

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Minutes

December 8, 2011

Members Present	Representing	Members Absent	Representing
Daniel Absher	General Contractor	Mike Riker	Construction Trades Labor
Larry Byers	Insurance/Surety Industry	Walter Schacht	Architects
Steven Crawford	School Districts	Senator Rodney Tom	Senate (D)
Christine McCorkle	Specialty Contractors	Vacant	Senate (R)
Ed Kommers (vice chair)	Specialty Contractors	Vince Campanella	General Contractors
John Ahlers	Private Industry	Damon Smith	Engineers
David Myers	Construction Trades Labor	Rep. Bruce Dammeier	House (R)
Cathy Canorro	OWMBE		
Christopher Hirst	Private Industry		
Helaine Honig	Cities		
Olivia Yang	Higher Education		
John Lynch	DES		
John Ahlers	Private Industry		
Gary Rowe	Counties		
Robert Maruska (chair)	Ports		
Chuck Davis	Hospitals		
Rep. Kathy Haigh	House (D)		

STAFF & GUESTS are listed on the last page

Welcome & Introductions

Chair Robert Maruska called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:04 a.m. Members provided self-introductions.

This was John Lynch's last meeting. Ed Kommers presented a Distinguished Service Award and board members congratulated John. John Lynch thanked everyone and stated that Nancy Deakins will represent Department of Enterprise Services until someone is appointed.

Approve Agenda

Ed Kommers moved to approve, John Lynch seconded. Motion carried.

Approve November 10, 2011 Minutes

Ed Kommers moved to approve the minutes. Olivia Yang seconded. Motion carried.

Project Review Committee (PRC)

Tom Peterson, chair, provided a review sheet of December's PRC meeting. University of Washington applied and was approved for recertification. Western Washington University had a GCCM project approved.

Bob Maruska approved a special PRC meeting for Jan. 5th, to review a project for Clover Park School District on JBLM based on grant funding, schedule need, and ability to create local jobs.

Reauthorization Subcommittee

Ed Kommers, Chair, gave a summary of the meeting held on December 5th. The subcommittee will be looking at the reauthorization of RCW 39.10 and changes that may need to be made. The meeting consisted of reviewing deadlines and topics for the subcommittee to cover. He will send out minutes and post them on the webpage. A plan for reauthorization was established at the first meeting.

The JLARC sunset review staff is doing a data analysis that will be summarized in June and the report presented to JLARC in September. Please respond to all JLARC requests as quickly as possible. Representative Haigh stated that if anyone has specific questions for JLARC to ask, contact her office immediately at haigh_ka@leg.wa.gov. Bob Maruska stated the intent is to include JLARC's sunset review recommendations in CPARB's recommendations to the 2013 legislature.

The City of Seattle requested that the Board approve to replace Nancy Locke with Aleanna Kondelis on the Reauthorization Subcommittee. **Ed Kommers moved to approve replacement, Bob Maruska seconded. Motion carried.**

John Lynch requested the Board to appoint Nancy Deakins to represent the Department of Enterprise Services on the subcommittee. **Ed Kommers moved to approve the appointment, John Lynch seconded. Motion carried.**

JOC Subcommittee Report

John Lynch, Chair, stated that one of the goals was to jump start data collection for JOC. The collection activity is underway and agencies are to provide information to DES by December 16th. Dick Lutz put together some preliminary data for this meeting to give an idea of where JOC stands in the state right now. John reviewed the information with the caveat that Board staff had not seen nor reviewed the data.

Another goal is to submit recommendations for changes in the current JOC law under RCW 39.10. The subcommittee adjusted what they would like to recommend:

- Adding five public entities to JOC authorized users
- Volume of JOC work in a calendar year to increase from \$4M to \$6M
- Adds definition for the contract term and allows work orders to be completed beyond the contract term.
- Changes the percentage of the job order contract required to be subcontracted from 90% to 60%, and clarifies the basis for calculating the percentage.
- Change maximum value of each work order to \$350,000.
- Change the annual reporting period to July 1st – June 30th.

The subcommittee discussed the level of required subcontractor participation. There was a range from 60% to 90%. The final decision was 60% with the agreement of removing the words 'work contained in.'

Chuck Davis requested that some portion of the public hospital districts be allowed to use JOC. There is a concern that most hospitals are too small to gain any value in using JOC. The subcommittee discussed it and decided not to include them at this time. It is possible that they will be added in the future when there is proof that there is value in it.

Dan Absher motioned to modify recommendation to say “At least 60% of a job order contract...” and leave the rest of the recommendations. Ed Kommers seconded. Motion carried. Vote: 13 Yes, 1 No.

Representative Haigh said she would request legislative staff, Marsha Reilly, to help draft the bill.

K-12 Performance Based Construction Contracts

John Lynch, chair, reported that the subcommittee met twice since last meeting. They addressed two items from last CPARB meeting. 1) Letter submitted by Northwest Energy Council. John spoke to Stan Price and he believes they advocate for energy conservation. The subcommittee decided not to change the previous recommendation, but will take that information and include it as an appendix to the report. 2) Bonding concerns raised by Insurance/Surety Representative, Larry Byers in a previously submitted letter will also be added as an appendix to the report. John replied also that he researched the bonding issue and believes it will not be a concern.

The subcommittee believes the report is ready to be submitted by the December 31st deadline.

Ed moved we approve the report and include the letters as appendixes to the report. Chuck seconded. Motion carried.

Responsibility/Eligibility Task Force

John Ahlers, co-chair, stated that the team is making good progress on the bidder responsibility guidelines that they were hoping to present, but with two issues that have not been resolved so they are not ready at this time. The two issues are 1) Final editing on the draft 2) a lack of consensus on a recommendation of pass/fail vs. owner discretion. There is hope to have a face-to-face meeting to come to an agreement on a recommendation for the guidelines.

The disagreement is on whether to require a pass/fail process to determine bidder responsibility after bids are opened. At this point, does the owner have the discretion to say that the contractor substantially meets the responsibility criteria or is there no discretion and it is pass/fail only? There was discussion from owners and contractors on their opinions on how this should be dealt with. John and members will take the feedback to the meeting and bring a recommendation to February's meeting.

A meeting will be scheduled after the first of the year to finalize the task force's recommendations. Also, in the new year the task force will need to talk about subcontractor eligibility issues. So far, they don't anticipate any statute change recommendations.

Break 10:24

Restart 10:42

Small Business Task Force (SBTF) Proposed Legislation

Dan Seydel, Chair, discussed the proposed changes by the SBTF to selection of firms in Design Build (DB) and General Contractor/Construction Manager (GC/CM). There was discussion in November's meeting on terms being proposed and he took them back to the task force for better

recommendations. The SBTF proposed three alternatives for language for DB and GC/CM selection language.

OMWBE representative Cathy Canorro believes this language does cause issues with I-200. She states her AAG says it is not legal to use this wordage. She has to follow the advice of her counsel and will vote against approving this language.

Mike Purdy submitted his suggestions on changing the language. His proposal were totally different from the three alternatives submitted by the SBTF. He agrees there are many opinions on whether or not this type of language conflicts with I-200. His language takes criterion away from selection and addresses working with the selected contractor.

The Board considered SBTF Alternate 3 and struck the language about Washington certified minority and women business enterprises (MWBE) for both DB and GC/CM selection criteria for the firm's outreach plan to MWBE and for the firm's past performance using MWBE.

There was discussion about the SBTF proposed language including concerns about the state's lack of definitions for small, economically, or disadvantaged businesses.

It was recommended that we request a consult by Department of Enterprise Services' assistant attorney general (AAG) for extending language to include certified MWBE in the future. Nancy Deakins will request the AAG review documents and have a discussion with the Board in February's meeting.

Olivia Yang motions to adopt alternative three for language in 39.10.330 & 39.10.360, as amended in the meeting. Chuck Davis seconded.

Ed Kommers suggests we amend motion to allow CPARB to review with legal counsel. Dan Absher seconded. After discussion, Ed withdrew his amendment.

Original motion stands. Ed Kommers called for vote. Yes, 10 votes. No, 4 votes. Motion carried.

Proposed Legislation & Wrap Up

Bob Maruska discussed our previous proposed bills 1970 & 1971. Both bills were proposed last session and have been included in 2012 session. Both bills are sponsored by Representative Haigh and Dammeier. There was also discussion on how to present the bills approved in today's meeting.

Bob Maruska motioned to bundle the approved new language into three bills to increase chances of success. The three bills are: HB1970, JOC Bill and Misc. GCCM clean up language bill. John Lynch seconded. Motion carried.

Budget: John Lynch says there is a proposal in the governor's budget to reinstate the CPARB budget. This will provide the funding for JOC analysis and other items. Bob Maruska requests the Board support any legislation that replenishes funding.

February 2012 CPARB Agenda items:

- PRC Report
- Subcommittee & Task Force Reports
 1. Reauthorization
 2. Responsibility/Eligibility
 3. K-12 Performance-Based Construction Contracts
 4. Small Business Opportunities
- JOC Data
- Budget Review
- Discussion with AG
- Legislative Review

**Motion to end meeting made at 12:02 p.m. by Ed Kommers Seconded by John Lynch
Motion carried.**

Staff & Guests

Nancy Deakins, DES Staff	Danelle Bessett, DES Staff	Dan Seydel, Platinum
Van Collins, AGC	Aleanna Kondelis, Seattle	Mike Purdy, MEP Associates
Lisa Taylor, King County	Drew Phillips	BP Construction
Rodger Benson	Mortenson Construction	Rory Woolsey, Gordian
Jim Borrow, KCDA	Dick Lutz, Centennial	Jim Anderson, Burton Construction
Jeanne Rynne, OFM	Tom Peterson, PRC	Dana Pittman, Sustainable Floors
Thuy Hong, Sound Transit	Linneth Riley-Hall, Sound Transit	Larry Stevens, NECA
Randy Dubig, WSDOT	Nora Huey, Port of Seattle	