

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Via ZOOM

Meeting Minutes

October 13, 2022

MEMBERS PRESENT	REPRESENTING	MEMBERS ABSENT	REPRESENTING
Janice Zahn (<i>Chair</i>)	Ports	Kara Skinner	Insurance/Surety Industry
Bill Dobyms (<i>Vice Chair</i>)	General Contractors	Rep. Mike Steele	House (R)
Corey Fedie	Public Hospital Districts	Rep. Steve Tharinger	House (D)
Lekha Fernandes	OMWBE		
Bobbie Forch, Jr.	Disadvantaged Businesses		
Senator Bob Hasegawa	Senate (D)		
Bruce Hayashi	Architects		
Janet Jansen	State Government		
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		
Josh Swenson	Const. Trades Labor		
Robynne Thaxton	Private Industry		
Sen. Judy Warnick	Senate (R)		
Olivia Yang	Higher Education		

Staff & Guests are listed on the last page

CALL TO ORDER & ROLL CALL FOR QUORUM *Chair Zahn called the Capital Projects Advisory Review Board (CPARB) virtual meeting to order at 8:00 a.m.*

A roll call of members confirmed a meeting quorum.

Mike Shinn joined the meeting at 8:02 a.m.

Linneth Riley Hall joined the meeting at 8:03 a.m.

WELCOME NEW BOARD MEMBERS & INTRODUCTIONS

Chair Zahn welcomed new Board member Lekha Fernandes representing the Office of Minority and Women Business Enterprises (OMWBE).

Ms. Fernandes said she had the opportunity to connect with several Board members. She is impressed with the work of the Board and is pleased to be a member of the Board. She is new to the world of supplier diversity in the state of Washington and will be asking questions as she learns more about the process.

EXECUTIVE SESSION WITH AAG – *Information*

Chair Zahn reported the executive session is a discussion with legal counsel on representing the Board on matters relating to Board enforcement actions and legal risks of a proposed action or current practice that the Board has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal consequence to the Board as authorized by RCW 42.30.110 (1.i). The executive session will conclude at approximately 8:30 a.m. and no action is anticipated following the executive session.

Chair Zahn recessed the meeting to the executive session at 8:04 a.m.

Chair Zahn extended the executive session at 8:35 a.m. to 8:50 a.m.

Chair Zahn extended the executive session at 8:52 a.m. to 9 a.m.

Chair Zahn reconvened the regular meeting at 9:13 a.m.

A meeting quorum was confirmed.

APPROVE AGENDA – Action

Vice Chair Dobyms reviewed the agenda.

Senator Warnick joined the meeting at 9:19 a.m.

Robynne Thaxton moved, seconded by Janet Jansen, to approve the agenda as published.

Chair Zahn recommended deferring the GC/CM Committee report due to the continuing work of the committee, as well as deferring discussions on Education, Outreach, and Web Development and the Industry Forum under New Business. Board members agreed to forego Board member Opening Thoughts to save additional time.

The makers of the motion agreed to revise the agenda as recommended. A voice vote approved the motion unanimously.

APPROVE SEPTEMBER 8, 2022 MEETING MINUTES

Vice Chair Dobyms recommended deferring consideration of the September 8, 2022 meeting minutes.

Robynne Thaxton moved, seconded by Olivia Yang, to defer action on the September 8, 2022 meeting minutes to the December meeting. A voice vote approved the motion unanimously.

INVITATION FOR PUBLIC COMMENTS – Information

Vice Chair Dobyms invited public comments

No public comments were offered.

CHAIR REPORT – Information

Chair Zahn reported she attended as many committee meetings as possible since the last meeting. She conveyed appreciation to members for their level of engagement. Both she and Ms. Yang presented the Business Equity/Diverse Business Inclusion Committee Report to the Senate State Government and Election Committee on September 13, 2022. Because of connectivity issues and audio difficulties, they will be invited to another meeting to present the materials.

The Board received an appeal letter from Northshore School District regarding GC/CM Certification action by the Project Review Committee (PRC). Discussions are in progress with staff to review the issue with the Office of the Attorney General to assist in drafting a response by the Board.

Chair Zahn thanked members for their feedback for scheduling the special meeting on November 9, 2022 at 2:30 p.m. to discuss the Board's legislative updates.

On behalf of the Board, Chair Zahn welcomed Lekha Fernandes representing OMWBE.

Vice Chair Dobyms recognized the attendance of Senators Hasegawa and Warnick.

BOARD ENGAGEMENT

Board Member Opening Thoughts/Shared Commitments – Discussion

Chair Zahn referred to the Board's shared commitments of respect, purpose, listening to understand, accountability, and inclusion and thanked all members for their efforts for advancing the commitments.

Members agreed to forego the sharing of opening thoughts in the interest of time.

COMMITTEE REPORTS

Legislative Writing/Drafting Committee – Information/Action

Committee Co-Chair Olivia Yang referred to the draft of proposed legislation discussed at the committee's September 29, 2022 meeting. The committee was formed to implement findings from the 2020 CPARB Business Equity/Diverse Business Inclusion Committee Report and the 2019 Local Government Study. The Small Works Committee was

established to implement elements of the 2019 Local Government Study. The Business Equity/Diverse Business Inclusion Committee Report acknowledges efforts should not only focus on the procurement side of small and diverse firms but the overall success of diverse and small firms while acknowledging barriers firms often encounter for accessing opportunities to capital and training. With recognition of the need to create a culture for supporting success, the committee focused on those areas to draft proposed legislation in support of the Study's recommendations.

The first proposal is two parts and addresses the definition of "Small Business" and certification of a small business. After considerable discussion, members opted not to reinvent the wheel but to recommend the state's certified minority-owned and women-owned firms criteria, eliminate race and gender preferences, and consider the net worth of owner(s) and the gross annual receipts of the firm averaged over three to five years. Dependent upon the category of the business, annual receipts would be no greater than \$20.48 million but could be less dependent upon the industry sector. The committee attained consensus on the proposal. However, concerns were raised surrounding the amount of \$20.48 million as it might be too large of an amount and warrants further discussion as the amount for small business could be less for mini and micro businesses.

Another conversation spoke to whether certification was necessary. The issue is currently under debate; however, the benefit for certification is recognition that the process can be rigorous and for a certified business, it can be assumed that any opportunity for fraud or other negative behavior would essentially be eliminated. The concerns surrounded the onerous and time consuming certification process requiring submittal of a substantial amount of information. For a mini or micro business that process might not be possible to complete. Based on those concerns, further discussion is warranted. In terms of legislation for the definition and the process of certification, the committee sought subject matter expertise from the OMWBE to assume the lead in drafting proposed legislation. The proposed draft legislation includes two versions for consideration. Ms. Yang invited comments.

Ms. Fernandes said the proposal relates to fairness and equity for all businesses under the proposed definition and to ensure some semblance between OMWBE's work in certifying small businesses owned by people of color and women, as well as for all small businesses. She invited feedback and comments.

Senator Hasegawa asked whether the second definition is essentially the federal definition of small business, which he does not believe speaks necessarily to a small business. Ms. Yang replied that the committee continues to explore both definitions. The second definition is based on the federal definition because OMWBE certifies minority and women-owned businesses, and that certification is accepted by federal agencies providing federal funds. Because of the goal of achieving a matching standard, the state definition of small business as race and gender neutral small business follows the same template. Although the federal definition includes very large businesses, the committee believes there should be further discussion on the caliber of business size, e.g. small, mini, and micro. The RCW for goods and services procurement includes small, mini, and micro businesses. Certified businesses could become eligible for federal funds on projects when federal funding is available with conditions, as well as to tailor the definitions to reflect the reality of current practices in the state.

Chair Zahn conveyed appreciation for consideration of the gradation of small, mini, and micro businesses as the revenue level of many small businesses can be very high. When different firms compete, there is a difference between micro, mini, and small businesses. When the industry is strong, competition is often level but when the industry experiences changes, some micro and mini businesses often struggle to compete with small businesses.

Ms. Yang replied that the proposal pertains to the issue of definition surrounding small, mini, and micro, as well as a certification issue. The committee supported the definition but less so for certification.

Ms. Yang reported the second element of the proposal pertains to acknowledgment within the Business Equity/Diverse Business Inclusion Committee Report of barriers for small and diverse businesses to access opportunities, capital, and training. Currently, RCW 39.10 authorizing GC/CM, Design-Build, and Job Order Contracting (JOC) requires an inclusion plan as a component of the selection criteria. Today, inclusion plans by both public bodies and contractors speak to creating opportunities by reaching out, networking, or unbundling projects to reduce project scopes to enable small firms to compete. To ensure sustained success of small businesses, it is important to acknowledge the need for access to

capital and access to training. Access to capital does not necessarily imply a contractor must serve as a bank for a small business. It is important to recognize the realm of issues surrounding capital access for small businesses to include capitalization to start a business, capitalization to continue a business, as well as a business cash flow that is influenced by prompt payments, timely release of retainage, and bond requirements. All those factors are in discussion by the Small Works Committee. Many programs are available to assist diverse and small businesses with cash flow. Access to training speaks to current mentorship programs, individual project mentoring, and diverse business support coaching offered by some contractors to assist businesses prepare safety plans or increase access to suppliers, etc. Both elements are important to ensure the sustainability of small and diverse businesses. The proposal expands the definition of current inclusion plan requirements in RCW 39.10 to include a request for contractor programs to include access to capital and training in addition to access to opportunities. She invited feedback on the proposal.

Keith Michel commented on the value of an inclusion plan in the context of competitive evaluation in pursuit of a project. There could be a potential discrepancy between the proposed language and some of the recommendations the Business Equity/Diverse Business Inclusion Committee Report offered as suggestions to improve prompt pay mechanisms. The owner has a connection to the pay process and timing and the proposed language appears to place the onus on general contractors and opens the door encouraging contractors pursuing a project to offer differences to standard contract terms and effectively serving as the bank. He suggested exploring options to refine the language that does not negatively affect a contractor's evaluation.

Ms. Yang acknowledged Mr. Michel as one of the engaged members of the Business Equity/Diverse Business Inclusion Committee last year. Those discussions included different options to achieve a desired outcome with acknowledgement that there could be logistical complications in terms of methods for cost accounting and payments by both owners and contractors. The committee attempted to step away from specific transactional details to retain the spirit of the proposal without imposing an intent that contractors should serve as a bank while acknowledging that small businesses often serve as the bank to finance a project. More discussion is warranted on ideas to refine the language, as the proposal is a draft subject to additional conversations.

Bobby Forch offered assistance in modifying the draft language. The reality of existing conditions is small business often serve as the bank. Businesses are completing upfront work and funding that work until they receive payment. Those businesses are the least likely to serve as a bank as they have limited resources. It is important that one of the biggest challenges for small businesses is cash flow. Small businesses can participate and perform, but unreasonable time to receive payments affects business cash flow leading to mitigating situations, such as workforce agreements or payment to a trust. Small construction contractors are often the first to perform the work and the last to receive payment. There are other issues inherent in the language that impact small businesses, such as change orders and force accounts that are nebulous in nature but leave smaller contractors exposed. Language should be included as to how contractors would mitigate those types of factors, such as the general contractor paying for mobilization without waiting for payment from the owner. He often consults with the Washington Department of Transportation on similar issues and the parties are working on other issues aligned with the proposal, such as an accelerated pay program where the owner might pay the prime a portion of its pay in an accelerated rate to enable the contractor to reimburse small contractors as a way of mitigating cash flow issues. Small businesses least able to front projects are often fronting those projects today. Efforts will involve more than just the owner, as prime contractors need to become involved as well. Discussions also include the possibility of developing a reserve that could be utilized early lessening the impact to prime contractors. Efforts are moving in the right direction but more discussions are warranted, as it will require a number of different avenues to address issues.

In response to questions regarding incorporating outreach to capital/training within the PRC evaluation process, Ms. Yang affirmed any changes codified in the statute would be incorporated within the PRC certification and recertification process.

Chair Zahn recapped the status of efforts to complete before the special meeting scheduled on November 9, 2022. The next meeting of the Legislative Writing/Drafting Committee is Thursday, September 27, 2022 at 3 p.m. via zoom. Ms. Yang encouraged members and representatives from small and diverse businesses to email any feedback/comments on the proposal.

Chair Zahn recessed the meeting at 9:55 a.m. for a break.
Chair Zahn reconvened the meeting at 10:06 a.m.
A meeting quorum was confirmed.

Small Works Committee – Information

Committee Co-Chair Irene Reyes invited Ms. Yang to provide the update on the committee's work.

Ms. Yang advised that the goal is attaining consensus by the Board to meet the deadline for drafting legislation for the November special CPARB meeting.

The Small Works Committee under the leadership of Co-Chairs Bill Frare and Irene Reyes intend to complete a draft of RCW 39.04.155 because over time the RCW has been modified numerous times and the goal is to ensure the statute is both cohesive and addresses issues. The intent section provisions should address administrative efficiency for small projects, participation by small and diverse businesses, and protection of worker rights.

Support was attained by the committee for a single statewide roster. Since its last meeting, other stakeholders unable to attend the meeting conveyed some concerns. From the diverse and small business perspective, a single statewide roster enables small businesses to register at one location with access to many projects; however, many public bodies want to retain individual rosters. More discussion is warranted to resolve those differences. Resolution could be in the form of a one-stop option rather than one combined roster. Today, MRSC represents over 80% of all owner rosters, which might be a solution. Any changes in legislation in the RCW require an accompanying Washington Administrative Code (WAC). DES has volunteered to author the WAC for the MRSC roster. If local agencies elect to retain a roster, they are also required to prepare a WAC. The option of a single roster would require time for phasing, consideration of any fee structure or funding source to sponsor small businesses (currently \$70 for 9 rosters), and consideration of public bodies who often do not charge a fee for placement on a roster.

Given the severe price escalation in today's volatile market, many public owner projects are approaching or exceeding \$350,000 (current small works roster limit). Some suggestions included providing some efficiency attributes of small works in a publicly bid process for projects under \$ 1 million. The option is controversial with minimal support from the private sector and unlikely to advance at this time. The current limit for small works is \$350,000 with Ports and other smaller jurisdictions authorized under another RCW at \$300,000. The intent is to afford the same level for all entities with no change to the current threshold of \$350,000. The committee is also discussing potential changes to bonds and retainage requirements.

For contracts of \$150,000 or less under the small works roster, owners may identify three to five contractors and select one of those contractors as long as the owner's history includes a rotation of contractors. The committee had previously agreed that a notice to bid would be released to everyone on the roster and that for projects under \$150,000 public owners could contract and negotiate with a contractor on the roster. The public owner would need to demonstrate that the same contractor is not continually selected. The proposal includes an annual review process.

Continuing conversations include retainage with the understanding that if the public owner waives retainage, the owner assumes the liability. The committee's discussions on retainage and performance bonds cover the spectrum of projects under \$5,000 to projects under \$20,000. More discussion is required between now and the special meeting in November.

Ms. Yang reported one of the drivers of the Local Government Study was reestablishing a threshold automatically - to the extent possible. However, concerns were raised about automatic adjustments to the threshold. The committee agreed to recommend the Board review cost escalation every five years using recognized indexes to inform a recommendation to the Legislature for any increase to the dollar amount. Ms. Yang added that any future increase in the threshold would be applicable to all public owners. Additionally, some entities treat sales tax differently when determining the low bidder with some public owners excluding sales tax while others include sales tax within the price of the project. The committee agreed the bid price should exclude sales tax, as each jurisdiction's tax rate is different.

Chair Zahn noted the two owners with different small works limits are Port Districts and Irrigation Districts. She acknowledged the degree of work completed as the committee was formed in early summer.

Ms. Riley Hall asked whether the committee considered either a clarification or a definition of a small works roster because of frequent misunderstandings of rosters used only by small businesses versus rosters used for small public works projects. She questioned whether the responsive and responsible bidder criteria would be retained during the selection process.

Ms. Yang explained that the committee recommends a small works roster project dollar limit of \$350,000 with the caveat of projects \$150,000 or less, etc. Companies bidding on small works roster projects must be a contractor or in some cases, a specialty contractor that are listed on the roster. Today, large and small contractors are included on rosters. To level the field for small businesses, the definition and the certification of a small business were considered in terms of small works rosters only for projects valued \$350,000 and under for small businesses only not exceeding the current threshold of \$28.4 million in annual gross income. It is incumbent upon the sponsor of the roster to ensure mandatory contractor responsibilities are followed, such as lack of wage compliance or workman's compensation compliance issues.

Ms. Reyes added that she volunteered to identify businesses that are not willing to participate or are avoiding the small works roster process. She has provided some findings to Mr. Frare. She is also seeking feedback from larger subcontractors and public owners and will share an update at the next meeting.

Ms. Riley Hall referred to previous presentation information that spoke to the requirement for public owners to rotate selections. Her concern surrounds small businesses selected from a particular roster interpreting such provisions as a way of limiting awards.

Ms. Reyes shared that she had similar concerns but the actual issue surrounds larger businesses categorized as small businesses receiving contract awards. She conceded the language is a draft with the goal of drafting legislation affording opportunities to all small businesses to receive awards while avoiding unintended consequences.

Ms. Yang said the intent is creating an even distribution of work while recognizing that in many circumstances, there might be only one contractor on the roster. In some instances, according to some information, some public bodies repeatedly award projects to one contractor when multiple companies are on the roster.

Mark Riker remarked that the rotation of contractors was one component his constituency supported as it applied to projects under \$150,000. Generally, a right of first refusal clause is included affording opportunities for smaller contractors to decline an award giving an opportunity to move on to the next contractor. Today, participation according to data provided by L&I on OMWBE utilization reveals that for projects valued at \$350,000 or below OMWBE participation is only 2.5%, which is unacceptable.

Chair Zahn invited public comments.

Aleanna Kondelis advised that she submitted questions and requested clarifications prior to the meeting. She acknowledged that the presentation assisted in clarifying many of her questions. She supports efforts to overhaul small works rosters. She recently left public service as a public procurement officer and accepted a position with the private sector serving as a consultant. She works with a number of small owners in rural jurisdictions in public works capacities. She works with small companies on internal controls and refreshing public works programs, and contracts for conformance with RCWs 39.10 and 39.04. She inquired about the possibility of pursuing an update of small works roster legislation in bite size and manageable pieces to assist small contractors in understanding all requirements.

Chair Zahn commented that the Board could consider completing small works best practices in alignment with other guides and tools the Board has created for other legislative changes.

Ms. Yang noted that it is also customary for public bodies using the small works roster to promulgate a WAC on the use of the small works roster, which includes public hearings. Additionally, she and Mr. Frare have discussed exploring

standardized templates for contract documents to avoid each public entity providing different types of documentation.

Talia Baker shared that the next Small Works Committee is scheduled on Friday, October 14, 2022, at 1:30 p.m.

Subcontractor Bid Listing Policy Evaluation Committee – Information/Action

Committee Co-Chair Dobyns reported on changes since the last report. More detail has been included in the report to include some history. The report is due to the Legislature on November 1, 2022. The proposal speaks to the bid listing law as revised in 2021 with no proposed changes at this time. Rather, the proposal is for the GC/CM Committee and the Job Order Contracting Committee adding information on the practice of any bidding documents as open book to anyone involved in projects. Additionally, some concerns as well as some requests centered on whether the bid listing statute could be included as a component of self-perform components of a GC/CM bid. The bid listing statute does not apply to RCW 39.10. The committee discussed the issue and attained consensus that it would be impractical to add that component to RCW 39.10 and that it likely could create more bid errors and disputes. The committee recommends forwarding a recommendation to the Legislature to make no changes to existing legislation.

Mr. Riker said he unsure as to whether all labor interests are in alignment with the recommendation. Should labor review and take action, it would not be on behalf of the Board.

Chair Zahn inquired about conversations in the committee with labor about the proposal. Vice Chair Dobyns advised that the report summarizes the meetings and participation by different stakeholders. Labor representatives participated in the meetings and provided input on the final recommendation. The report includes information surrounding concerns about the proposal to add RCW 39.10. A majority of the participants and stakeholders did not believe it was in the best interest of RCW 39.10 to add the provision.

Mr. Riker added that labor representatives were members of the committee representing their specific craft whereas he represents 14 different crafts. The report is accurate but should another proposal be offered by labor it would be distinguished as a separate proposal not endorsed by the Board.

Mr. Forch asked about any concerns or comments from representatives from the small and disadvantaged business community. Vice Chair Dobyns replied that representation on the committee included Ms. Reyes as well as discussion on any concerns by the minority business community.

Ms. Reyes advised that she did not attend any of the committee meetings.

Vice Chair Dobyns advised that he would follow up with meeting documentation to identify participation by representatives from small and diverse businesses. The categories of comments were derived from each set of meeting minutes.

Mr. Forch reported he would need some time to review the report in more detail with the possibility of asking some questions of the committee Co-chairs. He suggested meeting with Ms. Reyes to review the report. Ms. Reyes agreed and indicated she received some feedback from the small and diverse business community but would require additional time.

Mr. Michel reported he has tracked the work of the committee and supports the recommendation of the committee that no change would be appropriate at this time partly because the topic was addressed in previous legislative changes to include additional scopes of work that are required to be listed at the time of bid submission. Those additions were beneficial and positive in meeting many of the objectives surrounding the issue of ensuring a fair and open public bid process for all participating parties to include subcontractors.

Ms. Reyes commented on her lack of time because of membership on many boards and committees. She was hopeful that more persistence could have been offered to follow up on the final recommendation.

Discussion ensued on the opportunities for all members to participate on the committee during the last year. All meetings were public and invitations were sent to all stakeholders.

Mr. Forch offered that the report intimated that small and disadvantaged businesses were engaged as stakeholders. His inquiry concerns the identification of those stakeholders because the report to the Legislature reflects participation by disadvantaged businesses that should be quantified prior to forwarding the report to the Legislature.

Chair Zahn emphasized that the pending question from Ms. Reyes and Mr. Forch is whether there was any participation by small and disadvantaged business representatives. Vice Chair Dobyms advised that at the initial meetings, Ms. Reyes participated but later indicated she would be unable to participate.

Ms. Baker advised that the former director of OMWBE was also supposed to appoint a representative to the committee, which did not occur. Matthew Heppner participated at the beginning but withdrew in the spring.

Vice Chair Dobyms and Ms. Reyes exchanged opinions about representation on the committee and the framing of language in the report reflective of small and disadvantaged business participation.

Ms. Riley Hall asked about the possibility of delaying the submittal of the report to afford some time to address the discrepancy. Chair Zahn advised that the deadline is included in the statute giving the Board no ability to delay submittal of the report. The Board has the option of changing language in the report.

Ms. Riley Hall conveyed support for removing language that speaks to the involvement of small business and adding language that speaks to the lack of participation of small and disadvantaged businesses.

Discussion ensued on adding language addressing the lack of participation by other stakeholders as many stakeholders lacked the time to participate.

Several members offered to forward email edits on the content of the report to Vice Chair Dobyms to meet the statute deadline.

Michael Transue commented on the prior changes by the Legislature to add structural steel, rebar, and provide a 48-hour turnaround. The Legislature was seeking information on whether the list of additions should be expanded to include other types of trades. It is important to consider the original request by the Legislature when considering the recommendation by the committee.

Mr. Riker added that although his name is included within the information, he did not attend any committee meeting other than labor was represented at committee meetings.

Ms. Fernandes questioned whether the statute requires the inclusion of small and disadvantaged businesses. Ms. Thaxton explained that bid listing is a different statute than RCW 39.10, which requires inclusion from the perspective of procurement activities. She does not have any issues with removing disadvantaged businesses; however, the issue has been included on the Board's meeting agenda since April and members have regularly received updates. The Board has a statutory requirement to submit a report, which the Board could modify to fulfill the requirement.

Mr. Kuruvilla commented on the importance of compromise and meeting the statutory deadline while also supportive of removing language that speaks to participation by small business. He suggested adding language that speaks to the importance of furthering small business outreach.

Mr. Forch supported the suggestion offered by Ms. Riley Hall as his comments were based on the report alluding to the participation of small and minority-owned businesses. If that participation cannot be quantified, it should not be included within the report. Furthermore, at the last Board meeting, he offered his contact information for follow-up discussions, which did not occur.

Several members commented on the committee process, publishing of committee meeting dates, and the responsibility of members to attend and provide feedback. The draft report has been published to the Board twice before and it is difficult

to function and meet deadlines if members fail to follow through on any issues of concern.

Chair Zahn suggested moving forward and considering ways to improve participation while focusing on finalizing a report that is factually correct regarding participation.

Josh Swenson said he participated in numerous meetings of the committee and is appreciative of the conversations as many flexible adjustments were possible. The report should stand on its merits and should move forward to the Legislature as recommended by the committee.

Chair Zahn asked for edits to the report recognizing that in moving forward, additional work on the issues will be necessary.

Ms. Riley Hall and Mr. Kuruvilla recommended some amendments to the report.

Josh Swenson moved, seconded by Robynne Thaxton, to approve the Report to the Legislature as recommended by the Subcontractor Bid Listing Policy Evaluation Committee with the following amendments as reflected to several sections in the report designated as either a strikeout or additional underlined language:

“The subcommittee is comprised of members from various stakeholder groups represented in CPARB including General Contractors, Specialty Subcontractors, ~~Design and Engineering firms~~, Public Owners groups, ~~Disadvantaged business groups~~ and Labor. Meetings were held virtually in accordance with the Governors mandate regarding public meetings during the Pandemic. Meetings were open to the public and conducted under Robert’s Rules of Order. Minutes were taken and published. Seven meetings were conducted. Those participating in the meetings included representatives from Higher Education, General Contractors including representation from Association of General Contractors (AGC), Public Owners, Specialty Contractors, Public Agencies, ~~Disadvantaged Businesses~~, Cities, Counties, Public Hospitals, and DES, Labor including representatives from the Electrical trade, the Mechanical Trades and Ironworkers. Other trades invited to meetings included Roofers, Painters, Building envelope contractors and Glazers

Draft report: CPARB’s Subcontractor Bid Listing Policy Evaluation Committee (SBLPEC) recommends that the current legislation remains in place as written with no changes at this time. SBLPEC further recommends that the GC/CM and JOCE Committees to CPARB add to their Best Practices language the following: “It is recommended as a best practice that all bidding documents including Subcontractor quotes, Supplier quotes, and Contractors estimates be treated as open book materials to all competing subcontractors, suppliers, and Owners.”

A voice vote approved the motion as amended. Lekha Fernandes, Santosh Kuruvilla, and Irene Reyes opposed. John Salinas abstained.

Board Development Committee – Information

Co-Chair Robynne Thaxton presented changes to the Board’s bylaws. Recent changes in legislation require an update of the bylaws. The proposal applies only to those provisions that are outdated from recent legislative changes and any outdated information. With the Board’s recent change in membership, and meeting quorum requirements, position descriptions were updated to reflect changes in the statute, as well as the Board’s responsibilities. The Board is scheduled to approve the proposed changes to the bylaws at the December meeting.

Ms. Thaxton presented a draft onboarding checklist based on the PRC checklist. The checklist covers important information and items new members should know to participate effectively as a member of the Board. She invited feedback on additions or deletions to the checklist. The committee also recommends implementing a mentorship program for new and current members with the Vice Chair managing the program. The committee plans to draft guidelines for the program. Essentially the program assigns existing members as mentors to new members to serve as a resource. The committee plans to develop a set of expectations for members. As much of the work was completed through the Board’s work on shared commitments, those commitments will be included as well as information on attendance requirements,

participation requirements, other types of expectations, average time commitment by members, role of mentors, and role of members. Additionally, the committee is developing a new member checklist to help members learn about the type of work completed by the Board. New and existing members are encouraged to attend a minimum of one PRC business meeting during the first several months following appointment to the Board, and at least one certification meeting and a project review meeting.

Members suggested discussing and establishing guidelines for mentors to include longevity of membership on the Board as a qualification.

Mr. Kuruvilla conveyed ongoing concerns regarding conflict of interest issues. He urged consideration of the issue by the Board because there are no statutory requirements for the Board to address conflict of interest. Discussions are warranted, as well as developing some guidance on the issue. Ms. Thaxton agreed on the importance and encouraged participation by members.

Chair Zahn recommended staff provide the link to the Assistant Attorney General (AAG) training on conflict of interest provided to PRC members as a starting point for the Board or scheduling a discussion to grasp a better understanding of conflict of interest and code of conduct. Ms. Baker recommended scheduling a discussion with the Board by a representative from AAG.

Ms. Thaxton encouraged public sector members to consider serving as Co-Chair of the committee.

Project Review Committee – Information

PRC Chair Jeff Jurgensen provided the update.

At the last meeting, PRC members reviewed three applications for agency certification/recertification, with two recertifications approved and one certification denied. All 11 project applications were approved. The business meeting included training by Assistant Attorney General Dierk Meierbachtol. Members considered changes to the bylaws for the mentorship program and special meeting conditions, which were approved. The request for special meetings will be publicized and readily available so the industry will be informed as to the expectations for requesting a special meeting. The mentorship program is proceeding well. Members are discussing a requirement for project applicants to seek PRC approval of the project prior to advertising projects, as well as establishing a process for PRC members to forward questions on specific project applications to the panel chair prior to the meeting.

Mr. Jurgensen encouraged the Board to invite PRC members to attend any training offered by the Board.

GC/CM Committee – Information

With the meeting schedule back on track, Chair Zahn recommended receiving an update on the activities of the GC/CM Committee.

Chair Nick Datz updated members on the status of committee activities. The committee is working on drafts of the chapters the committee has reviewed to date to consolidate within a single document. Approximately seven of the 11 chapters have been combined to assist in ascertaining the status of the overall review of the GC/CM Best Practices Guidelines. Members identified some gaps and required updates. At the end of the month, the committee is scheduled to review and add another chapter to the manual with the possibility of adding two chapters dependent upon the status of the review leaving two remaining chapters to complete. Those chapters are the procurement and the total contract cost chapter for review in November/December. Members plan to include more graphics and tables to improve clarity of the information. The draft will be reviewed by PRC for feedback for any potential updates prior to publicizing the final draft version. The goal is to release a draft of the document in early 2023 for public review and feedback.

Mr. Datz confirmed stakeholder participation has been broad representing all sectors with one gap of the OMWBE representative, which is currently vacant. Throughout the review process, OMWBE and small business input has been received, as well as coordination with the business development group.

Ms. Fernandes confirmed through the chat function her intent to identify a representative to serve on the committee.

Chair Zahn recessed the meeting at 12:03 p.m. for a break.

Chair Zahn reconvened the meeting at 12:18 p.m.

A meeting quorum was confirmed.

MRSC – PTAC UPDATE ON TRAINING – *Information*

Chair Zahn invited Jon Rose with MRSC to provide an update on the status of work on the training initiative.

Mr. Rose reported MRSC supports public works throughout the state. He acknowledged project team members Josh Klika, MRSC Procurement Consultant; Theresa Gonzales, MRSC Rosters Coordinator; Tiffany Scroggs, Procurement Technical Assistance Center (PTAC); Mike Purdy, Mike Purdy and Associates; and Aleanna Kondelis, Hill International.

In 2018/2019, a study commissioned by the Legislature directed the Board to review areas to increase efficiencies and identify barriers for disadvantaged businesses. The role of MRSC within local government is to serve as the research and support mechanism for cities, counties, and special districts. The Board contracted with MRSC to assist in facilitating the research.

Of the 10 recommendations in the study, one recommendation was broad training for local government agencies and the contracting community. MRSC was able to obtain one-time funding to work with PTAC and OMWBE to create a consistent voice in the public works sphere for both agencies and contractors. The work will be informed by best practices for disadvantaged businesses. A set of broad program goals was developed to support the effort:

- Efficiency and consistency in developing communities
- Development of robust competitive options
- Support and clarity for projects
- Broad opportunities for inclusion

In 2022 through 2023 public works initiatives will focus on the following:

- Outreach events – in-person forums matching agency staff and public works contractors to communicate public processes and upcoming bid opportunities
- Agency/Contractor Training – professional training and technical assistance to agencies and contractors on broad set of public works topics
- Public Works Practitioner Guide – overview of all aspects of public works contracting and project delivery with practical advice on a wide range of issues
- Equity Toolkit – common practices within public works contracts to sustain equitable and inclusive procurement programs
- Contracting Requirements – refresh of tool meant to identify statutory legal requirements for purchasing and contracting
- Enhanced Web Resources – additional web resources including topic pages, sample contracting ordinances, and policies and procedures

Working jointly, MRSC and PTAC have scheduled outreach events:

- October 24, 2022 – Spokane
- October 26, 2022 – Lynnwood
- November 17, 2022 – Tri-Cities
- February 2023 – Vancouver
- March 2023 – Tacoma
- April 2023 – Bellingham
- May 2023 – Port Angeles

A webinar was offered on September 29, 2022 focusing on *Meaningful Engagement Strategies for Local Government Procurement* developed in conjunction with PTAC and OMWBE providing a mix of in-person and virtual training.

The public works guide is intended to provide a practitioners guide of information required for all aspects of public works contracting and project delivery with practical advice on a wide range of issues. A comprehensive draft has been prepared for review.

Ms. Scroggs reported PTAC is a non-profit organization co-located with the Thurston Economic Development Council as well as with other entities across the state. PTAC has been in existence for over 30 years assisting businesses maneuver through the process to sell products and services to government entities and contractors. PTAC is collaborating with MRSC to provide contractor training and technical assistance for local public works projects. A new training series will be launched in November 2022 with registrations already received for the training. The training will be held virtually and repeated in winter and spring 2023.

Mr. Rose reported on collaboration with other organizations, such as OMWBE, Washington NIGP (The Institute for Public Procurement), APWA (American Public Works Association), and other organizations to seek assistance and feedback to assist in advancing training opportunities.

Future goals include securing additional funds to advance high-level goals and seeking partnership opportunities with others advancing similar objectives.

MRSC recently launched electronic bidding. One of the limitations of solicitations for small works rosters is the amount of administrative work to collect documentation and analysis of the award amount. MRSC has worked over the last 18 months to provide electronic bidding at a price point that is affordable for small entities. The intent is to increase outreach to small businesses by offering a one-stop location for numerous project solicitations with award calculations automatically completed for the bidder. The program assists in filling a missing data component identifying businesses searching online rosters and data on businesses receiving a successful award. Data is lacking on businesses invited to bid. The program will offer data to enable analysis of trends across local government.

Mr. Rose added that the project team is also participating on the Small Works Committee.

Ms. Yang asked about the possibility of identifying training content as many avenues of training are offered within the industry. She stressed the importance of pursuing efforts to unify and standardize various training opportunities. Mr. Rose agreed as the presentation is intended to share information on training opportunities. He offered to work with members willing to assist in pursuing the work.

Ms. Reyes commented on the importance of tracking the effectiveness of training. Additionally, inclusion on rosters should be at no cost to small and minority companies as fees serve as a barrier to inclusion.

Mr. Rose explained that training redundancy is one of the reasons for the approach of working with a variety of stakeholders to ensure training is consistent. It is also important to understand the role of an educational entity as the role requires participation from businesses and agencies. In terms of the roster fees, MRSC is willing to consider different methods for administering the roster program. However, MRSC has been able to offer a statewide roster program very efficiently. A different source of funding may entail additional discussions as MRSC is attempting to identify the most equitable way of funding the program for administration of the program through fees to agencies and businesses.

Ms. Reyes contended that public agencies are required to release bids for projects and access to those bids should not be assessed a fee, especially for small businesses as it serves as another barrier for competing. Mr. Rose advised of a free option affording companies with the ability to sign up for nine agencies and nine different categories of services. He offered to engage in additional discussions with Ms. Reyes on access issues to rosters.

Chair Zahn thanked Mr. Rose for the update and discussion on eliminating training redundancies. The revitalization of the Education and Outreach Committee will also likely focus on identifying different educational resources. As the committee begins its work, the continued partnership with MRSC and PTAC will be important.

Ms. Fernandes commented on the collaboration by OMWBE. She eagerly awaits the release of the toolkit which included collaboration by OMWBE. She agreed on the importance of reviewing overall educational resources to avoid duplication of resources as well as identifying gaps in training resources. Efforts on an analysis will help to avoid replication and redundancy in training.

Chair Zahn asked whether cost for participation has created barriers to small public owners. Mr. Rose explained that the approach for training includes both virtual and in-person regional training. Training on subjects of such complexity calls for more in-person training opportunities to help participants understand the content, network, and ask questions. The funding has assisted in scheduling training events in different areas of the state.

Ms. Scroggs responded to questions on training content and whether it meets some of the recommendations by the Business Equity/Diverse Business Inclusion Committee to encourage access to capital and achieving success in delivering projects. The public works training is designed to provide an introduction of bonding, capital needs, payment timelines, and other aspects of forecasting project costs. One-on-one training affords the ability to work closely with more experienced companies on specific needs. PTAC also offers other support services for businesses.

NEW BUSINESS – Discussion

Revitalize Education, Outreach & Web Development Workgroup & Industry Forum

Chair Zahn acknowledged the deferment of both topics for placement in the parking lot for additional review at the end of the year.

ADMINISTRATIVE – Information

Nancy Deakins reported on the transitioning of the Board's budget to the next biennium budget. She reviewed actual expenses from July 2021 through August 2022 and budget projections through June 2023. The budget reflects expenditures less than budgeted with a number of expenses to be examined prior to the end of the year. In December, staff anticipates receiving guidance from the Office of Financial Management (OFM) on compensating disadvantaged businesses and individuals participating on committees and the Board.

Ms. Deakins reported the reduction in travel attributed to keeping expenses lower than projected, although the Board has indicated interest in resuming some in-person or hybrid meetings.

Ms. Baker responded to questions about the extent of PRC expenses. PRC incurs substantial costs for required advertising.

Ms. Deakins referred to information on the budget request for the next biennium. The budget for FY21-23 for travel was forecasted at more than \$28,000; however actual expense is \$12,000 because of virtual meetings. Staff included partial stipends within the travel budget, which can be adjusted when more information is received from OFM. The budget also reflects an increase in salaries and benefits. Earlier in the year, Ms. Baker assumed a Program Specialist position and will transition to working fulltime to support PRC and CPARB. Expenses for PRC are included in the budget and administered by DES.

Ms. Riley Hall asked whether training expenses for the Board are included within the budget within the professional services contracts. Ms. Deakins advised that contracting with a trainer would be funded from that specific line item.

Ms. Riley Hall asked whether the budget is sufficient to cover training for both PRC and the Board. Ms. Deakins said training has not been specifically budgeted because training has not been identified but that it would be possible to adjust different line items.

November Special Meeting – Draft Legislation Bill Language – Discussion

Chair Zahn reported the November special meeting was scheduled to review draft legislation submitted by the Business Equity/Diverse Business Inclusion Committee and Small Works Committee. The intent is to post draft legislation pre-

reads for review by the Board in preparation of the meeting discussion to offer any additional edits and to move the legislation forward. The special meeting is scheduled on November 9, 2022 at 2:30 p.m. to 4:00 p.m.

December 8, 2022 Meeting Planning & Draft Agenda – Discussion

The following topics were added to the December meeting agenda:

- Legislation Tracking\ Bill Progress
- PRC Report & Appointments
- Board Development Committee – Consideration of changes to By-Laws
- Legislative Writing\Drafting Committee
- Small Works Committee
- Subcontractor Bid Listing Policy Evaluation Committee
- GC/CM Committee
- New Business
- Administrative

CLOSING THOUGHTS - Information

The Board agreed to defer closing thoughts in deference of time.

ADJOURNMENT

With there being no further business, Chair Zahn adjourned the meeting at 1:13 p.m.

Staff & Guests

Kim Baker, P2S Inc.

Talia Baker, Department of Enterprise Services

Nick Datz, Sound Transit

Nancy Deakins, Department of Enterprise Services

Brandy DeLang, Assn. of Washington Cities

Debra Delzell, Department of Enterprise Services

Quinn Dolan, Centennial Contractors Enterprises,

Erin Frasier, Washington Building Trades

Theresa Gonzales, MRSC

Valerie Gow, Puget Sound Meeting Services

Chris Herman, Washington Public Ports

Jeff Jurgensen, OAC Services/PRC

Josh Klika, MRSC

Aleanna Kondelis, Hill International

Don Laford, Skillings

Brynn Linville, MRSC

Dierk Meierbachtol, Office of Attorney General

Erik McCarley, OMWBE

Scott Middleton, MCAWW

Rachel Murata, OMWBE

Brenda Portaro, OMWBE

Shari, Reiter-Johnson, Dept. of Labor & Industries

Cathy Robinson, University of Washington

Jon Rose, MRSC

Tiffany Scroggs, PTAC

Leeann Snyder, King County

Axel Swanson, WSAC

Jolene Skinner, L&I

Michael Transue, Small Works Committee

Kyle Twohig, Spokane County

Jerry Vanderwood, AGC

Melissa Van Gorkom, Legislature

Prepared by Valerie L. Gow, Recording Secretary/President
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