

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Virtual via Teams

Special Meeting Minutes – **DRAFT**

November 8, 2023

MEMBERS PRESENT

Janice Zahn (*Chair*)
Keith Michel (*Vice Chair*)
Lekha Fernandes
Janet Jansen
Santosh Kuruvilla
Karen Mooseker
Mark Nakagawara
Matt Rasmussen
Mark Riker
Linneth Riley Hall
John Salinas II
Robin Strom
Josh Swanson
Robynne Thaxton
Olivia Yang

REPRESENTING

Ports
General Contractors
OMWBE
State Government
Engineers
School Districts
Cities
Counties
Const. Trades Labor
Transportation
Specialty Contractors
General Contractors
Construction Trades Labor
Private Industry
Higher Education

MEMBERS ABSENT

Corey Fedie
Bobbie Forch, Jr.
Senator Bob Hasegawa
Bruce Hayashi
Irene Reyes
Kara Skinner
Rep. Mike Steele
Rep. Steve Tharinger
Senator Judy Warnick
Vacant

REPRESENTING

Public Hospital Districts
Disadvantaged Business
Senate (D)
Architects
Private Industry
Ins./Surety Industry
House (R)
House (D)
Senate (R)
Specialty Contractors

Staff & Guests are listed on the last page

CALL TO ORDER & ROLL CALL FOR QUORUM

Chair Janice Zahn called the virtual special meeting of the Capital Projects Advisory Review Board (CPARB) to order at 2:31 p.m.

A roll call of members confirmed a meeting quorum.

WELCOME BOARD MEMBERS & INTRODUCTIONS

Chair Zahn welcomed everyone to the special meeting to review a committee report to the Legislature in response to SHB 1621.

INVITATION FOR PUBLIC COMMENTS – *Information*

Vice Chair Keith Michel invited public comments.

Eric Alozie, NEW Construction, said he is hopeful the Board continues to support the opportunity for minority contractors to participate. Many minority contractors are not legacy businesses and have not been present in this space for many years. The introduction of new businesses and what it means is important because it appears many words are massaged, and various interests represented. He hopes that on the ground, opportunities are being provided in ways supported by each member.

BOARD ENGAGEMENT – *Information*

Board Member Opening Thoughts/Shared Commitments

Chair Zahn remarked that in lieu of the purpose of the meeting to discuss SHB 1621 Review Committee recommendations to the Board, she recommended members recommit to the Board's shared commitments of Respect, Purpose, Listen to Understand, Accountability, and Inclusion. She conveyed appreciation to members for their shared commitments to one another especially during times when a consensus may not be achieved of thoughts or opinions but continue to be guided by the Board's values. For new members, the meeting may be the first opportunity to vote on a recommendation that might not be unanimous. It is important to recognize that at the conclusion of the meeting, a set of recommendations could be approved either unanimously or by majority support.

By a show of hands, members conveyed their recommitment to the Board's set of values.

SHB 1621 REVIEW COMMITTEE REPORT – *Action*

Committee Co-Chair Michel reported he and CoChair Mark Nakagawara have co-chaired the committee since April 2023. The committee held meetings biweekly with many stakeholders and committee members consistently attending because of the importance of provisions in the legislation for the industry. The legislation includes many venues within the industry and how public agencies are positioned to execute work for public benefit and the need to balance those goals through public contracting thresholds, rules, and circumstances when executing projects. Committee members and stakeholders participated in many in-depth conversations and worked through issues fairly and methodically. The committee did not develop a specific format for the presentation on the recommendations preferring flexibility to receive

member input and feedback to help guide and improve any aspects of the report prior to acting on the report for submittal to the Legislature.

Chair Zahn advised that in previous meetings, questions and comments are received from Board members followed by comments from committee members or the public. Feedback from the public is dependent upon the meeting time remaining.

Robynne Thaxton conveyed appreciation and thanks to the committee for such a thorough review of the statute and transparency of opinions and thoughts shared about the statute and voting outcomes.

Olivia Yang disconnected from the meeting temporarily.

Santosh Kuruvilla inquired as to whether the Co-Chairs believe the report format represents the priority of the topics. Co-Chair Michel explained that the order of the votes does not necessarily align with the level of importance or priority for the Board's recommendation. Rather, the format was intended to follow the format of provisions in the bill and the RCW. The report includes several important topics, such as the initial threshold for self-performed work followed by a higher threshold in certain circumstances as defined currently and for Prudent Utility Management for the higher \$300,000 threshold. The language is applied consistently to five public entities of several public purpose districts, first- and second-class cities, fire districts, and sewer and water districts. The legislation is extensive as the provisions for each of the entities are included individually within the bill. It speaks to why the committee's voting process of distilling feedback on the different aspects reflected an increase in the number of votes. The committee identified language in the bill that is more or less applicable to an individual entity, which prompted alternative language for some entities within the bill without recommending changing where Prudent Utility Management would be applied. Some follow-on opportunities are also available to vote on the increase in the threshold in terms of what is included or not included, such as the definition of equipment. One final provision speaks to bidder responsibility criteria and an entity's ability to reject a low responsive bid under certain circumstances.

Mr. Kuruvilla asked whether one or several of the topics are of higher priority than the others. Co-Chair Michel responded that he believes there are some higher priority topics. He believes the circumstance, such as utilizing Prudent Utility Management or suggested alternative language is an important priority for input by the Board because he does not view the blanket application of Prudent Utility Management as a good definition of a circumstance for all entities equally. Another priority is the concept of thresholds and increased thresholds. It is an issue the Board should consider carefully as it could impact public contracting opportunities that are available in the market and to the small business community. Anytime the Board recommends increasing the threshold, the action should be conscious and intentional because the current threshold allows for a broad and vague exclusion for some project costs that could also fall outside of the increased threshold. The bill, in his opinion, creates a potential set of circumstances and applicability that could reduce public contracting opportunities important to the state and to communities.

Mark Riker commented that the Co-Chair's comments were well stated from labor's perspective and concerns. Both Co-Chairs did a very good job of herding cats that did not want to be herded. Labor representatives testified in opposition to the passage of SHB 1621. In consideration of making the bill salvageable throughout the committee's process, it resulted in a point where there were many issues, such as, in-house performance of previously exterior contracting eliminating opportunities for the small contracting community and limiting incubator business opportunities as the bill is implemented. Labor viewed the effort as trying to fix legislation that was unfixable despite the committee's good work resulting in labor respectfully moving forward with no support of a bill that would likely never be fixable. He shared that he authored a letter on the last day for submittal of comments, however, he realized the letter would be detrimental to the relationship process and decided to provide an overall statement out of respect for everyone's time to ensure everyone is clear about labor's position and the organizations his entity is advocating on behalf of. Regardless of the outcome of the report, he plans to be clear during advocacy in the next legislative session that he is not speaking as a committee member or Board member but is speaking on behalf of his organization.

Josh Swanson concurred with Mr. Riker's comments. Labor appreciates the committee's work with respect to the work product. He attended one meeting and encountered a situation for which he was unprepared with respect to the equipment operation for the equipment foundation within the report. He agreed with Mr. Riker because there are many issues that should be contemplated and factored into the analysis that have not been achieved at this time. His contingency does not believe the threshold increase makes sense at this point and is opposed to the proposal.

Lekha Fernandes said she read the report and the recommended actions to implement and reflected on the work completed on the small works roster and how members worked diligently to open up opportunities for small and diverse business. It is important to keep the momentum going to open opportunities for small business in the public works arena. She supports the report and the amount of contemplation undertaken by the committee. She reviewed all voting by the committee, which represented an abundant amount of work. She thanked the committee and stakeholders for their time and efforts as the report is incredibly detailed, responsive, and it assisted her in reflecting on the work completed to date and on work moving forward.

Co-Chair Mark Nakagawara said that as a representative for the cities and as a public entity that is impacted by the legislation, he supported the threshold for Prudent Utility Management use of \$300,000 and increasing the threshold from \$75,000 across the board for the different entities. With respect to the Prudent Utility Management issue, he recognizes that there is a need to preserve opportunities; however, as a representative of a city, there are times and instances when work must be completed for taxpayers or customers. Current RCWs do not always account for those instances. The proposal attempts to address those special instances whereby entities are handcuffed especially in terms of time, financial impacts, and other issues affecting the bottom line for taxpayer and utility customers. He acknowledged that Prudent Utility Management from his perspective as a representative of a municipality is not an issue and likely needs to be readdressed to some degree whereas he believes that for public utility districts the provisions are important. There needs to be some sort of provision that enables public entities the ability to address immediate needs by internal crews in some circumstances, which speaks to why cities promoted the language justifying the increase of the threshold to \$300,000. The increase is not intended for regular use but would apply for special circumstances.

Mr. Alozie asked about the bidder responsibility determination. He asked whether the representative from OMWBE could speak to the discussion by the committee concerning that particular issue.

Chair Zahn respectfully deferred the question until discussion by the Board was completed.

Linneth Riley Hall asked how OMWBE considered the impact of the report on small businesses. Ms. Fernandes responded that it is about the ability to compete and work. It is important that if the recommendations are geared for emergency situations to clarify that intent and the process for active solicitation of the work. She does believe however, that some clarity is required. She would not want to interfere with a public entity's project because of laws or circumstances that are preventing progress while also wanting to ensure there are ample opportunities for small businesses to compete. Often, she learns that some entities are indicating there is no availability of small businesses while small businesses concurrently are indicating they are available but are never contacted to compete. It appears something is occurring in that space and the issue is how to provide clarity. Moving legislation forward that could provide clarity would help resolve some of the impacts. She noted that she was not part of the committee's discussion but did read the committee's notes and materials, as well as the report.

Ms. Riley Hall said existing legislation addresses emergency situations. She is unsure of the report's distinction between "urgent work" and "emergency work." However, there are provisions in state law for emergencies. She does not believe the report pertains to emergency situations.

Co-Chair Michel agreed with Ms. Fernandes' understanding of the "space" as the topic is on point. He agreed with her sentiments, which speaks to the context of the bill that moves to some degree how that space is managed by many public entities, and it increased the importance of the Board's discussion on the report overall in support of the legislative process.

Co-Chair Nakagawara pointed out that the emergency exemption provided for in RCWs essentially is a competitive bid waiver for public entities and does not necessarily provide the entity with the right to have an internal crew complete work, especially if the project exceeds a certain threshold. Secondly, the City of Seattle typically does not have city crews on standby to work on projects. The city is not overstaffed; rather employees perform regular routine maintenance that does not qualify as public works as defined by the RCWs. The proposed threshold of \$300,000 would apply to public works projects as well as providing the ability to address issues that need to be resolved. The language as crafted attempted to capture circumstances because existing language for Prudent Utility Management is unclear as to the circumstances of applicability. The proposed language attempts to identify the circumstances. The city does not have personnel waiting on standby to complete public works projects as the city has much routine maintenance that does not fall under the umbrella of public works.

Co-Chair Michel shared that Co-Chair Nakagawara was an important resource for co-chairing the committee, as well as for his technical expertise with the City of Seattle. All public entities should be able to act on the best interests of the public in the ongoing infrastructure management of the entity. That is why it was so important to identify the right balance in how the laws are drafted. He values a certain amount of flexibility as well as a desire to afford an opportunity for entities to be nimble in executing needed work. As a general contractor and an advocate for subcontracting partners and small business, he is sensitive to the importance of the language. One way of reviewing the report, each type of entity, and whether some recommended provisions should apply, such as Prudent Utility Management is by determining whether the alternative language is more applicable and supported by the Board. Three provisions in the alternative language concerning specifics about a circumstance speaks to whether the “or” should be revised to reflect “and.” For example, Prudent Utility Management is the broadest in the context of when and how the circumstance might exist. The proposed alternative language is intentionally narrower. Changing “or” to “and” would further narrow the intent. The committee attempted to provide a scale of how special circumstances need to be in order to enable the ability for a public entity to utilize the \$300,000 threshold. The three versions are what could apply to the entity in terms of how broad or narrow the bill defines the circumstance.

Ms. Riley Hall asked about representation on the committee of small business other than representation by OMWBE. Ms. Fernandes replied that Irene Reyes is a member of the committee representing private industry. Co-Chair Michel added that to some degree Mark Riker representing labor and Michael Transue representing Mechanical Contractors of America (MCA) also represented small business, as well as his contributions on the committee representing some interests that were not present during the conversations.

Mr. Alozie vocalized some pushback on who was missing at the table as many were not represented. He is also unsure whether mechanical subcontractors speak for minority subcontractors.

Co-Chair Michel addressed Mr. Alozie’s earlier question concerning bidder responsibility criteria. Bidder criteria are included in SHB 1621. The provisions describe certain conditions where a low bid would not be awarded. The committee is evaluating a recommendation on existing provisions and whether the Board should offer a different recommendation.

Mr. Alozie explained that he understands the language but wanted to convey its importance. If a public entity indicates that it wants to offer opportunities to people who have not participated and were not allowed to develop; language that speaks to the issue should not be confined only to low bid criteria because other elements must come into play. The lack of development of minority contractors over the last 50 to 60 years has contributed to the current situation in terms of the lack of development of minority contractors. There are other elements in addition to low bid. He shared that he is aware of too much gaming occurring and that if people want to work and develop relationships, they would and if they do not, they won’t. It has been his experience as he has tried personally to develop relationships and hasn’t achieved much traction because there is always a workaround regardless of language in a bill. For those cities and public organizations that are truly committed they should be allowed to have language included that speaks to the community that they live in, and to the people who live in the community. If general contractors do not care then it is likely a project minority contractor should not bid on. He advocated for including language that speaks to the values or people will continue moving in the same direction.

Karen Mooseker disconnected from the meeting at 3:15 p.m.

Chair Zahn noted that the committee’s vote on the recommendation on #8 related to bidder responsibility provisions was split with one member absent. She asked for context by committee members in terms of the pros and cons of each vote and recalled a conversation about the reason for offering a different provision for bidder responsibility than in SHB 1621 when bidder responsibilities already exist within RCW 39.04.350.

Ms. Fernandes advised that OMWBE voted in support of the recommendation. Mr. Alozie articulated why criterion in RCW 39.10 does not necessarily cover the concerns he shared. Bidder responsibility criteria are not necessarily as inclusive for ensuring public contracting is equitable and fair. OMWBE supported including additional bidder criteria as provisions in RCW 39.10 do not speak to Mr. Alozie’s concerns.

Joren Clowers added that the language pertaining to second-class cities was added to the bill to apply to other municipalities; however, some stakeholders including water districts, sewer districts, and cities agreed it was not necessary to include additional (bidder responsibility) language within the bill.

Michael Transue recommended members review committee comments. Some of the comments attributed to cities and water-sewer districts supported striking the second-class alternative lowest responsible bidder language. The language was inserted as a floor amendment in a bill several years ago. As discussed by the committee, there are no examples of how it was applied and subsequently everyone felt that perhaps it was not the best type of policy moving forward. Another concern on the small works roster side were attempts by the committee to include a similar type of procurement methodology applying to the fullest extent possible equally across the board. In this instance, it would entail applying the language to fire districts, water-sewer districts, and first-class cities noting that the language is already on the books for second-class cities. He noted that there are other jurisdictions with procurement authority. Efforts on the small works roster process were to ensure consistency throughout the process so that when contractors wanted to know the identity of the lowest responsible bidder, they could find the information in one location containing all awards. Separating three jurisdictions continued to create problems for the other districts, such as public hospital districts, flood control districts, and counties, etc. From the committee's perspective, extending alternative lowest responsible bidder criteria was not an appropriate policy to move forward at this time. The explanation should provide some context from MCA's perspective on why there was no support in moving the language forward.

Co-Chair Nakagawara clarified that the reference to "additional language" spoke to language being added to first-class cities, fire districts and was not the expansion of additional criterion but rather the addition of the language to apply to current statutes governing first-class cities, fire districts, and water-sewer districts, etc. His intent is not to convey the notion that the committee opposed adding different criterion, which would likely be uniformly directed in RCW 39.04. Essentially, "additional" was intended to apply to the statutes governing fire districts, cities, and other entities.

Co-Chair Michel added that from his personal perspective and in the context of the split vote (4-4), his perception surrounded bidder responsibility language that was passed during the last session that already existed for second-class cities. The proposal was to add language for the other entities to match second-class provisions; however, when he learned that the Board has invested efforts on RCW 39.05.350 bidder responsibility criteria and the process that in his opinion was much more comprehensive, well written, applicable, and referenceable to help define how to use the criteria effectively in a public bid process, he voted against the motion as the alternative shorter and succinct language currently applicable to second-class cities should not apply to the other entities. Instead he recommends referring the entities to RCW 39.04.350, which he believes is a better process that allows a similar situation when the owner has the right to reject a low bid but not quite as vague or at a wider range of applicability.

Ms. Fernandes acknowledged the confusion when reviewing the report because the question is whether any bidder responsibility provision should be extended to any public works entities via 1621. The dialogue has been confusing. She asked for some clarity of the conversation within the report based on her perception of the report and her employees' understanding of the report, as the message is a different perspective based on the Board's conversation.

Co-Chair Michel recognized the confusion over the issue. His reference point was focused on those provisions that were adopted during the last session and whether those provisions exist in the bill as applied to other public entities.

Matt Rasmussen asked whether the provisions under discussion pertain to a low bidder that has delivered a project late or is over budget. Those are the issues that appear to him as existing language applicable to second-class cities and whether it should be extended to other public entities. The language is specific, and it is not a question of whether to add new bidder responsibility criteria. The issue is whether the Board supports the language.

Chair Zahn agreed there is confusion as the Board wants consistency in bidder responsibility, which already exists in RCW 39.04.350. The question is whether the Board wants consistency in language so when the subject of bidder responsibility is addressed RCW 39.04.350 is referenced rather than a slightly different version that exists for second-class cities that has now been extended to other entities. The question surrounds entities included in the bill that have new authority for determining bidder responsibility and whether the Board, committee, and stakeholders would support consideration of referring to RCW 39.04.350 as the bidder responsibility provisions instead of the vague and problematic provisions contained in the bill.

Mr. Rasmussen supported provisions in one statute with all provisions applied equally. Adding oddball special responsibility requirements that only apply to certain jurisdictions makes it more challenging for companies to bid projects. He would vote against including the language in SHB 1621 and consider adding language to RCW 34.03.350.

Mr. Transue clarified that when he and other stakeholders considered #8, it pertained to whether the language within the bill should be extended to three entities. That was the question and Mr. Rasmussen may have cited it differently; however, the issue was whether there is support for the language or no support for the language. The committee discussed responsible bidder criteria several times as a place to go for RFP management and contract management, etc. Although Mr. Rasmussen asked the right question, it is important the Board understands that the existing bill includes provisions that become effective mid-2024. The question is whether the Board recommends that the language should be effective on July 1, 2024. All other provisions within the bill are effective July 1, 2024 as well. It is critical to discuss whether to extend the language to other jurisdictions. If the response is negative, the committee can work on other recommendations. The broader question is whether there is support for extension of the language to other jurisdictions.

Brandy DeLange spoke to the Chair's question posed earlier. When city representatives met and recognized that the language had been extended to first-class cities, in particular, the group uniformly agreed with striking the language as it does not make applicable sense at this point in time for first-class cities. To provide some clarity to the discussion and while not speaking on behalf of the committee, the recommendation is to strike the language from SHB 1621 and not move forward with the language. Basically, she believes the language should not be a point of consideration moving forward.

Chair Zahn asked whether cities support removal of language existing in SHB 1621. Ms. DeLange affirmed her interpretation. Although she is not speaking on behalf of water sewer districts, fire districts, or irrigation districts, she believes everyone categorically agreed the language could be eliminated from the bill in its entirety.

Ms. Riley Hall requested clarification as to whether the response is a "yes" or a "no" because although some of the same points have been conveyed, the issue is whether they support or do not support the proposal.

Diane Pottinger reported she was a representative for water-sewer districts and supports striking the language from the bill.

Co-Chair Michel recognized Liz Anderson as a committee member.

Ms. Anderson, representing Public Utility Districts (PUD), said there was concurrence with water-sewer districts to strike the language from the bill.

Co-Chair Michel expressed appreciation to the representatives of the different entities for sharing feedback as it assisted in explaining the difference in votes. However, he is hopeful the Board, receiving the feedback, can reach a clear recommendation on that particular aspect of the bill.

Discussion ensued on the intent of the meeting and whether the intent is to render a vote. Chair Zahn explained that the special meeting was scheduled to afford time for the conversation to enable the Board to vote in December. Another outcome of the special meeting is identifying sufficient information for follow-up by the committee, which will meet prior to the Board's December meeting to review the Board's feedback and the discussion. It appears the vote regarding #8 was framed differently rather than eliminating bidder responsibility in 1621 to enable a default to RCW 39.04.350. The feedback was very useful. It would also be important to ensure that the vote in favor by OMWBE and the outcome based on the Board's discussion meets the needs of OMWBE firms and that the intent is not creating some vague and opaque process for considering bidder responsibility by removing the language.

Ms. Fernandes had disconnected from the meeting at 3:38p.m. and rejoined at 3:49 p.m.

Chair Zahn said it also appears there was a unanimous vote of opposition by cities on whether Prudent Utility Management should apply to cities. She advised the Board of the opportunity to direct the committee to continue its work of providing clarity on the votes or any other suggested areas.

Mr. Transue expressed appreciation to the Board for taking time to listen to the feedback. The initial questions for #3, #4, and #5 of whether Prudent Utility Management ought to be extended to (#3) cities, (#4) water-sewer districts, and (#5) fire districts resulted in a unanimous vote of opposition. The question is whether the Board supports the cities recommended alternative language of \$300,000 instead of Prudent Utility Management. MCA voted against \$300,000 for several reasons but most importantly, there was a unanimous vote to enable in-house work for \$75,000 or less for a single craft and \$150,000 or less for two or more crafts. The proposal resulted in a unanimous vote of support. With the exception of Mr. Riker, the Board is suggesting superimposing the \$300,000 threshold. From MCA's perspective he recommended working within current confines of \$75,000/\$150,000, small works roster, exigent circumstances, and all current existing

authorities in addition to the \$75,000 and \$150,000 added language. Those were a few of the reasons for voting against the \$300,000 threshold following the no Prudent Utility Management extension. The remaining issue before the Board is whether the recommendation of \$300,000 replacement language offered by the cities should be approved.

Co-Chair Nakagawara noted that the \$300,000 threshold was not created to double \$150,000 but rather the figure was included in language for Prudent Utility Management. Prudent Utility Management has a \$300,000 threshold. Additionally, for all intents and purposes, the exclusion of equipment or materials would likely exceed \$300,000. Prudent Utility Management as it currently exists could be beyond \$300,000, which was concerning to him. The committee attempted to narrow a definition that was more workable. Additionally, cities are also restricted to 10% of its total capital budget for a year for self-performance of public works otherwise the city would be liable for the loss of gas revenue from the state.

Mr. Kuruvilla said his struggle surrounds the committee's proposed language and several unanimous actions and other topics where the committee was divided. He questioned whether it is in the best interests of the Board to work on issues that reflect division or pursue unanimous recommendations. Essentially it is about whether the Board wants to discuss and vote on decisive issues with multiple facets of opinions as opposed to voting on the committee's unanimous recommendations to avoid creating more confusion. He asked about the best strategy for the Board's response to the committee.

Chair Zahn cited the example of the work completed by the Local Government Public Works Study Committee and the array of support for and against some recommendations. The report on the committee's recommendations was visible in terms of the unanimous votes and instances of disagreement to enable moving forward as the Board represents the entire industry while ensuring ongoing efforts to seek common ground. In those instances where agreement is not attained, it is reflective of the Board's role as it provides an opportunity to present to the Legislature a broad perspective of the issues for its consideration. This discussion is a component of that process of working through different perspectives to assist legislators in making better informed decisions as they move forward into the 2024 legislative session to determine which bills to support. With respect to the meeting time, issues not concluded would be deferred and discussed by the committee and during the Board's December meeting.

Mr. Rasmussen said his intent is to understand the recommendations as each include several sub votes. The first issue is whether Prudent Utility Management should be extended and if the Board votes against the recommendation, the next issue is whether the language as proposed by the cities should be extended. He would like clarity on the voting method.

Co-Chair Michel explained that was one of the reasons the committee provided the option of abstaining from voting on follow-on votes. The committee is comprised of nine members with most members representing their entity with most considering all sides of an issue. In terms of the Board's voting process versus the committee's voting process, the committee's makeup reflected a broader range of public interest. Although he does not anticipate consensus on all issues by the Board, the benefit of ascertaining a majority vote on some of the recommendations as compared to the committee is a key component in helping CPARB render recommendations.

Chair Zahn agreed and added that the Board may reach a point where time is no longer available. The report could convey that although the Board agreed with the need for some revisions, the Board was unable to develop language to meet the December 31, 2023 submittal deadline. That option is a possibility. She also believes vote #6 received unanimous support concerning whether the definition of equipment as applied to cities, water-sewer districts, and fire districts is modified through revisions to 1621. The vote was in support of the proposal. Although, the committee did not define the revised language, the committee reached consensus on the proposal. The issue is one that could be forwarded to the committee in addition to "should Prudent Utility Management" (vote #3) apply to cities. The vote unanimously opposed the proposal. The committee could explore potential alternative language that could achieve unanimous support. With more thought, it might be possible to attain consensus. The third recommendation that appeared to be supported by the Board pertained to the consistency of bidder responsibility by removing specific language. Those are the three issues the committee should revisit prior to the Board's December meeting.

Mr. Kuruvilla offered suggestions on the format on the report explaining that if there is a divergent of opinions, the left column could capture all the dimensions of the pros and cons without identifying constituencies.

Co-Chair Michel responded that the committee has discussed ways to improve and provide clarity on the recommendations. One option is an executive summary that likely should be crafted following the December meeting and

the Board's final recommendations. Although, the committee's comments on results of voting are informative it also may result in clear recommendations.

Mr. Transue cited the Chair's reference to equipment definition. Part of the reason for the unanimous support was because the definition of Prudent Utility Management excluded material not exceeding \$300,000 and that the definition also did not include the value of equipment, such as backhoes and other equipment used to install materials. However, the definition of equipment also includes conductors, cabling, water pipe, and other materials. Everyone recognized that the definition should be addressed and clarified. The context for changing the definition of Prudent Utility Management pertained to the exclusion of equipment from material. Those who voted yes believed that the exclusion was a "bridge too far" as it could result in a contract of \$300,000 for material or equipment and \$2 million for labor, which speaks to the problem of the definition.

Mr. Rasmussen agreed as the definitions are convoluted and confusing. Should the proposal not address definition, the definition should be revised. One city proposed setting a maximum threshold for labor and equipment versus the exclusion of specific items, which can be confusing. He agreed the definition needs to be revised if within the committee's scope to include in the report.

Mr. Swanson said from the perspective of construction trades labor with respect to equipment, the issue has been one of contention for the industry and should be determined one way or another. His sector has been engaged unilaterally as he is not a member of the committee. Mr. Riker serves on the committee and has been representing construction trades labor. There are definitely some actions that should occur with respect to equipment operations and use of and application of the costs. It has always been assumed that when considering equipment, the dollar amount would be beyond the threshold while also believing it should be factored within the equation. Engagement on the committee was to ensure that the issue was not overlooked. Moving forward, engagement will continue throughout the deliberations with respect to that particular policy.

Chair Zahn concluded the meeting and urged the Co-Chairs and the committee to continue meeting to deliberate some of the issues surrounding some of the recommendations. She encouraged Mr. Alozie to attend the committee meetings. The Board identified several areas and if progress can occur by the committee, it could result in some improvements. At the December meeting, the Board is scheduled to vote on the final recommendation for submittal to the Legislature by December 31, 2023. She thanked everyone for attending and engaging during the special meeting.

ADJOURNMENT

With there being no further business, Chair Zahn adjourned the meeting at 4:01 p.m.

Staff & Guests

Eric Alozie, NEW Construction

Liz Anderson, Washington PUD Association

Talia Baker, Department of Enterprise Services

Joren Clowers, Sno-King Water District Coalition

Nancy Deakins, Department of Enterprise Services

Brandy DeLange, Association of Washington Cities

Valerie Gow, Puget Sound Meeting Services

Monique Martinez, Department of Enterprise Services

Diane Pottinger, North City Water District

Michael Transue, Mechanical Contractors of America