

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Via Zoom

Meeting Minutes – Amended

December 9, 2020

MEMBERS PRESENT	REPRESENTING	MEMBERS ABSENT	REPRESENTING
Rebecca Keith (<i>Chair</i>)	Cities	Brian Belarde	Construction Trades Labor
Andrew Thompson (<i>Vice Chair</i>)	General Contractors	Mike Shinn	Specialty Contractors
Garett Buckingham	Public Hospital Districts	Rep. Mike Steele	House (R)
Bill Dobyns	General Contractors	Rep. Steve Tharinger	House (D)
Bill Frare	State Government		
Senator Bob Hasegawa	Senate (D)		
Matthew Hepner	Construction Trades Labor		
Santosh Kuruvilla	Engineers		
Mike McCormick	Higher Education		
Karen Mooseker	School Districts		
Barbara Piilani Benz	Insurance/Surety Industry		
Irene Reyes	Private Industry		
John Salinas II	Specialty Contractors		
Walter Schacht	Architects		
Robynne Thaxton	Private Industry		
Lisa van der Lugt	OMWBE		
Jane Wall	Counties		
Senator Judy Warnick	Senate (R)		
Janice Zahn	Ports		

Staff & Guests are listed on the last page

WELCOME & BOARD MEMBER INTRODUCTIONS

Chair Rebecca Keith called the Capital Projects Advisory Review Board (CPARB) virtual meeting via Zoom to order at 8:02 a.m.

Members provided self-introduction.

A meeting quorum was attained.

Chair Keith acknowledged Irene Reyes for her recent award from the National Association of Minority Contractors for her work on policies.

APPROVAL OF AGENDA

Subcontractor Bid Listing Statute was changed to an action item

The minutes of November 19, 2020 were deferred for approval.

Presenters for the Local Government Public Works Study include Chair Keith, Vice Chair Thompson, and Bill Frare.

Andrew Thompson moved, seconded by Janice Zahn, to approve the agenda as amended. A voice vote approved the motion unanimously.

APPROVAL OF OCTOBER 8, 2020 MEETING MINUTES – Action

The following corrections were requested to the October 8, 2020 minutes:

- On page 1, correct the spelling of *Barbara Piilani Benz*.
- On page 6, within the fourth paragraph, replace the third sentence to reflect: “She has always been interested in contracting whether it involves the alternate procurement process or the lowest apparent bidder.”
- On page 6, within the last paragraph, replace the second sentence to reflect: “As the candidate’s background in labor membership outreach, it is important to ensure the candidate...”
- On page 8, within the eighth paragraph, change the last sentence to reflect: “Chair Keith acknowledged the offer.”
- On page 16, change the last sentence in paragraph three to reflect, “Combining those efforts would satisfy the statutory mandate of the Board and provide the Legislature with some options to consider.”

Andrew Thompson moved, seconded by Rebecca Keith, to approve the minutes of October 8, 2020 as amended. A voice vote unanimously approved the motion.

Jane Wall joined the meeting.

APPROVAL OF NOVEMBER 19, 2020 – *Deferred*

INVITATION FOR PUBLIC COMMENTS

Vice Chair Thompson reviewed the format for providing comments and invited comments.

Chair Keith outlined the focus of the agenda and acknowledged feedback from members and stakeholders on the importance of enabling more time for Board members to become better acquainted and including time for Board and stakeholder feedback. This meeting's agenda is streamlined to enable the Board to move forward on approving the reauthorization bill. She thanked everyone for their time and efforts over the last several months working on behalf of the Board.

PRC APPOINTMENTS – *Action*

Project Review Committee Appointment

Chair Keith invited Michelle Helmholz to speak to her application for appointment to the Project Review Committee representing Construction Trades Labor. Previously, the Board questioned Ms. Helmholz about her knowledge of alternative public works and how her respective experience would align with PRC responsibilities. Ms. Helmholz recently completed some training.

Ms. Helmholz reported she has been working with Curt Gimmestad and recently registered for the GC/CM and Design-Build workshops. During the last several months she has reviewed RCWs to learn about the mission of the Board and PRC. She plans to continue those efforts. She has served on numerous other boards and panels throughout the year and was a member of the Governor's Safety and Health Advisory Board for 15 years.

Mathew Hepner acknowledged Ms. Helmholz's recent efforts and supports her appointment to the PRC.

Janice Zahn expressed appreciation to Ms. Helmholz for registering to attend training. She has attended meetings with Ms. Helmholz at the Port of Seattle and found her to be very thoughtful. She asked Ms. Helmholz to share information on why she wants to be a member of the PRC. Ms. Helmholz replied that she has always been fascinated with construction with her primary focus on labor and exploring all idiosyncrasies of set-asides, contingencies, and the industry as a whole. She would like to be a member of the committee so she can delve into the contracts and all inner workings of a project.

Walter Schacht nominated Michelle Helmholz to serve on the PRC representing Construction Trades Labor.

Mr. Schacht said he appreciates Ms. Helmholz for her initiative to learn more about alternative public works. However, as the Board recognized, not every PRC position would encompass the necessary experience of alternative project delivery methods, which creates some conflict as many applicants do not have the background because of their respective position within the industry. It is important for the PRC to include a representative from Construction Trades Labor. The applicant has committed to learning about the procurement methods benefitting both the applicant and PRC.

Andy Thompson seconded the nomination.

Robynne Thaxton thanked Ms. Helmholz for her willingness to attend training to learn about alternative delivery as it will help her during the review of projects.

Mr. Thompson thanked Mr. Gimmestad for his assistance and support to the applicant.

A voice vote of members unanimously appointed Barbara Helmholz to the PRC in the position representing Construction Trades Labor.

PROPOSED LEGISLATION – Discussion/Action
Reauthorization Statute Bill Diversity Provisions

Chair Keith reviewed her proposal, recent activities of the Joint Legislative Audit Review Committee (JLARC) since the Board's November meeting, and several proposals prioritized by the Office of Minority and Women's Enterprises (OMWBE) that were not previously reviewed by the Board. She acknowledged the lack of time necessary to devote full consideration to several proposals received since the October meeting and plans to recommend a proposal for moving forward. There were no objections by Board members.

Chair Keith reported JLARC approved the Final JLARC Report to the Legislature and is recommending reauthorizing RCW 39.10. The findings included acknowledgment that the Board has not completely met data collection requirements for Job Order Contracting (JOC). The report questioned whether the Board should be collecting data and the purpose it would serve for the Board to collect JOC annual contract dollar amounts as the Board has no authority for compliance. During prior discussions, the Board agreed and approved the submittal of changes to the JOC statute to require public owners to retain JOC data and provide the data upon request. JLARC members (Senators) Mullet and Short requested copies of all changes CPARB is recommending to the statute as soon as possible so they can begin educating other members of the Senate, as well as circulating the bill.

As a reminder of the Board's goal to ensure a strongly supported bill and to further the diversity conversations, Chair Keith recommended a review of the remaining OMWBE proposals as prioritized by the co-chairs of the Business Equity/Diverse Business Inclusion Committee. The first proposal is changes to RCW 39.10.330 (1) Design-Build contract award process.

Mr. Schacht said the proposal is consistent with other proposed changes to the RCW to provide more clarity on inclusion. Ms. van der Lugt referred to the previous lengthy discussion and the need to update language to capture the work currently in progress.

Chair Keith recommended consolidating the proposals into one motion.

The next proposal pertains to RCW 39.10.385 to replace "outreach" with "inclusion" and replacing "minority and women-owned businesses" with "disadvantaged business enterprises." No comments were offered by the Board.

An additional proposal to RCW 39.10.460 includes the following: *(3) A list of subcontractors hired under each work order, including whether those subcontractors were certified small, minority-, woman-, or veteran-owned businesses; and...* No comments were offered by the Board.

The final change pertains to a new section in RCW 39.10 – Heavy Civil Construction Projects changing "outreach plan" to "inclusion plan" for consistency with other changes. No comments were offered by the Board.

Rebecca Keith moved, seconded by Robynne Thaxton, to approve the proposed changes to the additional provisions in RCW 39.10 as discussed.

Aleanna Kondelis and Ms. Thaxton conveyed appreciation and their thanks for efforts entailed in developing the proposed changes.

A voice vote by the Board unanimously approved the motion.

Chair Keith encouraged a discussion on proposals not vetted to date.

Ms. van der Lugt commented on the importance of reviewing proposals submitted for consideration. The Board has made significant progress over the last several months and while Joanna Eide with OMWBE did an incredible job of consolidating proposals through a variety of meetings, telephone calls, and emails, much work remains to be completed. Ms. Kondelis and others have offered some good suggestions that deserve consideration over the next several months.

Chair Keith requested feedback on any of the proposals not reviewed by the Board.

Ms. Kondelis shared that the list is not reflective of a need to submit changes during this legislative session. Rather, she prefers continuing stakeholder discussions affording different points of view and thoughtful consideration. She is willing to work through some of the issues to ensure any proposals are accurately framed to avoid any unintended consequences.

Senator Warnick expressed appreciation of Ms. Kondelis' comments because she would like to follow-up on the comments by Senators Mullet and Short regarding the JLARC Report. This session, the Legislature will be restricted in terms of time available for bills. The amount of legislation for consideration will also be restricted based on rumors that the House has released a number of bills that each member could introduce. The House is not suggesting any companion bills. To ensure important legislation is considered this year, she recommended the Board submit the reauthorization bill as is because this session will be like no other session. She participated in several practice voting sessions and can attest that it will be difficult to achieve a full vote of the Senate. She recommended the Board complete as much of its work as possible with the understanding that future legislation would be required for adjustments. She thanked the Board for its good work.

Senator Warnick disconnected from the meeting.

Janice Zahn spoke in support of moving the reauthorization bill forward knowing the work is not completed. The Board has, in the past, successfully pursued modifications and improvements to RCW 39.10, and the Board has the opportunity in the future to move forward with additional improvements to RCW 39.10.

Chair Keith referred to correspondence from Frank Lemos representing the Minority Business Advisory Council (MBAC). Some of the proposals submitted by Mr. Lemos are included in the reauthorization bill pertaining to the sunset provision, inclusion plan (excluding a goal requirement), and several other provisions. One of the fundamental proposals was to include robust reporting requirements for public bodies to report information with the Board posting the information on CPARB's website. Currently, the website posts PRC applications for projects and certifications, which include final projects costs and cost overruns. The information is not provided in a compiled format. Data is an area the Board has struggled with in the past and although some stakeholders expect the Board to serve as an accountability organization, the Board's focus is on procurement issues and not data collection.

Jane Wall agreed because often when there is no obvious body it is easy for many to want the Board to assume responsibility for any number of issues. It is important for the Board to reiterate its purpose and if a task falls outside the realm of Board responsibilities, it would be important to explain the need for staff resources, budget, or a statutory change as to why the Board may or may not be the appropriate body for the task.

Ms. Thaxton reminded the Board of JLARC's acknowledgement that the Board has not been successful in collecting data. Data is difficult to collect, the Board lacks staff resources and the expertise to collect or disseminate information. Additionally, the Board has no funding for data collection. The Board is comprised of volunteers who provide expertise to the industry. The Board is not a group of data collectors providing information.

Ms. Zahn added that as a member of the Data Collection Implementation Committee for several years, another element of the Board's work is searching for the right answers to make good policy decisions. That is the type of data the Board typically seeks rather than a wholesale data collection effort from an accountability perspective. Each public agency should be responsible for management of contracts and complying with all rules. At times, CPARB might need to collect data to help determine whether owners are performing their accountability duties. Approximately, three years ago, the Board approved the addition of language in PRC applications for public owners to provide data on the level of self-performance by the GC/CM as the statute clearly limits self-performance of the GC/CM. Another question on the PRC application is the applicant's previous history on projects, which is important if the applicant is seeking certification. Typically, the collection of data through the application process are those elements directly related to the scope of work of the PRC when approving applications.

Garrett Buckingham joined the meeting.

Mike McCormick agreed the Board is not a data collection organization for some of the similar reasons previously stated; however, it is important the Board does not deflect the importance of the request as it is incumbent upon the Board and all agencies to partner to ensure collection of data occurs. One example is the implementation of GC/CM, which will provide important information on business equity and inclusion. Those are the types of partnerships the Board should continue fostering to avoid sending the message that the Board does not gather information and therefore it is not important. The information is important to collect but the Board is not the right body to collect the information.

Jolene Skinner advised that the Department of Labor and Industries recently implemented a new dataset for all project details for all public works projects statewide. Information from the dataset is publicly available. She shared the link to the dataset within the Zoom chat feature. Data can be viewed or downloaded and includes a search feature for all projects initiated after July 1, 2019. (<https://data.wa.gov/Labor/L-I-Public-Works-Project-Details/qp8s-a5uf>)

Chair Keith asked whether inclusion of diverse businesses within negotiated support services for Design-Build and GC/CM projects is also captured within the dataset. Ms. Skinner advised that data is only captured if the work is subject to prevailing wages. For custom off the shelf products, it would be subject to prevailing wage; however, standard products available to anyone would not be subject to prevailing wage and would not be included in L&I's data system.

Mr. Thompson acknowledged and cited the efforts by Ms. Skinner and L&I and the initiative pursued by OMWBE for recommendations in the Disparity Study surrounding electronic data. He offered to work with existing state resources to collect information from agencies performing data collection and schedule a meeting of the Data Collection Implementation Committee to develop information for presentation at the February meeting on the extent of data collection efforts by other agencies.

Ms. Kondelis agreed with Mr. Thompson's suggestion from a data collection perspective but cautioned that data collection represents a single source of information as data and information about projects mean different things to different people. Owners have other bodies overseeing the project process in different capacities that require different kinds of information for different policy settings. It would be a good opportunity to leverage all the different tools available to the Board and provide resources. The Board will always need information for policy decisions and there are potential resources for obtaining that information. It is important to acknowledge that data collection is a multi-pronged approach that is imperfect. She supports the suggestion to provide some information to the Board on existing resources and where the Board can leverage information for different decisions.

Ms. Zahn cautioned members of prior data collection efforts and the difficulty of developing definitions for data fields because of the inherent differences in interpretation. The Board's recent discussions on statute provisions for inclusion and disadvantaged business enterprises reflect the difficulties for agreeing on common definitions. Moving forward as a resource, it will be important for the Board to create some common definitions.

Chair Keith said she addressed the issue to acknowledge the interest by MBAC for data and website information. The Board provides information through the PRC application process that is posted on the website through applications with information on final project costs, project budget, and plans for inclusion. In terms of specific reporting, it would be difficult for the Board to fulfill that request.

Chair Keith presented a proposal to address remaining proposals, not vetted, as well as other proposals better suited for best practices. When the Board established the Business Equity/Diverse Business Inclusion Committee (BE/DBI), the mandate was to review RCW 39.10 for consistency and offer recommendations for statute provisions, as well as developing best practices guidelines. Based on the development of the Design-Build Best Practices Guidelines, the Board envisioned robust best practices that would provide tools many public owners could use to advance inclusion and implement a "community of practice." During the early meetings of the Reauthorization Committee, the committee identified the importance of making intentional choices of provisions for statute versus policies and best practices. The Job Order Contracting Evaluation Committee is working on best practices for JOC along with GC/CM Committee working on best practices guidelines. Those efforts are an attempt to raise the bar for public owners while also providing tools as alternative public works are utilized. This proposal is a way to commit to continuing the work and a timeline to continue the work that has not been fully considered or vetted. She proposed the addition of the following language for inclusion within the reauthorization bill:

Section X. The board shall coordinate and consult with the office of minority and women's business enterprises, the department of enterprise services, community stakeholders and advocates, and subject matter experts to create best practices guidelines for increasing and sustaining access to contracting opportunities in alternative public works for minority, women, and veteran-owned businesses and small businesses. In creating the guidelines, the board shall take into consideration the barriers to participation identified in the local government contracting report produced pursuant to SB 5418, information and recommendations from the 2019 Washington state disparity study and disparity studies of any other public body in Washington state, and successful diversity and inclusion policies being implemented by state and local government agencies. The best practices shall address, at a minimum, guidelines for use of race-neutral and race-conscious programs, elements of successful inclusion plans, the use of aspirational inclusion goals, evaluation of inclusion plans in the contract award process, and the evaluation of inclusion plans and past performance in public body certification and project approval processes under RCW 39.10.270 and 39.10.280. The board shall make the best practices guidelines available on its website by June 30, 2022, and include a plan to update the best practices to keep them relevant for use. Additionally, by June 30, 2022, the board will report to the legislature regarding any recommendations for changes to state law that are advisable based upon the best practices guidelines.

Walter Schacht moved, seconded by Rebecca Keith, to approve inclusion of the Chair's proposal within the reauthorization bill.

Mr. Schacht commented that the proposal tracks closely to the discussion by the Board about its role and responsibilities. The most effective contribution to the environment for capital projects in the state revolves around policy and education. The best practices guidelines are a starting point for the Board to educate, to improve conditions in the industry, such as diverse business inclusion, and creating a culture amongst public owners and the private sector. The BE/DBI Committee was geared to develop an initial round of best practices guidelines but agreed to refocus efforts on changes to the statute. Over the first two years, the committee engaged in dialogue and developed statutory provisions approved over the last two meetings. Although important, but in some ways not as important, are the best practices guidelines, engaging with the community, and creating change. The approval of Ms. Helmholtz's appointment to the PRC and the existence of the GC/CM and Design-Build workshops have grown from best practices. Best practices are likely the greatest opportunity to create positive change and for those reasons the work should continue.

Mike McCormick disconnected from the meeting at 9:25 a.m.

Ms. Zahn thanked the Chair for developing the proposal. She supports the proposal but added that as the work proceeds it should be centered on companies the Board is striving to reach because the Board can speak for companies while ensuring those voices are part of the work. Participation by small companies is often a challenge and the option of volunteering many hours on a committee can be challenging for small companies. She asked about the option of the Board pursuing a compensation policy to enable participation by small companies.

Matthew Hepner disconnected from the meeting.

Ms. van der Lugt thanked the Chair for the proposal. The proposal moves the Board in a positive direction as she supports the recommendation to include community stakeholders and advocates. She recommended including the Office of Equity. Other subtle and small ways can pool valuable input. Today, equity is front and center and the intent of the effort should not be because it is the current topic, it should be front and center because it matters how the Board governs and approaches its work. She thanked the Chair for hearing the voices as the work is ongoing with the Board working continuously to address the issues.

Chair Keith credited the assistance of OMWBE and Ms. Kondelis in helping to draft the proposal.

Ms. Kondelis shared that there is a sense of permanence or a sense of establishment of a platform for voices to be heard. Not only is it time-consuming but it is also potentially intimidating for the diverse business community to be part of a larger organization. Establishing a committee would provide a platform for community members. The proposal also recommends including a plan that updates best practices. She looks forward to participating.

Vice Chair Thompson asked for clarification as to whether the proposal is based on the fabric of the Board or would it entail creation of a committee. He views the proposal to reside within the Board as all members would be invested. Chair Keith offered that she believes the Board should own the proposal and commit to work through the issues with some flexibility in the process. Some of the options leadership and others have discussed include delegating the work to the committee but questioned how to connect the work to other work of the Board as GC/CM and JOC best practices will interface with those efforts. She believes it is up to the Board to determine how to format a process moving forward realizing that the proposal includes a commitment to send a report to the Legislature and developing best practices guidelines. Collectively as a group, the Board would need to be committed and determine the best method for accomplishing those tasks.

Mr. Schacht suggested a determination regarding the process does not need to be defined at this time to embrace the proposal and incorporate it within the reauthorization bill. The Board's history for completing work is to assign the work to a dedicated committee of members and volunteers willing to do the work.

Janis Zahn offered a friendly amendment to add the Office of Equity for consultation by the Board or ensuring an equity lens for inclusion at the minimum. The BE/DBI Committee could serve as the convening committee to create the platform for all voices to help identify some barriers to success.

Irene Reyes supported the friendly amendment offered by Ms. Zahn.

Ms. van der Lugt agreed it is unnecessary at this time to determine the assignment of the proposal other than she believes it may entail a combination as the Board will need to embrace the approach because all members have a responsibility. The Office of Equity resides within the Governor's Cabinet and was recently established and is not fully funded. It is likely the Board could outreach to the new office and the commission.

Matthew Hepner rejoined the meeting.

Melissa Van Gorkom reported she is responsible for providing staff support to the Senate State Government Committee. The proposed legislation will likely be reviewed by the committee. She suggested substituting the Chapter law number in place of SB 5418 as the bill numbers recycle each session, as well as citing the sections of references. She believes the proposal relates to Chapter 434 Laws of 2019 and the report is in Section 16 of the bill.

Mr. Schacht and Chair Keith accepted the friendly amendments to add the Office of Equity and correct the references as cited by Ms. Van Gorkom.

Vice Chair Thompson emphasized the importance of Board leadership ensuring that as the work moves forward, the right individuals are afforded an opportunity to participate. Chair Keith agreed the need to determine how the Board will pursue the work will be a critical next step.

Ms. Zahn agreed, with a caveat that to a degree the Board could retool the BE/DBI Committee to serve as the convening group to assist the Board with outreach or allocate some time at a future meeting to engage in a dialogue on what a commitment to the work will entail. Last week, an announcement was released about the Washington Employers for Racial Equity, which included a contractor and a specialty contractor. There may be other organizations that might be interested in supporting some of the work with the Board. She believes there are many opportunities and is hopeful a high level of support can be achieved by the Board to determine ways to outreach.

A roll call of present voting members unanimously approved the motion 16/16.

Chair Keith thanked members for the honest discussion and willingness to commit to the important work. She thanked Nancy Deakins for updating RCW 39.10 over the course of the last two meetings. All changes approved by the Board in October and November were delivered to the code reviser to format the changes to a bill. The approved proposal will be forwarded to the code reviser for incorporation within the bill. She asked for the Board's concurrence to enable the Chair

and DES to approve any technical revisions requested by the code reviser with a copy provided to each member. The next step is confirmation of bill sponsors with the assistance by Ann Larson with DES and OMWBE's governmental liaison.

Walter Schacht moved, seconded by Robynne Thaxton, to authorize the Chair to proceed with the approved reauthorization bill for submission to the code reviser and afford necessary latitude to approve any necessary technical but non-substantive changes in language with the code reviser.

Chair Keith confirmed she would forward the draft bill from the code reviser to all members and post on the website.

Vice Chair Thompson advised that Director Chris Liu, Director of DES, has offered to assist the Chair to work with the code reviser's office.

A voice vote unanimously approved the motion.

Chair Keith described the next steps for members to advocate support for the bill. Mr. Liu offered to provide assistance and support to the Board for meetings with legislators to ensure the bill is considered. Matthew Hepner offered to work with Ms. Larson as he serves as the lobbyist for the IBW statewide.

Senator Hasegawa congratulated the Board for completing the reauthorization bill. He does not foresee any roadblocks for the bill and given the nature of the session, the Legislature expects only to adopt 50% of bills passed during a typical session. The best approach is to convey broad-based support for the bill through a panel of participants with abbreviated presentations to the extent possible.

Chair Keith recessed the meeting for a break at 9:59 a.m.

Chair Keith reconvened the meeting at 10:17 a.m.

Project Review Committee Report – Information

Ed Peters, Chair of the Project Review Committee, reported on activities of the committee.

At its December 3, 2020 meeting, members reviewed four GC/CM project applications and three Design-Build project applications. All but two of the applications were approved. Both of the projects disapproved were GC/CM projects.

Ms. Thaxton commended PRC members as she was able to join the meeting during the panel presentation that did not receive approval. She also participated on several other panels. The discussion surrounding the disapproval was very helpful for the project sponsors. Members provided the team with good feedback on ways to improve and advice moving forward. The panel directed the public owner to the correct RCW, which reflects the value of PRC during the review process.

Vice Chair Thompson questioned whether the GC/CM projects not receiving approval could benefit from the discussions on best practices guidelines by the GC/CM Committee.

Talia Baker noted that the PRC discussed the number of applicants looking forward to GC/CM best practices guidelines. Both project applications were disapproved because the projects lacked experienced team members. Some of the experience was from Oregon and other states. The panels recommended both projects sponsors should enhance project teams and ensure all team members are familiar with the requirement of RCW 39.10.

Mr. Peters added that the value of best practices would clarify Washington State GC/CM experience as a mandatory requirement as the statute is unclear.

Chair Keith asked whether the PRC has experienced any challenges convening panels. Mr. Peters said the recent all day meeting of panels included two groups of panels. Because of the virtual meeting format, it has been easier for members to participate as panelists.

Discussion ensued on the Oregon GC/CM experience versus Washington GC/CM experience. Vice Chair Thompson offered that a comparative analysis between the two states might be interesting to learn the differences or the distinction between the states. Mr. Peters shared that he personally completed analysis of the two states but is unaware of whether the PRC pursued similar analysis. He pursued the analysis because of curiosity over the years as he has followed Oregon's GC/CM process.

Santosh Kuruvilla offered that the disapprovals might present a message for the Board's consideration because many agencies located outside the urban areas of Seattle, Olympia, and Spokane lack the requisite experience or have limited resources to present a project proposal successfully. He inquired about the possibility of providing some resources for those agencies lacking consultant assistance, particularly to agencies with limited resources. In both project applications, the agencies did not have a record of experience. An opportunity might exist for the Board to assist those agencies in succeeding, such as providing preapplication training or other forms of assistance.

Mr. Peters noted that the agencies encountering problems are generally not school districts because of the school district network. He is often contacted by other school districts requesting assistance. That type of network might be lacking in other owner groups.

Mr. Kuruvilla asked what the Board could do to help some of the agencies.

Chair Keith shared that during a recent review of the Local Government Public Works Study, many committee members conveyed interest in recommendations for technical assistance to public owners. One legislator asked how public owners knew or could learn about whether they should consider alternative public works and the best procurement method for a project. The Board encompasses much knowledge, information, training, and resources but is not sufficiently communicating those resources to public owners. The issue was addressed previously and is likely why the Education\Outreach Workgroup was formed. The Board could pursue a course of actions to improve outreach, such as including links on the website for assistance to public owners; however, the Board's focus has been on reauthorization, Subcontractor Bid Listing Policy Evaluation and the Local Government Public Works Study. February or May meetings might be timely for the Board to review its work plan and efforts to focus on.

Mr. Kuruvilla cited the analogy of a building permit process where the project proponent undertakes a robust intake process. Some early advice as part of an intake process could assist public agencies and could save time during PRC panels.

Garrett Buckingham shared his perspective that more work should be done as a Board to assist with education. The statute creates a catch-22 situation as the RCW requires experience while many agencies lack experience and must resort to hiring a consultant. Although that can help, the issue presents an educational opportunity for experienced owners to aid other agencies that are first-time applicants. He supports Mr. Kuruvilla's recommendation as it could be an effort the Board could assist with in helping agencies with GC/CM and Design-Build as advocates for the alternative public works procurement methods.

Mr. Schacht said he believes the Board supports the development of skills by public agencies to help them understand procurement rules and determine whether to use GC/CM or Design-Build. Twice each year, the Board is involved in training through the AGC Education Foundation by offering Design-Build and GC/CM workshops where public owners and private sector companies receive training and network with Board members, peers, and colleagues. The Board also produced Best Practices Guidelines for Design-Build and is currently drafting best practices for GC/CM and Job Order Contracting, which sheds more light on the procurement methods and how they work. In all fairness, the Board has opened up the door to public owners to assist them in understanding how they might pursue and complete successful alternative public works projects. Some improvements to the website might be warranted by posting training sessions on the PRC webpage or clearly delineating an area on the webpages devoted to resources for public agencies and the private industry. He stressed the importance of the Board avoiding an expansion of its scope to avoid falling into the trap of failing to keep promises or becoming an executive branch agency because the Board is a volunteer entity that does more in terms of supporting public works capital projects procurement than any other entity in the state of Washington. It is important for the Board to be careful even though it is important to provide education and knowledge while being prudent about the mechanisms used. The RCW enables owners who lack experience to hire consultants. At the end of the day,

both the public and private sector must seek the information or align with others that have the experience because it requires efforts from all sides of the industry.

Mike McCormick supported Mr. Kuruvilla's suggestion because it speaks to recent discussions by the Education\Outreach Workgroup. One of the first tasks of the committee was scanning all training opportunities on alternative public works and ensuring they were available. Some very good programs exist, but in terms of connecting to the PRC application process, avenues could be explored to provide the ability to outreach more effectively without creating a whole new infrastructure. The committee could pursue utilizing some of the same programs referenced by Mr. Schacht and assist in steering agencies to sources of information. Because of the focus on reauthorization over the last several months, the committee plans to begin meeting in January and could schedule a discussion on ways to move forward.

Ms. Zahn said she appreciates discussion on the issue. She noted that the PRC application contains information about training expectations but because of an intentional decision, a list of the types of training was not included in the application. She supports improvements to the webpage and allocating an area as a resource of tools currently available. She cited recent port conversations on ways to help smaller ports be successful by ensuring they are owner-ready and supporting the application process. In particular, the discussions have focused on the reauthorization bill including some language eliminating the PRC review requirement for agencies using Design-Build for projects involving prefabricated metal buildings. Smaller ports might be interested in pursuing those types of projects but might refrain because of the PRC review requirement. She suggested there might be some opportunities for the Board and PRC to assist in the process, such as encouraging experienced public owners supporting other less experienced owners through the process.

Chair Keith thanked members for the dialogue and Mr. Peters for the update and for the format of the reports.

Local Government Public Works Study (SB 5418) – Information

Chair Keith reported Municipal Research Services Corporation (MRSC) recently presented a summary of its findings to the Senate Local Government Committee. The Legislature requested the Board deliver a report that included an analysis component and recommendations. Mr. Frare and DES have been coordinating the effort with MRSC. The effort included collection of data, analysis, and discussion on the results of the analysis. The report was initially due on November 30, 2020. Although MRSC was contracted to complete the work, CPARB is responsible to vet and agree to the recommendations. In September, the committee presented some suggestions and recommendations to the Board. At that time, the Board lacked a consensus on the recommendations to adopt as part of the report. The Board also lacked sufficient time to vet the report. Subsequently, she and Jon Rose met with the legislative committee and provided an update on the status of the Board's review. The committee was appreciative of the update but wants to receive the recommendations. The Board will include some time on the February agenda to review the suggestions and approve a set of recommendations for inclusion in the report for finalization by the end of May. She urged stakeholders and Board members to review the recommendations.

Jon Rose offered MRSC's support to work through the next steps to meet the Legislature's deadline.

Vice Chair Thompson added that MRSC was directed to study seven areas based on SB 5418. Five of the areas were completed; however, the missing elements are the recommendations and the obligation of CPARB to vet the report and recommendations. Essentially the work has been completed except for final vetting and approval of the recommendations. The Board should be prepared in February to consider the recommendations by the Local Government Public Works Study Committee, which was formed by CPARB.

Chair Keith asked whether other legislative committees were interested in receiving the report as it appeared that it was not the only committee interested in the study. Attendees at the meeting were interested in resources for local government. Recommendations 9 and 11 appeared to be of interest as they provide resources to local agencies, which the Board had agreed would require additional funding. She asked whether it is unreasonable to expect that there are other aspects of the recommendations that are of interest to the Legislature.

Mr. Frare advised that he is uncertain as the bill was generated by the Senate and completely rewritten in the House. Through other amendments, the bill incorporated other ideas. Two representatives and one Senator were instrumental in moving the bill forward. Several of the legislators were interested in establishing small works limits and other bid limits

to avoid requests each session to increase the threshold limits. MRSC assisted with data collection and analysis. The Board's role is to provide the industry perspective and reach a consensus on some recommendations. He is unsure of the interest by the other legislative committees and is hesitant to exceed the Board's mandate.

Vice Chair Thompson added that Recommendation 11 is the supplemental bidder responsibility criteria. The recommendation was evaluated by the Board's appointed committee. The recommendation may need to be updated.

Chair Keith urged the Board to review the report and recommendations for preparation for the Board's discussion and consideration in February.

Ms. Wall requested clarification of the due date of the report. Chair Keith said the Board committed to submitting the report by May but submittal by February would be preferable.

Ms. Zahn requested clarification as to whether the package would entail a set of recommendations for consideration by the Legislature or recommendations as a legislative proposal for consideration by the Legislature. Chair Keith advised that the request by the Legislature is to deliver a set of recommendations.

Subcontractor Bid Listing Policy Evaluation Committee – Action

Bill Dobyms reported the Board previously reviewed the proposal and agreed to afford additional time to fine-tune and reformat the submittal. With assistance from Ms. Deakins and Jerry Vanderwood with AGC, the submittal was reformatted for submittal to the Legislature. No substantive changes were made to the document other than minor revisions. The committee recommends some housekeeping changes to the existing statute to include rectifying the "and/or" language and clarifying that the Subcontractor Bid Listing Statute does not apply to RCW 39.10. The committee will monitor the statute over the next two years and draft a detailed recommendation on impacts to the industry and the delivery method in November 2022.

Mr. Hepner added that the committee engaged in a good discussion with many stakeholders. The proposal is reflective of the industry as it exists today. He thanked Mr. Dobyms for his efforts.

Chair Keith said another question addressed by the Board was a technical correction to the statute changing "or" to "and." Although the recommendation to the Legislature includes that correction, she understands that another effort to change the language is already in progress by other interests. Mr. Dobyms replied that the committee elected to add the change as a failsafe because of the inability to confirm the other effort.

Chair Keith asked Scott Middleton to share some information about the issue.

Scott Middleton reported MCA was not directly involved in the bill but was involved in the discussion during negotiations between the Washington Building Trades and AGC. It is a priority for MCA to submit the technical edit of changing "or" to "and" in the statute to reflect the initial intent of the parties. A draft bill was submitted to the code reviser and includes the technical correction, as well as the exclusion of bid listing from GC/CM and Design-Build. Other discussions between Washington Building Trades, higher education, and AGC were reflective of concurrence with the technical correction.

Mr. Dobyms advised that retaining the technical correction in the Board's submittal would serve to reaffirm the proposed change. Chair Keith recommended including the correction.

Mr. Kuruvilla noted that item 3 would be of particular interest to engineers and small businesses and that it deserves additional discussion as it would affect the engineering community. Chair Keith requested additional clarification surrounding the concerns. Mr. Kuruvilla said his concerns surround how the section affects Progressive Design-Build in terms of Washington State Department of Transportation (WSDOT) and Sound Transit projects in the future.

Vice Chair Thompson affirmed the concerns surrounding the commoditization of the design industry. However, it is **tangential** to the intent of SB 5457 and he is unsure how to address the concern. Mr. Dobyms noted that the statute speaks to subcontracting and not subconsulting. He believes RCW 39.10 is silent on subconsulting. Mr. Kuruvilla cited

WSDOT's recent interest in Progressive Design-Build and how the department has essentially handed Progressive Design-Build procurement over to consultants. Designers, engineers, and consultants are viewed as subcontractors in the state. The fact that the provision specifically does not call out consultants is a moot point as the engineering community is treated as contractors in alternative delivery. Mr. Dobyms noted that if the bill is adopted, it would not apply to traditional or progressive Design-Build.

Chair Keith added that it would apply to low bid for traditional Design-Bid-Build. However, she acknowledged Mr. Kuruvilla's concerns and that the Board is the appropriate venue to address the concern. It is worthy of discussion to determine how to address the concern in alternative public works.

Mr. Kuruvilla remarked that he would lean heavily on the Board's expertise as the engineering community is concerned it has become commoditized because it is occurring every day. Any opportunity for the Board to address those concerns would be important as commoditization primarily affects small businesses.

Mr. Dobyms agreed and referred to the opportunity to address the concerns as part of the best practices discussions. Discussion has been prompted surrounding Progressive Design-Build on ways to increase inclusion as some owners only want to deal with the builder and designer and not the entire team.

Ms. Thaxton expressed appreciation of Mr. Kuruvilla's comment. She described the Progressive Design-Build project WSDOT is pursuing to replace culverts along U.S. Highway 101. The approach WSDOT is using for Progressive Design-Build is not commoditizing anyone at that point as they are considering qualifications very thoughtfully. Owners are interested in increasing diversity, which is one of the reasons why subcontractors and subconsultants are not asked to submit bids at the beginning of the project to ensure the owner is involved to promote diversity. When all bids are submitted at the front-end there is no opportunity to increase diversity. When the owner is involved, there are many more opportunities to increase diversity and focus on qualifications over the commoditization of the subconsultant. Owners are legitimately and actively pursuing that course to ensure they have the best team for the project. Requiring the listing of subcontractors at the onset will commoditize the engineering environment, limit diversity, and decrease the owner's ability to influence.

Ms. Reyes also appreciated Mr. Kuruvilla's comments as she believes more work is necessary because Mr. Kuruvilla likely experienced an unpleasant experience. Part of the problem is how architects, engineers, and suppliers are considered a commodity. For federally funded projects, 60% of every dollar spent on certified minority companies is applied to the diversity goal. She is hopeful the Board can assist in resolving some of the language/categories with WSDOT.

Mr. Middleton requested the addition of Barry Sherman with NECA to the committee as a specialty contractor. He joined the committee later in the process. Additionally, MCA is not aware of any opposition to the technical change. However, there may be some different opinions about excluding GC/CM and Design-Build from bid listing requirements. However, MCA intends to include it in its bill.

Ms. Zahn pointed out that the concerns expressed by Mr. Kuruvilla warrants a longer discussion than what can be afforded for this particular proposal. Chair Keith said she concurs.

Mr. Frare noted that commoditization and other concerns are at the root of the issue, as well as bid shopping and a bait and switch fairness issue associated with the proposal. He stressed the importance of protecting the design community as well as the subcontracting community from bid shopping by contractors searching for lower price after a contract has been awarded and the prime has established its contract. Subcontractors and subconsultants remain fluid, which is why protections are required for small and minority businesses as well as non-minority businesses. The concerns surrounding commoditization likely cannot be addressed because of the limitation associated with the direction to the Board, but it is part of a bigger picture the Board should address.

Ms. Thaxton supported separating and deferring the issue for follow-up by the Board.

Mr. Kuruvilla thanked the Board for considering his concerns.

Chair Keith thanked Mr. Dobyms and Mr. Hepner for their work on the committee.

Rebecca Keith moved, seconded by Garrett Buckingham, to approve the report submitted by the Subcontractor Bid Listing Policy Evaluation Committee and authorize the Chair to forward it to the Legislature as the CPARB Report.

Chair Keith recommended monitoring by public owners and general contractors to track outcomes.

Mr. Dobyms offered a friendly amendment to add Barry Sherman as a member of the committee.

The makers of the motion accepted the friendly amendment.

A voice vote unanimously approved the motion as amended.

New Committee Proposal re: PRC Revision – Information/Action

Ms. Zahn referred to a copy of a draft workplan for establishing a PRC Review Committee. She summarized feedback from the Board on areas of focus. They included PRC committee representation, appointment process, role of members (duties & expectations) PRC process and potential improvement areas. She suggested phasing the tasks with Phase 1 focusing on a review of the PRC Committee, representation, and appointment process by the Board because each June, positions expire on the committee.

Several years ago, PRC members authored job descriptions and qualifications. As the Board has rendered appointments, the Board identified job descriptions as an area for the committee to review to ensure language reflects the Board's desires and value, as well as examine the appointment process and consider some alternatives. The committee review would result in a report to the Board. Timing is a challenge for the Board because of the timing of Board meetings affording insufficient time to meet and produce a draft recommendation. She asked for guidance on the timing in light of the Board's existing workload.

Phase 2 would include a review of roles, duties, expectations, bylaws, and updating materials and compile recommendations for consideration by the Board. Phase 3 would include a review of the processes.

Ms. Zahn invited feedback on the proposal.

Ms. Thaxton offered to participate as a committee member.

Mr. Dobyms asked about the urgency for the May timeframe and volunteered to serve on the committee. Ms. Zahn noted the timeline is up for discussion as the Board has engaged in some interesting discussions during PRC appointments. She cited some options and the Board's workload as critical factors determining the timeline.

Mr. Dobyms asked whether the Board has the authority to render changes as it would affect the timeframe. Ms. Zahn noted the elements within the workplan are under the purview of the Board.

Chair Keith said she does not believe the statute authorizes the Board to control PRC's approvals. Additionally, DES staggers recruitments and appointments with the website providing applications and job descriptions.

Mr. Schacht offered that some of the tasks could be addressed and implemented quickly, such as including a requirement that each position has a connection to the community of representation, addressing some potential prejudices with specific stakeholder groups, or addressing situations where a PRC member who favors a particular delivery method speaks to the merits of that method when the application is for another delivery method. The Board might want to formalize training and change some of the processes. It is likely the committee could also work with the PRC Chair or the Board Chair to improve processes within a limited timeframe. Many of the actions could occur relatively soon following discussions and attaining consensus and eventually documented. Some adjustments/improvements might require more time.

Ms. van der Lugt offered that some of the tasks might fit under Board Development. She stressed the importance of accountability, documented changes, and defined expectations. Mr. Schacht agreed while recognizing that the some improvements would likely receive consensus by the Board that could be implemented immediately. Those actions would also be documented so they are memorialized and become process and protocol. His goal is not to delay improvements that would achieve widely shared goals.

Chair Keith advised that Mr. Buckingham and Ms. Mooseker have volunteered to serve on the committee. Because the proposal has no definite deadline she asked about the next step moving forward. Ms. Zahn suggested the Board could offer feedback and be prepared to appoint members in February.

Discussion ensued on next steps with Chair Keith suggesting the deferral of appointments to enable time for the Board to review the workplan and offer feedback during the February meeting.

ADMINISTRATIVE

February 11, 2021 Meeting Planning & Draft Agenda

The Board agreed to schedule the February 11, 2021 meeting from 8 a.m. to 1 p.m.

The Board discussed communication channels between now and February in support of the reauthorization bill. Each committee should plan to provide an update on its alignment with the Board's work plan. Mr. Schacht advised that the 2021 work plan from January through April is to successfully reauthorize the statute. Dependent upon the outcome, it will inform the work plan for 2021-22.

February 11, 2021 meeting agenda includes the following:

- 2021 Legislative Bills of Interest
- Reauthorization Bill Update
- Local Government Public Works Study (SB5418)
- PRC Review Committee Discussion/Action
- Committee reports (to include update on status)
 - Board Development
 - Project Review Committee
 - JOC Evaluation Committee
 - GC/CM Committee
 - Design-Build Statute Review
 - Business Equity/Diverse Business Inclusion Committee
 - Data Collection Implementation Committee
 - Education\Outreach Workgroup

ADJOURNMENT - Action

Janice Zahn moved, seconded by Bill Frare, to adjourn the meeting at 12:11 p.m. A voice motion carried unanimously.

STAFF & GUESTS

Talia Baker, Department of Enterprise Services

Kelle Christensen

Nancy Deakins, Department of Enterprise Services

Joanna Eide, OMWBE

Curt Gimmestad, Absher Construction

G. Glasgow

Valerie Gow, Puget Sound Meeting Services

Michelle Helmholz, Laborers Local 212

Judy Isaac, MRSC

Janet Jensen, Department of Enterprise Services

Chris Liu, Department of Enterprise Services

Art McCluskey, WSDOT

Scott Middleton, MCAA

Ed Peters, Edmonds School District

Jackie Robinson

Jon Rose, MRSC

Linda Shilley, JOCE Committee/Pierce Transit

Jolene Skinner, Labor & Industries

Mike Transue, Specialty Contractors

Jerry Vanderwood, AGC

Kelci Karl-Robinson, Washington State Legislature
Joseph Kline
Aleanna Kondelis, University of Washington

Melissa Van Gorkom, Washington State Leg. Staff
Olivia Yang, Washington State University

Prepared by Puget Sound Meeting Services, psmsoly@earthlink.net