

1 **Capital Projects Advisory Review Board**

2 **Business Equity/Diverse Business Inclusion Committee**

3 Meeting Summary October 29, 2020

4 **1. Committee co-chair Walter Schacht called the meeting to order at 11:01 a.m. A quorum**  
5 **was established.**

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7 **2. Welcome and introductions.** Co-chair Walter Schacht welcomed the attendees and notified  
8 them this meeting will be recorded.

9 Committee members in attendance unless otherwise noted:

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| 10 | • Walter Schacht, Mithun                     | CPARB | Co-chair |
| 11 | • Lisa van der Lugt, OMWBE                   | CPARB | Co-chair |
| 12 | • Bill Frare, DES                            | CPARB |          |
| 13 | • Irene Reyes, The Glove Lady                | CPARB |          |
| 14 | • Janice Zahn, Port of Seattle               | CPARB |          |
| 15 | • Olivia Yang, Washington State University   |       |          |
| 16 | • Cheryl Stewart, AGC Eastern Washington     |       |          |
| 17 | • Chip Tull, Hoffman Construction            |       |          |
| 18 | • Aleanna Kondelis, University of Washington |       |          |
| 19 | • Brenda Nnambi, Sound Transit               |       |          |

20 Other attendees include:

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| 21 | • Rebecca Keith, City of Seattle                    | CPARB |  |
| 22 | • John Salinas, Salinas Construction                | CPARB |  |
| 23 | • Sarah Erdmann, OMWBE                              |       |  |
| 24 | • Joanna Eide, OMWBE                                |       |  |
| 25 | • Dan Seydel, Platinum Group                        |       |  |
| 26 | • Tammie Wilson, Department of Labor and Industries |       |  |
| 27 | • Scott Middleton, MCAWW                            |       |  |
| 28 | • Santosh Kuruvilla, Exeltech Consulting            |       |  |
| 29 | • Andy Thompson, Granite Construction               |       |  |
| 30 | • Jerry Vanderwood, AGC                             |       |  |
| 31 | • Bob Armstead, NAMC                                |       |  |
| 32 | • Nancy Deakins, DES                                |       |  |

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34 **3. Review and approve agenda.** Co-chair Schacht briefly reviewed the agenda for today noting  
35 that our primary task today is to talk about proposals made to modify or add to the current state of  
36 the reauthorization proposal and go through the suggestions provided by OMWBE and Aleanna  
37 Kondelis. The draft outline is included on the agenda to aid discussion.

38 a. Approval of today's agenda – Motion (Bill Frare), Passed to approve the meeting agenda.

39 **4. Review and approve last meeting's minutes.**

40 a. Approval of September 11, 2020 meeting – Motion (Cheryl Stewart), Second (Olivia  
41 Yang), Passed to approve the September 11, 2020 meeting minutes.

42 **5. Expectations for discussion.** Co-chairs Schacht and van der Lugt encouraged input for the  
43 meeting and to respect each other if disagreements arise. Co-chair Schacht asked for Zoom  
44 participants to use the chat and hand raise functions if they want to speak.

- 45 **6. Reauthorization update.** Rebecca Keith gave an update on the Reauthorization Committee. The  
46 committee provides regular updates to CPARB and last May released a draft of proposed statute  
47 asking for CPARB members to provide feedback. There is a meeting on Nov. 19 to hear and  
48 consider feedback from this committee.
- 49 a. Co-chair Schacht added that this committee was founded by the board to provide a  
50 comprehensive review of RCW 39.10, RCW 39.04, and RCW 39.80 to create consistency  
51 in statutory language, and to bring forth effective strategies and opportunities for firms to  
52 compete.  
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- 54 **7. OMWBE review of proposed reauthorization legislation.** Co-chair Walter Schacht shared his  
55 screen to show a spreadsheet of the CPARB Reauthorization Bill comments starting at Item 2,  
56 the first item on the spreadsheet. Both OMWBE and Aleanna prioritized their comments for  
57 review today. Co-chair van der Lugt clarified that OMWBE is not the representative for all minority  
58 and women minority owned business throughout the state but brings that perspective.
- 59 a. Item 2, RCW 39.10.220 – Board – Membership – Vacancies  
60 i. Co-chair van der Lugt noted discussions in board requirements, noting that  
61 someone of color is not a requirement alone to sit on a board, that representation  
62 of MWBEs, advocacy, and involvement matters.  
63 ii. Aleanna explained her comments overlapped OMWBE comments and can be  
64 talked about in the same context, trying to capture the thought of how to bring a  
65 level of advocacy to the position.  
66 iii. Irene Reyes expressed that someone on the board should also be engaged in  
67 the community and not just a certified WMBE. Another attendee voiced their  
68 agreement.  
69 iv. Co-chair Schacht explained that every member of the board is to represent a  
70 stakeholder group clarified by RCW 39.10.220 (2)(a). He believes community  
71 involvement should apply to all board positions.
- 72 b. Item 3, RCW 39.10.230 – Board – Powers and duties  
73 i. Co-chair van der Lugt read the notes with no further comments from attendees.  
74 ii. Co-chair Schacht mentioned one of the two private sector board members are a  
75 WMBE engaged in their community.
- 76 c. Item 4, RCW 39.10.240 (2) – Project Review Committee – Creation – Members  
77 i. Co-chair van der Lugt read her comments and changes to the statute.  
78 ii. Janice Zahn explained there are currently two WMBE representatives.  
79 iii. Dan Seydel clarified there should be the same scrutiny applied to PRC members  
80 as there are with CPARB members.  
81 iv. Co-chair van der Lugt agreed saying technical and equitable representation is  
82 critical.  
83 v. Janice Zahn expressed the need to make consistent language changes between  
84 RCW 39.10.220 and RCW 39.10.240.  
85 vi. Dan Seydel expressed the need for a more effective way to introduce  
86 educational and training opportunities so candidates who are otherwise qualified  
87 have a chance for the role.
- 88 d. Item 5, RCW 39.10.240 – Project Review Committee – Creation – Members  
89 i. Co-chair van der Lugt summarized the notes on representation and knowledge  
90 and advocacy of committee members, noting it is like the previous item.  
91 ii. Co-chair Schacht believes this is done in practice but is not a statutory  
92 requirement. Adding the language would make it a statutory requirement.
- 93 e. Item 6, RCW 39.10.270 – Project Review Committee – Certification of public bodies

- 94 i. Co-chair Schacht shared his screen to show a word document with the RCW  
95 language along with revisions and comments, noting a sentence added to  
96 subsection (2) suggested by Aleanna Kondelis and picked up by OMWBE as  
97 being worth considering.
- 98 ii. Aleanna Kondelis explained the added sentence was to create consistent  
99 language to hold same criteria for owners in their selection process.
- 100 iii. Aleanna Kondelis summarized her comments on subsection (2)(b), with no  
101 additional language being added.
- 102 iv. Olivia Yang is concerned about the clarity and implications this has on other less  
103 diverse areas in Washington, not opposing inclusion, but acknowledging  
104 performance looks different in different areas of the state.
- 105 v. Brenda Nnambi acknowledged the benefits of this section and wants public  
106 agencies who have not met their goals to be asked to demonstrate what efforts  
107 they plan to take to meet their goals.
- 108 vi. Rebecca Keith mentioned in the Design-build statute solicitation would include  
109 past performance on inclusion to the extent permitted by law. While we can't  
110 mandate inclusion goals, there could be concerns from public owners to what  
111 extent they're permitted by law, and when could certifications or project  
112 approvals be denied on that basis.
- 113 vii. Jerry Vanderwood expressed concerned about adding new criteria for approval  
114 by the Project Review Committee (PRC) because this decision is about  
115 qualifications and alternative procurement is already in the public's interest,  
116 noting the requirements could pit against each other.
- 117 viii. Bob Armstead agreed with Aleanna's recommendations. He also expressed  
118 concern they have been waiting on data to see if alternative practices are  
119 beneficial to the state.
- 120 ix. Janice Zahn noted they added a question a year ago in project applications for  
121 GCCM Design-build on outreach and WMBE participation but wants to consider  
122 bringing them into the statute.
- 123 x. Aleanna Kondelis reminded the group that this language is not asking for past  
124 performance, but for internal controls and approach.
- 125 f. Item 7, RCW 39.10.380 – General contractor/construction manager procedure –  
126 subcontracts bidding procedure
- 127 i. Co-chair van der Lugt explained subsection (1) is outdated and there are other  
128 publications that can be used besides a newspaper.
- 129 ii. Aleanna Kondelis added the update is also to include this requirement  
130 throughout RCW 39.10.
- 131 g. Item 8, RCW 39.10.380 – General contractor/construction manager procedure –  
132 subcontracts bidding procedure
- 133 i. Co-chair van der Lugt reiterated these comments are about minority and women  
134 participation, feeling the more they're stated in statutes the more normalized it  
135 will be.
- 136 ii. Co-chair Schacht shared subsection (1), explaining what is being proposed ties  
137 the value of unbundling to diverse business inclusion.
- 138 h. Item 9, RCW 39.10.380 – General contractor/construction manager procedure –  
139 subcontracts bidding procedure
- 140 i. Co-chair Schacht explained this section was also about bundling/unbundling  
141 adding on to the same comment as the previous item of discussion.
- 142 i. Item 10, RCW 39.10.385 – General contractor/construction manager procedure –  
143 Alternative subcontractor selection process

- 144 i. Co-chair Schacht reiterated comments on newspapers not being the only form of  
145 communication these days.
- 146 j. Item 11, RCW 39.10.400 – General contractor/construction manager procedure – Prebid  
147 determination of subcontractor eligibility
- 148 i. Joanna Eide explained they didn't offer language, but the comments show  
149 desired changes.
- 150 ii. Scott Middleton mentioned the GCCM Committee and Reauthorization  
151 Committee has a requirement for public hearing notices and bid notices to be  
152 published in the same publications. He raised the challenge of who would  
153 manage that and what mediums they would use in addition to the language in the  
154 RCW.
- 155 iii. Irene Reyes shared her experience on bids and has encountered construction  
156 bids to be restrictive posting on the Journal of Commerce since there are other  
157 avenues to take that don't have to be cost-incentivized.
- 158 iv. Co-chair van der Lugt confirmed we aren't asking to remove the newspaper  
159 element but to add to it as it's outdated.
- 160 k. Item 12, RCW 39.10.430 – Job order procedure – Contract award process
- 161 i. Aleanna Kondelis mentioned this isn't the first time this language about soliciting  
162 proposals from certified minority or women contractors comes up, it's also the  
163 proposal to add similar encouragement to use the direct fee in all three delivery  
164 types, if mentioned.
- 165 l. Item 13, RCW 39.10.460 (3) – Job order procedure – Required information
- 166 i. Co-chair van der Lugt wanted to add "including whether those subcontractors  
167 were certified small minority, women, or veteran owned businesses" to the  
168 statute.
- 169 ii. Janice Zahn and others mentioned certified and self-identified WMBE businesses  
170 are utilized. She asked for clarity around the language not precluding them from  
171 reaching out to self-identified WMBEs, but noting they're not considered for  
172 counting purposes.
- 173 iii. Co-chair van der Lugt clarified this isn't precluding from reporting on both  
174 certified and self-identified, they are focusing on certified firms.
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- 176 **8. Frank Lemos email re: reauthorization.** Rebecca Keith explained she reached out to Frank  
177 Lemos who followed up with items Minority Business Advisory Council (MBAC) is looking for in  
178 reauthorization.
- 179 a. Co-chair Schacht read the first suggestion outlined in the email and asked for comments.
- 180 i. Aleanna Kondelis explained her theme regarding statutory clarity around owners  
181 applying for certifications is like this comment.
- 182 ii. Co-chair Schacht asked if this information exists for state-funded capital projects.  
183 Aleanna Kondelis shared universities report on subcontractor utilization of state-  
184 certified firms annually, and that number is provided and required.
- 185 iii. Bill Frare said he supports reporting but is concerned if asking for past  
186 performance reporting during the solicitation will result in bid protests.
- 187 iv. Bob Armstead expressed that they should be required to report their existing  
188 plans and past performance so they can collect that data.
- 189 v. Co-chair van der Lugt wants to be clear they can only use the reporting for data  
190 and not evaluation.
- 191 vi. Aleanna Kondelis mentioned the qualification-based selection accounts for past  
192 performance and voluntary goals and has for a number of years. They enhance  
193 the language in Design-build on HB 1295, and that they are now suggesting that

194 be applied to both job order contracting and GCCM qualifications-based  
195 selections of primes. Aleanna expressed confusion on qualification-based  
196 selection.

197 vii. Bill Frare shared that DES included that in the selection criteria requirements  
198 around the time of the disparity study, and was advised by the AG's office that  
199 that language needed to be pulled back because it went too far.

200 viii. Rebecca Keith confirmed the HB 1295 language was carried into the GCCM  
201 statute; the AG's advice was adding "to the extent of the law".

202 ix. Co-chair Schacht showed the statute language showing past performance of  
203 inclusion with certified firms is a required evaluation factor.

204 x. Bill Frare clarified that adding the language "to the extent permitted by law"  
205 reconciled the concerns between this language and the language of I 200. He  
206 also mentioned the need for legal review.

207 b. Co-chair Schacht read the second suggestion, asking if they should include in the statute  
208 that public bodies be the ones to set the goals and the contractors have the responsibility  
209 to meet those goals by the extent of the law.

210 i. Aleanna Kondelis stated it's a combination, and that the statute allows for both to  
211 set goals.

212 ii. Bill Frare mentioned many of the requirements of the agencies are passed along  
213 to prime contractors.

214 c. Co-chair Schacht read the third recommendation on a requirement to report post-project  
215 performance of state certified firms detailed enough so the OMWBE can audit them.

216 i. Aleanna Kondelis believes this will be addressed in the B2Gnow! reporting  
217 category. Sarah Erdmann added that it will enforce agencies and educational  
218 institutions so political subdivision will not be included in our data collection.

219 ii. Janice Zahn added that there has been a lot of discussion about what kind of role  
220 CPARB has in this context, and if they collect data from other sources or for  
221 policy making.

222 iii. Olivia Yang wanted to go back to the second comment, noting she's seen  
223 different layers of effort in bidding and awarding. She suggests there needs to be  
224 a more nuanced look at what part of the inclusion we are talking about that may  
225 drive reporting.

226 iv. Andy Thompson noted the data committee is looking for CPARB to investigate  
227 opportunities to address information available from B2Gnow!

228 v. Bob Armstead mentioned his interpretation of the intent is to have the data  
229 they've been unable to get, noting the bottom line is to get the participation and  
230 inclusion data.

231 d. Co-chair Schacht read the next set of recommendations regarding inclusion priorities,  
232 starting with Frank Lemos's comment about a sunset approach for the statute.

233 i. Rebecca Keith noted it will be 10 years before the statute sunsets and is  
234 reauthorized. Rebecca notified Frank Lemos of this and is waiting to hear back.

235 e. Co-chair Schacht read the next comment on MBACs' priorities for reporting on cost and  
236 prime meeting the project deadlines.

237 i. Co-chair Schacht added that any information collected is related to an application  
238 that is made for project approval or certification, and that there is additional  
239 reporting for recertification.

240 ii. Janice Zahn said there is data required to be submitted in the application for any  
241 owner who wants to be certified, recertified, or receive approval for a project. The  
242 certification asks for five years of data to report on the projects as well as  
243 documenting cost overruns or schedule delays.

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- iii. Co-chair Schacht clarified that for public bodies to use Design-build and GCCM they must go through the process of applying to the Project Review Committee, and show understanding of the statute. If a public body frequently uses Design-build or GCCM and wants to be certified, they will go to the Project Review Committee with five years of project experience to apply for a three year certification.
  - iv. Nancy Deakins stated all the applications are available on the Project Review Committee website, and that the data is not aggregated.
  - v. Rebecca Keith shared her understanding that this isn't an inclusion intention, this is more difficult because it's about a difference in viewpoint over what CPARB's role and local government accountability should be.
  - vi. Bob Armstead added that he agrees but notes that cost is also an important factor here. There are comments on the benefit of alternative construction processes, but there is no data to support its effectiveness in terms of cost. If data is not required, there never will be any data for them to use.
  - vii. Co-chair van der Lugt added that OMWBE has funding for one of the three phases, which includes six agencies. They are asking for additional funding.
  - viii. Rebecca Keith added a final note that CPARB and Public Works underwent an audit that concluded that alternative public works were in the public's interest. The challenge is that it's a qualitative analysis.

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- 9. Aleanna Kondelis' review of proposed reauthorization legislation.** Aleanna revisited the CPARB Reauthorization Bill comments, wanting to log this conversation to be able to revisit this work and have it continued. Her initial comments are themed around increasing owner accountability and demonstration of performance as a statutory requirement.
- a. Aleanna Kondelis informed the group that they have already reviewed the comments regarding member vacancies on CPARB and PRC, noting most of these comments regard what should be in their applications and demonstration materials.
  - b. Co-chair van der Lugt mentioned on RCW 39.10.220 OMWBE's position is that they want this language to specifically state it's for an WMBE representative.
  - c. Item 25, RCW 39.10320 – Design-build procedure – Project management and contracting requirements
    - i. Aleanna Kondelis skipped to line item 25, noting incentives and disincentives are commonly used, and wants to add diverse business inclusion to the extent permitted by law.
  - d. Item 26, RCW 39.10.330 – Design-build contract award process
    - i. Aleanna Kondelis explained her comment to replace “the outreach plan” with “approach” as it is more relevant and could include more strategies. Co-chair van der Lugt and Aleanna Kondelis explained that the plan is less important than the process. Using “approach” gives more flexibility and is more easily understood than an outreach plan.
    - ii. Janice Zahn wants to make sure we also align common terminology on types of businesses, noting that items 26 and 27 use different language. Co-chair Schacht and Aleanna Kondelis agreed, wanting to see consistency in all places.
  - e. Aleanna Kondelis skimmed through the remaining items reiterating the themes of contractors demonstrating past performance and their approach to meeting goals, using consistent language, and incentivizing utilization of WMBEs. There were no further comments from the group.

- 293
- 10. Open discussion.** Co-chair Schacht asked if there were any comments on today's discussion.



- 294 a. Many expressed their appreciation and showed support of the recommendations and  
295 discussions today.
- 296 b. Dan Seydel expressed a concern that GCCM has different challenges with general  
297 contractors and agencies meeting inclusion. He believes an increase in WMBEs be part  
298 of the value set in justifying alternative works. Owners should include MWBE rationale in  
299 applying to PRC for use of alternative project delivery method.
- 300 c. Andy Thompson recognized the desire for information surrounding the disparity studies  
301 and believes OMWBE and Labor and Industries are moving in that direction, noting  
302 CPARB has a role in providing expediency for the information.
- 303 d. Janice Zahn noted there has been many years of discussion on data collection and  
304 reporting, and CPARB's role. We need to keep working on explaining it in parallel with  
305 our efforts here. She highlighted the theme of consistent language.
- 306 e. Brenda Nnambi mentioned an early comment of someone not receiving information after  
307 requesting it. It starts with CPARB getting permission to do these projects and making  
308 sure everyone is doing the work correctly. She believes they are moving in the right  
309 direction after I 200 came into effect.
- 310 f. Santosh Kuruvilla suggested to be prepared for the passing and implementation of SB  
311 5457. There is a qualitative aspect of the bill that could affect this discussion.
- 312 g. Bob Armstead recognizes the work that has been done and has concerns about the  
313 reauthorization of CPARB because the data being requested is used to inform the  
314 reauthorization process.
- 315 h. Irene Reyes wants to include the definitions of inclusion and diverse businesses so there  
316 is consensus.

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318 **11. Wrap up.** Rebecca Keith explained that this committee's goal is to make recommendations to the  
319 Reauthorization Committee, and then to the board. She asked the Reauthorization Committee to  
320 hold Nov. 12 to hear the recommendations from this committee. The board will then meet on Nov.  
321 19 to determine what will be included. She's hoping to connect the dots between this group and  
322 best practices and GCCM. Co-chair Schacht summarized the next steps including:

- 323 a. Action items— Co-chairs Schacht and van der Lugt will determine the best way to share  
324 these recommendations with the Reauthorization Committee, noting the need to vet for  
325 consistent language and have the AG review the language to ensure it reaches its intent.
- 326 i. Co-chair Schacht made a motion to ask Co-chair van der Lugt and Aleanna  
327 Kondelis to work with each other and/or others in consolidating the  
328 recommendations to deliver a single document to the Reauthorization  
329 Committee, Second (Irene Reyes), Passed unanimously.
- 330 b. Next meeting—Reauthorization Committee meeting on Nov. 12, 2020.

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332 **12. Adjourn.** The committee M/S/A to adjourn the meeting at 2 p.m.

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