

CAPITAL PROJECTS ADVISORY REVIEW BOARD

La Quinta Inn & Suites
4600 Capitol Boulevard SE
Tumwater, Washington 98501

**Minutes
December 14, 2017**

MEMBERS PRESENT

Bill Frare (*Chair*)
Andrew Thompson (*V. Chair*)
Steve Crawford
Greg Fuller
Senator Bob Hasegawa
Ty Heim
Joaquin Hernandez
Charles Horn
Rebecca Keith
Santosh Kuruvilla
Brent LeVander
Robert Maruska
Irene Reyes
Mark Riker
Gary Rowe
Walter Schacht
Mike Shinn
Staff & Guests are listed on the last page

REPRESENTING

State Government
General Contractors
Higher Education
Specialty Contractors
Senate (D)
Public Hospital Districts
Private Industry
Insurance/Surety Industry
Cities
Engineers
General Contractors
Washington Ports
Private Industry
Construction Trades Labor
Counties
Architects
Specialty Contractors

MEMBERS ABSENT

Teresa Berntsen
Rep. Vincent Buys
Lee Newgent
Rep. Steve Tharinger
Senator Judy Warnick
Vacant

REPRESENTING

OMWBE
House (R)
Construction Trades
House (D)
Senate (R)
Higher Education

WELCOME & INTRODUCTIONS

Chair Bill Frare called the Capital Projects Advisory Review Board (CPARB) meeting to order at 8:17 a.m.

A meeting quorum was attained.
Members provided self-introduction.

APPROVE AGENDA - Action

Andrew Thompson requested the addition of a discussion at the end of the agenda surrounding direction to PRC to include additional criteria during certification and recertification reviews of public bodies.

Robert Maruska moved, seconded by Ty Heim, to approve the agenda as amended. Motion carried unanimously.

APPROVE NOVEMBER 16, 2017 MINUTES – Action

Andrew Thompson moved, seconded by Robert Maruska, to approve the minutes of November 16, 2017 as published. Motion carried unanimously.

PUBLIC COMMENT

Chair Frare encouraged public comments throughout the meeting.

Joaquin Hernandez arrived at the meeting.

LEGISLATION OF INTEREST – Information

Limit on Number of Small DB Projects by Certified Public Bodies – Information/Action

Amy Engle with the University of Washington (UW) representing a group of public bodies reported the group met numerous times to discuss alternative public works. One provision of interest was reducing the dollar limit of Design-Build (DB) from \$10 million to \$2 million. The group drafted some proposed legislative changes. Public owners participating in the discussions represented the cities of Kennewick, Seattle, Tacoma, and Richland, King County, Department of Enterprise Services, and The Evergreen State College.

RCW proposed changes include RCW 39.10.250, Project Review Committee – Duties; RCW 39.10.270, Project Review Committee—Certification of public bodies; and RCW 39.10.300, Design-Build procedure—Uses. Walter Schacht recommended deleting RCW 39.10.300 (5), as the provision essentially duplicates RCW 39.10.300 (1). Another area of interest is RCW 39.10.330 (8) regarding honorariums. The group believes the proposed language is sufficient to ensure public owners consider the level of effort and requirements of the project when determining the amount of an honorarium.

Ms. Engle shared examples of DB projects \$10 million or less completed throughout the state:

- **DES DB Project – Natural Resources Building Garage Fire Suppression & Repairs.** The project was a Progressive DB because of the schedule and environments. The bond and failing systems drove schedule requirements. The fire suppression system was failing, as well as deteriorating exterior waterproofing creating structural failures creating safety hazards throughout the facility. The project cost was approximately \$8.1 million. Honorariums of \$100,000 were paid.

Chair Frare clarified that the project was funded through a Certificate of Participation (COP) by the Treasurer's Office. The Treasurer's Office sells bonds twice a year in January and July. If the project did not meet the January bond sale timeline for contract obligation, DES would not have been able to move forward with the project. The schedule drove the contracting method.

- **DES DB Projects – Modular Classrooms for K-3.** Progressive DB was selected because of timing and flexibility. The project required cross laminated timber. One team was selected for schools in western Washington and one team was selected for schools in eastern Washington. Twenty classrooms were constructed throughout five school districts. Total project cost was \$5.4 million with \$3.2 million for classrooms at three schools in western Washington and a \$2.2 million project for eight classrooms at two locations in eastern Washington. The Request for Proposals (RFP) was received June 28, 2016. The project was completed in fall 2017.
- **Washington State University (WSU) Visitor's Center.** The project was selected for DB because of tight scheduling. The project broke ground in May 2013 and completed in time for fall homecoming. The successful project involved a collaborative team with a mutual goal of completing the project within the time constraints. Decision-making was streamlined. The contract value was \$1.7 million with a total project cost of \$2 million. *Senator Hasegawa inquired as to what constitutes a "tight schedule." Ms. Engle advised that she did not have the details of the project other than completing a \$2 million project in five months was an impressive accomplishment. Senator Hasegawa said his interest revolves around the logic that public bodies have the ability to declare a tight schedule for those projects the owner wanted to complete by the DB delivery method. Ms. Engle noted that criteria in the RCW define how projects qualify for DB. One of the requirements is scheduling.*
- **WSU Public Safety Building.** The \$6 million project was selected for DB because of the tight schedule and because of the success of the Visitor's Center project.
- **WSU Tri-Cities Student Union Building.** The DB delivery method was selected because of scheduling requirements. WSU had 17 months from DB selection to substantial completion. The project was successful because students were driving many of the changes and the presence of the contractor afforded a way to inform user groups quickly of potential cost and schedule impacts from changes. The \$4.3 million project was completed in May 2017.
- **WSU Washington Building Third Floor Renovation Project.** The project was selected for DB because of collaboration needs between the design team and the contractor during demolition. Because of the lack of as built, the project was exposed to unforeseen conditions. The \$5.4 million project was completed in July 2015.

- **WSU Washington Grains Plant Growth Greenhouse.** The team developed a collaborative solution to fit the scope within the budget as early indications reflected that the program desired for completion was over budget. The team was able to align programmatic needs and add programs beyond the original budget. The team completed real time cost estimates to ensure continued growth in the program was within budget. Design was able to progress while different options were explored. The project was completed in June 2015 at a cost of \$8.9 million.
- **UW Medical Center 2nd Floor Family Waiting and Admitting.** Progressive DB was selected because of project complexity surrounding shutdowns and the need to phase a difficult area of the hospital. Progressive DB helped to increase minority and women-owned business participation. The project achieved a 20% savings from the predesign budget and resulted in an increase in the number of waiting area seats to 107 seats through collaborative efforts. The project cost was \$3.8 million.
- **UW Integrated Service Center/WU Tower IT Administration Space Upgrade.** Progressive DB was selected because of a tight schedule associated with implementing a new service center for the new payroll system. The project was completed in 8 months from advertisement to substantial completion. The project achieved a 9.4% savings from the historical baseline budgets established for the project. Limited administrative changes also contributed to the savings. Phase 1 of the project was \$2 million. Phase 2 is currently under construction and is \$5.5 million.

Mr. Thompson questioned the reason the Board supported limiting the number of projects and size for DB. Mr. Maruska recalled that when legislation was first drafted to establish DB, most of the projects were traditional DB and concerns were conveyed that the cost to compete and profit on relatively low-cost projects could negatively impact competition. The Board agreed to limit the number and monitor results. A number of years passed before public owners began to pursue DB projects costing between \$2 million and \$10 million. One project was a fire station in the Tri-Cities that was extremely successful. Today, public owners are realizing many more benefits by using Progressive DB. The Board selected five projects initially to serve as a starting point. When CPARB's bill was reauthorized by the Legislature, it included some adjustments. However, as more public owners use DB, more experience is generated enabling the ability to judge whether the legislation should be expanded. He believes the process is at the point because of the number of public owners experiencing success.

Mr. Thompson asked whether the proposed changes would provide public owners greater flexibility for smaller projects rather than limiting the selection of a project because of the limitation on the number of projects. Ms. Engle noted that the problem UW is experiencing is exhaustion of the five projects that could be completed by the DB method. Because the five-project limit has been achieved, it places UW in the position of not knowing what other types of projects might be on the horizon that could best be served by using DB. If DB is the best tool to ensure the wise use of tax dollars, it should not be limited.

Mr. Thompson asked about any data documenting the distribution of work to architects, engineers, and contractors, etc. Ms. Engle said she is not aware of specific selections across the state. Discussions with the Project Review Committee (PRC) speak to documenting projects from certified owners. Some missing data are from certified owners.

Nancy Deakins added that when original legislation was adopted in 2007, no project limitations were included; however, in 2009, the Board proposed and the Legislature subsequently adopted legislation directing the PRC to review no more than 10 DB projects by any public owner. The committee subsequently reported on progress, and in 2013, legislation was adopted changing the statute to limit the number of DB projects to five for certified owners with the PRC limited to reviewing no more than 15 DB projects from noncertified public owners. The legislation specifies no timeframe. Based on a review by staff, the PRC has only reviewed several DB projects from noncertified public bodies.

Ms. Engle said one of the representatives of a noncertified City expressed a preference for not applying to the PRC for DB projects valued between \$2 million and \$10 million because of the level of effort required for smaller projects.

Rebecca Keith agreed that the PRC review process impedes justifying using DB on smaller projects because of the level of effort required.

Ms. Engle requested the Board's support of the proposed legislative changes as a CPARB bill.

Walter Schacht spoke to Senator Hasegawa's question about an agency's ability to designate DB as a means of project delivery. According to the statute, most projects would qualify for DB. He is unsure whether the PRC has ever rejected a DB project because the agency did not meet the criteria for DB project delivery. As an architect, he believes DB could be applied to any project a public agency would propose, which is one of the many reasons why any project would qualify. In that respect, DB is becoming the preferred means of procuring projects in higher education across the state, as well as expanding to K-12. Today, the industry is living in the age of DB. Some public owners asked him to assemble a group of architects who might be impacted by the proposed legislation, to include small businesses, as well as women-owned and minority-owned businesses. The group met with a smaller group of the public owners group to include representatives from UW, WSU, Port of Seattle, and Sound Transit in ongoing conversations with the America Institute of Architects (AIA) Washington Council. Consensus was achieved to expand the ability for public agencies to pursue projects valued \$2 million or more because it is becoming the trend in public works. However, two significant areas of concern surround the lack of competition for \$2 million to \$10 million projects as those projects typically enable entry of many design professionals and general contractors as primes. If larger elements of the work continue to be awarded to those firms with established relationships or to those firms that have completed previous projects, the concern is exclusion of firms rather than inclusion. It is important for agencies to be flexible and open when developing RFQs and RFPs by creating the greatest and broadest level of participation. Mr. Schacht said he does not have a specific recommendation other than following the CPARB DB Best Practices Guidelines. Certainly, minority and women-owned businesses were quite concerned about that aspect during the discussions. At this point, public agencies would have to be trusted that they would be good stewards of that aspect of DB.

Mr. Schacht said the secondary component is honorariums. As Mr. Maruska conveyed earlier, the reason honorariums were constricted was because the cost of competing for \$2 to \$10 million projects might be prohibitive and burdensome to firms. Mr. Schacht said he believes, and as shared by a number of public agencies, the intent is procuring projects through the Progressive method. He cited several of the projects Ms. Engle presented. One Progressive DB project was completed by his firm. No honorariums were provided. A second project successfully bid by his firm included a \$25,000 honorarium, which would not have been sufficient to cover the firm's costs for bidding had the firm been unsuccessful in its bid. A number of design professionals attended the Board's last meeting to discuss how even with larger projects there is a discrepancy of five-fold between the amount of honorarium for design and price competition and the cost to compete. It makes sense for the \$2 million to \$10 million projects to be Progressive as a way to be fair. Many small firms do not have the time or the money to compete for traditional procurements.

Mr. Schacht offered a friendly amendment to RCW 39.10.338, revising the language to state, "...the honorarium payments shall be commensurate with the level of effort required to meet the selection criteria."

Mr. Maruska asked how an owner determines the amount commensurate to the level of effort. Mr. Schacht replied that there are other aspects of DB in RCW 39.10 to consider as well. Existing language is too vague. The recommended language provides public owners with some leeway while providing more clarity and definition. He referred to the Clover Park Technical Park project competition DES administered for the State Board of Community and Technical Colleges and cited the RFQ and the RFP requirements for schematic design. In a design and price competition, schematic design is often required to produce a set of drawings for best value evaluation and to determine project cost. It is difficult to commit to a cost even at schematic design, but it would be even more difficult to provide a hard number if less than schematic design recognizing schematic design is the minimum for design and price competition. While it allows some room, it places CPARB and the PRC in a position of not having the ability to interpret or implement. It is clearly a different message and would hopefully begin to reverse the trend of asking Design-Build teams to invest four to six times the cost to compete while protecting small firms who are pursuing smaller \$2-\$10 million projects.

Mr. Maruska asked whether the concern only applies to traditional DB rather than Progressive DB. Mr. Schacht affirmed that in today's procurement market, design professionals believe Progressive is a better instrument overall because of cost to compete and better opportunities to engage with the owner and the builder. Current statute requires payment of an honorarium; however, if the honorarium was \$1, \$500, or \$1,000 to reach that threshold, no one would object. Progressive projects could be implemented with initial design required except it would not be tied to a firm cost. That amount of effort could be stepped up by the team to pursue Progressive projects. A minimum honorarium could be appropriate dependent upon the level of effort.

Mike Shinn asked whether many general contractors are absorbing the cost of Design-Build. Mr. Schacht said that typically, general contractors deduct reimbursable expenses and provide the remaining amount to the design team.

Gary Rowe referred to the Board's prior conversations about the need to collect data associated with DB and other alternative delivery modes. He asked whether the statute provides sufficient direction or requires the public owner to provide data, as the Board continues to struggle with the collection of data after the fact.

Chair Frare advised that the statute is sufficient in terms of data collection. The issue was developing the data collection system. CPARB established a committee to develop some criteria with DES initially working through the process internally. However, because the priority level was insufficient to secure adequate IT resources, the effort was subsequently transferred to UW. Since then, staff and UW personnel have worked together acknowledging some constraints because of the lack of a Capital Budget. For that reason, the project has not moved forward.

Mr. Rowe asked about possible actions to address data collection to avoid future problems of lacking useful information and data for alternative delivery methods. Chair Frare affirmed that once a Capital Budget is adopted and funding allocated, UW and DES staff would allocate the necessary resources to implement the data collection system for preparation of reports for the PRC and the CPARB.

Joaquin Hernandez asked whether there was a noticeable difference in the proposal pool for \$2-\$10 million projects. Ms. Engle said the proposers are typically architects and contractors who typically do not compete for larger projects.

Santosh Kuruvilla asked whether the group of public owners considered the recommendations and suggestions within the DB Best Practices Guidelines. Chair Frare affirmed the guidelines were reviewed. He and the Attorney General's Office have discussed DB Best Practices Guidelines to ensure they are in sync with RCW 39.10.

Mr. Thompson requested clarification as to whether the motivation for using Progressive DB is based on the level of effort and honorarium or whether the owner uses the delivery method because it fits with the scope of work and an understanding of the work to be delivered. Chair Frare advised that the motivation for DES to use Progressive DB is twofold. One is the administrative and schedule timeline required to complete a traditional price and design competition, which is lengthy. Secondly, within a design and price competition, the design-builder provides schematic designs typically completed on a proprietary fashion without the benefit of consultation with the owner. It precludes brainstorming sessions with different architects. Progressive DB offers an integrated design process whereby the designer and the contractor have the ability to brainstorm and work through different ideas. The synergy of having all three parties participating during early design helps to create innovation. The project announcement includes a budget. However, Progressive DB affords the ability to negotiate price and scope. For example the DNR Parking Lot project scope included a number of priorities to accomplish within the budget. The top priority was the fire suppression system followed by waterproofing. At the onset, DES was uncertain whether the budget would be sufficient to complete the priorities. The process enabled DES and the design-builder to prioritize the areas and the type of materials while remaining within budget.

Mr. Schacht remarked that the conversation about DB has evolved since the initial statute was adopted. At that time, DB was not utilized for high profile civic facilities. Today, it is being used for those types of facilities. The method has undergone a transformation that is worthy of a future discussion. However, owners continue to want cost certainty early

in the project. Cost certainty is still attained at approximately 30% design development. The issue is reaching that point of setting cost certainty well in advance of construction and placing the responsibility on the DB team that normally would not occur in a conventional or GC/CM procurement.

Walter Schacht moved, seconded by Chair Frare, to endorse a modification to RCW 39.10 based on the modifications as provided in the pre-read submitted by Ms. Engle with two additional changes:

- 1. Strike RCW 39.10.300 (5) in its entirety.*
- 2. Revise RCW 39.10.330 (A) by striking and replacing the last sentence to reflect, "In determining the amount of the honorarium, the honorarium shall be commensurate with the level of effort required to meet the selection criteria."*

Mr. Maruska commented that by striking the last sentence in RCW 39.10.330 (A), "public body" should be added. Mr. Schacht suggested the sentence could be revised to state, "In determining the amount of the honorarium, the public body shall provide honorarium payments commensurate with the level of effort required to meet the selection criteria." Mr. Maruska said his point speaks to the public body determining the commensurate level for any particular solicitation rather than "shall pay."

Mr. Rowe expressed similar concerns as addressed by Mr. Maruska as the owner establishes the amount of the honorarium commensurate to the level of effort at some point during the solicitation of proposals. He asked whether the proposed language opens the possibility of a team seeking legal redress if the level of effort extended beyond the level of the honorarium because the honorarium did not meet the statutory requirement to be commensurate. He supports including language that indicates the public body shall determine the appropriate level.

Although Mr. Schacht acknowledged the concern, the proposal would essentially render the change ineffective and would not address the issue surrounding honorariums. Today, the language is essentially "a license to kill," which is how it has been used. He is receptive to alternative language but prefers avoiding "shall consider," which essentially was ignored.

Mr. Rowe recommended rephrasing the last sentence by striking "consider" and replacing with "determine" and striking "required" and replacing with "commensurate" to reflect a new sentence of, "In determining the amount of the honorarium, the public body shall consider the level of effort commensurate to meet the selection criteria."

Mr. Shinn questioned the probability of smaller architectural firms and engineers expending four to five times the level of the honorarium. He suggested that the level of detail might be unnecessary.

Dawn Cortez, Assistant Attorney General, Office of the Attorney General, representing DES and CPARB, advised of her review of the proposed language. Adding "appropriate" could address a number of concerns. When language is not defined in statute, courts refer to a specific dictionary. Including "appropriate" could be suitable or proper in this circumstance as "commensurate" corresponds to size or degree. Synonyms include equivalent, corresponding, comparable, or proportional. In terms of changing language in statute and how it could be interpreted in the future, if the intent is to improve "appropriate" or more direction is warranted, then the problem is not the statute, but how the statute is applied.

Mr. Schacht asked about options to solve the issue because legislation for design and price competition is not adhered to by public bodies. Ms. Cortez responded that typically when there are issues with an RFQ or RFP, those issues are addressed at that time. The Board is not the body responsible for overseeing how public bodies determine honorariums; however, the Board could consider the process and consider adding to the process to address that specific issue, such as protests earlier in the process. Mr. Schacht noted the challenge is the difficulty in pursuing the work when at the end of the day it does not really matter as to the procurement method because there is still a qualifications component. Protesting the amount of honorarium first would not set the stage for success for any party. The alternative solution might be modifying the list of criteria PRC reviews and address honorariums at the time of the PRC review enabling the PRC to provide feedback. Ms. Cortez pointed out the statute does not authorize PRC to pursue that option. It would require a statutory change.

Mr. Schacht added that the proposed language or modification is not his main issue other than acknowledging that there is clearly a gap. Data have been collected on honorariums for design and price competitions. The data demonstrates a gap between the statute and practice.

Mr. Shinn pointed out that during PRC project reviews, honorariums are addressed during the project presentation.

Chair Frare indicated the discussion has morphed from expanding DB to other issues. He recommended considering the proposal as presented by Ms. Engle.

Ms. Keith remarked that concerns surrounding honorariums have been previously discussed by the Board in the context of both small and large DB projects. Although the design community is seeking the Board's consideration, it would be difficult to tie the issue to the recommended changes for small DB projects. Because any change would impact the entire DB procurement method, future conversations might be a better option. Her concern about the language is that it might be unclear in terms of whether a court or a public body determines the amount. It appears the Board is not at a point to recommend a solution. She recommended the Board meet and work with the design community on the issue.

Mr. Schacht replied that previous comments for limiting the number of projects reflected concerns surrounding the cost of competing for projects. The intent was to limit the impact. His intent is not delaying access to the procurement tool for public agencies because he supports the proposal moving forward, but it is tied together as PRC has an obligation to report to the Board on project outcomes. Although his intent is not to delay a legislative change, the fundamental problem has not been resolved.

Mr. Maruska clarified that the PRC does not approve projects but rather approves the ability of the public owner to pursue a procurement method. Analyzing whether the honorarium was an appropriate amount is much different than seeking answers to questions about how the honorarium amount was established.

Mr. Crawford offered that "consider" is vague, as current language tends to encourage a more lenient environment for providing honorariums. Mr. Rowe's proposed amendment is reasonable. However, given the legal definition of "appropriate" it could entail striking the second sentence in its entirety to avoid vagueness of "consider." He is also leery of providing additional selection criteria to the PRC to determine whether a public agency is qualified to utilize an alternative contracting method.

Ms. Cortez added that another option is adding a definition of "appropriate honorarium" in the statute at some point in the future.

Mr. Schacht acknowledged that the issue likely would not be solved at this time. If the architects can believe public owners are deeply concerned about the issue and want to improve outcomes for all involved, he offered to modify his motion to reflect removal of the modification to RCW 39.10.330 (8) and consider appointing a small workgroup to address the challenges of defining appropriate honoraria.

Mr. Thompson asked for more specificity in terms of the mission of the workgroup.

Mr. Schacht replied that the statute lacks clarity and the intent of the workgroup is to provide a recommendation on clarifying the intent of the provision to ensure the honorarium is appropriate.

Discussion ensued on the intent and the issues the workgroup should address. Mr. Schacht noted that in addition to honoraria, other gaps exist in the statute that should be addressed. Progressive DB has created some gaps and perhaps the workgroup should evaluate other issues, such as what owners should be required to provide in RFQs/RFPs. Additionally, the review could include specific language surrounding the PRC's review and application process as discussed at the last meeting. The workgroup should address issues holistically if the intent is to present proposed revisions to legislation.

Mr. Crawford pointed out that the DB Best Practices Guidelines provide clarity on honoraria, as well as providing guidelines to public agencies in how they select the method of DB for the project. He referred to efforts to review how the guidelines align with the RCWs and how that effort might tie in with efforts by the workgroup.

Chair Frare acknowledged the possibility but expressed interest in pursuing incremental changes to legislation rather than a wholesale change, which can be more problematic and create different issues. Reconciling the guidelines and the statute were for specific guidelines to ensure consistency and to avoid overstepping any legislative intent.

Ms. Deakins reviewed the intent of the proposed amended motion.

Chair Frare called for the question.

Senator Hasegawa requested clarification of the motion.

Chair Frare restated the motion: *“Walter Schacht moved, seconded by Chair Frare, for CPARB to accept Amy Engle’s proposed changes with the following modifications:*

Strike 39.10.300 (5) as it repeats what is in section (1), and establish a workgroup to evaluate issues in the statute considering design community concerns around honoraria and Progressive Design-Build, i.e., what is being required in RFP/RFQ vs. progressive.”

Senator Hasegawa asked whether the motion includes all proposed recommendations in the statute or only the amendment. Mr. Schacht affirmed the motion would approve all recommended changes in the RCW and the proposed amendments.

Chair Frare offered another friendly amendment changing “accept” to reflect, “endorse.” Mr. Schacht accepted the proposed change.

Senator Hasegawa acknowledged that there are pros and cons of expanding smaller projects and taking advantage of economies of scale through the DB process by affording an increase in smaller contracts. He questioned how the proposal affects the ability of certified and small businesses to compete in the process, as well as ensuring public owners pursue appropriate outreach to certified and small businesses. He has less faith at this time that public owners would pursue outreach because the overall trend has reflected lower participation by certified and small companies. The University’s extension of alternative contracting procedures for the hospital was approved based on UW’s commitment to affirmatively outreach smaller and minority companies. As power is increased for designers/builders, he questioned whether that action would enhance the ability for certified companies to participate in the process. .

Mr. Rowe concurred with the concerns and suggested adding the issue to the workgroup issues to evaluate.

Mr. Hernandez said the issue surrounds the Board’s discussion at its last meeting in terms of adding four questions to the recertification process for public bodies. Those questions included the public body providing information on the status of efforts to include small businesses, minority, and women-owned businesses to gauge progress. Those questions would also apply for smaller DB projects (\$2-\$10 million).

Mr. Rowe asked whether the proposed language would address the implementation of outreach by public bodies.

Mr. Thompson referred to requirements in RCW 39.10.330 - Design-Build contractor award process. He cited some of the required evaluation factors and suggested the language depicting “may” should be changed to reflect “shall” or “must” if the intent is to conform to 39.10. Changing the language would satisfy concerns about small business participation in DB projects totaling \$2 million to \$10 million.

Chair Frare restated the motion:

“Walter Schacht moved, seconded by Chair Frare, to endorse Amy Engle’s proposed changes to DB portion of RCW 39.10 with the following modifications:

- 1. Strike RCW 39.10.330 (5) because it is repeated in section (1).*
- 2. CPARB will establish a workgroup to evaluate issues in the statute and consider design community concerns around honoraria, Progressive DB, and what is required in RFP/RFQ versus Progressive.”*

Members agreed the endorsement should reflect the proposal is from public owners rather than from Amy Engle.

Mr. Schacht referred to the Board’s last conversation surrounding Mr. Hernandez’s proposal to include four additional questions during PRC reviews and concerns expressed by Senator Hasegawa about the lack of participation from certified and small businesses. He suggested including all those issues for the workgroup to consider.

Senator Hasegawa noted the prior Board conversation centered on Job Order Contracting. Mr. Hernandez replied that his proposal was more generalized.

Rustin Hall, PRC, volunteered to serve on the workgroup.

Motion carried unanimously.

Irene Reyes arrived at the meeting.

Chair Frare recessed the meeting at 9:49 a.m. to 10:04 a.m. for a break.

JOC Evaluation Committee Proposed Legislation – Information/Action

Ms. Engle reported on proposed changes to JOC legislation. Based on feedback and support from public owners and the JOC Committee, RCW 39.10.420 was revised by striking the list of public agencies allowed to use JOC to allowing all public bodies to use Job Order Contracting procedures. Additionally, language in RCW 39.10.440 concerning unused capacity carryover was retained, as well as clarifying language about sales tax. Another change based on feedback allows public owners to have no more than three JOCs in effect at any one time rather than two with the exception of DES, which is authorized to use six JOC contracts. That proposed change was in lieu of changing the threshold level from \$4 million to \$6 million as a way to encourage more participation and use of different contractors to ensure more distribution of JOC projects. The proposal included increasing the maximum dollar amount of a work order from \$300,000 to \$500,000 and deleting RCW 39.10.450 (4) limiting the square footage for any new permanent, enclosed building space constructed under a work order.

Provisions not recommended for change were based on recent discussions surrounding minority participation and women-owned businesses. RCW 39.10.440 requires 90% of the work to include subcontracting with an emphasis to include both minority and women-owned businesses. The existing statute addresses some of the concerns. RCW 39.10.450 (5) requires the review of all job order outreach plans by the Office of Minority and Women’s Business Enterprises (OMWBE) to ensure equity in subcontracting opportunities for certified women and minority businesses enterprises. Today, JOC has achieved an 18% participation rate.

Chair Frare asked about the specific allocation of 18%. Ms. Engle said approximately 90% of the businesses are certified; however, that data should be verified.

Another issue raised during conversations pertained to subcontractor bonding. The concern is not addressed in the RCW; however, it could be addressed in best practices. Many contractors do not require sub bonds for contracts valued less than \$150,000.

Gary Rowe moved, seconded by Robert Maruska, to endorse the JOC Committee's recommendation regarding Job Order Contracting sections in RCW 39.10.

Chair Frare reported he reviewed the proposed changes with Ms. Engle and supports most of the changes except opening JOC to all public bodies. However, he is approaching a middle ground perspective. Because of the potential of an unsophisticated public body issuing a JOC contract and work order for \$300,000 and then submitting change orders totaling \$3 million in work, it could create a situation where the project would not have qualified for JOC, or the contracting process intended for one purpose was used for another purpose. He cited some examples of similar situations that have occurred. His concern is that the practice might reflect poorly on the contracting process rather than the offending public body, which could endanger continuance of the contracting method.

Mr. Rowe commented that based on his experience with local government and participating in many state audits, the State Auditor rigorously reviews those instances where a contract was extended beyond the original scope. Chair Frare conceded that given the history of successful JOC projects his concerns have been mitigated.

Mr. Maruska said JOC is a tool requested by ports because of the difficulty in securing procurement for small projects.

Chair Frare questioned the demand to enable JOC for all public bodies. Mr. Maruska said feedback from other ports speak to the difficulty in today's market of small dollar value projects and the ability to obtain bids or executing those types of contracts individually versus through a JOC with one contract enabling authorizations up to three years.

Mr. Thompson asked about any limitations for public owners to use small works. Mr. Maruska replied that any public body has the option of utilizing small works; however, it involves an agreement with MRSC (Municipal Research and Services Center) or establishment of a roster.

Chair Frare inquired about the need to form a workgroup to work on best practices for JOC. Ms. Engle advised that after submittal of the legislative changes, the JOC Committee expressed interest in developing best practices.

Irene Reyes asked about the possibility of including "certified" prior to "minority and woman-owned subcontractors to the extent permitted by law in the last sentence of RCW 39.10.440 (4). Ms. Engle commented that the JOC Committee is exploring options to report all companies regardless of certification because using disadvantaged business enterprises (DBEs) does not necessarily mean they have to be certified. Ms. Reyes asked how those businesses are determined to be disadvantaged. Ms. Engle referred to the purchase of a database to confirm the status of business ownership. The database is a Dun & Bradstreet product used by DES and other public agencies. Ms. Reyes shared that being involved in federal and local contracting, the definition of DBE requires proof that a business is economically or socially disadvantaged. The problem is that any company could claim to be a DBE business necessitating the need for an agency to identify qualified DBE companies. Ms. Engle added that UW contacts OMWBE when a contract is issued. The contractor meets with OMWBE and agrees to prepare an outreach plan. UW is emphasizing the importance of certification to companies. By reflecting both certified and noncertified businesses, it might be possible to convince noncertified companies to seek certification. Currently, certification is less advantageous other than for competing for federal projects.

Ms. Keith supported Ms. Engle's comments and does not support including "certified" as there are other reasons why some entities prefer the broader scope in considering minority and women business firms that are not necessarily certified. Others in the community have shared reasons for not becoming certified. What is important is the requirement to meet with OMWBE to review an outreach plan. At that point, OMWBE provides input on the plan.

Mr. Rowe did not accept the friendly amendment to add, "certified." He also assumes other language that speaks to minority and woman-owned subcontractors is located within other sections of the statute. Including "certified" in one section in the statute could create confusion.

Brent LeVander commented that RCW 39.10.450 (5), which addresses the approval of outreach plans includes “certified.”

Mr. Riker encouraged including “certified” throughout the statute.

Mr. Hernandez said although he agrees with the sentiment, he is worried based on prior comments from the Director of OMWBE last month during a similar discussion. Ms. Berntsen encouraged the Board to shift thinking regarding the availability of certified firms because many firms do not seek certification, as they do not believe there is a benefit. OMWBE is analyzing the issue and actively encourages certification.

Ms. Keith noted RCW 39.10.450 (5) speaks to consultation with OMWBE on a plan for job order contracting equity among certified women and minority business enterprises while RCW 39.10.440 (4) speaks to how the work is distributed to ensure equity to the extent possible. She agreed the Board should continue to discuss the issue.

Ms. Reyes remarked that the City of Seattle does not really acknowledge and utilize OMWBE certified firms because the City has its own process for certifying women and minority-owned companies. She asked Ms. Keith if that is why she opposes the change. Ms. Keith responded that other public owners are interested in having an expanded universe of companies to consider. Ms. Reyes emphasized that OMWBE certification is the most stringent of all certifications in the state and is similar to federal certification. It is important for the Board to keep that in mind as other certifications in the state do not undertake federal scrutiny that OMWBE undertakes. If the goal is to have legitimate minority and woman-owned companies, public owners need to use OMWBE certified firms.

Senator Hasegawa agreed “certified” should be included whenever possible because there is an ongoing problem. Previously, OMWBE was derelict in certifying companies, but is transitioning to a user-friendly process and providing worthwhile outcomes for companies to complete the process. Many companies claiming to be minority or woman-owned are not with contracting dollars continuing to remain in the same closed circle. The OMWBE is working to ensure there is social equity included in the contracting process as well.

Elisa Young, OMWBE, affirmed OMWBE’s certification requires information that is not possible with companies proclaiming self-identification as either a minority or woman-owned company. No proof is offered to justify certification, such as ownership of the business and overseeing day-to-day operations. Several crucial pieces touch on why there has been fraud in some of those areas and why there should be a shift from using self-identified companies to certified companies.

Ms. Keith contended that self-identification does not necessarily mean a company makes it up. The City has conducted audits and has standards and criteria. A company can not proclaim the status without proof. City staff members have often heard complaints from companies about the OMWBE process while many other companies have concerns because of legal status or requirements for review of company financial records.

Ms. Young affirmed OMWBE’s ongoing efforts to correct some of the concerns by the public including the timeframe by decreasing the timeline for certification. A part of the process is encouraging certifications and the Board’s action is helping to move that forward, as well as explaining to companies why certification is a real benefit to the company. The state process is much more stringent and the office is able to verify information.

Mr. Riker shared that he has worked for some noncertified companies claiming to be certified. His company was involved with two other companies that were not WBE companies but claimed to be. The City of Seattle’s certification process does not work because he has witnessed it firsthand. It does not work as there are too many fraudulent people pretending to be a minority company when they are not.

Mr. Reyes agreed with Senator Hasegawa’s comments as many companies are using disadvantaged status as a crutch to enter the market and win contracts. She has been certified since 1995. Although there were and continue to be some

loopholes in the system, the process is improving. She completed her certification with the City of Seattle and King County in 30 minutes. She asked the Board to take a deep breath and consider her actual experience as she has witnessed contractors win an award when claiming to be a woman or minority owned when really it was just a front.

Chair Frare advised members to speak to the pending motion. Mr. Rowe has declined the friendly amendment to the motion. The option at this point is to offer an amendment to the main motion and vote on the amendment.

Irene Reyes moved, seconded by Gary Riker, to amend the motion to add “certified” to RCW 39.10.440 (4) reflecting the following, “At least ninety percent of work contained in a Job Order Contract must be subcontracted to entities other than the Job Order Contractor. The Job Order Contractor must distribute contracts as equitably as possible among qualified and available subcontractors including certified minority and woman-owned subcontractors to the extent permitted by law.”

Discussion ensued on the interpretation of “certified” and whether it included both state and federal. Senator Hasegawa clarified that “certified” is defined as OMWBE, as it is the only state certification.

Mr. Maruska asked whether the intent of the amendment limits subcontracting to only certified companies. After further discussion among members, clarification was offered that the amendment was not intended to limit subcontracting by other companies.

Motion carried unanimously on the amendment.

Motion carried unanimously on the main motion as amended.

Mr. Maruska asked whether the Chair plans to work with other CPARB members to move the legislation forward to the code reviser. Chair Frare affirmed that intent.

STATE BANK LEGISLATION – Information/Action

Greg Fuller moved, seconded by Steve Crawford, to support proposed legislation, Senate Bill 5464, as presented by Senator Hasegawa.

Senator Hasegawa requested support for a publicly owned public depository commonly known as a state bank. The State has many revolving loan accounts, such as the Public Works Trust Account, but does not take advantage of the leveraging capacity that a bank has from deposits of tax revenues and other revenue sources. The State would have the ability to leverage more in lending capacity dramatically increasing the State’s capacity to finance infrastructure projects. North Dakota is the only state in the country that has a state bank. Many states use revolving loan accounts. The State of California created IBank; however, it is not considered a public depository in the sense that it accepts tax revenues. IBank uses available funds for loans. As loans are repaid, other loans are negotiated. IBank does not have the leverage capacity a publicly owned bank provides. All commercial banks have leverage capacity for loaning funds. He asked the Board to endorse SB 5464 through a letter of support to the chair and vice chair of the Senate Financial Institutions & Insurance Committee and to the chair of the House Business & Financial Services Committee.

Mr. Fuller questioned whether the state bank would accept cannabis money. Senator Hasegawa replied that the Legislature determines the source of funds; however, if the State anticipates establishing a public depository for cannabis money it should be separate to avoid co-mingling with state general funds.

Mr. LeVander questioned why only one state has established a state bank. Senator Hasegawa replied that internationally, public banking is a standard practice. However, in the United States, the focus is on commercial banking making it difficult for public banks to gain a foothold. Banks and bond brokers have much power within the U.S. political system, as well as institutional and cultural momentum that tend to block the path to state banks.

Mr. Thompson asked about the proposal in terms of how a state bank might impact the state or the Treasurer's Office. Senator Hasegawa said the public would be the most affected. Previously, the State Treasurer opposed the legislation. During the last budget, he was able to establish a bipartisan task force to include representatives from both chambers, the Governor's Office, Treasurer's Office, banking representatives from large banks, community banks, and credit unions, and public agencies. The effort was delayed because of the length of the last session. Approximately four weeks ago, task force members were polled with all members supporting moving forward with legislation. Before the last meeting, which was scheduled to issue Senate recommendations, the Treasurer changed position on the proposal and the Senate Republican appointee who did not attend previous meetings, disrupted the meeting. At the last meeting, the task force was not able to advance a set of recommendations to the Legislature to move forward with a public depository. However, a week prior, all members favored moving forward. It demonstrates some of the political sensitivities surrounding the issue.

Mr. Maruska noted the Board strives to avoid extending beyond its legal scope. He inquired as to whether the Board's support could be connected to supporting the ability to fund more public works projects rather than an endorsement that would be outside the Board's scope. Although supportive of different ways to increase funding for public works in the state, he prefers avoiding outreach beyond the Board's scope.

Senator Hasegawa referred to the intent section of the bill pointing out significant public infrastructure needs and how the proposal would greatly expand financing capacity. Mr. Maruska expressed support for that approach.

Mr. Thompson cited statute defining the power and duties of the Board, which states in part, "...*(1) Develop and recommend to the Legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods (2) Evaluate the use of existing contracting procedures and the potential future use of other alternative contracting procedures including competitive negotiation contracts...*" In terms of CPARB engagement, there is a benefit if there is a connection to construction.

Mr. Crawford cited Section 1 (2) (a) of SB 5464 as language also addressing investment of public infrastructure.

Ms. Keith proposed a friendly amendment to revise the motion to state, "*CPARB supports the intent of SB 5464.*"

Senator Hasegawa pointed out that the proposal is a bipartisan issue. The task force was created through a budget proviso supported by both Republicans and Democrats. Unfortunately, the Chair of the Senate Financial Institutions Committee opposed the proposal.

Ms. Keith explained the basis of her amendment. Some cities are interested in the proposal but there are some concerns about whether it would politically insulate cities from the political process of having the Legislature render decisions. While there are some concerns, there is also a strong level of interest. While the scope of CPARB and areas of expertise represented on the Board is limited, the proposal could help facilitate funding for capital projects, which is supported by cities.

Senator Hasegawa explained that the governance structure was addressed as a key issue, which is why the bill models the governance structure of the Bank of North Dakota, a bank with nearly 100 years of a proven track record for isolating the bank from legislative control. Decisions on movement of funds would be negotiated between the bank and the Legislature. However, decisions/actions today cannot define future legislatures. Should cities wish to participate in the bank, the best direction is to include city participation in the governance structure of the bank. The bill is the vehicle and is pending an amendment to define a public bank.

Ms. Keith remarked that the bill was likely thought through but it pertains more to the multidisciplinary impact, which is why she could support the intent of the bill rather than supporting the structure of the bill.

Mr. Fuller and Mr. Crawford did not accept the friendly amendment.

Mr. Rowe said his comments are similar, as interest in the legislation is how to provide additional financing for infrastructure. Should the Board support the proposal for alternative financing methods for public works, then the Board should be prepared to support other legislation that might be proposed and offering the same value. From that perspective, he does not believe there would be harm in supporting the legislation, but similar to Ms. Keith's comments, he is also not an expert on banking and would need to refer to the county treasurer or other financial experts to learn more about the benefits of the proposal. Counties were represented on the task force and county representation supported the recommendation. The Public Works Trust Fund was raided by the Legislature and it would be beneficial to develop a way to protect those funds to provide public owners with some assurance the funds would be available. He encouraged the Board to support other future options as well.

Mr. Schacht commented on the importance of increasing funding for public agencies to address deficient facilities; however, his reservation is how CPARB supports the proposal, as it does not align with the Board's legislative purview. Additionally and although he trusts Senator Hasegawa's good judgment, the Board has not vetted the proposal to assist members in understanding the proposal as the proposal is not within the realm of expertise by any member of the Board. He is also concerned about endorsing legislation for DB and JOC and proceeding with too many issues. Although supportive of the state's need to increase capital, he cannot connect the relationship with the mission of the Board as defined in statute.

Mr. Thompson said the amendment would have enabled some level of support by the Board. Lacking that approach, the request is more of a political recommendation rather than a policy recommendation.

Chair Frare added that the proposal also involves financial methodologies. He appreciated the amendment to support the intent of the proposal because of his support for funding public infrastructure to an appropriate level and supporting a policy that conveys the Board's support of ways to expand public works funding. Similar to other members, he is not a financial expert while recognizing the impact the proposal could have on the industry. He would prefer to frame the motion as supporting the intent rather than supporting the bill outright.

Mr. Fuller asked Senator Hasegawa about his preference with respect to "intent" versus "agreement."

Senator Hasegawa replied that "intent" would suffice. He originally presented the proposal to the Board because infrastructure is the focus of the legislation and it would provide capital for public works, which speaks to relevance of why he presented the proposal. At this time, he envisions continued action to move the process forward and not necessarily creating a public bank at this time. Section 5 in the proposal addresses creation of a transition board to develop a business plan for consideration by the Legislature to establish the facility with a focus directed to infrastructure rather than an array of different issues.

Mr. Fuller agreed to accept the friendly amendment.

Mr. Crawford remarked that he seconded the motion because he was able to vet the proposed bill through his district's chief financial officer who is knowledgeable in state financing. He also supported the addition of "intent" but preferred not to oppose the maker of the motion's rejection of the friendly amendment. He now supports the friendly amendment.

Chair Frare reviewed the amendment motion: *CPARB supports the intent of SB 5464.*

Motion carried unanimously.

PUBLIC-PRIVATE UPDATE – Information/Action

Mr. Thompson reported Representative Buys is moving forward with the bill request. He shared an email he sent to Representative Buys updating him on actions to date. The information conveyed how many involved in the Public-Private Partnership (P3) Committee did a very good job of collecting input, representation, and expertise from public owners, financial experts, academics, labor, small businesses, architecture, and the engineering community along with contractors. Recent input from Washington State Department of Transportation (WSDOT), State Transportation Commission, and the Treasurer's Office center on political issues rather than policy. The CPARB P3 Committee was able to address and protect the interests of citizens, public owners, and the industry as reflected in H-3117 for public-private partnerships for public works projects. It would be beneficial to bring H-3117 to the 2018 legislative session, enable conversations with stakeholders, and ensure the work completed over the last two years had weight as statute for P3 to become law.

Currently, there is distinction between WSDOT's P3 statute and CPARB's RCW 39.10. Governance is a political issue. The P3 bill began with a review of existing statute not previously utilized. The Committee elected to develop a separate bill because existing legislation was not working. Two years later, input is being conveyed from WSDOT on efforts by the P3 Committee.

James Lynch added that the update is reflective of today's status. The message to Representative Buys underscored the Board's action in May and reflects the Committee and Board's expertise and public works delivery methods. The discussions pursued by Representative Buys are interfacing with WSDOT and the Treasurer's Office. Some of those discussions have indicated the need to sort out some internal mechanisms. Representative Buys has contacted him and other members of the Committee with expertise to provide support while the Committee relies on him and the agencies to work on moving the proposal forward politically.

Mr. Maruska inquired about any corresponding work occurring in the Senate. Mr. Lynch said most of the efforts are focused in the House because of anticipated political hurdles to overcome.

Mr. Rowe asked whether the bill aligns with the Committee's proposal. Mr. Lynch reported the code reviser converted "shalls" to "must" (standard language), as well as changing some provisions for labor plans to reflect no intent to undermine fair and open competition.

Mr. Schacht asked about the potential for bipartisan support in both chambers during the session. Mr. Lynch advised that the ongoing conversations by numerous stakeholders are not indicative of any outcome at this time.

Mr. Thompson commented that his legislative foray began several years ago when he was involved with GC/CM Heavy Civil legislation sponsored by a similar committee with transparency. This effort included support by public owners. However, no public owner has stepped forward to promote the proposal. WSDOT is currently reviewing its P3 statute, which has not been used for over 20 years. WSDOT may be considering whether to change the statute, which could entail a long-term process. He recommended focusing on public owners to solicit interest in CPARB's P3 legislation. P3 legislation is designed for specific types of projects.

Mr. Kuruvilla inquired as to whether Sound Transit has considered the legislation particularly in the realm of transit-oriented development because it is a good bridge between vertical and horizontal development. Mr. Lynch advised that Sound Transit's existing legislation includes many components of the P3 process. Sound Transit has utilized the legislation and engaged consultants for P3 studies.

Mr. Thompson added Sound Transit awarded contracts to consultants to serve as advisors for P3. Sound Transit's DB procurements include P3 knowledge as an evaluation factor when selecting designers for projects. Most public owners have been thoughtful about what P3 legislation could mean.

Mr. Schacht summarized his understanding of the process as no public owner stepping forward as an advocate for P3 legislation and WSDOT's P3 statute has not been used in 25 years and is not aligned with the proposal. Mr. Thompson replied that he is not aware of any public owner who has embraced the P3 proposal similar to what occurred during the GC/CM Heavy Civil process. Mr. Lynch added that endorse or support is different from being a champion of the proposal. Beginning with the Committee through today, the sentiment conveyed is that P3 would be a good tool to have in the tool box and owners would consider it if it was available as it might be right for some project in the future; however, no owner has proclaimed to become the P3 owner advocating for the legislation.

Ms. Keith referenced other information mentioning Snohomish's interest. Mr. Lynch said the Snohomish group has visited and discussed P3 with the Legislature. The group is interested in the tool for a potential project. Mr. Thompson added that P3 is only one of the available options as the Snohomish group is striving to solve a financing issue.

Chair Frare commented that when the proposal was before the Board in May for a vote, the motion was carefully crafted to move the proposal from committee, which he supported because the process had reached an endpoint of available expertise. If the motion had been to endorse the proposal, he would have opposed the motion because of concerns involving oversight, financing, and risk. When the Board voted last May, most members, he believes, were of the same opinion that there were sufficient reservations whereby if the action has requested endorsement, the motion would have failed. He asked for an explanation of the proposal before the Board at this time.

Mr. Lynch advised that the briefing is an update only. In all of his discussions, he has been very careful in characterizing the true intent of the Board's vote, which was appropriate. The Committee pursued the work and contributed the expertise and now the next step is the political process. If the political climate is not ready, then it may mean the legislation should be pursued in the future.

Mr. Thompson noted that one element of the Committee's work was inclusion of language supporting small businesses. Provisions for the inclusion of small business do not include "may" but includes "must" for evaluation factors. The language is substantial and different in light of earlier discussions surrounding the Board's legislative changes to the statute. Members of the P3 Committee considered input from a number of stakeholders when it elected to include the language.

IMPLIED WARRANTY - AGC – Information

The presentation was deferred to a future meeting.

PROJECT REVIEW COMMITTEE – Information/Action

November 30, 2017 Meeting

Rustin Hall, Chair of the PRC provided the report. A quorum of the Committee met on November 30, 2017 for certification of a school district. Members also participated in new member training, approved an update to the PRC Bylaws, and completed a first read of other PRC documents.

Members considered the public agency certification for GC/CM from Central Valley School District in Spokane. Many PRC members shared that the presentation was one of the best presentations in terms of the applicant demonstrating quality, knowledge, expertise of personnel, and information on lessons learned. The application was approved unanimously by PRC.

Members participated in three project application panels:

- 1. Evergreen Hospital Medical Center Renovation – GC/CM.** The project was a highly complicated seismic and infrastructure upgrade to an existing hospital facility. The project qualified for GC/CM and met the criteria. The applicant demonstrated funding availability and a realistic budget and management plan. The complexity of the work, technical environment, and need to maintain operations were the primary reasons the project satisfied GC/CM criteria. The PRC panel approved the project unanimously.

2. **Tukwila Justice Center – GC/CM.** The project is a new 45,500 square foot police facility, municipal court, and emergency operations center. Panel members asked some in-depth questions of the team who responded with the right answers. The programming was sophisticated with different users in the facility creating complexity in planning and integration of systems. The site posed some challenges related to environmental issues. Securing expertise early in the project was important to avoid budget impacts. The City recently received approval for another GC/CM project. The team had the experience and expertise necessary to complete a GC/CM project. The panel approved the project unanimously.
3. **Fire Station 62 Renovation & New Fire Station 63 for Clark County Fire Protection District No. 6 – GC/CM.** Unfortunately, the application was denied for specific reasons. The applicant had already completed all construction documents for the renovation project as well as bidding the project. The bids were high by approximately 30%. The applicant believed GC/CM could assist in resolving budgetary issues but did not adjust the budget or the scope. That situation created some problems. The second project of a new building also had construction documents nearly completed. Additionally, the design team was from Oregon and not licensed in Washington. The design team previously completed CM/GC projects in Oregon but had no GC/CM experience in the State of Washington. The panel denied the application and encouraged the team to consider DB.

PRC Recruitment – Information

Mr. Hall reported a vacancy exists for Public Hospitals. He encouraged the Board to reach out to potential contacts to assist in recruiting efforts to fill the position.

The PRC inadvertently advertised for a position that was not available. Letters of apology were mailed to applicants for a design engineer position.

Chair Frare shared that staff plans to work with PRC leadership to develop definitions for each position represented on the Committee for approval by the Board for consistency of position descriptions.

Mr. Kuruvilla asked whether the Clark County Fire Protection District No. 6 renovation project included a contingency amount. Mr. Hall affirmed the budget included a 1% contingency rather than the required 5% by the RCW.

PRC Bylaws – Action

Mr. Hall invited questions on the draft of the Committee's Operating Bylaws.

Mr. Maruska inquired as to whether there were other elements updated in the bylaws in addition to reconciling the bylaws with changes in the CPARB bylaws. Mr. Hall replied that some of the original language was corrected to reflect "DES" rather than "Department of General Administration."

Ms. Deakins noted the PRC has not reviewed the bylaws specifically for alignment with CPARB bylaws because of timing. Mr. Maruska asked whether the intent is for an AG review of bylaws for consistency. Ms. Deakins replied that it was a goal; however, because of timing factors, the AG reviewed the document for consistency with the statute rather than alignment with CPARB bylaws.

Chair Frare added that the AG has advised that the Board does not have authority to approve PRC Bylaws.

Mr. Hall referred to the Board's action approving DB Best Practices Guidelines and efforts by PRC to ensure DB documents include a reference to the guidelines. He asked whether the guidelines were finalized. Chair Frare said the document is undergoing a review to revise some language inadvertently conveying more than what the Board intended. The Assistant AG is reviewing the document and could offer feedback on some potential changes.

Mr. Hall referred to the annual reporting requirement for \$2 million to \$10 million DB projects. He understands that a report has not been submitted since 2013. His plan is to submit a report prior to his term ending in June 2018. He asked for input on data to include within the report to enable a balanced and unbiased report.

Members offered the following suggestions:

- Include data on participation by certified OMWBE businesses.
- Include information on deficiencies regarding the ability to report data.
- Information on honorarium amounts and information from the design-build teams on how the level of honoraria compared to the level of effort.
- Include information on percentage of change orders.
- Information on the close-out process in terms of documentation, timeline, and audit status, etc.

Members discussed the statute and the intent for providing the report.

Mr. Rustin cited the statute, RCW 39.10.250 stating, “...Where possible, the Committee shall approve projects among multiple public bodies. At least annually, the Committee shall report to the board regarding the Committee’s review procedure of these projects and its recommendations for future use; and...”

Ms. Deakins noted the Board approved a prior motion deleting the first sentence of the section stating, “Review and approve not more than fifteen projects using the Design-Build contracting procedure by noncertified public bodies for projects that have a total project cost between two million and ten million dollars.”

Mr. Maruska affirmed the original intent when the legislation was drafted. However, with the Board’s action, that provision would change. The initial intent of the statute was to receive information on \$2-\$10 million DB projects to help the Board evaluate projects. He does not believe there was any intent to report on all PRC DB projects.

Mr. Schacht remarked that based on the statute, the reports should have been provided so that the Board could have considered the effectiveness of the procurement of the projects before deciding to remove constraints on the number of projects. He suggested the Board consider striking the clause as part of the revisions public owners recommended of removing constraints for \$2-\$10 million projects. He recommended striking the entire section of RCW 39.10.250 (3). Additionally, the Board has a terrible track record of providing data and information to assist in evaluating the quality of and quantity of alternative project delivery. It is incumbent upon the Board to identify the process of data collection and to pursue case studies as Mr. Kuruvilla previously recommended. Ms. Engle’s earlier presentation on the DB projects from certified public agencies was helpful; however, the Board could do more.

Robert Maruska moved, seconded by Andrew Thompson, to strike RCW 39.10.250 (3) entirely and include the change in the proposed bill to the Legislature previously approved by the Board.

Mr. Rowe questioned the importance of several sentences within the section and possible repercussions if eliminated. Mr. Maruska advised that striking the entire section would be okay. Mr. Rowe asked about other provisions in the statute requiring reports from PRC. Mr. Maruska advised that the Board is able to request information from the PRC at any time.

Motion carried unanimously.

DESIGN-BUILD HONORARIA – AG OPINION – Information

Ms. Cortez briefed members on her response to several questions submitted by Mr. Schacht:

- **Are honorarium payments required for all Design-Build procurements?** *Unlike the WSDOT statute, RCW 39.10 requires honorarium payments to finalists not selected. Ms. Cortez added that she does not believe it would be a nominal amount as referenced earlier by Mr. Schacht. The statute would likely not be interpreted as applying to nominal amounts.*
- **How does the Capital Projects Advisory Review Board and/or the Board's Project Review Committee determine if any agency is providing the appropriate honorarium payment to finalists?** *As mentioned earlier in the meeting, it is not the role of the Board to regulate the amount of the honorarium. Regulating the amount is pursued through either a protest or other method, such as stakeholder group meetings. Honorariums are designed to promote competition.*
- **How does Chapter 39.80 RCW, Contracts for Architectural and Engineering Services, relate to Chapter 39.10 RCW, Alternative Public Works Contracting Procedures in particular for the Design-Build procedure?** *Typically, this question relates to statutory construction where the courts review all applicable statutes. Statutory construction typically does not occur unless the statute is unclear or there are conflicting statutes. Where statutes appear to conflict or two statutes apply to the same topic, the courts tend to consider when statutes were enacted and if they are more specific to a particular topic. It is clear that 39.80 was enacted in 1981 and 39.10 was enacted in 2004 with amendments. RCW 39.10 is a very specific tool for alternative delivery methods. RCW 39.10 would be the statute the courts would consider. However, if there are conflicts between the two statutes, those provisions could be negotiated.*
- **Agencies often require design-builders to include design fees in the cost or price-related factors submitted in their proposal. Is this in conflict with Chapter 39.80 RCW? Should design fees be negotiated with the most qualified firm per RCW 39.80.050?** *As noted above, RCW 39.10 would prevail.*

Mr. Schacht expressed appreciation for the answers. He cited numerous Progressive DB procurements exclusive of honorariums because the RFP indicated design efforts would be minimal. That practice does not clearly meet the intent of the statute. He asked whether the PRC has the ability during projects reviews to clarify the honorarium requirement to agencies planning to pursue Progressive DB procurements.

Mr. Cortez advised that the PRC is only authorized to review the criteria established in the statute. Mr. Schacht replied that his recommendation is only for the PRC to inform public owners of the requirement.

Chair Frare recommended the Board should author a letter to certified public owners and members of the PRC referring to the opinion from the AG Office and emphasizing the requirement for honoraria.

Ms. Cortez clarified that her opinion is an informal opinion for clients. A formal process offers guidance to all parties. Chair Frare recommended against pursuing a formal opinion at this point.

Mr. Rowe asked whether the DB Best Practices Guidelines include other guidelines for honoraria. Mr. Cortez said the guidelines include a discussion concerning honoraria.

Mr. Schacht noted the guidelines recommend using the state fee schedule, but does not recommend the use of the schedule, as well as indicating that all forms of DB procurement require an honorarium. Some misunderstanding has occurred around the issue, as some DB procurements include no honorarium. Ms. Cortez acknowledged possible confusion with WSDOT requirements, which can exclude honorariums.

Discussion ensued on the best format to convey the letter. Ms. Cortez advised that the written response to the questions should not be distributed as it falls under client-privilege. Chair Frare offered to work with Ms. Cortez to draft a letter in an appropriate format.

**ADDITIONAL PRC CRITERIA DURING CERTIFICATION AND RECERTIFICATION REVIEWS OF PUBLIC BODIES -
Direction**

Mr. Thompson summarized the request approved by the Board at its last meeting. Mr. Hernandez recommended the addition of four criteria PRC should consider during certification and recertification reviews. Because of some concerns surrounding the proposal, the PRC was asked to provide the Board with direction rather than receiving direction from the Board. He recommended the Board should provide guidance to the PRC for inclusion of the criteria during certification and recertification reviews.

Mr. Hall advised that all information in the application is tied to the RCW. Any other criteria considered superfluous is avoided as PRC serves as agents of the state. Additional criteria should be tied to the RCWs. If the four criteria are explicit, clear, and defensible in terms of the responses, it is likely they could be incorporated within the application.

Mr. Thompson shared an example for placement and framing of the criteria within the application.

Mr. Hall questioned whether the information reflects a qualification or more of a description of a management plan or process.

Ms. Keith commented that the Board's action and direction did not direct using the information as criteria for approval but rather reflected a request for PRC to collect information.

Mr. Thompson offered that it could be included as an 11th item and not necessarily included under public body qualifications. Mr. Hall offered to present the proposal to the PRC as a discussion topic. He added that the questions could also be included as an attachment.

Discussion followed on whether additional direction to the PRC is warranted as to the specific information to be provided by the public body. Several members supported Mr. Hall's recommendation to review the request with PRC members.

Mr. Hall commented on the difficulty eastern Washington public owners encounter with outreach because of the lack of small and minority-owned companies. Public agencies in eastern Washington support inclusion of small and certified businesses. The issue is the lack of small businesses, as well as certified businesses. The potential of having limited participation count against a public agency would be problematic.

OTHER BUSINESS

The Board supported Mr. Schacht's request to meet with the DB Best Practices Committee and public owners to solicit volunteers to serve on the task force.

ADJOURNMENT

Mike Shinn moved, seconded by Robert Maruska, to adjourn the meeting at 12:15 p.m. Motion carried unanimously.

STAFF & GUESTS

Talia Baker, Department of Enterprise Services
Kelsey Beck, City of Seattle
Dawn Cortez, Office of Attorney General
Nancy Deakins, Enterprise Services
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