

DRAFT - CPARB Reauthorization Committee Meeting Minutes

September 9, 2019 1pm-4pm

Columbia Center, Suite 2050, Seattle, Washington

In attendance:

Chair: Rebecca Keith (WA Cities)

Vice- Chair: Robynne Thaxton (Private Industry, phone)

Members: Loren Armstrong (Port, phone), Becky Blankenship (Architects, phone), Neil Hartman (WA Building Trades, phone), Janet Jansen (DES, phone), Santosh Kuruvilla (Engineers, phone), Scott Middleton (Specialty Contractors), Mike Pellitteri (General Contractors), Olivia Yang (Higher Ed)

Guests: Nancy Deakins (DES), Bryan Eppler (University Mechanical Contractors) Mike Hinson (Harris), Dave Johnson (Hoffman Construction), Ed Kommers (MCA of WWA), Justin Pritchett (Auburn Mechanical), Bob Maruska (Port, phone), Kelly Peterson (Holmberg), Daniel Seydel (Platinum Group, phone), Andy Thompson (CPARB – General Contractors), Walter Schact (CPARB Chair - Architects)

Meeting convenes at 1:04pm.

CPARB committee coordination, process and schedule: Walter Schact

- Walter discusses the MCAWW proposals to modify statute for alternative procurement of mechanical and electrical contractors.
 - Walter notes that he was not previously tracking the Reauthorization Committee plan to have MCA proposals at this meeting, but the GCCM committee is evaluating issues surrounding GCCM procurement, and mechanical and electrical fit squarely into this work.
 - While anyone can talk about any issue, in his view CPARB's intent for the GCCM committee was to have issues regarding GCCM go through the GCCM committee before elevating to the reauthorization committee.
 - If anyone cannot find satisfaction in the appropriate committee, they are welcome to escalate all the way up to the legislature, but a clear process will help us get input from all stakeholders.
 - In working with 1295, we found this process is the best way to get a consensus-based decision.
- Rebecca: There is a chicken/egg problem in terms of what comes first for GCCM, so it's important to revisit the timeline to ensure we're doing everything in a way that allows for input.
- Ed: We have been talking about this process since the Best Practices Committee days.
 - M/E contractors association brought concerns about this process years ago.
 - The best practices document has had limited success for the process.
 - There is an opportunity to make changes to 39.10.385 and M/E contractors brought forth these concerns in a letter to Walter and advocated for these concerns to be addressed at the reauthorization level.

- The MCA issues have been on the Reauthorization Committee agenda for quite some time. He knows that this will be an ongoing discussion, possibly up to the Legislature in 2021, and he believes that this is crucial to the Reauthorization Committee and to their support, up to deciding if there should be a sunset.
- Ed expresses concern and disappointment with the process.
- Rebecca asks for more clarification on the concerns because Reauthorization Committee must approve any changes, but realistically, both Reauthorization Committee and GCCM Committee both need to give input on proposed changes.
- Walter said he thinks it is appropriate for MCAWW to present provided they also present at GCCM.
- Ed says that is a very reasonable request.
- Andy notes that there is an intense agenda and an intense timeline, and it is important to move forward.

MCAWW proposals for RCW 39.10.85

Proposals presented by MCA of Western Washington, working closely with NECA/Barry Sherman. Their contractors have the same level of questions and support.

MCAWW issues are with fairness and taxpayer interest.

MCAWW states they are suggesting changes that are best practices for public bodies.

Proposal 7, 7a and 7b: Authority to use the procedure.

Summary provided, see proposals provided at meeting and attached to minutes.

7: Limit use of GCCM to public bodies certified under 39.10.270

Rationale: Many issues with GCCM project-approved public owners who may lack the experience or motivation to follow the letter and spirit of RCW 39.10.385.

7a: limit to public bodies that are certified under 39.10.270. Public bodies certified on a project basis may go before PRC to use the selection process. The language involves changes to the PRC authority as well.

7b: Would prevent school districts from using MCCM and ECCM without the approval of the PRC.

Discussion:

- Olivia: Which of the three do you prefer?
 - Ed answers 7a – certified. Because they have already reached some level of competency.
- Olivia: Selection prior design development?
 - Ed answers - this section was created to get firms on board early.
- Andy: MCCM and ECCM – reaching out to ECCM folks will be very helpful to learn their position on the statute.
 - Ed says he cannot represent NECA but notes he has been communicating with them and has a high degree of confidence that they support these changes.

- Walter comments with the GCCM committee we are looking closely at GCCM procurement. Notes GCCM has fallen out of favor due to the difficulty of emulating the kind of project delivery you can get from design-build. Notes architects are interested in re-invigorating GCCM. Walter notes that on some projects the GCCM comes too late and E and M come too late. Supports selection of E and M. Concerned about limiting use of MCCM and ECCM to only certified agencies, since school districts are prominent users of GCCM and would benefit from earlier subcontractor involvement.
- Dave: As a general contractor who has used ECCM a lot, he appreciates having that tool in their tool belt. Would not want to throw the baby out with the bath water just because some people cannot use it as effectively. Challenges with PRC committee review because as a GC, he is not always sure if he wants to procure ECCM or MCCM until getting on board and evaluating project. It's a great tool in some applications but not in all applications.
- Walter: Would this proposal require the use of ECCM and MCCM if PRC approved?
 - Ed: No, it's a choice and an option. But he is unsympathetic increasingly to public bodies not knowing if they should use ECCM or MCCM in advance. What is missing is a higher bar for the public body. Is in favor of the hearing process.
- Brian: Thinking through being on the PRC – when public owners are asked do you intend to use ECCM or MCCM, answer is usually emphatically yes or no. Owners already know what they are intending – they add the additional step – do they want to use it, and are they qualified to use it. PRC uses a prescriptive yes/no criteria.
- Olivia: Mindset from low bid to alternative procurement can be very complicated. It's important to have the right tools and the right users. That's why it's so important to have training – there is no silver bullet.
- Ed: thought through the same issues back when they established PRC. Agrees that the PRC judging should be an internal policy rather than the statute. Has only thought a bit about the criteria but thinks it should be knowledge of the statute and how it works.
- Rebecca: Noting that 7b specifies school districts can you share your thoughts?
 - Ed: The largest number of issues are with school districts with one-hit projects. School districts often misunderstand the process. Going back to the statute originally school districts did not have authority, it was two times ago that they were granted the authority.
 - Scott: K-12 can abuse the public hearing process (even with certified public bodies) by not bringing forth criteria and decision making with no documentation.
- Mike: How much influence does the GCCM have on the selection of the ECCM MCCM?
 - Dave: When putting together a selection committee, 2-3 are contractor, 1-2 are usually owner. With design committee – it is generally input but not necessarily scoring
- Dan: 1) A challenge as a smaller business with a great deal of experience – would like to see language for firms that do not have a great deal of experience to compete in this area; 2) Timing for when ECCM or MCCM is brought on – if we were to create any type of value it would be by getting the GCCM in sooner; 3) if we could establish record keeping sooner it would be good – with 7b it would be good to have specific criteria all agencies could follow instead of just choosing one.

Proposal 9 – Best interest of the public

Summary provided, see proposal provided at meeting and attached to minutes.

Explanation: It is in the best interest of the public to having timing as early as possible.

Language is from the principles that came out of the CPARB E/MCCM committee – taking language out of principles and putting into the statute. Show that factors have been considered to show that all is in best interest of the public.

Discussion:

- Brian: Points out importance of looking into criteria of selection specific to selection.
- Dave: Points out that in some cases it may be the chickens guarding the henhouse.
- Ed: If the description of the hearing process is more robust and public body is still not meeting it, they would protest and see where it lands.
- Walter: Appreciating that almost all is in statute and there are only a few modifications; points out the procurement process itself does not undertake this level of scrutiny. How does this line up with the selection of a procurement method to start with? There are anomalies with the statute.

Proposal 1: Public Hearing Notification

Summary, see proposal provided at meeting and attached to minutes

Summary Explanation:

- 1) Place public notice of the hearing in the same legal newspaper you publish a call for proposals.
- 2) Asks for RFP to be available at the same time as the public hearing

Questions:

- Olivia: Have you gotten push back?
 - Ed: Yes, people have said they are ready for the notice but need more time for the RFP.
 - Dave notes that as a general contractor it can be difficult to get things together quickly.
- Brian: Is there is a best practice RFP?
 - Ed says no, it was difficult to get all GCCMs and public bodies on the same page.
- Olivia: It's important to pick a GCCM before selecting EC/MCCM because they have to work together.
- Rebecca: If you take away DB and GCCM – why do the sub trades feel they are worse off in this model?
 - Ed: The problem with procurement is there is one winner and a whole bunch of losers. Notes they would rather go through fair low bid than an unfair GCCM process.
 - Brian agrees.
 - Mike: one thing about a rip and read is you know then and there where all the cards fell.
 - Walter, Rebecca, Mike have discussion on the nuance of this statement.
- Walter: Architects agree that this part of the statute is to leverage experience to inform design decision making.

Proposal 10: Evaluation Factors

Summary see proposal provided at meeting and attached to minutes.

Rationale: Finds some public bodies are being not as clear as could be in evaluating proposals and requesting details to demonstrate success. This narrows focus of evaluation criteria to information about previous projects similar in size, scope and complexity.

Proposal 11: Project Descriptions

Rationale: RFQ should give additional and detailed descriptions about the unique aspects, challenges and complexities of proposals.

Proposal 2, 2a: Interviews

Rationale: There should be more objectivity in how interviews are scored and used, including criteria. Either say interviews may not be used as part of selection process or clarify that there should be clear criteria.

- Robynne: Interviews are invaluable for getting to the real interaction. Has questions about what would happen if there's questions outside the initial scope of criteria.
- Dave: Agrees that interviews are important to assess in-person collaboration. Also says there should be criteria and debriefing collaboration.
- Dan: Agrees with comments about value of interviews.
- Walter: This is another example of why we need to coordinate what we're doing with the statute as a whole. Notes if we get too exclusive with past experience criteria (like in example ten) of only selecting people based on work we've performed before, we could cut out new contractors.
 - Ed counters that this criteria allows proposers to be creative and explain how they are qualified.
 - Walter states that as most public owners are linear thinkers this could still be an issue.
 - Scott restates that narrowing the criteria will help newer proposers.
- Walter: Why are we talking about interviews here when we have not talked about them in any other part of the statute? Why be more specific with ECCM and MCCM?
- Continued discussion with a number of people weighing in about specific criteria on interview process.
- Rebecca: Notes that we do have agreement that there is value to keeping the interview process.

Proposal 3: SGCs and Fee

Summary, see proposal provided at meeting and attached to minutes,

Rationale:

There should be clear definitions of the SGC and fee components so everyone is on the same page at the beginning of the procurement process.

- Several comments clarifying the ask.

Proposal 6: Cumulative Scoring

Summary see proposal provided at meeting and attached to minutes.

Rationale: They don't want a clean slate after RFQs - all components should be added together.

- Ed's comments – it will give room to give extra for value and count value as one part of the whole equation.

Proposal 5: Bid Bonds

Summary see proposal provided at meeting and attached to minutes.

Rationale: A bid bond to obtain a bid fee makes no sense.

- Brian notes the bond is probably not enforceable anyway because not bid to cover. Several others agree.

Proposal 4: Written Final Determination

Summary see proposal provided at meeting and attached to minutes.

Rationale: For public comment to be meaningful there needs to be a response to these constructive comments.

- Justin notes that his firm may have made a different determination of pursuit had information been given at the time of the hearing.

Proposal 8: Protests

Summary see proposal provided at meeting and attached to minutes.

Rationale: Should be clear and respond to each of the points in the proposal.

Meeting breaks.

3:34 meeting comes back to order.

Meeting minute corrections:

- In July 29 minutes: Andy: RCW 39.10.240 - change "squishy" to "may need to clarify language through statutory change."
- Scott notes there is a detailed memo in the AG's office.
- **MOTION TO APPROVE MINUTES WITH CORRECTIONS:** Olivia moves, Scott seconds. All approve.

Committee coordination:

- Rebecca: It is time to re-look at schedule and GCCM provisions with revised timeline with reauthorization statute by January.
- Rebecca: There is concern about coordination with different committees.
- Scott: Discusses the progress of the GCCM committee. He is concerned about timing with the progress of the GCCM committee with GCCM related proposals for the reauthorization bill. Scott

states we should talk about subcontract proposals sooner than other issues so that process can be vetted sufficiently and with enough time to make the reauthorization bill.

- Mike: We should address the items on the table that are hot items rather than going through the bill line by line.
- Rebecca: JOC and DB did go through section by section. Olivia suggests we should find the deal killers.
- Rebecca: There needs to be a balance between GCCM expertise and the process as a whole – makes a proposal ask GCCM to look at MCAWW proposals and subcontracting first and then go through in more detail.
- Olivia states there is an opportunity to fix the Act.
- Walter: Suggests that reauthorization committee should focus on the rest of the process beyond GCCM and give GCCM the time to move their process forward.
- Olivia and Rebecca discuss if it is feasible to move forward with the timeline to have CPARB looking at statute in January rather than May and voting on it September.
- Rebecca makes a proposal: Reauthorization Committee ask GCCM committee to look at MCAWW proposals and to move up sub-contracting discuss.
- Mike suggests that GCCM meet **twice a week, Reauthorization meet once a week.**
- Andy notes that GCCM is looking to expand .385 to other trades at same time as Reauthorization Committee is looking to revise .385.
- Olivia suggests that if we figure out what might work for one trade, we could add that to other trades.
- Walter says there is more than one strategy. Suggests that Reauthorization should make presentations at Board meetings in segmented parts through May. Once in May, GCCM can present.
- Next meeting: Review conflict of interest items, PRC provisions, CPARB membership provisions (not GCCM)
- If GCCM could use our time to add another meeting to its calendar, we may cancel the meeting and yield the time to GCCM
- October meetings: Robynne and Rebecca will come up with proposed meeting topics for those meetings (JOC, business diversity, membership)

Meeting adjourns 4:08pm.

Minutes prepared by Jesse Gilliam.