

# CAPITAL PROJECTS ADVISORY REVIEW BOARD

Via Teams

## Meeting Minutes

September 8, 2022

| <b>MEMBERS PRESENT</b>       | <b>REPRESENTING</b>       | <b>MEMBERS ABSENT</b>             | <b>REPRESENTING</b>       |
|------------------------------|---------------------------|-----------------------------------|---------------------------|
| Janice Zahn ( <i>Chair</i> ) | Ports                     | Bill Dobyms ( <i>Vice Chair</i> ) | General Contractors       |
| Bobbie Forch, Jr.            | Disadvantaged Bus.        | Corey Fedie                       | Public Hospital Districts |
| Senator Bob Hasegawa         | Senate (D)                | Rep. Mike Steele                  | House (R)                 |
| Bruce Hayashi                | Architects                | Rep. Steve Tharinger              | House (D)                 |
| Janet Jansen                 | State Government          | Senator Judy Warnick              | Senate (R)                |
| Santosh Kuruvilla            | Engineers                 |                                   |                           |
| Erik Martin                  | Counties                  |                                   |                           |
| Keith Michel                 | General Contractors       |                                   |                           |
| Karen Mooseker               | School Districts          |                                   |                           |
| Mark Nakagawara              | Cities                    |                                   |                           |
| Irene Reyes                  | Private Industry          |                                   |                           |
| Mark Riker                   | Const. Trades Labor       |                                   |                           |
| Linneth Riley Hall           | Transportation            |                                   |                           |
| John Salinas II              | Specialty Contractors     |                                   |                           |
| Mike Shinn                   | Specialty Contractors     |                                   |                           |
| Kara Skinner                 | Insurance/Surety Industry |                                   |                           |
| Josh Swanson                 | Construction Trades Labor |                                   |                           |
| Robynne Thaxton              | Private                   |                                   |                           |
| Olivia Yang                  | Higher Education          |                                   |                           |

***Staff & Guests are listed on the last page***

### **CALL TO ORDER & ROLL CALL FOR QUORUM**

*Chair Janice Zahn called the Capital Projects Advisory Review Board (CPARB) virtual meeting to order at 8:00 a.m.*

A roll call of members established a meeting quorum.

### **WELCOME NEW BOARD MEMBERS & INTRODUCTIONS**

Chair Zahn welcomed members. Chair Zahn introduced Josh Swanson as a new member representing Construction Trades Labor. Ms. van der Lugt has left the Office of Minority and Women Business Enterprises. Her replacement will attend the next meeting following her appointment by the Governor.

Josh Swanson said he appreciates the opportunity to serve on the Board. He spent 12 years at the Department of Labor and Industries in the prevailing wage program and later as the legislative director. His most recent experience has been with the International Union of Operating Engineers over the last 12 years serving 14,000 members from three states covering equipment and stationary operators. He also serves on the Washington State Building Construction Trades Executive Board and previously served on the Project Review Committee (PRC).

### **APPROVE AGENDA – Action**

Chair Zahn asked members to consider serving as Vice Chair.

*Janet Jansen joined the meeting at 8:09 a.m.*

Keith Michel volunteered to serve as Acting Vice Chair.

***Bruce Hayashi moved, seconded by Linneth Riley Hall, to appoint Keith Michel as Acting Vice Chair for this meeting. A voice vote approved the motion unanimously.***

### **APPROVAL OF MAY 12, 2022 AND JUNE 9, 2022 MEETING MINUTES – Action**

Acting Vice Chair Michel requested consideration for approval of the May 12, 2022 and June 9, 2022 meeting minutes

Corrections to the May 12, 2022 minutes included:

- On pages 4 and 5, change all instances of “Mr. Dobyms” to reflect Mr. Dobyms.”
- On page 4 within the sixth paragraph, revise the first sentence to state, “Mr. Michel said Mr. Dobyms’ role on the Board served as part ...”

- On page 4, within the seventh paragraph, revise the first sentence to reflect: “Mark Riker commented on Mr. Doby’s candidacy, as he has been member ...”
- On page 4, revise the second sentence in the last paragraph to reflect, “He understands Mr. Doby’s participation in the construction industry...”
- On page 7, within the sixth paragraph, replace the second sentence to reflect, “Based on member feedback as COVID restrictions are lifted, continuation of virtual and/or hybrid meetings should continue to allow for continued public participation.
- On page 9, within the seventh sentence of the third paragraph, correct “discus” to reflect, “discuss,” add “public” between “limited” and “works,” and add “dollar before “limits” at the end of the sentence.
- Revise the seventh paragraph on page 13 to reflect, “Chair Zahn reviewed the time and status of agenda topics. She suggested revising the agenda moving next to *New Business*.”
- On page 14, within the first sentence of the fourth paragraph, add “a” prior to “member of the Board.”
- On page 15, flip the order of the first two paragraphs.
- On page 15, spell out “DJC” as “Daily Journal of Commerce” within the last paragraph.
- On page 16, revise the paragraph 12 to reflect, “Chair Zahn suggested the issue merits a discussion by the Board in terms of automatic appointment extensions and whether the Board prefers to continue the process.”
- On page 17, revise the third sentence in the second paragraph to state, “Her concern is the PRC’s decisions in terms of leadership elections would automatically extend a member’s term, without action or concurrence from the Board.”
- On page 17, revise the third sentence of paragraph six, to reflect, “Currently, Sherry Harris is serving as the representative for Minority/Women Businesses on panels.”
- On page 17, revise the second sentence in paragraph 13 to reflect, “Chair Zahn clarified her intent to open a dialogue regarding this issue.”
- On page 17, revise the first sentence within the last paragraph to state, “Ms. Reyes commented about the uncertainties of CPARB’s budget when she has requested information.”
- On page 18, revise the second sentence in the first paragraph to state, “She noted the limited meeting time remaining and pending items to complete, and recommended...”
- On page 18, revise the first sentence under *PRC Appointments* to reflect, “Chair Zahn returned to the request for deferral of the appointment of the DBE position.”
- On page 18, within the seventh paragraph, identify NAMC as “National Association of Minority Contractors.”
- On page 18, revise the ninth paragraph to state, “Following an extended discussion between Ms. van der Lugt and Ms. Reyes on the importance of disseminating information on PRC vacant positions to the broader community in addition to efforts by OMWBE advertising openings, Chair Zahn reaffirmed the importance of listening to all voices and recommended deferring the discussion to the Board Development Committee as the appropriate venue to discuss broad notification of PRC vacancies.”

***Mike Shinn moved, seconded by Kara Skinner, to approve the minutes of May 12, 2022 as amended. A voice vote approved the motion. Linneth Riley Hall abstained.***

***Olivia Yang moved, seconded by Janet Jansen, to approve the minutes of June 9, 2022 as published. A voice vote approved the motion unanimously.***

#### **INVITATION FOR PUBLIC COMMENTS – *Information***

Acting Vice Chair Michel invited public comments.

There were no public comments.

#### **CHAIR REPORT –*Information***

Chair Zahn referred members to the written Chair’s Report submitted as a pre-read. Over the last several months she has been attending a number of committee meetings and submitted the final Business Equity/Diverse Business Inclusion (BE/DBI) Committee Report in response to Section 20 of SB 5032 to the State Legislature on June 24, 2022. She thanked the Board for attending the June Special Meeting to review and finalize the report.

Later in the meeting, the Board will discuss converting zoom meetings to the Team virtual meeting platform.

Lisa van der Lugt has resigned from the Board. The new OMWBE Director will join the Board after appointment by Governor Inslee.

The Senate State Government and Election Committee requested a presentation from CPARB on the BE/DBI report on Wednesday, September 21, 2022. Chair Zahn said she is coordinating with the committee chair for preparation of a presentation.

Chair Zahn reiterated her intent to engage in ongoing conversations with Board members individually.

### **BOARD ENGAGEMENT– *Informational***

#### **Board Member Opening Thoughts/Shared Commitments**

Chair Zahn described the Board's work since September 2021 to develop a set of Shared Commitments. The Board adopted Shared Commitments of *Respect, Purpose, Listening to Understand, Accountability, and Inclusion*. Each shared commitment describes the commitment approved and supported by the Board and is included on each meeting agenda. A recent practice affords time for each member to share thoughts at the beginning and end of each meeting. Chair Zahn invited opening comments from members.

Members individually shared their respective thoughts about their personal preparedness for the meeting, ongoing engagement with other members, and their intent to accomplish meeting goals.

*Robynne Thaxton joined the meeting at 8:41 a.m.*

### **PRC APPOINTMENTS – *Action***

Chair Zahn reported one letter of interest was submitted for the Counties position and another letter was submitted for the Cities position. At the May meeting, the Board deferred appointment of the Counties position to enable more time for outreach for the position. Since then, some other changes have occurred.

Erik Martin said he appreciated the willingness to delay the appointment as a natural solution has resolved the issue. The request is to swap positions of two existing PRC members to enable them to represent their respective constituency.

*Erik Martin nominated Kyle Twohig with Spokane County to serve on the PRC representing Counties.*

Chair Zahn invited Mr. Twohig to speak to his letter of interest.

Mr. Twohig thanked Mr. Martin for the nomination and support. After spending the last decade with the City of Spokane as the Director Engineering Services, he recently accepted the position of Public Works Director with Spokane County. He was reappointed in June to serve a second term on the PRC and was recently elected to serve as the PRC Vice Chair. He shared information on the scope of his experience working on alternative delivery projects.

Irene Reyes asked Mr. Twohig about his motivation for serving on the PRC and possible future improvements to the PRC. Mr. Twohig replied that his motivation is to provide service as a public sector employee. It is important for PRC to represent a diversity of voices. When he was first appointed to the PRC, Eastern Washington was underrepresented on the committee. The challenges facing Eastern Washington are different than Western Washington. It is important to work together to gain an understanding of all projects across the state. One of his goals is to ensure owners improve delivering projects by identifying lessons learned.

*Linneth Riley Hall seconded the nomination.*

***By unanimous affirmation, the Board appointed Kyle Twohig to the PRC representing Counties.***

Chair Zahn noted that with the appointment of Mr. Twohig, the Cities position becomes vacant. She asked Mark Nakagawara for feedback on whether to consider the appointment of the applicant or pursue additional outreach to attract candidates.

Mark Nakagawara said he supports nominating Jessica Murphy for the PRC position representing Cities. Ms. Murphy has served on the PRC representing Counties because of the lack of County representatives. Ms. Murphy is experienced in alternative public works delivery and is an experienced PRC member representing Counties. She serves as an experienced project manager and professional engineer with the City of Seattle.

*Mark Nakagawara nominated Jessica Murphy to serve on the PRC representing Cities.*

Mike Shinn spoke in support of Ms. Murphy's nomination and stressed the importance of ensuring all positions on the PRC are filled to ensure adequate assignments on PRC panels.

Chair Zahn invited Ms. Murphy to speak to her letter of interest.

Ms. Murphy said she looks forward to serving on the PRC in a position that better aligns with her current position with the City of Seattle. She has over 20-years' experience working for cities and is a project manager by training and is a practitioner of alternative delivery statutes affording the opportunity to learn firsthand the positives and negatives of project delivery. Her passion is ensuring alternative delivery works well in the state. She is an advocate of owner education and responsibility that is bestowed upon public owners by the statute. Her personal mission statement for professional growth is instilling public trust in government. She considers it a primary factor in all her efforts on the job and when serving on the PRC.

Ms. Reyes asked Ms. Murphy to share any challenges or barriers she has experienced as a member of the PRC. Ms. Murphy said she has not experienced any barriers with respect to the committee; however, serving on the PRC requires time, effort, and dedication. Although not easy, members must commit to time upfront to review project applications and be prepared to ask questions to ensure productivity during the panel presentations. All participants in attendance are there because they care and it is just a matter of carving out time to ensure the panel utilizes its time efficiently.

***By unanimous affirmation, the Board appointed Jessica Murphy to the PRC representing Cities.***

Mr. Martin congratulated Ms. Murphy for her appointment to continue serving on the PRC.

*Bruce Hayashi disconnected from the meeting at 9:02 a.m.*

## **COMMITTEE REPORTS**

### **Board Development Committee – Information & Action**

Committee Chair Robynne Thaxton updated members on the status of the committee's progress. The committee continues its work on revisions to the Bylaws to reflect changes in the statute, development of an onboarding process for members, development of a mentoring process for new CPARB members, and drafting of criteria and expectation of members, CPARB leadership, and members of the PRC in term of member expectations and roles.

Nancy Deakins has also identified several additional changes to the Bylaws. Additionally, the committee is seeking counsel from the Attorney General's Office on some provisions within the Bylaws. The intent is to present revisions to the Bylaws as a pre-read for the October meeting. The Board's process requires review and discussion at one meeting followed by approval at a subsequent meeting.

Elements of the onboarding process will be fine-tuned for the Board's review at the September meeting. Finalization of the draft onboarding process is scheduled after approval of amendments to the Bylaws.

Kyle Twohig attended the last committee meeting and provided an overview of PRC's onboarding process. PRC's process serves as the baseline with some expansion for the CPARB onboarding process. PRC also assigns mentors for new members. Ms. Thaxton recommended discussing whether the Board should implement a similar mentorship program for new CPARB members.

In terms of criteria on roles and expectations, the intent is ensure that new members joining the Board and PRC are aware of expectations and their role as members, e.g., attendance expectations and individual responsibilities as members.

Ms. Thaxton reviewed some of the proposed major changes to the Bylaws.

Chair Zahn thanked Ms. Thaxton for her efforts and willingness to serve as chair of the committee. She asked for feedback on whether a co-chair should be appointed to provide additional support. Ms. Thaxton expressed support for assigning a co-chair. Additionally, committee leadership positions have typically represented both public and private sectors. She invited Board and PRC members to consider serving as a co-chair of the committee.

The Board reviewed current membership of the committee to ensure adequate coverage to complete tasks. Ms. Thaxton asked PRC Co-chairs Jeff Jurgenson and Kyle Twohig to query PRC members on interest in serving as co-chair. Mr. Jurgenson affirmed an announcement would be included on the next PRC meeting agenda.

### **Subcontractor Bid Listing Policy Evaluation Committee – *Information & Action***

On behalf of Committee Chair Bill Dobyms, Curt Gimmestad updated members on efforts by the committee to review the bid listing statute adopted several years prior. Over the last several years, numerous conversations in the industry questioned bid listing requirements with respect to mechanical and electrical subcontractor listing requirements at the time of bid, and the possibility of adding other trades to the statute. The committee previously recommended adding structural steel erectors and rebar installers within 48 hours of a public bid announcement. That recommendation was adopted by the Legislature several years ago.

This committee was formed and tasked to solicit input and feedback from industry groups on the current statute and offer input and any recommended changes for potential legislative changes. At the committee's meeting in June, members agreed to forward a recommendation to offer no changes to current legislation. Members agreed on the importance of ensuring entities involved in alternative procurement models (GC/CM, Design-Build, and Job Order Contracting (JOC)) continue to pursue best practices to ensure open communications, accurate documentation, and estimates through open book materials for all competing subcontractors, suppliers, and owners.

Mr. Gimmestad reported the committee received positive feedback on the effectiveness of the new bid listing requirements for structural steel and rebar contractors.

Bobby Forch Jr. commented that he has spoken with many of his peers and others he works with who have shared that they believe there is somewhat of a monopoly by several steel contractors who bid on public projects. He asked for feedback on the tiering of small businesses and accessibility for smaller businesses to bid on steel contracts for fabrication and other areas because it appears small businesses are experiencing a challenge in the way the statute and the system have been established. Small and diverse businesses are experiencing issues in participating in the steel industry.

Mr. Gimmestad replied that he was unsure of the answer for small business participation on structural steel associated with public projects; however, as an employee of a general contractor, the company receives good participation on Design-Bid-Build projects from small and diverse steel erection companies. However, much of that participation is also dependent upon the magnitude of a project for steel packages for both materials and erection. The company has not experienced as much small and diverse business participation when the project scope is larger. Recent legislative changes should provide an opportunity for smaller businesses to be listed as part of the bidding opportunity on public works projects.

Mr. Forch said other feedback from some small and diverse steel companies involved some steel packages for erection including other scopes within the package creating difficulties for small companies to submit bids because of increased risks associated with other scopes. Mr. Gimmestad explained that the statute governing project listings for Design-Bid-Build and alternative delivery projects includes provisions to ensure bid packages are clear to generate participation by the industry. When packages include other scopes of work that are not typical for subcontracting bidding, some general contractors have typically have experienced higher bid numbers because of limited competition. From his perspective, the intent is to ensure the scope is limited to the extent possible to what the industry expects.

Mr. Shinn suggested small and minority businesses should reach out to general contractors and inquire about the scopes they could bid as a subcontractor. Contacting general contractors prior to release of a bid enables small and diverse companies more opportunities to bid on packages. Mr. Forch explained that the concern shared by many of the businesses was based on actual projects he has worked on involving large heavy civil projects where bidding was for an alternative delivered project. During that process, some small and diverse businesses shared feedback that he shared with the general contractor resulting in some general contractors adjusting the process to assist in alleviating those concerns. However, the issue is the lack of any advocacy from within a company to address those concerns to the GC/CM to enable the GC/CM to rectify the situation.

Mr. Gimmestad said those concerns were discussed during committee conversations, which speaks to why some recommendations on best practices were identified for bidding to small, diverse businesses. Best practices should speak to efforts to ensure opportunities during a GC/CM or Design-Build project for those businesses interested in submitting bids. Another aspect of the issue is assurance that scopes of work for bidding are concise and clear and adhere to industry practices. When other scopes of work are added to bid packages, the result is the elimination of competition, which is detrimental to project budgets.

Mark Riker offered to engage in a conversation with Mr. Forch outside the meeting. The Washington State Building & Construction Trades Council is engaging in efforts to identify and understand challenges for disadvantaged business enterprises and the minority contracting community. He asked Mr. Forch to share information on other issues caused by the addition of scopes for structural steel and reinforcement packages released for bid.

Ms. Thaxton commented that after reviewing the statute and minutes of the committee's last meeting, she believes the statute does not apply to RCW 39.10 except for an exception for Job Order Contracting. It has been assumed that it does not apply to Design-Build. She questioned why the committee elected not to extend the exception in the statute to Design-Build.

Mr. Gimmestad responded that the statute does not include bid listing associated with Design-Build or GC/CM. Ms. Thaxton responded that the statute expressly addresses those exclusions other than for an exception for Job Order Contracting in RCW 39.10. Mr. Gimmestad said the committee did not specifically discuss the language in the statute as it related to RCW 39.10 and the exception to Job Order Contracting. Ms. Thaxton asked whether the committee would have an opportunity to address the issue prior to any recommendations to the Board. Her concern is that the statute specifically speaks to an exception in RCW 39.10 without specifically excluding RCW 39.10. She recommended offering language that speaks to all three types of delivery methods under RCW 39.10 or removing the reference to Job Order Contracting. Mr. Gimmestad offered to follow-up with the committee to address ambiguities in the statute in terms of references to RCW 39.10.

Melissa Van Gorkom advised that in 2021, the statute was amended to add language that the section does not apply to Design-Build, GC/CM, or Job Order Contracting.

Mr. Gimmestad acknowledged that no further follow-up would be necessary on that particular issue. He plans to update Bill Dobyms on the outcome of the update to the Board.

Chair Zahn thanked Mr. Gimmestad for the report.

### **Project Review Committee – Information/Action**

PRC Chair Jeff Jurgensen reported the PRC is scheduled to consider 14 applications during a two-day meeting. The committee is focusing on accountability by making changes to ensure members represent their respective stakeholder groups rather than representing their agency or their company when attending PRC meetings. The committee established a Mentor Program, which has been effective and resulted in positive feedback from participants. The purpose of the committee is to assist new PRC members acclimate to their role as member of PRC. Next steps include updating PRC bylaws to add the Mentor Program and establishing criteria for special meeting requests. Efforts continue to emphasize the importance of members reviewing project or certification/renewal applications prior to the panel review. Panel Chairs

will initiate a new process by accepting and reviewing all questions from panel members. The process will help to identify those members who have not prepared to participate in the panel review. It is important the panel is prepared as owners spend time and effort to present project proposals. At the very least, PRC members owe them the respect of reviewing applications and asking questions. PRC leadership is also developing a training program. A representative from the Office of the Attorney General is scheduled to provide training on conflict of interest in September.

Mr. Jurgensen reported on efforts by PRC leadership, Mike Shinn, and Linneth Riley Hall to meet and review owner project advertising prior to receiving PRC approval for a project. The discussion will consider a recommendation of not allowing owners to advertise projects prior to receiving PRC project approval.

Olivia Yang asked whether the committee has contemplated continuing virtual project presentations because of the difficulty some owners in Eastern Washington encounter when traveling to provide a project presentation. Mr. Jurgensen reported the committee agreed to continue sponsoring virtual panel presentations as well as scheduling some in-person PRC business meetings in Eastern and Western Washington on a rotating basis.

PRC Vice Chair Kyle Twohig said the committee discussed scheduling in-person meetings several times a year, such as in the spring and fall. Future conversations will focus on identifying meeting locations.

*Bruce Hayashi rejoined the meeting at 9:44 a.m.*

Mr. Michel asked whether the direction of the advertising discussion leans toward a recommendation of prohibiting any advertisement of a project prior to seeking PRC project approval. Mr. Jurgensen said members continue to evaluate the issue with an objective of ensuring a fair recommendation that benefits communities. Mr. Twohig added that the intent is to consider changes at the bylaw or application level that would not be legally binding. The current advertising process is undefined and should be clarified as the issue often creates the need to schedule a special meeting based on owner needs. Owners who have not contemplated or scheduled a PRC review for a major project and then decide at the last moment to schedule a review is reflective of the lack of readiness by the owner. However, there are circumstances where special meetings are warranted, such as a school district waiting for voter approval for a bond. It is important to retain flexibility within the PRC review process.

Chair Zahn agreed with the importance of the committee considering the balance of the process while also considering project urgencies. She asked about the possibility of the committee adding more regular meetings to accommodate the increased number of project proposals.

Talia Baker advised that PRC meets bi-monthly except for an additional meeting in June. However, the increase in applications has now shifted from May and June to September. The committee will likely discuss whether seven regular meetings are appropriate with potential shifts of meetings to accommodate the industry.

Santosh Kuruvilla complimented PRC leadership for the report. The format of the report is helpful as it reflects a complete and detailed accounting of the committee's work. He suggested members should consider attending a PRC meeting to assist in familiarizing themselves with the committee's work, as well as promoting active engagement between the entities.

Ms. Thaxton agreed because part of the Board Development Committee's onboarding discussion included a suggestion for all members to attend at least one PRC general business meeting and several PRC panel reviews to help members understand the mechanics of the process and outcomes.

Discussion ensued on calendar scheduling of both Board and PRC meetings. Ms. Baker explained that members currently have the ability to access CPARB's website, which includes information on scheduled meetings for both entities.

*Senator Hasegawa disconnected from the meeting at 9:59 a.m.*

Ms. Reyes recommended inviting Mr. Jurgensen to attend future Board Development Committee meetings.

Chair Zahn thanked Mr. Jurgensen and Mr. Twohig for the thoroughness of the report.

### **Small Works Committee – Information /Action**

Co-Chair Bill Frare presented information on the committee's mission, timeline, the request to the Board, policy topics, consensus recommendations, and topics still under deliberation.

The mission of the committee is to rewrite the Small Works statute to define and clarify administratively efficient methods for contracting small public works projects and to provide opportunities for small and diverse businesses to grow. The Small Works statute was originally established as an administratively efficient way to advertise smaller public works projects. Another goal is to incorporate some of the recommendations from the Local Agency Studies completed by the Board.

In October, the Board will receive final recommendations for statute changes. If possible, the committee is requesting the scheduling of a special meeting in November to review the proposed recommendations to the statute in a final bill format to afford sufficient time for members to consider the recommendations and follow-up with their respective constituencies to enable the Board to act on the recommendations. Following the Board's action, the committee plans to work with legislators to identify a sponsor to move the bill forward through the legislative process. The Board should also be prepared to provide support to the Legislature as the bill is considered by legislative committees.

Another request is appointment of several individuals as voting members of the committee. They include Scott Middleton representing small contractors and Brenda Nnambi representing the small business community and Sound Transit. Mr. Frare asked members to consider the recommendations and provide feedback and identify any roadblocks that might impede successful legislation, as well as commit to reviewing the recommendations to accommodate the short timeline. Mr. Frare requested consideration of scheduling a special meeting in November.

The approach the committee employed was identifying policies of interest and establishing workgroups with leads to review specific policies focusing on:

- Retainage and Bonding – *Jolene Skinner*
- Equitable Distribution – *Rachel Murata*
- Developing and Maintaining Rosters – *Josh Klika*
- Contracting Thresholds, Automatic Cost Escalation – *Dawn Egbert*
- Two-Tier system for contracting agencies
- Administratively Transparent and Efficient

Policy changes supported unanimously by the committee included:

1. **Consistent Threshold for Port and Special Purpose Districts.** Currently, port districts and special purpose districts have less authority. The proposal would tie the Small Works statute with enabling statutes for various districts to ensure changes in threshold within in the Small Works statute would be unnecessary to include in other statutes.
2. **No Automatic Threshold Escalation.** The committee agreed not to include an automatic threshold escalation, as members believe it was preferable to monitor the industry on a recurring basis. The committee recommends the Board, at five-year intervals, offer a recommendation to increase the thresholds by a specific amount based on current construction escalation.
3. **Provide Clarity that the Threshold does not include Washington State Sales Tax.** Different agencies assess Washington State sales tax differently with some including sales tax and some excluding sales tax from the threshold. The committee recommends not including sales tax in thresholds because sales tax rates are different for cities and counties in the state. The recommendation would provide threshold consistency across the state.
4. **Direct Buy (waive competition) for public works contracts under \$50,000.** The committee supports a direct buy or waiving competitive bidding for contracts under \$50,000 enabling selection of a contractor from the roster to begin a project. The committee recognized that some districts have existing authority within enabling statutes. The committee



does not recommend reducing those amounts as some of the enabling statutes allow non-competitive contracts up to \$75,000.

**5. Invitation to Bid Provided to Entire Roster.** Eliminate the pick of 3 to 5 to ensure equal access and opportunity. The recommendation stems from equitable distribution as some contracting agencies have a favorite list of contractors they contact with for projects. The practice is decades old in part because in the 1980s and 1990s, the industry was not connected through the internet or the mechanisms to quickly communicate with contractors, which enabled the process of selecting 3 or 5. With the advent of electronic and internet capabilities for contracting, it is much easier to consider all names on rosters to ensure equal opportunity for companies to compete for small works projects. For those reasons, the committee recommends the elimination of the pick 3 or 5 process.

**6. No Bonds or Retainage Required for Projects under \$5,000.**

Josh Klicka reported the Retainage and Bonding Workgroup focused on ensuring capacity for workers to recover wages if not paid timely. Members supported a \$5,000 project threshold as contractors are bonded at a minimum of \$6,000 providing a mechanism for the waiver.

Mr. Frare identified issues not reaching consensus by the committee that will require addition deliberations:

1. **Increase Thresholds over \$350,000?** Most agencies have a threshold of \$350,000. The committee did not achieve consensus on a recommendation to increase the threshold.

2. **Consideration of Guardrails for Direct Buy under \$50,000.**

- Definition of Certified Small Business
- What is the Threshold?
- Training/Mentoring for Certified Small Business

A concept discussed by the committee was reservation of small works under a specific dollar amount for certified small businesses. The intent is creating an incubation opportunity within public works to enable small, new, and/or diverse businesses to obtain experience working for public agencies and building bonding capacity and insurance history, etc. A federal definition of a small business is a company with 50 or less employees generating \$7 million in revenue. That level of business is substantial and the intent is to reach out to smaller businesses, which are significantly smaller than the federal definition.

3. **Retainage and Bonding Requirements.**

4. **Two-Tier System.** Mature organizations have more flexibility than businesses with less expertise. The committee agreed not to forward a recommendation because of the issues surrounding the definition of a “mature organization” versus an organization lacking expertise. A proxy to consider is the size of the company’s capital program or project dollar threshold, etc. However, after considerable deliberation, members believe the proxy is not necessarily the way to identify whether a company has expertise.

*John Salinas II returned to the meeting at 10:27 a.m. after disconnecting at an unknown time.*

Mr. Shinn asked about the threshold for bonding and retainage. Mr. Frare said the committee agreed with bonding and retainage up to \$5,000. The committee did not agree to increase the threshold of \$350,000 at this time.

Mr. Shinn pointed out that if the threshold is \$350,000, the public agency typically does not provide payments to the contractor within 30 days, which calls into question the need for retainage when the company is also bonded. Mr. Frare explained that the committee is continuing discussions on those issues in addition to prompt pay and quick payouts to avoid payment delays to companies. He encouraged Mr. Shinn to contact him or participate in committee meetings and provide feedback.

Mr. Forch thanked and acknowledged the committee and Mr. Frare for the work. He suggested exploring the definitions of “micro” and “mini” businesses under the RCWs. Mini businesses must have a gross income of \$3 million and micro businesses must have a gross income of \$1 million. Other issues include the ease of using rosters and thresholds that are focused on size of contract versus size of contractor, as smaller projects are optimum for small, mini, and micro

businesses to perform independently with minimum assistance affording an entry into the public works environment. He spoke to the importance of equal distribution, which appears to be a concern. He questioned the discussions around direct buy and whether the conversations spoke to limited versus unlimited. While direct buy is a good tool for small businesses, owners have used the tool differently and oversight is lacking in terms of how it is applied.

Ms. Yang suggested that the comments might be appropriate to review and discuss by members of the Legislative Writing/Drafting Committee. The committee discussed the definition of a small business during the course of its deliberations with a review of [RCW 39.26](#), which is the goods and services RCW. Members are considering whether to follow the template of differently sized companies, and if so, whether thresholds would be different for each category. Those issues are under discussion. She stressed the importance of being cognizant that as more opportunities are provided, support must also be provided to ensure businesses are successful. The issue is complicated and nuanced with many different parts working cohesively; however, both the Legislative Writing/Drafting Committee and the Small Works Committee have debated those issues.

Mr. Swanson spoke to the comments on bonding and retainage as the challenge has been the lack of expertise by many members of the committee on bonding and retainage. The focus has been on providing labor to complete the projects. The retainage question speaks to seeking feedback from general contractors as it is often used as leverage when a subcontractor encounters challenges and has not met payroll obligations or other financial obligations. He invited Mr. Shinn to attend the Bonding and Retainage Workgroup meetings because of conversations on the issues with much of the focus on the owner side and balancing the ability to provide opportunities for small companies to access opportunities while balancing the need for some protections.

Mr. Riker acknowledged that some challenges exist with some of the proposals, which is why some are identified for additional deliberation.

Mr. Michel commented that the bond is a mechanism if the project contractor fails to complete the work. Retainage is a valuable and important tool in the context of avoiding liens on a project, as well as protection of employee wages. There definitely should be conversations around whether it is ever appropriate to waive those requirements. There is statutory allowance for subcontractors to secure a retainage bond. Retainage bonds are typically lower in cost. Conversations by the bond and insurance community, as well as within the Department of Labor and Industries (L&I) speak to objections of eliminating bonds and retainage for projects regardless of thresholds or dollar values, as they are important mechanisms used in public contracting.

*Irene Reyes disconnected from the meeting at 10:38 a.m.*

Mr. Kuruvilla said one of the topics discussed by the Business Equity/Diverse Business Inclusion Committee centered on access to capital, which should be included in the some of the workgroup discussions as well.

Mr. Swanson acknowledged the difficulty for small contractors to achieve bonding levels to increase the company's competitiveness. The workgroup's discussions are cognizant of how to treat retainage and bonding as there are some existing exclusions, which are typically related to bonding. However, the owner bears the liability if there are problems.

Mr. Frare spoke to retainage, which essentially is a specific amount retained from payments to the contractor to ensure liens are paid, materials are paid, labor is paid, prevailing wage is paid, and taxes and industrial insurance are paid. As a contracting agency, once a project is completed, DES conveys the information to the Department of Revenue, L&I, and the Employment Security Department to obtain releases to enable DES to release project retainage. A performance bond is secured to ensure the project was completed in the amount of the bid. In the event the contractor claims bankruptcy or is unable to complete the project, DES activates the bond with the surety company, which is responsible for completing the contract for the original bid amount.

Jolene Skinner commented that the points addressed by Mr. Swanson and Mr. Michel are in direct alignment with the workgroup's discussions. Members considered the issues seriously while considering all perspectives. The workgroup is also reviewing other state and other city practices to assist in addressing the issues, such as programs that have been

implemented to increase participation of minority and women-owned businesses without removing the securities of retainage and bonding.

Chair Zahn expressed appreciation for the thoroughness of the workgroups to understand the different nuances while identifying the root causes and the goals that are targeted to be accomplished.

Mr. Frare requested approval of appointing Scott Middleton and Brenda Nnambi as voting members of the Small Works Committee, as well as consider an appointment of a representative from the Washington State Department of Transportation (WSDOT) with the member to be identified by WSDOT.

***Mark Riker moved, seconded by Mike Shinn, to appoint Scott Middleton, Brenda Nnambi, and a representative from WSDOT (member identified later) as voting members of the Small Works Committee. A voice vote approved the motion unanimously.***

Mr. Frare requested consideration of scheduling a special Board meeting in November to present statute language for consideration. Chair Zahn acknowledged that the request would be considered under New Business.

*Chair Zahn recessed the meeting at 10:51 a.m. for a break. During the break, Karen Mooseker and Bobby Forch Jr., disconnected from the meeting and rejoined the meeting at 12:06 p.m. and 12:18 p.m., respectively. Chair Zahn reconvened the meeting at 11:06 a.m. A meeting quorum was confirmed.*

#### **Legislative Writing/Drafting Committee – Information**

Committee Co-Chair Olivia Yang provided the update on the committee's activities.

The committee was formed to review the recommendations from the Business Equity/Diverse Business Inclusion Committee Report and develop legislative proposals for the 2023 legislative session. The committee is focusing on two efforts. The first effort is the definition of "small business" and whether public works and AE services should follow the goods and services structure of small, mini, and micro businesses, and if so, determine the criteria or thresholds. A second issue is whether the adopted definition should include a certification process, which does not currently exist in the state; however, it does exist at the federal level through the Small Business Administration (SBA). Other discussion topics focused on access to capital and training. Members discussed ways of paying lower tier subcontractors sooner because current payments are often over 30 days and up to 90 to 100 days. Cash flow for small business is important. The topics are both technically complicated and politically sensitive. Members have not attained consensus on language but have attained tentative consensus on using the SBA definition for small business. The SBA definition is based on a business owner's net worth of \$1.23 million, with the potential to increase the level to \$1.6 million, whether the owner is considered economically disadvantaged, and the company's annual receipts of less than \$28.48 million on average.

As mentioned earlier, members discussed whether the construction "small business" definition should include micro and small. Members will consider whether to add, and if so, how used and whether dollar thresholds would be different. Validation is lacking whether those options could apply to construction or AE services in RCWs [39.10](#), [39.04](#) or [39.80](#).

The committee changed its meeting frequency to two hours once a month to provide more time to conduct focus groups to examine language in more detail and other issues.

Mr. Shinn offered that one area not explored for small business is the area of prevailing wage and the process for documenting wages. Many employees are not receiving payment because of the timeline of three weeks required to receive approval of the prevailing wage form and another three weeks to receive the affidavit. He suggested forming a subcommittee to examine the processing timelines that prevent timely payments.

Mr. Riker noted that training programs are available to contractors to learn about what is required to participate in public works projects. It might be necessary to evaluate those programs to determine the effectiveness of various programs.

*Linneth Riley Hall disconnected from the meeting at 11:14 a.m.*

Mr. Shinn offered that the issue does not speak to educating contractors, but rather it is the L&I system. Apprentice information must be entered manually as the L&I system does not recognize apprentices. Those are impacts affecting small businesses.

Chair Zahn noted that LCPTracker is a private company that a number of public agencies use.

Ms. Skinner addressed the concerns. L&I is aware of the approval times required for both the intents and affidavits for review. L&I experienced an exodus of staff responsible for reviewing and approving those forms. L&I is hiring and training new employees to reduce processing times. In terms of apprentice reporting, many of the issues were computer glitches L&I has addressed. The issues should have been resolved for all apprentice reporting.

Mr. Shinn pointed out that in recent weeks the reporting is still a manual process to three different systems. Ms. Skinner invited him to contact her offline to discuss the issue. Additionally, the law requires that all contractors must file certified payroll at least once a month using L&I's online system. An export option from LCPTracker enables uploading of data to the L&I system to avoid double entry of information.

Mr. Michel noted that reporting is an obligation within the construction industry and many owners do not use the LCPTracker tool while the owner's expectation is to ensure the availability of information at the same level at any given time during the project. For general contractors, having the ability to export from the L&I system in similar formats for reporting and presentation tools would be beneficial.

Chair Zahn suggested deferring some of the issues to the committee to determine if any of the recommendations would require any legislative changes. The committee was established to respond to the Business Equity/Diverse Business Inclusion Committee Report and propose any legislative changes, which could include training issues and access to capital.

Ms. Yang said some of the concerns are legislative while other concerns relate to processes. She suggested scheduling a special meeting of the committee with other interested stakeholders to address payroll and prevailing wage reporting and how it affects small businesses.

Mr. Swanson offered to participate in the committee to assist in issues surrounding payroll and prevailing wage reporting.

Mr. Michel offered to engage with and support the work of the committee representing general contractors.

Ms. Yang reported Jerry VanderWood representing AGC has volunteered to participate as a member of the committee.

Mr. VanderWood affirmed his interest in serving as a voting member of the Legislative Writing/Drafting Committee.

*Olivia Yang nominated Jerry VanderWood to serve as a voting member of the Legislative Writing/Drafting Committee. Mike Shinn seconded the nomination.*

***Olivia Yang moved, seconded by Mike Shinn to appoint Jerry VanderWood as a voting member of the Legislative Writing/Drafting Committee. A voice vote approved the motion unanimously.***

The Board reviewed current membership of the Legislative Writing/Drafting Committee to avoid a quorum of the Board during committee members. Attendance by Board members should not exceed 11 members to avoid achieving a quorum of 12 members.

*Erik Martin disconnected from the meeting at 11:40 a.m.*

### **GC/CM Committee – Information**

Committee Chair Nick Datz provided the report.

Mr. Datz reported the committee last met in July and agreed to compile the seven chapters previously approved within one document. Efforts continue to develop the document. The committee is scheduled to review the draft to identify any missing elements or modifications. Two chapters remain to draft, on Procurement and Total Contract Cost. Members are scheduled to begin working on those chapters over the next several months. Following a review and consensus on any suggested changes, the committee will fold the remaining chapters within the manual for production of a draft for presentation to the Board for review. Although, his goal is for the Board to adopt the GC/CM Best Practices Guidelines by the end of the year, he cannot commit to the deadline at this time based on the committee's workload.

Ms. Yang questioned the alignment of the GC/CM Best Practices Guidelines with current AGC Foundation GC/CM Training. Mr. Datz said there have been discussions with AGC about the guidelines. The intent is to work with AGC once the final draft is approved to align the training curriculum with GC/CM Best Practices.

Chair Zahn noted that several years ago the Board established the Education/Outreach Committee to collect information on training opportunities available within the industry. The committee never formally completed any work. The Board may want to consider revitalizing the committee to consolidate all best practices guidelines and training opportunities.

Ms. Yang noted the Business Equity/Diverse Business Inclusion Committee Report spoke to inventorying all existing training, as well as identifying future training under development, such as MRSC's work on a DBI toolkit. There are specific types of training that is specific to small businesses and the Business Equity/Diverse Business Inclusion Committee.

Chair Zahn noted that she committed to meet with Irene Reyes and Linneth Riley Hall to discuss training and restarting the committee. It is important for the Board to have the different guidelines; however, it is important to identify how to weave the Business Equity/Diverse Business Inclusion Committee best practices into existing Design-Build, Job Order Contracting, and the GC/CM Best Practices. Those issues could be pursued by the committee, as well as pursuing collaboration with MRSC on training under development. She is, however, reluctant to reinstitute the committee given the workload of the Board. The effort is an important component of collecting information on different training opportunities.

*Linneth Riley Hall rejoined the meeting.*

Ms. Yang supported the recommendations. Although it may appear the Board has a smaller legislative agenda, the issues are not simple. It might be preferable to delay implementation as the Board moves forward with the 2023 legislative session and consider those issues prior to the 2024 legislative session deadline. She recommended considering concurrent efforts on inventorying current training opportunities to create a training registry.

Ms. Baker recommended adding inventorying of available training and restarting the Education/ Outreach Committee to the "parking lot."

Linneth Riley Hall inquired about the possibility of distributing the GC/CM Best Practices Guidelines draft to PRC members to review and provide feedback as members are actively engaged in all alternative delivery methods as they review project applications. Mr. Datz affirmed the request.

Chair Zahn thanked Mr. Datz for the update.

### **Job Order Contracting Evaluation Committee – Information**

The update was deferred.

**NEW BUSINESS – Discussion**

Chair Zahn recommended scheduling a special meeting in November to consider all legislative bills for Small Works Committee, Business Equity/Diverse Business Inclusion Committee Report, and any other legislative bill language during the 2023 legislative session.

*Erik Martin rejoined the meeting at 11:58 a.m.*

Following discussion, the Board agreed to schedule the special meeting on November 9, 2022. Members will be polled on the preferred time for the meeting.

Chair Zahn reviewed parking lot items of addressing Core Values as identified in February, consider hosting an industry forum, PRC approvals after advertisement, and other legal interpretations.

Mr. Kuruvilla described the intent of the industry forum as a discussion on lessons learned and the overall industry practice of alternative delivery to ensure the Board is actively engaged with the practicing industry. The recommendation had been discussed by the Board several times in the past. He, Mike McCormick, and Walter Schacht had identified several speakers and drafted a forum agenda. However, with the advent of the pandemic, those efforts were postponed.

Discussion ensued on whether the forum would be in-person or virtual. Ms. Baker said DES is moving to the Teams virtual platform and any forum could be offered as a webinar.

Mr. Kuruvilla referred to a recent Washington State University (WSU) virtual forum and suggested emulating the same format for a Board-sponsored forum.

Ms. Yang agreed that feedback from the industry is valuable for public owners. Organizing a forum requires many months of planning and is a serious commitment. She supports the idea of a forum sponsored by the Board understanding that it requires much effort.

Janet Jansen cited the Board's current workload and questioned whether the Board has the capacity to sponsor a forum.

Ms. Thaxton agreed and referred to Design Build Institute of America's western version of WSU's program. She suggested the Board should consider a future forum with adequate planning time to ensure industry participation.

Ms. Riley Hall spoke in support of a forum. She suggested attaching a session to another industry conference, such as the 2022 Regional Contracting Forum or other industry meeting rather than coordinating a stand-alone forum through the Board.

Chair Zahn commented that as efforts continue on reinstating the Education/Outreach Committee, the proposal could be pursued to identify the Board's role in a future opportunity to partner with another organization to sponsor an industry forum.

Chair Zahn spoke to recent incidents concerning the discovery of a noose at several job sites. She stressed the importance of worker protections for all employees working on construction sites for both physical safety as well as psychological safety. As the Board has not specifically addressed workplace safety, it is important to recognize the safety element within the Board's work. One of the job sites was a private job site at Meta in Redmond. The second incident occurred at a school job site in Oregon. As more information was released about the incidents, other information was shared about some agencies conducting investigations into similar types of incidents.

Several members commented on the incidents and condemned the actions.

## **ADMINISTRATIVE**

### **Budget Report - Information**

Nancy Deakins noted the lack of a budget report due to staffing absences. Staff is scheduled to begin preparing the next biennium budget request for DES, which will include funds for compensation for disadvantaged businesses as a result of recent legislation on stipends for participating in state meetings.

Chair Zahn noted that Vice Chair Dobyms had indicated he planned to meet with staff to learn more about the budgeting process for the Board. Senator Hasegawa has expressed support for increasing the Board's budget to support its work.

Ms. Jansen advised that staff is including a budget line item for the Board as a standing fund for CPARB and separate from the DES project management budget.

### **Proposed Meeting Dates for 2023 – Action**

Ms. Baker presented and requested approval of the following meeting dates for 2023. Following the Board's approval, the Office of the Code Reviser publishes the dates.

- Thursday, February 9, 2023
- Thursday, April 13, 2023 (added in 2022 to accommodate legislative work)
- Thursday, May 11, 2023
- Thursday, September 14, 2023
- Thursday, October 12, 2023
- Thursday, December 14, 2023

Members agreed to include the April 13, 2023 meeting.

***Robynne Thaxton moved, seconded by Bruce Hayashi, to approve the CPARB 2023 meeting dates as presented. A voice vote approved the motion unanimously.***

### **Future Meeting Format – Discussion**

Ms. Baker updated the Board on the status of the meeting room at DES. Following a meeting with DES building staff, she attended a demonstration of the upgrades completed for the room. The room can accommodate hybrid meetings. Equipment installed includes microphones in ceiling panels and sound suppressors along the walls to minimize echoes. She received instructions on the operation of the computer for the meeting room. Hybrid meetings can be hosted in the meeting room eliminating telephone conference participation based on recent upgrades to the room. The virtual option has generated much more participation. The meeting room was recently opened at DES with some restrictions. Visitors to the DES building must wear a mask and check in at the front desk. The Board determines whether participants must wear a mask during a meeting. Ms. Baker confirmed the budget includes funds to cover meeting rental costs at other locations.

Members shared their respective preferences for continuing virtual meetings, converting to in-person meetings, or offering hybrid meetings. Several members suggested scheduling several in-person meetings during the year but avoid scheduling those meeting in winter or during the legislative session. The Board supported hosting an in-person meeting in May. Mr. Swanson offered to host the May meeting in Ellensburg.

Ms. Baker advised of the transfer of the virtual meeting format by DES to the Teams platform effective for the October meeting.

### **October 13, 2022 Meeting Planning & Draft Agenda – Action**

The Board recommended the following topics for inclusion on the October meeting agenda:

- Committee Reports:
  - PRC Report
  - Board Development Committee – introduce changes to By-Laws (Approve December)
  - Legislative Writing/Drafting Committee
  - Small Works Committee

- GC/CM Committee
- JOCE Committee
- Subcontractor Bid Listing Report to the Legislature due November 2, 2022 approval by CPARB
- Jon Rose – MRSC/PTAC Training
- New Business
- Budget Report

#### **CLOSING THOUGHTS - Information**

Chair Zahn thanked for members for their engagement and robust and meaningful conversations. Members shared their respective closing thoughts.

*John Salinas disconnected from the meeting at 12:50 p.m.*

#### **ADJOURNMENT**

*With there being no further business, Chair Zahn adjourned the meeting at 12:51 p.m.*

#### **Staff & Guests**

|  |   |
|--|---|
| Talia Baker, Department of Enterprise Services       | Ann Larson, Department of Enterprise Services |
| Nick Datz, Pierce Transit                            | Scott Middleton, MCAWW                        |
| Mallorie Davies, Washington Council of Laborers      | Rachel Murata, OMWBE                          |
| Nancy Deakins, Department of Enterprise Services     | Jessica Murphy, City of Seattle               |
| Quinn Dolan, Centennial Contractor Enterprises, Inc. | Cathy Robinson, Lynnwood School District      |
| Bill Frare, Department of Enterprise Services        | Jon Rose, MRSC                                |
| Curt Gimmestad, Curt Absher Construction             | Linda Shilley, Pierce Transit                 |
| Valerie Gow, Puget Sound Meeting Services            | Jolene Skinner, L&I                           |
| Jeff Jurgenson, OAC Services                         | Kyle Twohig, Spokane County                   |
| Josh Klicka, MRSC                                    | Jerry VanderWood, AGC                         |
| Aleanna Kondelis-Halpin, Hill International          | Melissa VanGorkom, Legislative Staff          |