

CAPITAL PROJECTS ADVISORY REVIEW BOARD
504 15th Avenue
John L. O'Brien Building – Hearing Room A
Olympia, Washington
December 11, 2008
9:00 AM

Final Minutes

MEMBERS PRESENT

Daniel Absher
Norman Strong
Rocky Sharp
Ed Kommers
David D. Johnson
Pete Crow
Cynthia Cooper
Christopher Hirst
Olivia Yang
John Lynch
Larry Byers
Rodney Eng
Gary Rowe
Robert Maruska
Rep. Kathy Haigh (Vice
Chair)

REPRESENTING

General Contractors
Architects
Specialty Contractors
Specialty Contractors
Construction Trades Labor
Construction Trades Labor
OMWBE
Private Industry
Higher Education
General Administration (GA)
Insurance/Surety Industry
Cities
Counties
Ports
House (D)

MEMBERS ABSENT

Rep. Dan Kristiansen House (R)
Senator Rodney Tom Senate (D)
Senator Dale Brandland Senate (R)
Vince Campanella General Contractors
Damon Smith Engineers
John Ahlers Private Industry
Vacant Public Hospital Districts
Dan Vaught School Districts

STAFF & GUESTS

Nancy Deakins, GA
Searetha Kelly, GA
Cheri Lindgren, Puget Sound Meeting Services
Dick Lutz, Centennial Contractors
Eric Smith, Chair, Project Review Committee (PRC)
Miriam Israel Moses, Rebound
As Marsha Reilly, State Government & Tribal Affairs
Committee
Ashley Probart, Association of Washington Cities (AWC)
Aran Buchan, ABC
Randy Scott, WSA of UA

Van Collins, Association of General Contractors (AGC)
Rocky Gerber, CCE
Mark Scoccolo, Utility Contractors Assoc. of WA
Bill Arnett, King County Dept. of Natural Resources
Rodger Benson, Mortenson Construction
Robyn Hofstad, GA
Mark Wheeler, City of Seattle
Mark Riker, Sheet Metal Workers Local 66
Joe Barnett, King County

Welcome & Introductions

Chair Robert Maruska called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:10 a.m. Everyone present provided self-introductions. A meeting quorum was attained.

Approve Agenda

Chair Maruska added two items to the agenda. Kathryn Leathers, Joint Administrative Rules Review Committee (JARRC), will be available to answer questions from 1:00 p.m. to 1:30 p.m. on a JARRC

work session scheduled for January 8, 2009. The Association of Washington Housing Authorities submitted two letters concerning a request for the Attorney General's opinion on public housing authorities.

Pete Crow moved, seconded by Cynthia Cooper, to approve the agenda as amended. Motion carried.

Approve November 13, 2008 Meeting Minutes

Pete Crow moved, seconded by Daniel Absher, to approve the November 13, 2008 minutes as presented. Motion carried.

Public Comments

Chair Maruska reported this is the last meeting for Pete Crow.

Mr. Crow said he recommended Mark Riker, Sheet Metal Workers Local 66, to the Governor to fill his position.

Chair Maruska thanked Mr. Crow for his service to the Board and wished him well in his future endeavors.

Report from Project Review Committee

Eric Smith, Chair, PRC, reported the committee welcomed new members Frank Abart, Linneth Riley Hall, Mark Scoccolo, Juan Huey Ray, and Tony Benjamin. Recruitment is underway for three additional members representing ports, labor, and school districts. Five other member terms expire in July 2009.

The PRC considered the following applications at the December 4, 2008 meeting:

- Project application review for General Contractor Construction Manager (GC/CM) – City of Yakima – Capital Theatre Expansion. The project was a good candidate for the GC/CM delivery and the team was well qualified. PRC approved the application.
- Project application review for GC/CM - Chelan County Public Hospital District #2 - dba Lake Chelan Community Hospital. PRC members votes unanimously to deny the application because the project was not suitable for GC/CM and the team was not experienced for managing the process.

Discussion ensued on the budgets for the two projects and details of the Lake Chelan Community Hospital project and owner team. PRC Chair Smith explained that the Chelan Community Hospital is vital to the community. The team did not demonstrate an understanding of the process. Owner representatives were familiar with private sector delivery, but did not understand the public bidding process and other matters.

Chair Maruska reported on a media contact to the Board and staff. Ms. Deakins responded to the inquiry and provided general information about GC/CM, the process, and statute requirements. Ms. Deakins said the question was whether there was a review process for school projects. She provided an explanation on how the law changed in 2007 and how the School District Project Review Board was replaced with the PRC. The concern was related to significant change orders occurring with a several school district projects and whether anyone was evaluating the effectiveness of GC/CM. She

said she explained the data collection process to King 5 News and referred the agency to benchmark measures in the data collection guide. The reporter was not doing a story but was obtaining information.

PRC Chair Smith reported Ms. Deakins and Ms. Septelka also updated members on the data collection project.

CPARB and PRC Membership

Ms. Deakins reported information was forwarded to Mr. Riker. A public hospital districts representative is working to identify a candidate for the vacancy.

Mr. Eng asked Ms. Deakins to follow up on outdated website contact list information. Mr. Kommers term of expiration is incorrect.

Ms. Deakins advised that Don Gillmore has expressed interest for serving on the PRC as a school districts representative. Members were referred information outlining Mr. Gillmore's architecture and school construction experience.

Mr. Hirst and Mr. Absher said Mr. Gillmore is well qualified and would be a great addition to the PRC.

PRC Chair Smith commented that Mr. Gillmore's agency appeared before the PRC last year and was not approved for GC/CM certification.

Daniel Absher moved, seconded by Christopher Hirst, to appoint Don Gillmore to the PRC. Motion carried.

Ms. Deakins reported staff will continue to recruit for owner (ports) and construction trades labor candidates to fill vacancies on the PRC.

Task Force Status Reports

Owners - Job Order Contracting – John Lynch

Dick Lutz, Centennial Contractors, provided a PowerPoint presentation. Centennial Contractors specializes in Job Order Contracting (JOC). He reviewed other procurement options and defined JOC as, "A contract in which the contractor agrees to a fixed period, indefinite quantity delivery order contract, which provides for the use of negotiated, definitive work orders for public works." Each work order is negotiated. General reasons to choose JOC include:

- Multiple projects typically ranging from \$25,000 to \$350,000 in value
- Total dollar volume of work is less than \$4 million per year
- Limited owner staff availability for proper implementation of other methods
- Urgency for project completion

Unique aspects of JOC, JOC's construction niche, and the JOC contractor's coefficient and responsibilities were reviewed. A sample Scope of Work (SOW) and work order proposal was provided. JOC contractors also provide bonding and insurance, which is an important element for small and disadvantaged businesses. Paying prevailing wages applies. Typical projects include

infrastructure repair, renovation, remodeling, and upgrade projects. New construction is limited to 2,000 square feet.

Benefits of JOC for owners include reduced lead time, eliminated bid time, expedited engineering, and joint scoping and re-scoping as needed. Increased opportunities for small and disadvantaged businesses were examined. A flow chart of the JOC process was presented. Mr. Lutz described what a typical site visit with the owner. Pictorial SOW examples were provided. The proposal phase includes the work order request, proposal package, and scope negotiations. The facility manager signs a final work order form. Elements of a work order proposal estimate package were outlined and include the following:

- Are the estimated line items appropriate?
- Are the estimated quantities correct?
- Is the proposed schedule acceptable?
- Is the bottom line price fair and reasonable?

Negotiations under JOC are different from other delivery methods. JOC negotiations are based on line item selection, line item quantity and schedule, and not price. The result of negotiations is consensus. Mr. Lutz reviewed construction and project closeout components.

Mr. Lutz distributed an additional handout illustrating what the JOC contractor provides and the owner's responsibility for small works projects.

Mr. Lutz responded to questions and affirmed building permits are required for JOC projects, the designs are completed by a registered architect, and the architect carries liability insurance.

Mr. Crow asked how contractors are notified of the JOC work. Mr. Lynch replied GA advertises in the *Daily Journal of Commerce* and with contractors in GA's web system similar to an advertised construction contract. It's partly a qualifications-based selection. GA interviews potential contractors and develops a short list. Bids are submitted on the co-efficient. A combination of the qualifications and bids determines award of the contract.

Mr. Lutz said there are approximately five JOC contractors in the state.

Mr. Johnson asked what recourse is available for employees to recover incorrect or unpaid prevailing wages, as there is no real retainage associated with a JOC. Mr. Lutz said an employee would contact the JOC contractor, who has to document prevailing wages were paid. Mr. Johnson said an employee would have to hire an attorney and pursue legal action against the contractor.

Mr. Eng said an employee must follow the same steps to make a claim against retainage. Mr. Johnson replied that an employee can file a claim with Labor and Industries (L&I) within 30 days, but there is no retainage available. L&I will prosecute on behalf of the worker. JOC contractors are generally paying correct prevailing wage rates. It's likely not a significant issue. However, expansion of JOC will bring additional contractors into the pool. Everyone should be aware there are no protections for employees in terms of wages and how to collect if paid incorrectly. The employee is forced to hire an attorney to recover wages.

Mr. Hirst asked about the type of bond provided by a JOC. Mr. Lutz said it's a performance and payment bond for all the contracts performed for an owner.

Rocky Gerber said that most contracts require a 5% retainage.

Mr. Lynch stated GA has not received any contacts concerning any wage disputes. GA would hold the JOC contractor responsible because paying prevailing wage rates is a requirement under a contract. Contractors are interested in return business. If there are problems, GA wouldn't hire the JOC contractor for future projects. GA would ensure employees are paid accurately.

Ms. Deakins said each work order is treated as a separate contract. There is retainage at the JOC contractor level and not with subcontractors.

Discussion ensued on what happens if an employee performs work for a subcontractor and not the JOC contractor.

Mark Scoccolo, Utility Contractors Association (UCA) of Washington, asked if a JOC contractor is required to provide certified payrolls. Mr. Lutz confirmed the requirement. Mr. Scoccolo said claims would be against the general contractor and not the subcontractor. Mr. Lutz replied that is correct, and there are protections.

Miriam Israel Moses, Rebound, said based on her experience, L&I in general will not accept a wage claim from an employee when there is no retainage. The 5% retainage is the retainage on a contract and not for a project, which is problematic. Another problem is the time it takes L&I to process a claim. When the project is accepted, and the retainage is released L&I will not file a claim and refer the employee to a private action. There are public agencies not acting in a responsible manner, such as using unlicensed contractors. There needs to be a universal requirement for all public agencies authorized to use JOC to guarantee the right of the employee to obtain services the State of Washington provides for them.

Mr. Eng said the JOC statute discusses retainage and bonds to the level of the outstanding work order rather than the potential value of the entire contract. The Alternative Public Works (APW) law is silent on retainage and bonding. The presumption is that retainage laws apply to JOC contracts and other alternative procurement options.

Discussion followed on the City of Seattle's retainage requirements.

Mr. Lynch said the retainage protection is similar to a Design Bid Build (DBB) project.

Mr. Hirst clarified that the current statute is not silent. Chapter 60.28 states in part, "each work order shall be treated as a separate contract."

Mr. Scoccolo suggested a general contractor is still obligated to ensure wages are satisfied.

Discussion ensued on the JOC's process to hire subcontractors, which is not necessarily based on the low bid but rather on best value, and that a negotiated and awarded SOW could be very different from what was initially advertised. Mr. Lutz explained that it's incumbent on the JOC to spread out the contracts. He acknowledged additional outreach to subcontractors is needed. In response to the latter

issue, Mr. Lutz said the intent is to send the same SOW to all parties. The JOC contractor can choose who performs the work.

Mr. Absher said if a problem with prevailing wages for JOC develops, the Board should address it. He asked how the bonding works and if public agencies are requiring bonds for each work order.

Representative Haigh suggested another issue is the duration of the bond.

Mr. Byers said that typically an owner will file a bond covering all work expected to be completed within a given year. The bond might be adjusted up if more work is awarded. Bonding is subject to an aggregate cap. There could be a sub-limit or cap for each project. There are two issues concerning the duration of the bond – L&I’s interpretation of the law and that and the bond is subject to the statute of limitations.

Ms. Moses said the statute of limitations on wage claims is three years. Thirty-days involve project acceptance and release of retainage. While Centennial Contractors requires certified payrolls, certified payrolls are not required under the JOC statute.

Mr. Lynch commented that for GA, retainage and performance bonds are held beyond the close out of the JOC contractor’s contract. The JOC task force discussed expanding the authority. Members were provided a handout of the task force’s draft language proposals to Revised Code of Washington (RCW) 39.10.420 and 39.10.440 as follows:

- Add a new item (3) to RCW 39.10.420 to read, “The Department of General Administration, the University of Washington, and Washington State University may issue job order contract work orders for the state regional universities and The Evergreen State College.”
- Add a new paragraph under (6) within RCW 39.10.440 to read, “The job order contractor shall obtain certified payroll records for each subcontractor under all work orders. Copies of certified payroll records shall be provided to the awarding agency upon written request from the agency or from an interested party.”

Members offered the following comments on the proposed language:

- Other issues in addition to certified payroll were discussed at the task force level. Under the Davis Bacon Act, a JOC contractor has a responsibility to monitor subcontractors and verify worker classifications and number of hours worked under the SOWs. It’s critical the CPARB understands how JOC works including bonding, retainage, protecting workers, and how contracts are distributed prior to expanding the authority.
- The recommendation does not involve expanding JOC. The task force did not discuss monitoring job classifications.
- The task force agreed to add “regional universities” with no expansion of the dollar amount. The three owners are responsible, understand the concerns, and are trying to reach a compromise.
- Money the state might receive from the federal government is intended to complete projects quickly and keep people working. State agencies have been asked to cut their budgets by 20%, which will affect jobs. An idea is to add language strengthening subcontractor responsibilities.

The Board could advance the issue. There is a sense of urgency. Expanding authority to higher education is a good next step.

- Workers are not aware of correct pay scales. A requirement could be to post the prevailing wage rates on job sites.
- RCW 39.12 requires posting prevailing wage rates and applicable benefit packages on every job site; however, it's not enforced and often is not posted.

Mr. Lutz asked whether modifying the language to read, "The job order contractor *shall monitor prevailing wage and wage classifications and* obtain certified payroll records..." would alleviate some concerns. Mr. Johnson said there should be a mechanism for employees and subcontractors to know the correct wage rate and that the contractor ensures and is responsible for paying the correct rate. Mr. Lutz said applicable references could also be included in the language.

Discussion followed on provisions contained in RCW 39.12.

Chair Maruska recessed the meeting from 10:42 a.m. to 11:06 a.m.

Mr. Lynch suggested revising the new paragraph in RCW 39.10.440 to clarify retainage and payment bonds are triggered by the end of the JOC contract period rather than the individual work order period, and dropping the language about obtaining certified payroll records because subcontractors are required to produce the records upon request. Owners are concerned about adding a requirement for general contractors to monitor items such as employee classifications and are unable to support incorporating that language in paragraph 39.10.400.

John Lynch moved, seconded by Rodney Eng, to add the new paragraph (3) to RCW 39.10.420, and clarify that accessing the retainage and payment bonds is triggered by the end of the JOC contract period rather than individual work order periods.

It was noted subcontractors are not required to submit certified payroll records.

Ms. Cooper asked whether the task force could propose two separate motions. Labor's interest remains unanswered to some degree.

Van Collins, Association of General Contractors (AGC), said the contractor community does not want to see JOC used obliquely to address a broader issue.

Mr. Johnson pointed out that language to protect employees, which was agreed to at the JOC task force level, is not part of the proposal. He said he's unsure whether he can support the motion.

Ms. Deakins said accessing retainage beyond the work order could be problematic because the law provides for treating work orders as separate contracts.

John Lynch and Rodney Eng withdrew the motion.

Ms. Yang moved, seconded by Pete Crow, to refer the issue back to the task force in hopes of presenting an alternate proposal in January.

Mr. Collins asked for notification to all stakeholders of the next task force meeting.

Mr. Absher offered a friendly amendment stating, *that the Board adopt paragraph (3) today, based on Representative Haigh's comments and refer the monitoring and prevailing wage issue back to the task force.*

The makers of the motion accepted the friendly amendment.

The motion as amended states, "The Board approves paragraph (3) and refers the monitoring and prevailing wage issue to the task force in hopes of presenting an alternate proposal in January." Motion carried.

Ms. Cooper left the meeting.

Mr. Benson asked members to add a review of the Collective Bargaining Agreement (CBA) language to the agenda.

Owners - Increase bid limits / day labor (public body self-performed work) - Ashley Probart

A supplemental handout was distributed. Mr. Probart reviewed the history of the issue. The task force did not reach a consensus on a proposal, which is a one-time bump up to \$150,000 and \$75,000 for first and second-class cities, respectively, regardless of the trades. He presented concerns raised by members of the task force. Some members are opposed to changing bid limits and indexing while others are willing to consider how public owners are impacted by the change in materials costs. Elements of the Washington State Department of Transportation (WSDOT) construction cost index were highlighted. A construction cost indices document was provided. Public owners engaged in a conference call several days ago to respond to concerns that emerged at the task force meeting. Mr. Probart explained that the intent is to advance the scheduled increase to cities from 2010 to 2009. He outlined the proposed increases for first class and code cities contained in the first handout. The request also includes an "average index proposal" consisting of a third engineering record, Consumer Price Index (CPI), and the WSDOT construction cost index, along with the CPARB providing the Legislature with a recommendation annually or biannually as necessary.

Mr. Eng described how public owners determined an average index proposal. A "basket of indices" better reflects the different types of work performed by the owners. The *Engineering Record* is often used for vertical construction. The WSDOT index relates to flat work. The CPI best reflects how labor rates are increasing.

Mr. Strong indicated a blended rate is a good compromise. Work performed by cities is typically flat rather than vertical. His agency completed a study for a client that revealed construction costs in Seattle increased 26% from 2005 to 2008. The matrix represents a 10% increase during the same time period. A concern is whether a one size fits all approach is best.

Mr. Johnson said labor opposes an automatic index. Harmonizing the index needs more discussion – it's a secondary issue. The same result occurs whether owners come back to CPARB every couple of years to review an automatic index, or the Board sets an amount and reviews the threshold every several years. Either way, CPARB would approach the Legislature about an adjustment.

Mr. Eng clarified that he understands that the proposal provides for an automatic index. The Board would review the index and make a recommendation to the Legislature if the indexing is inappropriate.

Mr. Absher said he supports the compromise except indexing. Harmonizing and establishing only a few limits is easier for monitoring purposes. This issue is related to the small works roster subject.

Mr. Kommers said subcontractors do not support increasing bid limits.

Ms. Moses said she understands the concept of catching up financially. She asked whether harmonizing benefits owners or whether it increases the bid limit. There is a significant difference in the index percentages - Engineering Record 38.5%, RS Means 50.9%, and WSDOT 107% - and averaging is an inappropriate methodology to determine costs. Ms. Moses spoke about work performed by public employees under the law, which is generally ordinary maintenance. Public employees are exempt from prevailing wage surveys. Construction work should be awarded to small and minority businesses. The issue is whether a public agency wants to function as a private business or a public agency. She asked the Board to evaluate the proposal closely.

Mr. Probart referred to the limits proposed, which are based on increases scheduled for 2010 and relate to the "catch up" side. The intent is to track the CPI. The second piece concerns an automatic index and the appropriate mix of indices. Another objective is not approaching the Legislature each year for an adjustment. The single trade change for code cities is the same. The multiple trade change is the difference between \$60,000 and \$65,000. The proposed change for first class cities is from \$40,000 to \$45,000, and there is an adjustment for the multiple trade limits, which is constrained by 10% of the total public works budget.

Chair Maruska recessed the meeting from to 11:56 a.m. to 12:35 p.m.

Olivia Yang moved, seconded by Rodney Eng, to harmonize the different limits based on the proposal presented by Mr. Probart. Motion carried. Pete Crow, Dave Johnson, Rocky Sharp and Ed Kommers opposed. (Christopher Hirst was not present when the vote was taken.)

Rodney Eng moved, seconded by Olivia Yang, to automatically index the bid limit numbers in accordance with the proposal presented by Mr. Probart (basket of indices) with one addition: try the strategy as a pilot program with the pilot program sunset on the same date as the APW legislation sunset date of June 30, 2013. Additionally, the CPARB will review and make recommendations to the Legislature based on the merits of a permanent indexing program.

Mr. Johnson said it's more appropriate for the Board to review and monitor bid limits on an annual basis or when awarding agencies believe an increase is necessary and propose increases without an automatic index. The cost increases as presented are not an accurate reflection of what's currently occurring in the construction market. An automatic index is not the answer. He encouraged members to vote against the motion.

Mr. Hirst rejoined the meeting.

Mr. Eng advised that the proposal maintains the status quo, as there was no "catch up" in the past when construction prices escalated greatly. If construction costs remain flat and the indices are accurate, bid limits will not increase.

Mr. Absher suggested a recommendation from CPARB when AGC, labor, and subcontractors are opposed undermines the Board's credibility.

Discussion ensued on responsibility of calculating the index, how the Legislature is notified that an increase is warranted, and how often. Representative Haigh noted that the CPARB has a powerful voice with the Legislature. Based on member comments, there appears to be problems with indexing and perhaps the CPARB should continue to work the issue. A recommendation for the 2009 session is valuable.

Mr. Eng said he assumes a state entity (such as L&I) calculates the limits in accordance with the CPI.

Mr. Johnson said it makes sense for the CPARB to review bid limits on a periodic basis and determine whether the limits should increase. Labor is not keeping pace with inflation.

Mr. Lynch acknowledged there are unanswered questions and suggested referring the matter to the task force. He recommended forwarding a recommendation to the Legislature when the CPARB is divided.

Mr. Eng said his motion is based on a concept. If the motion passes, the issue should be referred to the task force for additional work.

Mr. Strong commented that four years is a long pilot and that the program is not a trial if the CPARB reviews the matter on an annual basis.

Mr. Eng clarified that his motion concerns a pilot program with an automatic index and that the Board can render a recommendation to change the index if it's not reflective on what's occurring in the industry.

Ms. Reilly advised that the statute states in part that the code reviser will calculate the contribution every two years based on a recommendation by the Public Disclosure Commission.

Mr. Eng offered to amend the motion reflecting that the Board will perform the calculations and recommend an increase, decrease, or no change based on indices basket proposed. Ms. Reilly suggested having the Office of Financial Management (OFM) undertake the calculations. The change affects other section of the statute and not just RCW 39.10. Mr. Eng said he prefers having the task force work out the details. Indexing is a valid way to track costs.

Discussion ensued on the amount of work public owners can accomplish in house. There are larger entities that have no bid limits.

Motion failed (four in favor, eight opposed).

Mr. Kommers left the meeting.

JARRC Worksession

Kathryn Leathers, House JARRC and Transportation staff, reported Representative Hasegawa is conducting a hearing on the rule adopted by the University establishing a new APW contracting methodology.

Ms. Yang said there are two parts to the issue. Legislative members asked the Attorney General's Office (AGO) for a legal opinion. The Board established a task force to determine whether the delivery model should be expanded to other owners. The Board has not agreed to look at the merits or application of the stadium Washington Administrative Code (WAC) itself.

Ms. Leathers acknowledged the two different issues of whether or not the University is authorized to adopt the rule, and the CPARB is evaluating whether the methodology has merit for other agencies. Representative Hasegawa would like members at the hearing to answer questions and explain how the APW processes work in general.

In response to an additional question from the Board, Ms. Leathers said questions on the University rule are likely to come up, as the subject of the hearing is the rule adopted by the University of Washington (UW).

Representative Haigh moved, seconded by Rodney Eng, for Chair Maruska or his designee to represent the CPARB at the hearing.

Mr. Eng advised that the Board has not taken a position on the UW rule. The Chair or designee could talk about the history and background of the APW law.

Motion carried. (Dave Johnson not present for the vote.)

Mr. Eng offered to attend the JARRC hearing as the Board designee. There were no objections.

Task Force Status Reports, *Continued*

Owners – Small Works Roster Limits – John Lynch

Mr. Lynch reviewed changes recommended by the task force for RCW 39.04.155:

- Change \$200,000 to \$300,000 within the fifth line of paragraph (1)
- Change \$100,000 to \$200,000 within the 12th line of paragraph (c) to \$100,000 to \$300,000

Chair Maruska suggested that adjustments to RCW 39.04.155 should also be applied to RCW 58.08.120 (specific to ports) for consistency purposes.

John Lynch moved, seconded by Christopher Hirst, to recommend to the Legislature changing the thresholds per the task force recommendation and apply the change to RCW 58.08.120. Motion carried unanimously.

Contractors - Collective bargaining agreement – Rodger Benson, Mortenson Construction and PRC member

Mr. Benson said the RCW states the law shall not supersede any CBA language in place. There was the potential for limiting access to public works by either union or non-union contractors based on the language. Mortenson Construction performs a significant amount of GC/CM work in the state. He spoke about soliciting bids from a number of landscapers for the Kent Events Center project. All of the low bids were from non-union companies. The labor organization approached Mortenson Construction demanding it not accept the bids and award a contract to the lowest responsive union bidder. Mortenson Construction's labor agreement does not contain a subcontracting clause for GC/CM work and is not directly impacted this time. The City of Kent was quite concerned about

establishing a precedent. Other contractors in the state have been required to preclude nonunion trade contractors from pursuing work or have done what was necessary to get the best price for the owner. Absher Construction experienced a similar incident. The issue is significant for general contractors. If owners believe limited competition will occur at the trade contractor level by hiring a union GC/CM, owners will cease selecting Mortenson from performing that work. Mr. Benson acknowledged the Board decided not to pursue legislation now. He asked the Board to revisit the matter and address the ramifications of the language or clarify the intent so everyone knows the rules as GC/CM moves forward.

Mr. Johnson explained the issue surfaced when an awarding agency rewrote a general contractor's bid specifications requiring them to work outside their CBA. It was specified in GC/CM that no general contractor could be required to breach its CBA to participate in GC/CM activities. The same is true for subcontractors. The Board previously engaged in a lively debate and voted not to pursue the subject at this time.

Chair Maruska reiterated the Board took action not to pursue legislation now and plans to gather information on potential impacts and establish a work group.

Mr. Johnson and Mr. Absher reported the work group has not met.

Mr. Benson asked to participate on the work group. He said he would like to see union and non-union contractors have the opportunity to perform GC/CM work.

Mr. Johnson said the intent is to protect CBAs and he would like to see all work awarded to union contractors. The language says the state cannot force a general contractor to breach its CBA. If there's an agreement between a contractor and one of its signatories, that's a separate matter.

Mr. Benson advised that there might be some way APW can accommodate the fact that CBAs are in place.

Mr. Absher suggested the work group meet after session. The work group could report to the CPARB in May 2009

Mr. Absher left the meeting.

Subcontractors – Include housing authorities in APW

Mr. Lynch provided an overview of the issue. The Director of GA issued a letter requesting a legal opinion. The Board can decide to defer, suspend, or cancel the request for a legal opinion or do nothing. A legal opinion is expected within 60 days. He said he and Mr. Kommers are meeting with The Association of Washington Housing Authorities (AWHA) in January 2009.

Mr. Eng said it's unclear what the AWHA is proposing. The CPARB requested a legal opinion based on its belief that all public entities, including the housing authority, are subject to APW legislation. The AWHA's commitments as outlined in the November 26, 2008 letter to Chair Maruska do not lead to an answer.

Ms. Moses reported that Rebound has forwarded a formal response to GA regarding the issue. The intent of the legislation was to include housing authorities. If the Attorney General concludes housing authorities are not covered in APW, Rebound's position is that they should be.

Rodney Eng moved, seconded by Rocky Sharp, that unless the AWHHA agrees to support legislation naming housing authorities as an entity subject to RCW 39.10 by the next CPARB meeting, the Board will not withdraw its request for an Attorney General opinion. Motion carried.

Mr. Strong left the meeting.

Contractors – Pay undisputed claims promptly - Van Collins

A handout of draft legislation was provided. Mr. Collins reviewed a history of the subject to require public owners to pay undisputed amounts of a claim and not delay the entire claim.

Chair Maruska said owners support the concept. The intent is clarifying what an owner can and can't do, and when interest accrues on what amount. He reviewed lines 10 and 11 of the handout stating in part, "... shall issue a change order to the contract for the full amount of the work not in dispute..." He suggested replacing "full amount" with "undisputed value" because a second change order is required to resolve the remainder of the claim.

Discussion followed on the distinction between "value" and "amount" and whether 60 days is a more reasonable time frame than 30 days.

Chair Maruska said the GC/CM statute states once the contractor agrees in writing on the price for the additional work, the public body must issue a change order within 30 days of the written agreement.

Mr. Eng advised that the 30-day time frame could be a burden for smaller entities. City councils often meet bi-weekly.

Christopher Hirst moved, seconded by John Lynch, to approve the language as proposed changing "full" to "dollar" within line 10.

Discussion ensued on the relationship between undisputed claims and a worker wage claim. Mr. Eng said if an owner agrees on the amount of the change order and the contractor miscalculated the wage component, the contractor will not come back to the owner for that error. It is the contractor's responsibility to have agreed to a lump sum amount for the additional work and to make all appropriate payments.

Mr. Hirst said the proposal is specific to chapter 39.04 RCW and does not change the retainage statute in any way.

Bill Arnett, King County Department of Natural Resources, explained that the county attempts to negotiate bilateral change orders rather than unilateral change orders. The onus is on the owner to issue and finalize change orders and pay them within 30 days. There are times when a contractor is not able to turn the change order around in a timely fashion. He suggested revising line 10 to read in part, "shall offer or issue a change order..."

Mr. Hirst said the language as proposed is a compromise that has been vetted. He conveyed he would not support the change suggested by Mr. Arnett.

Mr. Lynch emphasized that the 30 days doesn't start until the contractor agrees with the change order amount and the change order is executed.

Motion carried unanimously.

Unranked issue – Trench excavation on bid form

Mr. Lynch suggested reintroducing the trench excavation safety bill with a new number in the 2009 session.

Discussion ensued on following up with the utility contractors first and the bill is controversial.

Mr. Lynch indicated he'll follow up with Mr. Absher and Mike Myette.

Mr. Hirst left the meeting. A quorum is no longer present.

Ms. Reilly reported the code reviser issued House Bill (HB) 2780 earlier in the day. The bill, along with the JOC changes approved by the Board previously, was forwarded to Representative Haigh.

Mr. Johnson reported labor has two outstanding issues. A goal is for the task forces to meet prior to the Board's next meeting and present draft legislation in January. The task forces were not able to meet on November 18, 2008.

Discussion followed on the status of language drafted specific to *public bid opening for GC/CM*, Open Public Meetings Act requirements for task force meetings, and the task forces meeting the morning of January 8, 2009.

Review Task Force Assignments / Set Next Meeting Agenda

It was noted that Mr. Eng and Ms. Yang are not available the morning of CPARB's next regular meeting on January 8, 2009. Board members agreed to change the meeting time for the regular meeting to 1:00 p.m. to 4:00 p.m. The JARRC work session is scheduled for the same day from 10:00 a.m. to 12:00 p.m. The labor task force can meet between 8:00 a.m. and 9:30 a.m. at a location (on campus or at GA) to be determined.

Mr. Collins reported the AGC Education Foundation and UW are hosting GC/CM training on January 29 and 30, 2009. Additional information can be obtained from CPARB's website.

Adjournment

With there being no further business, Chair Maruska adjourned the meeting at 2:25 p.m.

Robert Maruska, CPARB Chair

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services