

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Minutes

1500 Jefferson – Presentation Room

Olympia, Washington

February 13, 2014

<u>Members Present</u>	<u>Representing</u>	<u>Members Absent</u>	<u>Representing</u>
Daniel Absher	General Contractors	Christopher Hirst	Private Industry
Vince Campanella	General Contractors	Vacant	Specialty Contractors
Walter Schacht	Architects	Senator Bob Hasegawa	Senate (D)
Steven Crawford	School Districts	Vacant	Senate (R)
William Frare	DES	Vacant	Insurance/Surety Industry
Ty Heim	Public Hospital Districts	John Ahlers	Private Industry
Ed Kommers (Vice Chair)	Specialty Contractors	Albert Shen	Engineers
Robert Maruska (Chair)	Washington Ports	David Myers	Construction Trades Labor
Mark Riker	Construction Trades Labor	Helaine Honig	Cities
Gary Rowe	Counties	Rep. Vincent Buys	House (R)
Olivia Yang	Higher Education	Rep. Kathy Haigh	House (D)
Mick Matsuzawa for Alexis Oliver	OMWBE		

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 9:06 a.m.

A meeting quorum was attained.

Everyone present provided self-introductions.

Chair Maruska acknowledged the recent appointments of William Frare, Alexis Oliver, and Senator Bob Hasegawa.

Approve Agenda

Ed Kommers moved, seconded by Vince Campanella, to approve the agenda as published. Motion carried.

Approve December 12, 2013 Meeting Minutes

Several corrections to the minutes included:

- Correct Helaine Honig as representing Cities and Gary Rowe as representing Counties on page 1.
- Correct the minutes meeting date on the first page to reflect “December 12, 2013.”
- On page 2, revise the seventh full paragraph to reflect, “Steve Crawford reported that during PRC’s application review process, the applicant received other positive comments regarding the City’s MBWE outreach and implementation program.”

Ed Kommers moved, seconded by Steve Crawford, to approve the December 12, 2013 minutes as amended. Motion carried.

Public Comments

Chair Maruska encouraged public comments throughout the meeting.

Governor's New Policy on Board Membership

Nancy Deakins reported on the new policy by Governor Inslee to limit Governor-appointed members to two terms or 10 years. Two members currently have expired terms under the new policy (Dan Absher and Olivia Yang).

Chair Maruska reported the Governor's Office is also streamlining the appointment process by processing appointments electronically for both applications and recommendation letters. Applicants interested in serving on the Board for vacant positions should follow the new process. At the end of Governor Gregoire's term, the positions of Higher Education and General Contractors positions ended. Current members serving in those positions will continue serving until their respective term ends. The Governor's Office has indicated a desire to appoint those positions. Two vacant positions of Specialty Contractors and Insurance/Surety Industry are currently posted.

Positions not subject to the Governor's appointment include Public Hospital Districts, School Districts, Ports, Counties, and House and Senate positions. Appointment of a member representing Cities is by the Governor.

Ed Kommers advised that as of June 30, 2015, the following terms expire:

- Vince Campanella, General Contractors
- Walter Schacht, Architects
- Ed Kommers, Specialty Contractors
- Dave Myers, Construction Trades Labor
- Mark Riker, Construction Trades Labor
- Christopher Hirst, Private Industry
- John Ahlers, Private Industry

Chair Maruska advised that a meeting is planned with staff from the Governor's Office to review the appointment process for the Board. Positions on the CPARB represent certain constituencies and it's important the Board is aware of the process the Governor's Office will use to ensure appointees are representing those constituencies.

Oliva Yang provided an update on recruitment for filling the Higher Education position. The Higher Education Coordinating Board (now the Student Achievement Council) was contacted and Alan Nygaard's name will be submitted as the nominee to fill the position with a letter of recommendation pending.

Chair Maruska acknowledged the ending terms of Daniel Absher and Olivia Yang and thanked them for their significant contributions during their membership on the Board. He expressed appreciation for their commitment to public service.

Project Review Committee

Report from January 23 Meeting

Dan Chandler, PRC Chair, provided an update on the results of the January 23 PRC meeting. The PRC considered three applications:

- Port of Seattle, GC/CM Certification
- Port of Seattle, Design-Build Certification
- City of Everett, Grand Avenue Park Bridge Design Build

Currently, PRC Bylaws do not require separation of two different certification applications. Members discussed the possibility of adopting a Bylaw change to require agencies to submit separate applications for certification of GC/CM and Design-Build to avoid the potential situation of rejection of the entire application if only one method is not certified. The Port of Seattle submitted two applications at the request of the PRC. Both applications were approved unanimously by the committee.

The third application was submitted by the City of Everett for a bridge project. The City had previously submitted applications to the PRC for Design Build and received approval. However, this application was denied due to the lack of readiness by the applicant and organizational structure of the team, which was deemed too weak. The committee determined the project was appropriate but that the organizational structure was lacking. The applicant was encouraged to resubmit.

Chair Maruska provided the PRC with an update on current legislative status of statutes that might impact the PRC.

Chair Maruska asked about any pending applications for projects. Mr. Chandler said he believes several applications are pending, but the applications haven't been submitted at this time. Chair Maruska encouraged the PRC to update the application form to reflect current PRC membership. He suggested listing the position rather than a member's name.

Ms. Deakins recommended including additional details in the PRC report, such as the dollar amount and timeline of the projects.

Civil/Heavy Bill Status Report – HB 2208

Chair Maruska provided the update on behalf of Linneth Riley-Hall.

House Bill 2208 on heavy civil construction projects was introduced in the House. A companion bill, SB 6428, was subsequently introduced in the Senate. House and Senate committees held hearings on both bills to include the Capital Budget Committee in the House and Government Operations Committee in the Senate. Subsequent to the hearing, both committees recessed to executive sessions on the bill. The bills passed from the committee to both Rules Committees. The next step is pulling the bills for placement of second reading on the floor for a vote. Rules could also redirect the bills to the Senate Finance Committee. Both bills are receiving strong support from CPARB members and there was no opposition testifying before the House or the Senate.

DB Life Cycle Cost Study Feedback – HB 2555

Chair Maruska reported the second bill wasn't officially drafted by CPARB but endorsed because it's generated from recommendations within the Life Cycle Cost Analysis and Energy Efficiency Report the Board approved on December 12, 2013. The bill is a statutory change in the Design-Build (DB) statute requiring public owners to include performance criteria and validation requirements within the request for proposals to the shortlist of bidders. The bill received good support in the House and Senate and is currently in Rules in both bodies. Gary Rowe added that the Senate bill passed from Rules on February 11.

Assuming the successful passage of the bills, the Board previously considered establishing some additional committees to complete follow-on work for life cycle costs. Following the outcome of the legislative session, the Board would likely appoint some members to a committee at the May meeting to continue the work.

The CPARB received a request from the House Capital Budget Committee to provide a briefing on life cycle costs on Tuesday, February 18 at 8 a.m. Ed Kommers is providing the overview and Walter Schacht is providing the technical presentations. Chair Maruska invited everyone to attend to demonstrate support for the bill. Concurrently, the Office of Financial Management (OFM) is providing a similar presentation on life cycle costs modeling as required by Executive Order (EO) 1303.

Chair Maruska added that there is a group of statutes relating to life cycle costing (RCW 39.35). He suggested reviewing the statutes for development of an integrated statute because each was enacted at various times for different purposes. A comprehensive approach should be pursued given the state of the industry and current practices to ensure good policy is enacted. The Board may receive some direction by the Legislature to proceed with that effort.

Ms. Deakins noted the CPARB's webpage includes a copy of the Life Cycle Cost Analysis and Energy Efficiency Report.

Discussion followed on the legislative committee presentation, which is only scheduled for 15 minutes. Mr. Schacht said legislative staff asked the presenters to draft a narrative of the CPARB's process. All stakeholders contributing to the report are scheduled to meet to review the narrative document. Additionally, it appears that the three separate moving pieces are interrelated and it would be beneficial if the presentation materials keyed on how success is dependent upon the connectivity of those pieces. The Life Cycle Cost Committee completed the life cycle cost analysis (LCCA) while OFM was directed through EO 1303 to develop the tool. The committee focused mostly on process, which is of interest to the Legislature. DES is reworking its guidelines from the energy life cycle cost analysis (ELCCA), and ideally, all three efforts should be combined. The committee learned through its process that LCCA leads to ELCCA and that they shouldn't be two different processes to avoid separate guidelines for LCCA, a tool for LCCA, and a set of guidelines for ELCCA.

Ms. Deakins said another element of EO 1303 directs DES to develop sustainable design guidelines. DES is also updating its ELCCA and guidelines as well.

Mr. Schacht said a fourth piece is the Public Works Procurement Study presented to the CPARB several times last year. It speaks to the issue of putting buildings online to align with the measurement validation piece of the LCCA work.

Mr. Kommers commented on the presentation format and how he's hopeful the outcome informs the legislative committee of the importance of tying the elements together.

Chair Maruska noted the Board didn't receive an invitation to offer a similar presentation to the Senate committee.

Legislative Update

Chair Maruska reported a number of bills were reintroduced with no additional action at this point. Friday, February 7, was the deadline for bills to be considered by House committees. Consequently, SHB 1025 (SB 5395) and HB 1841 did not move forward. A public hearing was held on HB 2014, but the bill did not move

forward. Ms. Deakins added that none of those bills were considered for a vote or subject to an executive session by the committees.

Chair Maruska reported SHB 2331 concerning certified payroll records on public works projects was amended because of concerns on whether each public entity is responsible to ensure the accuracy and completeness, as well as the issue of a public entity decision and the Department of Labor and Industries having the statutory authority to make the decision. The bill passed to Rules for a second reading on February 11.

The spreadsheet description of HB 2527 is incorrect and will be updated. The bill concerns establishing prevailing wage rates based on collective bargaining agreements. It was deferred to second reading by the Rules Committee on February 7.

Ms. Deakins referred to HB 2578 exempting from public inspection certain public works proposals and documents. The bill is specific to Design-Build under RCW 39.10 and not to GC/CM. During the Office Building 1063 project and after the selection of the three DB finalists, some public records requests were submitted for the proposals. The Public Records Office at DES deemed it was appropriate to release the documents. The release was essentially against industry practices and staff conveyed that the statement of qualifications were part of the selection process and shouldn't be released. However, the Public Records Office arranged for the release of the documents. The Office contacted each submitter about verifying any proprietary information as the documents would be released. The bill clarifies language and exempts the disclosure until a selection decision is rendered and announced.

Bill Frare shared additional information on the GC/CM competitive process. The information is not shared to ensure a competitive proposal. It's important to maintain the same competitive advantage for each DB finalist that's available within the GC/CM process. The submission of the proposal includes the building design and the maximum allowable construction costs. In many respects, the two methods are similar and include the same competitive advantages. During a public process, it's important to avoid the loss of the competitive environment.

Dan Absher inquired about the identity of the person requesting the information. Ms. Deakins said staff doesn't know the identity of the party requesting the information. Mr. Frare said the bill is sponsored by Representatives Dunshee and DeBolt.

Chair Maruska added that several individuals within the contracting community were very concerned. Dependent upon the interpretation of current statutes, it's possible to interpret them differently with different agencies believing the information is protected. However, in this particular instance because there was some confusion, the proposed bill attempts to resolve and clarify the interpretation. There is no case law in this particular instance and some public owners in the past have declined to provide certain information to maintain the competitive advantage.

Mr. Rowe said he believed that the information was only exempt from public disclosure prior to award of the contract. Chair Maruska said that's also an issue because according to existing statute, after award of a contract, those who wish to protest or take legal action lose that ability. Essentially, exempting public disclosure at the time of award prohibited anyone from taking action because the information wasn't releasable until after the award. The bill includes language that moves public disclosure at the time of announcement, which is consistent with other public procurement processes, such as Design-Bid-Build. The language equalizes the process for all procurement processes.

Ms. Deakins reviewed SB 6454 language stating, "Exempt from disclosure until public body announces the highest scoring finalist in accordance with 39.10.300 or the selection process is terminated."

Chair Maruska said the individual representing the printed media testified in opposition to the bill and wanted public disclosure of all information throughout the process.

Mr. Kommers pointed out that the Board advises proposers during training classes on GC/CM to pay attention to 39.10.470, which allows for the protection of trade secrets. However, the provision is incumbent upon the proposer identifying and labeling the information. During classes in GC/CM training, participants are advised to take advantage of the statute because if the statute is followed, the need for protection is less.

Ms. Deakins noted that it's also incumbent upon the public body to treat the information similarly as well. RCW 39.10.470 applies to both DB and GC/CM.

Chair Maruska referred to SSB 6110 and said the current statute allows public owners, for the purpose of retainage bonds, to enable a contractor to post a retainage bond in lieu of the public owner holding the funds. The statute allows the ability for the public owner to establish the standards of the bonding company to avoid the posting of junk bonds as a way to protect the retainage bond. A Washington State port established a rating for the retainage bond of A+ resulting in the inability of the bonding company that issued performance and other bonds the inability of issuing the retainage bond because it did not have an A+ financial rating. The action precluded some good bonding companies. Other public owners typically use an A- rating. The bill removes the ability of the public owner to select the rating and defines the rating for the retainage bond as those bonding companies that are allowed to conduct business in the State of Washington having a financial rating of A- or above.

Mr. Frare shared that he's heard some concerns because it removes some of the decision from the public owner and perhaps increasing the public body's risk or reducing the level of assurance for repayment of the performance bond. He's personally not concerned with language in subsection 6 of the statute that speaks to A- for retainage bonds. He questioned the purpose of the language under section 1 pertaining to applicability to all insurance bonds. Chair Maruska advised that the language was an attempt by the insurance companies to include all the requirements under one statute. He is not aware of any issue; however, from the insurance companies' perspective, there are different requirements for performance versus retainage bonds. The language attempts to consolidate those requirements. Mr. Frare offered that the proposal places a higher standard on less risk while the retainage bond is more risk to the owner. Chair Maruska clarified that the language consistency in subsection 6 only pertains to retainage bonds. Other bonds could include different criteria.

Mr. Absher said he interprets the language as applying to all bonds, which doesn't enable an owner the discretion of setting a rating higher than A-. Ms. Deakins pointed out that subsection 6 only applies to bonds for retainage. Chair Maruska affirmed that was the intent of the language in the bill. He encouraged members to read the bill entirely to determine if the language results in any unintended consequences. Movement of the bill at this point is uncertain.

Ms. Yang said a prior attempt to adjust retainage requirements for small projects under \$5,000 did not pass.

It was noted that SSB 6110 has passed out of the Senate.

Chair Maruska advised members who may have issues to voice their concerns with legislators.

Chair Maruska said Senate Bill 6341 pertaining to LEED plus W high performance standards speaks to the issue of legislators setting policy while the implementers must contend with how best to implement the policy.

Another bill not listed was initiated by Sound Transit (HB 2120) for establishing a time limit for when an adjacent property owner to a Sound Transit project can sue the contractor or Sound Transit for damage. The damage doesn't need to occur on the owner's property. The limitation is the shorter of either three years from when the property owner was aware of the damage or three years after the contract. The bill passed the House Judiciary Committee. A substitute bill clarified several provisions in the bill.

Mr. Rowe inquired about the status of continued funding for CPARB. Chair Maruska advised that CPARB's budget is included in the operating budget and there was no attempt to reduce or eliminate the funding.

Mr. Frare asked about the status of any legislation pertaining to Sound Transit membership on CPARB. Ms. Deakins said HB 1210 was reintroduced from the last session and passed Rules for second reading adding a transit authority representative to the Board.

Vince Campanella asked about the authority for appointment of the transit authority member. Ms. Deakins said only positions designated in SSHB 1210 are appointed by the Governor; essentially appointment authority of the regional authority representative is not specified within the bill.

Ms. Deakins reported the cut-off date for all bills to pass the first body is Tuesday, February 18.

Web Based Data Collection Update

Ms. Deakins reported on the lack of any movement since the Board's action at the last meeting. More definition is pending on the requirements for major projects prior to submission to DES for establishing a revised and improved database.

DES staff is working on the Job Order Contracting reporting and is chairing the JOC Users Group. The group is preparing to forward regular spreadsheets that have been previously used. JOC members agreed to collect the last two years of data.

Ms. Deakins described some of the next steps for DES staff and members to meet and develop the reporting parameters. She suggested appointing a workgroup to help expedite the process and asked for feedback from the Board on whether to submit drafts of the reporting information.

Ms. Yang offered to provide some assistance to staff.

Mr. Kommers suggested if the information were available for the May meeting it might be beneficial for the Board to review otherwise he wouldn't want to delay the process.

Ms. Deakins asked for volunteers to help finalize the information.

Robert Maruska moved, seconded by Olivia Yang, to appoint Gary Rowe, Alan Nygaard, Olivia Yang, and Vince Campanella to form a workgroup to finalize online data collection for major projects. Motion carried.

Set Agenda Items for May 8, 2014 Meeting

Agenda items for the May meeting include:

- Legislative Update
- PRC Report
- Update on data collection efforts

Mr. Kommers reported on GC/CM training classes underway now and on February 14 in Seattle. Fifty-five individuals signed up to take the training including DES Director Chris Liu.

Adjournment

Ed Kommers moved, seconded by Olivia Yang, to adjourn the meeting at 10:29 a.m. Motion carried.

Staff & Guests

Nancy Deakins, DES
Danelle Bessett, DES
Tom Gow, Puget Sound Meeting Services
David Mahalko, King County
Alan Nygaard, UW
Dan Chandler, PRC

Robert Maruska, CPARB Chair

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