

**CPARB Reauthorization Committee Meeting Notes**  
**Feb. 18, 2020 1 p.m. – 4 p.m.**  
**Columbia Center, Suite 2050, Seattle, Washington**

**In attendance:**

**Chair:** Rebecca Keith (WA Cities)

**Vice-Chair:** Robynne Thaxton (Private Industry)

**Members:** Loren Armstrong (WA Ports) - phone, Janet Jansen (DES) - phone, Robin Heinrichs (School Districts) - phone, Santosh Kuruvilla (Engineers) – phone, Scott Middleton (Specialty Contractors), Eric Nordstrom (Counties) – phone, Andy Thompson (rep for Mike Pellitteri) (General Contractors), Olivia Yang (Higher Ed)

**Guests:** Nancy Deakins (DES) – phone, Jesse Gilliam (City of Seattle), Don Laford (CMMA), (brookehaven@msn.com), Bill Dobyys-Lydig (phone), Dan Seydell – phone, Vicky Stockard (CMMA)

***Meeting is called to order with a quorum present at 1:07 p.m.***

***Welcome and introductions.***

***Approve agenda.***

- Rebecca suggests the committee amend the agenda to strike approval of minutes from December 2, 2019 because she realized they were not distributed in advance. Rebecca will distribute the minutes and will put them forward at the next meeting. Committee agrees.
- No one has further changes to agenda.
- **DECISION:** All approve the agenda. None opposed.

***Update on GCCM Committee.***

Scott gives update on the GCCM committee meeting.

- GCCM committee gave tentative approval to statute changes relating to costs, claims adjustments and work orders.
- GCCM committee gave tentative approval on the scope of audits when there are lump sum elements of a contract (for heavy GCCM and MCCM).
- GCCM committee is having a continued discussion on price related factors and GCCMs. The group did take action (tentative approval) on additional items but people in the room are not certain. Rebecca will review GCCM minutes to determine what action was taken.
- GCCM committee is involved in an ongoing discussion on risk, owner and design activities.

- The GCCM meeting next Tuesday, Feb. 25 between 10 a.m. and 1 p.m. is at MCA at the Metropolitan NW building and will be focused on ECCM and MCCM.
  - Rebecca notes anyone who is at the current meeting would be welcome to take part in that committee.
- Olivia Yang is now part of the GCCM committee.
- Olivia notes there was a discussion about negotiation and selection during the last meeting.

***Joint meeting proposal for March 24 – discussion and action.***

- Rebecca proposes a joint meeting between reauthorization and GCCM committees. There is general agreement.
- Robynne requests that there is a pre-read for those who have not been to the meetings before.
- Scott notes that GCCM materials are on the CPARB website. This item will be updated before the meeting.
- **DECISION:** Joint GCCM/reauthorization meeting will be March 24 between 10 a.m. to 1 p.m.
  - All in favor. None opposed.
  - Meeting will likely be at Scott's office.

***Update on JLARC.***

- Janet notes that a draft report will be ready in late September.
- Reauthorization committee will have an opportunity to respond to the report. The committee's response will be incorporated as an appendix to the report.
- The report will be presented to JLARC in December.
- CPARB will put the proposed ordinance changes forward independently of the reports.
- There is a document called "Sunset Review" on the CPARB website that Robynne and Rebecca recommend committee members read.

***Update on Powers and Duties.***

- Rebecca opens a discussion about changing "powers and duties" to "authority."
  - Rebecca notes the reason for the potential change is to avoid implying that CPARB *must* do these things.
  - Janet spoke with AG to get their opinion. AG advice was that changing powers and duties to authority could lead to concerns.
    - Janet quotes from an e-mail that the AG states. Part of the e-mail says "I agree overall this statute is unclear. While it gives CPARB powers and duties it does not say when or how they are completed." AG notes that there could be specific reports or parameters.

- Rebecca gives two proposals for discussion: leave statute as is now or change.
- Robynne notes one issue is that if CPARB has a “duty” that they are not doing, CPARB could be held accountable. Rebecca notes that stakeholders or JLARC could hold CPARB accountable.
  - The group goes back and forth and decided that this issue can be managed by explaining to stakeholders what “powers and duties” means.
- Don notes that at the last CPARB meeting, a committee was formed to collect data, so CPARB is fulfilling the duty of collecting data.
  - Andy notes that the data that is collected is very narrow, about subcontractor performance.
- Andy states as a CPARB member he would be more comfortable with authority. As a volunteer for CPARB, authority would be helpful for him to be clearer about the role of CPARB as an advisory voice that brings ideas together.
- Group has discussion about the letter from Senator who asks about duty to collect data.
- Janet points out that the e-mail the AG said that there is not distinction between “powers and duties” and “authority.”
- Olivia asks is it possible to leave language as-is and when the request comes in for data, explain why or why not CPARB has this data?
- **ACTION:** Rebecca pauses the discussion and says that the committee will revisit this issue.

***Update on JOC.***

- Rebecca notes:
  - Tae Hee left his position at Sound Transit to take a position with Lane construction.
  - CPARB made new appointments to JOC and they will be appointing a new chair shortly.
  - JOC is working on an updated definition of coefficient, open issues of bonding and conflict of issue and bid.
  - **ACTION:** Rebecca will make a meeting to speak with the JOC committee on open issues.

***Accountability; Fairness and Transparency in Selection. Discussion and update to issues matrix.***

- Robynne raises issue in Senator Fortunato’s letter about what CPARB does about public owners that do not follow statute.
  - Robynne notes that CPARB does not have quasi-judicial capacity or resources to address these owners.

- Robynne says this issue could be addressed through protest procedures within procurement and if not solved then sued and taken to court.
- Olivia questions – could all issues be addressed through the bid protest process?
- Robynne notes that payment issue would be breach of contract. Just because something is alternative procurement does not mean there is not remedy.
- Discussion turns to issue of firms getting appropriate experience to get into alternative public works.
  - Bill notes that there are barriers to entrance in every type of delivery.
  - Olivia notes that for some public owners, experience with low bid will be acceptable experience to get into alternative public works.
  - Bill points out that in WSU's contract language there are clauses on this issue.
  - Robynne notes that there are a variety of ways that one can lower barriers to entry to alternative public works.
  - Robynne says that tackling this issue is a best practice, but does not raise to the level of a statutory issue.
- Discussion moves back to public owners not following statute.
  - Dan notes that this is everyone's responsibility – the firms and the public owners.
  - Dan also states that barriers to entry exist for all firms, including non-WMBE firms. WMBE firms have other institutional barriers coming into the process.
- Andy states that for relating to transparency and fairness he believes interviews need to be part of the process.
  - Scott agrees there is value in interviews but the question is how they are evaluated and how they are used.
  - Andy hopes that whatever is accomplished and decided upon with interviews in EECM, MCCM section is universal.
  - Andy says before March 24 mechanical contractors and AGC should come together to get on same page.
  - Robynne notes that meetings/interviews can be crucial to move process forward. Question on if proprietary meetings should be scored.
  - Scott points out several examples of challenges in interviews. There should be notes taken on how interviews are scored.
    - Bill points out issue between personal notes and public records of summary – different public owners do this differently.
- Santosh notes transparency is as important at the beginning as at the end.
  - At the beginning with RFP and bid processes there is transparency.
  - If a firm is not selected, public owners should also be transparent about why and how a firm could do better.

- Rebecca recalls two checkpoints emerged from this discussion: transparency in the procurement process and accountability during project.
- **ACTION:** Several issues are raised up to put in the matrix:
  - *Interviews in the selection process.*
    - Put specific ECCM/MCCM concern in alignment with all areas of the statute
    - Interviews are not expressly addressed in statute, but there is language on evaluation. Transparency in scoring of interviews.
  - *Prompt processing of change owners.* The GCCM committee is addressing this issue.
  - *Transparency after selection.* See Santosh's comments above.

***Break at 2:46 p.m.***

***Resume at 3:04 p.m.***

***Sunset – discussion and update to issues matrix.***

*Opening comments.*

- Rebecca frames the discussion: group should talk about the pros and cons of if there should be a sunset date for the statute.
- Rebecca notes that this decision is ultimately up to the State Legislature.
  - Last reauthorization, Senator Tharinger's office asked about deleting the sunset clause. Rebecca anticipates this will come up again and wants to have a reason for either keeping or deleting the sunset clause.

*Discussion.*

- Don asks – how difficult are future legislative changes?
  - Rebecca notes legislative changes are always possible, and how difficult it is depends on political will.
- Scott notes that MCA is a strong supporter of sunset. It forces a broad group of stakeholders appointed by CPARB to come together to address issues. His position is enforced by the many fruitful discussions that have been happening during this reauthorization process.
  - Scott notes that it is very difficult (but not impossible) to get legislative changes outside of a process like this reauthorization process.
- Don notes that everything going through reauthorization has to go through CPARB. There have been changes through CPARB without sunset. Therefore he does not see any value in sunset.
- Nancy says that CPARB is structured very well and does not need a sunset clause to continue moving forward and reviewing things carefully.
- Eric Nordstrom feels sunset is the wrong mechanism.
- Loren Armstrong thinks sunset is the wrong mechanism for Ports to implement things like accountability and other changes.

- Bill asks – has there ever been noise to actually let the statute sunset?
  - Robynne says there is always a deep dive into the statute for every review. Robynne notes that they did a deep dive into design build last year without the threat of sunset.
- Robynne says reauthorization originally happened because it was an unknown delivery method. Now the delivery method is known and issues are being addressed head on.
- Loren notes that he does not think of DB and GCCM as alternative anymore – they are as mainstream as it gets.
- Janet notes she went to her first DBIA conference and states that Washington is a leader in these methods.
- Santosh asks about the sunset date.
  - Rebecca notes that if the law is not reauthorized it will go off the books entirely in 2022.
  - Santosh notes the sunset sunsets in 2025 unless extended by law for an additional fixed period of time.
- Olivia notes that owners are not in favor of sunset. However, owners are in favor of accountability.
  - There are logistical problems with sunset that make some decisions hard to make.
- Andy says that while there isn't an explicit general contractor position, he has heard "let's keep it." He knows there are concerns with long-term planning and certainty.
- Bill says he has mixed feelings. As a contractor he would like the sunset to go away. As a citizen he feels that it is an accountability measure. He feels that the reauthorization meetings allow him to hear points of view he does not usually hear.
- Robynne states that contractors invest a lot of money to get their staff trained in the delivery method.
- Bill says that from a general contractor's viewpoint, the original statute was broad and hard to determine how to comply. There is a need for parties to come together to determine how to comply, and that is why the sunset process is helpful.
- Olivia states sunset will not impact the behavior of the "bad" owners.
- Scott states MCA is one of the only groups that attends the MCCM hearings and provide comments. Out of respect for the process of knowing sunset is coming up, they are bringing up grievances from the members through the reauthorization process rather than through the hearings.
- Andy asks: why don't owners like the sunset process – what are the top two reasons?
  - Rebecca says that from her perspective it makes no sense to have a sunset when alternative public works are no longer alternative. She asked

– how should we spend our time? Any time a law opens up the bill is open to political decisions and does not seem like the best way to achieve principled decisions to a statute. Notes 1295 as an example of how things can change through a political process.

- Robynne talks about the GCCM process. She states that when there was a reauthorization process, they worked on changing as little as possible to ensure reauthorization. When there was a deep dive in statute, committees were able to make deeper changes.
- Andy says that this group is able to have authentic conversations and questions. He believes that the sunset clause has everyone come to the table and look inward every seven years to increase credibility.
- **ACTION:** Rebecca pauses the conversation given time.
  - Andy asks if AGC or other contractors should provide an opinion?
  - Scott suggests that this discussion be facilitated.

***Work Plan Proposal from Chair and Vice-Chair.***

- Rebecca states that the group needs to go back to meeting every other week.
- Rebecca leads the group in a detailed conversation about scheduling.
  - Next meetings will be March 5 at noon and March 17 at noon.
  - March 24 will be the joint meeting of GCCM and reauthorization.
  - Rebecca also names April dates. She will work with her scheduler to make this happen.
- Rebecca walks through the work plan document that was sent to committee members (discussion captured on work plan document by Rebecca, updated plan to be distributed).

***Meeting adjourned at 4:07 p.m.***

***Minutes prepared by Jesse Gilliam.***