

## CAPITAL PROJECTS ADVISORY REVIEW BOARD

Minutes

November 10, 2011

DRAFT

<u>Members Present</u>	<u>Representing</u>	<u>Members Absent</u>	<u>Representing</u>
Daniel Absher	General Contractor	Helaine Honig	Cities
Vince Campanella	General Contractors	Walter Schacht	Architects
Damon Smith	Engineers	Senator Rodney Tom	Senate (D)
Christine McCorkle	Specialty Contractors	Vacant	Senate (R)
Ed Kommers (vice chair)	Specialty Contractors		
Mike Riker	Construction Trades Labor		
David Meyers	Construction Trades Labor		
Cathy Canorro	OWMBE		
Christopher Hirst	Private Industry		
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)		
Rep. Bruce Dammeier	House (R)		
John Ahlers	Private Industry		
Larry Byers	Insurance/Surety Industry		
Steven Crawford	School Districts		

**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 present provided self-introductions.

### **Approve Agenda**

**Chuck Davis moved to approve, Ed Kommers seconded. Motion carried.**

### **Approve September 8, 2011 Minutes**

Dan Seydel requested to submit changes to the Small Business Task Force section to September's minutes. Ed Kommers responded that Dan may submit an addition to be posted on the website to the minutes.

**Ed Kommers moved to approve the minutes with minor corrections to header, seconded by Gary Rowe. Motion carried.**

### **Project Review Committee (PRC)**

Tom Peterson, chair, provided a review sheet of the September 22, 2011. There was one application for DB from Western State University. The application was approved. Cathy Canorro requested a list of who was on the panel, Danelle to provide information. There are two applications for the December 1, 2011 meeting.

There was a request from a previously approved application asking to add scope to their project. The PRC decided it isn't a decision for PRC to weigh in on.

### PRC Membership

Steven Crawford submitted a letter of interest to serve on the PRC in the School Districts position.

**Ed Kommers moved to approve Steven Crawford to the PRC, Vince Campanella seconded. Motion carried.**

A vote was taken and unanimously approved.

### Reauthorization Subcommittee

Ed Kommers, chair, announced the first meeting will be on December 5<sup>th</sup> in Kent. The [information](#) is on the website and an agenda is forthcoming.

There was a discussion on the requirements for public notice for the subcommittee as there is a possibility to have more than a quorum of CPARB members. [The requirements have been met for public notice.]

### JOC Subcommittee Report

John Lynch, chair, reported on the issues of Job Order Contracting (JOC.) The first was technical corrections to existing statute to clarify and unify how they are done. Second issue is data collection issues, for example timing on collection and how to collect data in the future. Third issue is potentially expanding JOC with changes to limits and users of JOC.

The [Draft Legislation](#) is available on the website. Bob Maruska started the review of the proposed legislation by discussing the expansion of JOC to: every public hospital, Western Washington University, Central Washington University, Eastern Washington University, The Evergreen State College and Sound Transit.

#### Expanding Job Order Contracts (JOC) to other entities issues:

- There was discussion on including all counties; the Board will take into consideration.
- There was a concern with including 'all' public hospitals, as some might not have the tools/experience to implement effectively the JOC process.

#### Raising the limit issues:

- (39.10.440 (1)) The proposed change from \$4 million to \$6 million dollars per year maximum for three years was challenged as possibly too high, an increase of 50%.
- (39.10.440(1)) Using the word 'may' in the added language 'DES may increase limit amount for inflation' is too unclear and leaves room for potential problems.
- (36.10.440 (3)) The question was raised as to why public owners want increased limits and number of JOCs per public body. John Lynch stated there is a need for more flexibility and attracting smaller businesses.
- (39.10.440 (1, 3)) The question was also raised of the need for entities that have only one location to have higher limits or four JOC's.

- (39.10.440 (4)) There was discussion on the subcommittee's language to clarify what part of the JOC work is to be subcontracted at the 90% requirement.
- (39.10.450 (1)) Eliminating the limit of only two work orders allowed to be at \$350K and making the new limit to all work orders to \$350K.

John Lynch agreed that the subcommittee will meet again before December's meeting and bring revisions back to the Board for possible action. The Small Business Task Force chair, Dan Seydel, stated they will be discussing the issues as they pertain to small business in their meeting following this CPARB meeting.

### **K-12 Performance Based Construction Contracts**

John Lynch, chair, led the discussion of the K-12 Performance Based Construction Contracts Subcommittee's draft recommendations. The subcommittee met three times. Recommendations must be presented to the House Committee by January 1<sup>st</sup>. This is a provision of the Capitol Budget Engrossed Substitute House Bill 1497, Section 7010.

The subcommittee created the draft document stating that these projects should be handled much like a current design-build project authorized in RCW 39.10, with a difference of the contractor staying with the project after the project is complete and accepted. The intent of this is to verify that the high performance happens for a period of time after completion of the project. This makes the contractor responsible for that performance, similar to how they do energy performance contracts. The goal is to have very high performance projects in terms of energy and resource conservation.

The subcommittee also envisions CPARB's Project Review Committee (PRC) would review these projects. There was also a question and discussion about why schools would want this type of project.

Bob Maruska would like the Board to review it and expects it to take action during the December meeting. John Lynch mentioned receiving an e-mail from Stan Price of the Northwest Energy Efficiency Council that stated the subcommittee's draft did not make the mark that the legislation required. The e-mail was read and will be posted on the website. CPARB was tasked for a process with four requirements and this draft supports that.

Ed Kommers said the subcommittee did a great job of providing options and flexibility to build on. It is not done; it is a first report and will look differently when complete. The Office of the Superintendent of Public Instruction (OSPI) representatives attended the meetings and had excellent input.

*Break 10:36*

*Restart 10:49*

### **Responsibility/Eligibility Task Force**

John Ahlers reviews the circulated the redline changes to the suggested guidelines for bidder responsibility. He says they should be considered the final product for now and recommends to the Board that in December these be approved in December.

There is one issue how you handle the bidder that doesn't meet the responsibility criteria to the letter. 1. Strict it's a pass/fail that they meet criteria. 2. Second is to use logical discretion and to look at each issue on a case by case basis and employ discretion. The statute doesn't give guidelines so the Task Force is still trying to debate this issue.

Mike Purdy, in the past it's been that the bidder would have to meet the law to the letter of the law. But over time, some owners have evolved into the second opinion. He believes CPARB needs to weigh in on this and finalize it. These are just guidelines but the Task Force would like it clear.

The Board needs to consider and bring to discussion in December and possibly add it to the currently submitted changes.

A meeting will be scheduled before December's meeting. Comments should be sent to John Ahler's at [jahlers@ac-lawyers.com](mailto:jahlers@ac-lawyers.com) or [ekommers@mcaww.net](mailto:ekommers@mcaww.net).

#### **Small Business Task Force (SBTF) Proposed Legislation**

Bob Maruska reviewed written comments that were received late on the [proposed legislation](#) by SBTF. The pre-reads of the proposed legislation have been available on the website since September's meeting.

Dan Seydel spoke on the discussions that have happened since the original submission of the legislation. The only change he sees in the Design Build is that the language be modified to remove the reference to economically and socially disadvantaged with Minority and Women-owned Businesses with an addition to Veteran owned business. Also there was much discussion on what the word certified means and how or if it should be applied. Van Collins stated that AGC supports this wording and for certification for both DB/GCCM wording.

Many public participants stated their concerns, opinions and opposition to using the word 'certification' in this legislation. A large reason for the opposition is who 'certifies' and what are the criteria for certification for each kind of business.

Cathy Cannaro stated that MWBE already has a 'certification' process that has been used since the 80s. Some participants were in disagreement with allowing firms with ownership outside of Washington not be allowed to be certified. Cathy stated that's not an option that if they are licensed to do business in Washington and they meet all other criteria they will be certified by MWBE.

Representative Haigh stated that in the proposed legislation, somewhere, there needs to be a clear definition of what 'certified' means for this particular Bill. Cathy responded that language is available in [RCW 39.10](#) that can be applied to this Bill.

Bob Maruska stated that the task force take into consideration comments made today and bring back the proposed legislation in December for Action. Dan Seydel requested the language for all the Bills, be determined in the meeting today so that it can be placed in proposed legislation and

be ready for a vote in December. John Ahlers responded that using the word ‘certification’ is broad enough to be put in all language.

Representative Dammeier stated that for legislation to be passed the language must be clear. He suggested we take the time to do it right and not fast and it’s not ready at this point to get approval in Session.

*Representatives Haigh & Dammeier left at 11:42.*

More discussion was had on the term ‘certification’ or ‘certified’ with no consensus. Dan Seydel stated that he believes that the task force will not come to an agreement on ‘certification’ either. He requested it be done here in the CPARB meeting. Ed Kommers stated this is not the place for this and that it is not near ready for the Board to vote on. Ed requested that some language be suggested today by CPARB to give to the Task Force for implementation. John Ahlers gave his advice and Dan agreed to work with John on this language. Dan requested that all comments be submitted to him in writing and sent to him at [dan@platinumbusinessgroup.com](mailto:dan@platinumbusinessgroup.com).

**Ed Kommers moved to refer the Legislation back to the Task Force for language modification, Chuck Davis seconded. Motion carried.**

### **Budget Review**

Nancy Deakins gave a report on the CPARB’s budget and its continual decline. The funding source of the budget is being changed so to stabilize it. The Governor’s proposed budget shifts CPARB’s budget to the capital budget from general fund to keep it from being completely cut.

### **December CPARB Agenda items:**

- PRC Report & Membership
- SBTF/CPARB Sponsorship of Bills
- Subcommittee Reports
  1. JOC
  2. Reauthorization
  3. K-12 Performance-Based Construction Contracts

**Motion to end meeting made at 12:08 p.m. by Bob Maruska Seconded by Ed Kommers Motion carried.**

	<b>Staff &amp; Guests</b>	
Nancy Deakins, GA Staff	Danelle Bessett, GA Staff	Dan Seydel, Platinum
Van Collins, AGC	Aleanna Kondelis, Seattle	Mike Purdy, MEP Associates
Karen Primeau, Platinum	T. Ross Good, Elcon	Thomas Carver, OSPI
Keith Barnes, JEDunn	John Boknecht, Stary & Witbeck	Rory Woolsey, Gordian
Craig Daniel, DOT	Dick Lutz, Centennial	Marilynn Moch, Phoenix
Josh Swenson	Tom Peterson, PRC	Dana Pittman, Sustainable Floors
Eric Jackson, LDC Inc	Frank Lemos, LDC Inc	Grover Johnson, NAMC

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Fred Anderson, NAMC	James You, NAMC	Russell Meeds, NAMC
Eugene Hardin III, NAMC	Bob Armstead, NAMC	Learline Romine, NAMC
Michael Hall, NAMC	Elton Mason, WST	Ginger Eagle, WPPA
Jim Parvey, City of Tacoma	Greg Toy, Graham	Larry Stevens, NECA
Len Simpson, NANC		