

CPARB Public-Private Partnership Committee

November 29, 2016, 9:00 a.m.

South Seattle Community College, Georgetown Campus, Bldg. E, Finishing Trades Building,
Room 370

Agenda (DRAFT)

I. Welcome & Introductions

II. Evaluate Open Discussion Items

The purpose of this Committee meeting is to address and resolve comments, questions, and issues raised in the October 13, 2016 PPP Committee meeting and November 10, 2016 CPARB meeting.

Upon referral by Representative Buys, Committee members met with legislative staff Steve Masse for independent insight on issues identified by the Board and Committee. Including points raised by Mr. Masse for the Committee's consideration, the following core issues have emerged for resolution. Attached to this agenda is a redline draft of the Committee's legislation, with discussion language addressing these issues as follows:

- A. **Issue:** Specify review standards for project approval by new PRC Subcommittee. The Committee discussed authorizing CPARB to prescribe specific guidelines. Some public Owner representatives relatedly observed that requiring fully developed RFP and draft form of Agreement are premature at PRC stage.

Discussion Proposal: Redline to 39.10.580(b) authorizes CPARB to develop criteria for review. Redlines to 39.10.580(a) and (d) adjust the Public Body's submission package to remove RFP and draft Agreement but include business case analysis and value for money analysis.

- B. **Issue:** Introduce "Pilot" program to enable calculated implementation, review of successes and lessons learned, and appropriate adjustments for future projects.

Discussion Proposal: Redline to 39.10.580(g) authorizes two PPP projects per year for the first five years, and authorizes CPARB to set deadlines and procedures to identify, review, and approve such pilot projects.

- C. **Issue:** Multiple public Owner representatives voiced that the draft requirements for the governing Agreement are too prescriptive.

Discussion Proposal: Redlines to 39.10.520 narrow the list of contract requirements to a more basic list of essential terms, requirements unique to PPP, and requirements to ensure protection of labor and subcontractor interests and promotion of diversity participation.

- D. **Issue:** Existing draft language regarding debt limitations raises constitutional considerations.

Discussion Proposal: Redlines to 39.10.550 remove purported “off book” language, leaving the issue for resolution, if it ever arises, based on existing constitutional and statutory limitations rather than creating unnecessary potential constitutional tension.

- E. **Issue:** Stipend / Honorarium. Should a stipend be mandatory, discretionary, or silent?

Discussion Proposal: Draft 39.10.510(e)(i)(5) requires the Public Body to specify the honorarium, including whether any amount will be paid if the solicitation is canceled prior to award. Draft 39.10.510(e)(v) in turn requires the Public Body to make the honorarium payment as specified. This represents a compromise representing the Committee’s perceived best practice that reasonable honoraria are appropriate in most cases to promote robust competition and avoid limiting the candidate group exclusively to large entities capable of bearing the financial burden of major proposals, balanced with the need for Public Bodies to have flexibility in setting honoraria based on the nature of the project, scope, the owner’s financial situation, likely effort required, and other project-specific considerations.

- F. **Issue:** Can the draft legislation be incorporated into the existing “design-build-operate-maintain” provisions?

Discussion Proposal: The design-build-operate-maintain statute is a brief and limiting provision of the design-build procedure in RCW 39.10.300(4). Using this provision to enable the types of projects intended for PPP while providing the protections envisioned by the Committee would require extensive changes to the design-build provisions if not implemented separately.

- G. **Issue:** Terminology. The Committee discussed the terms “PPP / Public-Private Partnerships” vs. “Performance Based Infrastructure” or “Performance-Based Facilities.”

Discussion Proposal: Further discussion is recommended to avoid potential misconception of terms and determine where to implement final terminology in proposed legislation.

- H. **Issue:** Mr. Masse raised for the Committee’s consideration whether a public hearing would be appropriate for proposed PPP projects.

Discussion Proposal: Committee to discuss whether the public PRC review process appropriately addresses the desire for public input.

- I. **Issue:** Unsolicited Proposals.

Discussion Proposal: Draft 39.10.510(c) permits unsolicited proposals but does not require the Public Body to evaluate them, and requires that all such proposals be put through the otherwise-applicable solicitation process.