

**CAPITAL PROJECTS ADVISORY REVIEW BOARD
REAUTHORIZATION COMMITTEE**

MINUTES

Wednesday, July 29, 2020 1:00 – 3:00 pm

Members present: **Chair:** Rebecca Keith (WA Cities)
Vice-Chair: Robynne Thaxton (Private Industry)
Loren Armstrong (WA Ports), Becky Blankenship (Architects), Janet Jansen (DES), Howard Hillinger (Construction Managers), Santosh Kuruvilla (Engineers), Scott Middleton (Specialty Contractors), Mike Pellitteri (General Contractors), Olivia Yang (Higher Ed); Robin Heinrichs (School Districts),

Others present: Nancy Deakins (DES), Bill Dobyons (General Contractors), Andy Thompson (CPARB - General Contractors), Melissa Van Gorkom (Staff to WA Legislature), Steve Goldblatt (University of Washington); Michael Transue (Mechanical Contractors Association); Jerry Vanderwood (AGC); Aaron Cavin (JLARC); Janice Zahn (Ports); Aleanna Kondelis (University of Washington)

Committee Task: Achieve reauthorization of RCW 39.10

Agenda

1:00 Rebecca: Welcome and Introduction
Approve agenda
Approve meeting minutes from July 1, 2020

**WSU Pilot DB
Proposals**

Discussion and action regarding proposals:

Proposal 1: do not change statute (result: WSU would not be allowed to do pilot project for DB projects under \$2 M).

Proposal 2: amend RCW 39.10.300 (1) to add WSU DB pilot project proposal (distributed separately).

**Pre-engineered
Metal Buildings
Proposals**

RCW 39.10.300 (3)
Discussion and action regarding proposals:

Proposal 1: change nothing, statute remains as-is and under RCW 39.10.300 (3), pre-engineered metal buildings are an exception to requirement for PRC project approval.

Proposal 2: delete pre-engineered metal buildings as an exception to PRC review.

Proposal 3: next page

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Proposal 3: keep pre-engineered metal buildings as an exception to PRC review but define them as:

“Preengineered metal buildings” means buildings where the primary and secondary structural members, and the cladding, are an integrated set of metal assemblies, which are designed and engineered by the manufacturer and manufactured in a manner that permits inspection of the assemblies prior to erection.

Should Statute Expire or Continue

Discussion and possible action regarding proposals:

Proposal 1: Delete/repeal RCW 39.10.490 and have no expiration date and no JLARC sunset review included.

Proposal 2: Amend RCW 39.10.490 to an expiration date of July 1, 2031 (ten years) or [date TBD] and include a provision requiring JLARC performance (a/k/a sunset review).

Proposal 3: Amend RCW 39.10.490 to an expiration date of July 1, 2031 (ten years) or [date TBD] but do not include the sunset provision that requires JLARC review.

Small Business Proposals/MWBE issues

Discussion and action regarding proposals:

Proposal 1: Schedule a RA Committee meeting after the Business Equity/Diverse Business Inclusion Committee completes review and recommendations to discuss and vote on the recommendations.

Proposal 2: Delegate statute revisions to Business Equity/Diverse Business Inclusion Committee

Reference: CPARB’s charged the BE/DBI Committee with the following purpose:

Focus efforts around the following:

- *Comprehensive review of 39.10 with lens of equity (include RCW 39.04 & 39.80).*
 - *Create consistency in language.*
 - *Evaluate and bring forth effective strategies and opportunities for firms to compete.*
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Next Steps

Rebecca update on next steps; committee input and questions

Adjourn

Minutes:

1:00 Call to order
Moved to approve agenda with extended time to 4:00 pm
Approved by committee.

**Welcome/
Introductions** Meeting Minutes:
Motion to approve: Rebecca Keith
Second: Janet Jansen
Approved

**WSU Pilot DB
Proposals**

- Proposal by WSU to perform pilot projects for DB under \$2 million.
“Washington State University may perform design-build demonstration projects with a total project cost under \$2M to develop best practices in encouraging small business participation and in managing capital projects under \$2M. Washington State University shall provide bi-annual reports to CPARB that includes information on the type of projects performed, the initial and final project cost of the projects, and the best practices derived from the projects.”
 - Olivia
 - WSU has a body of work that can provide value
 - Good owner willing to provide feedback
 - Will report back
 - Loren: The word bi-annual can be misleading.
 - Olivia: Change bi-annual to every other year.
 - Janice: Was there an intent not to include schedule?
 - Olivia: Happy to include schedule.
 - Revisions discussed:
Washington State University may perform design-build demonstration projects with a total project cost under \$2M to develop best practices in encouraging small business participation and in managing capital projects under \$2M. Washington State University shall provide reports to CPARB every other year, starting with two years after the effective date of the statute. Such reports shall include information on the type of projects performed, the initial and final project cost and schedule of the projects, small business participation, and the best practices derived from the projects.
 - Scott: He will support because the provision has reporting requirements.
 - Mike: Can you create a set aside for small businesses?
 - Olivia: Don't want to put a set aside in the statute. Don't think that large firms will participate.
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- Howard: As drafted, the purpose is to encourage small business participation. Don't think statute should add more restrictions.
- Olivia: If a large business were to express business, WSU would look at it as an opportunity for the large business to be a mentor and help small businesses grow.
- Aleanna: Will there be a limit to the number of projects or the time frame?
- Olivia: Not at this time and reluctant to put a number on it. WSU intends to be very hands on in helping first time users.
- Bill: If there is an intent to limit to small business, then we would have to define small business, and then figure out how to enforce. That's a lot of bureaucracy to track.
- Janice: Seems like small business participation is in the statute in other places. Are we encouraging small business participation or to pursue this type of project. Suggest a change from "participation" to "pursue".
- Robynne: "Participation" is the correct term because allows mentorship.
- Rebecca: Small business participation in the rest of the statute is focused on sub participation.
- Olivia: In looking at current list of firms, there is opportunity to allow firms to participate with more than just pursuing the work. WSU wants to explore collaboration and business models. Hoping to make it less expensive to compete. Focused on all members of the team. Design-build skills and business model is different. Possibly less expensive to compete.
- Aleanna: Including just one agency in the statute without an off ramp with no end date is problematic.
- Olivia: The alternative was to put in 28B, like the UW critical care roster. Instead, the decision was made to put in 39.10 for greater visibility.
- Aleanna: UW has been submitting reports on the Critical Care Center, and it seems odd. Think that there is something positive here. Other parties could benefit from it, and what happens if we don't get to the point of revisiting?
- Olivia: Notes that she had discussed with other higher ed representatives and had not heard concerns.
- Motion: Robynne moves to adopt the revisions as edited by the committee:
Washington State University may perform design-build demonstration projects with a total project cost under \$2M to develop best practices in encouraging small business participation and in managing capital projects under \$2M. Washington State University shall provide reports to CPARB every other year, starting with two years after the effective date of the statute. Such reports shall include information on the type of projects performed, the initial and final project cost and schedule of the projects, small business participation, and the best practices derived from the projects.

Second: Santosh

Vote:

Rebecca Keith (WA Cities) Y

Robynne Thaxton (Private Industry) Y

Loren Armstrong (WA Ports) Y

Becky Blankenship (Architects) Y

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Janet Jansen (DES) Y
Howard Hillinger (Construction Managers) Y
Santosh Kuruvilla (Engineers) Y
Scott Middleton (Specialty Contractors) Y
Mike Pellitteri (General Contractors) N
Olivia Yang (Higher Ed) Y
Robin Heinrichs (School Districts) Y

Pre-engineered Metal Buildings Proposals

- Three options:

Proposal 1: change nothing, statute remains as-is and under RCW 39.10.300 (3), pre-engineered metal buildings are an exception to requirement for PRC project approval.

Proposal 2: delete pre-engineered metal buildings as an exception to PRC review.

Proposal 3: keep pre-engineered metal buildings as an exception to PRC review but define them as:

“Preengineered metal buildings” means buildings where the primary and secondary structural members, and the cladding, are an integrated set of metal assemblies, which are designed and engineered by the manufacturer and manufactured in a manner that permits inspection of the assemblies prior to erection.

- Becky: She has seen some concerning RFPs. The AIA Practice Committee is very happy with this proposal to delete pre-engineered metal buildings from the exception to go to the PRC.
 - Robynne: The committee should delete it unless someone reaches out to the pre-engineered metal building community to get their assistance in creating a definition. In addition, if there is push back by the committee, this change should be dropped to preserve re-authorization.
 - Janet: Agree with Robynne, this change would be the first thing to give up in the bill.
 - Becky: The likelihood that the bill will get pushback from legislators is low.
 - Rebecca: Have heard nothing from Port of Ridgefield. This provision is an exception, and the industry seems to have changed since including the exception. We should be trying to do what we think is good policy, and if an industry group pushes back then deal with that. From a policy perspective, should look at why we have the exception to the first place, and assume that there was an understanding that certain projects don't make sense to require PRC review. If you have a \$5 million structure that does include design and other elements then would start to question the exception.
 - Santosh: Would support proposal 2
 - Howard: He comes back to the question about what happens if a small agency wants to do a small project. What about the cost and effort for a small project to
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go before the PRC? What about trying to define certain classes of structures is making it more complicated. Is there a size threshold that makes it more difficult?

- Becky: Already have a dollar threshold and at the \$2 million value. Not an extreme cost or burden for the owner, particularly now that can do it virtually.
 - Howard, He doesn't recall there being a size exemption under PRC rules.
 - Rebecca: You still have to comply with all of the requirements of the statute. Received presentation regarding several projects; Port of Richfield at 4.25 million and \$250 honorarium; no contract for review; etc.
 - Howard: Going before the PRC is not a simple process, and he is reluctant to require people to go through process if might be more cost effective for small buildings.
 - Olivia: Becoming more and more sympathetic to designer's concerns. Should we have a definition?
 - Becky: Comes down more to compliance with RCW. Make it fair and reasonable for architects to compete.
 - Rebecca: Question to Howard, is a definition helpful to your concern?
 - Howard: Is there a project under \$2mm threshold? Maybe one way to do it is that definition of pre-engineered metal building. Perhaps could be broadened. Or, we could say that PRC is triggered by a certain project size?
 - Discussion of size of project and requirements of RCW 39.10.300
 - Nancy: The intent of the proposal was that these projects would go to the PRC.
 - Discussion regarding what is allowed under the statute.
 - Nancy: Possibly set a dollar threshold. Is under \$2 million as much of a concern.
 - Becky: Probably correct.
 - Janice: Beyond the commodity part of the pre-engineered building, is the issue more regarding the site work and the other work (foundation) supporting the construction of the building?
 - Rebecca: We need to move on. Is there a motion? Is this ripe for action today?
 - Olivia: This idea may need a second meeting. Happy to work with Santosh, Becky and Walter to refine.
 - Becky: Happy to do that.
 - Rebecca: Remember when exception was put into the statute the number was \$10 million.
 - Olivia: Part of why designers are upset is that these projects have not used best practices.
 - Rebecca: We know what the definition of portable facilities is. We can tell what modular buildings are. We don't know what pre-engineered metal buildings are as the industry has changed since the statute was enacted.
 - Reviewed examples of "pre-engineered metal buildings"
 - Santosh: His suggestion is to punt on this. Walter has been the champion. Share his concern.
 - Went through committee list to determine whether have anything to add to discussion.
 - Scott: We should do something, but there are concerns about the definition. It is best to have the relevant association weigh in. Lean more toward proposal 2 than 3. If we get push back from stakeholders then can deal with issue down the road.
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- Olivia volunteered to work with parties to work with stakeholders to come up with a definition.
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Loren Armstrong will leave at 3 and appoints Janice Zahn as delegate.

**Should Statute
Expire or
Continue**

- Options:
Proposal 1: Delete/repeal RCW 39.10.490 and have no expiration date and no JLARC sunset review included.

Proposal 2: Amend RCW 39.10.490 to an expiration date of July 1, 2031 (ten years) or [date TBD] and include a provision requiring JLARC performance (a/k/a sunset review).

Proposal 3: Amend RCW 39.10.490 to an expiration date of July 1, 2031 (ten years) or [date TBD] but do not include the sunset provision that requires JLARC review.
 - Scott: MCA would support sunset. The number of amendments that are proposed throughout the discussions on reauthorization support keeping it in. There is a strong interest in expanding use, which has a large impact to capital budgets. There have been some abuses to the process. Sunset is very important. It brings folks to the table and adds an element of urgency, which is good for the stakeholders, to modify the statute to work for everyone.
 - Rebecca: Are you looking at Proposal 1 or 2
 - Scott: Proposal 2. If we get to a point where we keep sunset in and we have discussions at the next reauthorization round, and there isn't a number of proposed amendments, perhaps at that point we should consider taking out sunset. We are not at that point right now. Keep it at the most recent, to 2029, which is beyond the current sunset statute date.
 - Becky: No comment
 - Robin: Schools don't have a perspective on this.
 - Santosh: No additional comments
 - Mike P: Solidly with MCA in keeping the status quo. This is an important process.
 - Janet: Initial thought is that we have been doing this for a long time, at some point should be taken out. If we can extend to 10 years can be more balanced.
 - Howard: CMs would be in favor of a longer period. Supportive of proposal #1. Would be supportive of proposal 2 with a longer period. Can you remove sunset but still have a review of the statute?
 - Aaron: Can draft a statute with JLARC review without a sunset provision.
 - Nancy: If you go with proposal #3, which is that the statute expires but without JLARC review, you still have to go to the legislature and prove to the legislature to keep statute.
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- Janice: In light of the last discussion, we have had 39.10 in place for a long time. The idea that we only make changes during sunset is incorrect. For example, design-build and JOC changes last year. Would be in favor of extending time frame longer.
 - Scott: He would like to point out Jerry Vanderwood with AGC is in favor of keeping sunset in the reauthorization bill. Neal Hartman wanted to convey that we should keep it in.
 - Robynne: We should get rid of sunset, but willing to go with a 10 year sunset is a good compromise
 - Olivia: Sunset puts undue urgency, for example, GC/CM committee had to revise statute before best practices. Perhaps put in a review provision.
 - Janet: Concern is with the amount of work that CPARB already has on its plate. Doing an internal review would add more angst to everything. The compromise with the 10 years seems reasonable at this point.
 - Rebecca: Is there anyone not on the committee who would like to talk?
 - Steve Goldblatt: Clearly biased. Does anyone really think that we would go back to a DBB world in this state? We were there for a 100 years, and 30 years ago we started working on alternatives. We have had this statute for 25 years. Incremental improvements are thoughtful and can be done without the specter of this statute disappearing. There would be less pressure to work on the incremental changes and do them in an orderly/periodic fashion without sunset.
 - Andy Thompson: One could make argument that these delivery methods are not alternate delivery anymore; however, this is a good discussion to have. Because deliberative process will occur, the users on the contractors' side appreciate the opportunity to get in a forum with the public agencies every 7 years. Keep it the way it is. If JLARC review was not part of sunset, it would make it easier from having to put together a performance report.
 - Rebecca: As a Cities representative, alternative public procurement has proven its worth, and it's provided a lot of value to public owners across the state. The industry evolves, and there is a way that stakeholders can deal with it. You will always have a forum for issues as well as good and informed policy discussions. For example, we are now having a rush regarding the language on pre-engineered metal buildings. From a policy perspective she doesn't see value of having the statute expire. As the chair committed to getting reauthorization of 39.10, that happens when we have broad stakeholder support and consensus. If we don't have strong consensus from labor, specialty subs, and AGC, etc., on sunset, then we risk our charge, and we don't want to do that. Was there something that would have gotten you to getting rid of expiration date? In meetings, she has not heard anything that would get people to that point. If there was something that would get people to that point, she would like to hear it. If not, we need to do what will get the statute reauthorized. The JLARC review is valuable, but it is a lot of work.
 - Andy: Would like to recognize Rebecca and the work she has done to get involved and her ability to put on paper what is needed for reauthorization. The performance report has been a significant amount of work.
 - Olivia: Second what Andy said.
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- Rebecca: What we are asked to do at CPARB is often an unfunded mandate, and we rely a lot on DES with assistance and budget. DES supplements our work with their budget.
- Scott: Echo what Andy and Olivia were saying. Rebecca is an asset to all committees.
- Rebecca: Scott and many others also did a great job.
- Robynne: Can we get everyone to a 10 year time frame?
- Scott: Yes.
- Robynne: Question regarding what will happen if the sunset provisions aren't renewed.
- Melanie: No expectation that the sunset statute won't be renewed. That issue should not be a consideration.
- Andy: If it does get extended 10 instead of 8, can it be renewed in a year where there is a longer session?
- Mike: Suggestion to go to 5 years
- Melanie: There is a minimum of 7 years clause if it is sunseting, but they are asked to look at other statutes without a sunset clause.
- Mike: Can we explore what it looks like if there is no JLARC review?
- Rebecca: JLARC review not just a report, but it is one more piece of a process that is dealt with at the same time as working with all of the stakeholders. Give more description of process.
- Mike: How important is JLARC review?
- Rebecca: One more layer of work on a volunteer board.
- Mike: Can we still be as effective without the process?
- Rebecca: Question for committee and the group.
- Janice: If it's not in the RCW, we can still include things in the CPARB by-laws and guidelines as to what we do. One more way to get that level of rigor. What are the different options to have review of RCW?
- Howard: Could keep GC/CM, Design-Build, and JOC committees as standing committee to continue to discuss issues so that it's not a crush at reauthorization
- Rebecca: Did that. Not hearing anything from detractors that we can create that structure. Will be extremely helpful to have the bill in full to CPARB as quickly as possible.
- Howard: If best we can do is 10 years with performance review, then let's do that.
- Andy: Has reached out to various legislative representatives. They have made it clear that the legislative session is coming up, but there are a lot of things going on in January, and it is in our interest to get this in the end zone with the greatest opportunity.

Motion: Robynne moved to adopt proposal number 2 with 10 years:

Proposal 2: Amend RCW 39.10.490 to an expiration date of July 1, 2031 (ten years) and include a provision requiring JLARC performance (a/k/a sunset review)

Second: Janet

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Discussion:

- Scott: Can get to 10 years if that is what we will advocate as a group going forward. Would like to hear from other owners.
- Rebecca: If specialty subs agrees and votes for 10 years, are public owners going to support with consensus?
- Janet: Yes
- Janice: Have owners vote first.
- Rebecca: As the chair, she would go back to the commitment. She would tell constituents that highest and best interest is getting reauthorization and would want consensus on this. A vote on this is a commitment to what we all will advocate for.
- Olivia: Clarifying question, we aren't just talking about sunset. Talking about whole bill, including the changes to the GC/CM statute.
- Scott: Yes.

Vote:

Rebecca Keith (WA Cities) Y
Robynne Thaxton (Private Industry) Y
Loren Armstrong via Janice Zahn (WA Ports) Y
Becky Blankenship (Architects) Y
Janet Jansen (DES) Y
Howard Hillinger (Construction Managers) Y
Santosh Kuruvilla (Engineers) Y
Scott Middleton (Specialty Contractors) Y
Mike Pellitteri (General Contractors) Y
Olivia Yang (Higher Ed) Y
Robin Heinrichs (School Districts) Y

**Small Business
Proposals/MWBE
issues**

- Update. Committee will have meeting on August 4. Walter doesn't expect additional changes because we have already aligned statutes.
 - Suggest that we meet again before the pre-reads are due.
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Next Steps

Next meeting on August 10.

Adjourn

Meeting is adjourned at 4:00 pm
