

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Via Zoom

SPECIAL Meeting Minutes - DRAFT

March 30, 2021

MEMBERS PRESENT	REPRESENTING	MEMBERS ABSENT	REPRESENTING
Rebecca Keith (<i>Chair</i>)	Cities	Barbara Piilani Benz	Insurance/Surety Industry
Andrew Thompson (<i>Vice Chair</i>)	General Contractors	Senator Bob Hasegawa	Senate (D)
Garett Buckingham	Public Hospital Districts	Matthew Hepner	Construction Trades Labor
Bill Dobyms	General Contractors	Rep. Mike Steele	House (R)
Bill Frare	State Government	Jane Wall	Counties
Santosh Kuruvilla	Engineers	Senator Judy Warnick	Senate (R)
Karen Mooseker	School Districts	<i>Vacant</i>	Const. Trades Labor
Irene Reyes	Private Industry		
John Salinas II	Specialty Contractors		
Walter Schacht	Architects		
Mike Shinn	Specialty Contractors		
Rep. Steve Tharinger	House (D)		
Robynne Thaxton	Private Industry		
Lisa van der Lugt	OMWBE		
Olivia Yang (for Mike McCormick)	Higher Education		
Janice Zahn	Ports		

Staff & Guests are listed on the last page

WELCOME & BOARD MEMBER INTRODUCTIONS

Chair Rebecca Keith called the special Capital Projects Advisory Review Board (CPARB) meeting via Zoom to order at 12:05 p.m.

A meeting quorum was attained.

SPECIAL MEETING PURPOSE

Chair Keith reported the purpose of the special meeting is to discuss and possibly take action on CPARB's position for a proposed amendment to SB 5032. The amendment was published with the meeting notice.

Members provided self-introduction.

Chair Keith invited introductory comments from Senator Tharinger.

Senator Tharinger reported he is interested in receiving feedback from members on the amendment presented by Representative Santos on equity and inclusion for minority and women contractors. He acknowledged the extensive time the Board invested in the reauthorization bill and efforts last fall on the issues addressed by the amendment. Executive action is scheduled on the bill on March 31, 2021. The issue is whether a portion or the entire amendment should be included in the bill when executive action moves the bill out of the Capital Budget Committee. He acknowledged the Board's tremendous amount of time developing language in the bill while acknowledging the heightened interest in equity and inclusion by the Board, Legislature, and the nation. He welcomed comments from the Board on the proposed amendments to Section 20 of SB 5032.

Chair Keith thanked Representative Tharinger for taking time to attend the meeting and sharing information on the amendment. When she became aware of the proposed amendment, she recognized that the intent and the values of the amendment clearly align with the Board's goals of improving inclusion of women and minority businesses with the understanding that there is always room for improvement. The intent of the special meeting is to provide an opportunity for the Board to consider a position on the proposed amendment. She asked the Board to review the amendment and avoid focusing on the language as opposed to whether the language reflects intended values the Board is working towards to achieve. She recommended focusing on unintended impacts or other concerns surrounding the provisions. She asked the Board to consider whether the Board, as an advisory Board, would like to communicate its position.

Representative Tharinger thanked Chair Keith for chairing the meeting to review the amendment and for fielding many questions the amendment has generated.

INVITATION FOR PUBLIC COMMENTS

Vice Chair Thompson reviewed the format for providing comments and invited comments.

Bob Armstead thanked the Board for scheduling the meeting and including a public comment segment. He has participated in the process, and although he has not attended all committee meetings, he has attended many and has consistently conveyed his position. For him, at this point, the bill is discriminatory, it is arrogant, and it is self-serving. He encouraged all Board members and legislators who will be voting on the bill to read the document and take the time to listen (review) to the minutes of some of the committee and subcommittee meetings to understand the reasons for his comments. All the proposed changes were submitted by committee members or Board members representing various industries or agencies and those changes are preceded by “shall.” Language for the limited number of changes that are part of inclusion (provisions) are “encouraged.” The fact that one is “shall” and the other is “encourage” helps to understand some of his concern and displeasure with the bill. He supports the amendments by Representative Santos; however, it is just the beginning. This state has a history of not including and discriminating against minority and women contractors. It is evident by all the disparity studies of approximately eight that have been conducted in the state over the last 10 years. He cited the way the committee went about selecting who would represent the community. He supports all the changes recommended for improvements for OMWBE, but OMWBE is a state agency and is not the community. The committee and subcommittees purposely and intentionally did not include any of the recommendations put forward by anyone other than OMWBE. The committee also did not include all OMWBE recommendations. He does not want to take the Board’s time for public comment, but as he has stated in other meetings, this is just not the way that these types of processes should be conducted. The committee and the subcommittee have intentionally removed some language and not included other language that would enhance the position of Washington State to receive a fair share of the infrastructure and transportation bills coming forward and that will harm all residents of the state of Washington. Those are issues that were not given proper consideration during the process and some were outright rejected during the process. He encouraged all members and state legislators to look at what is in front of them and consider the processes utilized to get the bill to this point, what was rejected, and offers and suggestions that were offered so that the state could be more inclusive. It is easy to say that there is no chance that the state would be impacted by the infrastructure and transportation bills because nothing is going to happen. That was the thought before WSDOT had its noncompliance report issued against the agency. The Biden Administration has pledged to look at all of the requirements for providing funding to states with the infrastructure bill and the transportation bill. Things like Title VI and other factors count against the state. The federal process requires that points be allocated to states to determine the level of funding for those bills. He thanked the Board for its time.

Vice Chair Thompson asked Mr. Armstead whether he had an opportunity to review Section 20 of SB 5032.

Mr. Armstead said he is uncertain as to what is included in Section 20.

Vice Chair Thompson explained that Section 20 pertains to coordination and consulting to establish best practices as a way of acknowledging that further work needs to be completed by the Board.

Mr. Armstead affirmed he is familiar with the provisions and supports the language; however, as he has conveyed during committee and subcommittee meetings during the process, he has been hearing the same thing for the last 11 years that has been attending CPARB meetings. CPARB has been in existence since 2005 and it is just past time to wait.

SPECIAL MEETING TOPIC

Discuss and Possibly Take Action Regarding CPARB’s Position on the Proposed Amendment to SB 5032

Chair Keith thanked DES and Talia Baker for support to the Board and scheduling a special meeting.

Chair Keith invited feedback on the suggested review process of the proposed amendment. She clarified that the proposed review of the amendment is not intended to be a line-by-line review but a review of the proposed changes.

Vice Chair Thompson noted that as a representative of the general contractor sector, he is interested in the OMWBE representative's opinion of the proposed amendment.

Lisa van der Lugt advised that she has reviewed the amendment. She referred to comments offered by Mr. Armstead because it is important Mr. Armstead is aware that his remarks are considered. He is right, as things have been bumpy in the way the Board has handled some of the issues. There is been much discomfort. However, what she has learned through discomfort is also the opportunity to learn. She believes there has been learning over the last several months. She clarified that OMWBE does not represent all minority and women-owned firms in the state, which why she believes it is important to have more people involved in decision-making and discussions. Based on her understanding of the amendment and as she conveyed to the Chair, the Board completed much work on the issues and plans to continue the focus. She supports the changes proposed by Representative Santos. Many of the changes make sense. In fact, she had wished the Board had considered some of them earlier. She is not opposed to the amendment acknowledging that she is not familiar with some of the provisions; however, Chair Keith plans to address those areas. That is the position of the agency at this time.

Vice Chair Thompson inquired about the possibility of any of the changes requiring any financial notes because based on his review of available disparity reports, many of the provisions may face hurdles because costs will be entailed and financial support will be necessary to implement the recommendations in the disparity report.

Ms. van der Lugt advised that she is unaware of any fiscal note.

Vice Chair Thompson noted that the Board as a group of volunteers sometimes navigates and provides advice that exceeds its authority and funding capability. The Board could inadvertently focus on something that might require funds to implement.

Chair Keith advised that the comment speaks to the review process of the amendment, as the value of the Board has been to speak as a voice of impacted stakeholders. The Board has weathered some difficult lessons and one of the reasons for the Board including language in Section 20 was to work with other stakeholders in addition to OMWBE. Rather than pursuing an unstructured conversation, it would be helpful to address member concerns or unintended impacts of any of the proposed provisions that the Board should address.

Janis Zahn agreed with the Chair's approach, as it would be helpful to review the amendment and receive feedback from members. She asked whether the intent of the review is to collect feedback from members on the proposed amendment to provide to Representative Tharinger.

Chair Keith affirmed that would be the approach. However, the Board could elect to offer no comments, elect to support the amendment, or support the amendments with comments. She suggested proceeding with the review as it would provide some insight as to the next step.

Robynne Thaxton commented on the tremendous effort and time by the Reauthorization Committee and stakeholders. The committee worked on the bill for over 18 months before receiving any comments on the issues of inclusion and diversity. The committee worked very hard to incorporate everything possible. She noted that there were several factual inaccuracies in Mr. Armstead's comments. She is very familiar with the statute and works with the statute daily. Mr. Armstead noted that each time when there is a reference to OMWBE it speaks to "encourage" rather than "shall." That is not correct. Public agencies are required to look at and examine a proposer's history with OMWBE certified businesses in all alternative delivery methods. That is true in Design-Build and that requirement has been included in the GC/CM and JOC statutes. Mr. Armstead noted that no recommendations were included, which is inaccurate as the committee included many recommendations. However, it was difficult to determine which recommendations should be statute provisions versus best practices. The committee made a valiant effort to include as many as possible. Although Ms. van der Lugt and OMWBE do not represent all minority businesses, the committee worked very closely and pursued major efforts to include as much as possible. She does not recall Mr. Armstead attending any of the committee meetings and apologized if she missed his attendance. It is important for Mr. Armstead to know the committee worked diligently on the proposed changes with the understanding the Board would continue the work. The Board's review of the amendment will likely

identify some unintended consequences in the placement of certain provisions. She supported the Board's review of the proposed changes in the amendment.

Mr. Armstead said that he planned not to offer any further comments during the remaining part of the meeting; however, Ms. Thaxton should understand that he has been part of the process for 11 years and he understands what the committee has done and what has not been done. It is one thing to be on the side of not being individually, personally, and community affected by the issues and it is something else working with theory in process. He is appreciative of all of the time put forth by everyone, but stands by his statement. He is aware of OMWBE proposals and proposals by others and what is and what is not included in the document.

Chair Keith initiated the review of the proposed amendment. She added that it was unfortunate the amendment was not incorporated within the statute to provide a clearer context of the proposed changes. She cited the first change stating, "On page 4, line 10, after "contracting" insert, "including state and federal laws, rules, and best practices concerning public contracting for minority, women, and veteran-owned businesses and small businesses." That provision is included in the statute under the qualifications for membership on the Board. The issue was thoroughly discussed by the Reauthorization Committee. Ironically, several members of the women and minority business community expressed concerns about raising the bar for membership on the Board. The proposed language would change RCW 39.10.220 to reflect, "Members of the Board identified in (a) through (f) of this subsection must be knowledgeable or have experience in public works procurement and contracting, including state and federal laws, rules, and best practices concerning public contracting for minority, women, and veteran-owned businesses and small businesses." She invited comments or concerns.

Ms. Thaxton expressed similar concerns as conveyed during the committee's deliberations to ensure the Board is able to recruit members from various communities while ensuring they have the necessary background. It is important to have an open recruitment to the extent possible.

Ms. van der Lugt said the proposal is reflective of the Board's insufficient efforts for the Board Development Committee because it pertains to recruiting and onboarding. While she understands the struggle in the past, if the Board spent more time on recruitment and development it would be easier for the Board to seek talent as proposed in the amendment.

Ms. Zahn agreed with Ms. van der Lugt because it is an area where the Board has communicated that representation matters and that the Board should spend more efforts on the issue. The question is whether the Board Development Committee need more efforts first or should the intentionality be included in the statute to ensure the Board pursues steps. The Board spent several meetings discussing representation on CPARB and PRC and ensuring the Board is completing the difficult work of recruiting individuals who are knowledgeable and provide diverse representation. Both are important. The proposed amendment speaks to whether the Board should wait until Board development occurs or by accepting the change in statute, the provision would hold the Board accountable to achieve the goal.

Chair Keith noted that the change would apply to the Governor's appointees and the provision would be implemented by the Governor's Office.

The next proposed change pertains to page 4, line 25, inserting "The Board must reflect the gender, racial, ethnic, and geographic diversity of the state, including the interest of persons with disabilities." The proposal applies to the appointments by the Governor for Board membership.

The next proposed change is to RCW 39.10.220 and appears to enhance the intent of the prior changes.

John Salinas II asked for an explanation of the difference between "equity" and "equitable" in terms of participation. His intent is to ensure there is clarity between the two terms as "equity" versus "equitable participation by disadvantaged business enterprises" is a change that could have far-reaching effects.

Chair Keith replied that "equity" was proposed and included in the statute as part of the Board's recommended changes. Representative Santos has commented that "equity" need a definition. Chair Keith said she foresees best practices as

helpful to inform that, but believes Representative Santos is recommending equitable participation. Her role is not to provide legal advice to the Board, but she believes equitable participation can mean many things and the provision might be delved into through best practices.

Irene Reyes explained that she is very involved in the minority community and “equitable” is dealing fairly and equally with all concerned. Equity refers to the fact that different people have varying needs for support and assistance.

Chair Keith asked for feedback on any changes in the proposed amendment rather than conducting an item-by-item review.

Ms. Thaxton said she has comments pertaining to two changes within the amendment. The first is on page 7, line 18 pertaining to the requirement for the PRC to include a member representing the interests of disadvantaged business enterprises. Instead of including “to the extent reasonably practicable”, the proposed change deletes that section. One of the concerns by the committee was that PRC as a volunteer committee completes a substantial amount of work. The committee did not want to overburden members who represent disadvantaged businesses, as the burden would increase if all PRC panels required participation by members representing diverse businesses. The committee believed that adding, “to the extent reasonably practical” would help balance the interests without overburdening members as it might impact potential recruitment of members because of the workload. The second proposed change is specific to Design-Build.

Ms. van der Lugt asked whether the committee received those concerns directly from minority and women- owned business representatives on PRC. Ms. Thaxton said the concerns were conveyed by PRC members and she is unsure as to which positions those members represented.

Chair Keith offered that one way for the Board to address the issue is enabling PRC members to serve more than one industry sector. She noted that a comment received through the zoom chat function indicates that it is difficult to have someone representing diversity and inclusion on many PRC reviews as possible when only two PRC members represent the MWBE community.

Ms. Zahn noted that as a prior chair of PRC, the proposed change speaks to the Board considering a different approach. When considering representation on the PRC, the Board might consider whether there are members who could represent the voices of minority businesses who actively work with minority businesses. The proposed change may not mean relying on the two MWBE seats to participate in all panels, but ensuring PRC panel discussions include inclusion opportunities and access. As chair, she never received feedback from MWBE members that they did not want to participate on panels, as they understood the importance of participating on the panels. The question is how important is the proposed change to the Board and the Legislature. If it were determined to be important, the Board would likely explore ways to implement the change.

Ms. Reyes referred to the references of DBE and MWBE and requested clarification as to whether the acronyms are included in a definition of terms as they represent two different meanings. Chair Keith affirmed DBE is a definition under federal law. The state statute defines DBE as certified firm under OMWBE. The proposed change pertains to certified firms and each panel must include a member that is certified. She has no doubt that there would be some implementation challenges while also appreciative of Ms. Zahn’s comments.

Ms. Reyes pointed out the possibility of being a woman-owned disadvantaged business. It is not possible to interchange the two definitions. Under federal law, a disadvantaged business could be a women-owned business. However, under the state’s certification, the business must either be certified as minority women-owned or certified as a DBE, which is why the state certification includes two different categories. It is important for the Board to clarify the intent of each category, as inclusion does not pertain to DBE because DBEs can be anyone with gross annual receipts under a specific threshold. Some firms cannot be certified as MWBE but are certified as DBE.

Chair Keith noted the language proposed by Representative Santos uses “DBE” as defined in the state statute, which means any business entity certified by the OMWBE.

Ms. Reye replied that her comments are meant to remind everyone that the acronyms are often interchanged.

Representative Tharinger advised of his need to attend another meeting but plans to return at the end of the meeting. He conveyed his appreciation to the Board to review the amendment realizing the Board has invested much time in the development of the reauthorization bill. He encouraged members to highlight areas that are not tenable for the Board, as language to amend the amendment is required prior to the executive action scheduled at 8 a.m. on March 31, 2021.

With no additional comments on the proposed PRC changes, Chair Keith acknowledged that there might be some implementation challenges associated with the PRC requirement.

Ms. Zahn added that if the Board establishes the PRC Review Committee, one of the tasks could entail examination of the proposed change to include a certified member on each PRC panel.

Ms. Thaxton spoke to concerns for the proposed changes to the Design-Build statute. The proposal eliminates language in the evaluation factors for the Request for Qualifications (RFQ). Normally, the evaluation factors include the proposer's past performance in the utilization of disadvantaged business enterprises as a mandatory requirement. The requirement has been replaced with the inclusion plan. She assists public agencies to prepare RFQs and Request for Proposals (RFPs) and is aware that while many RFQ and RFP submittals reflect a great inclusion plan, they do not have a good history of including OMWBE businesses. The unintended consequence of the change is not having the ability to learn of the proposer's history on past projects, which would no longer be required under the proposed change. The only requirement is an inclusion plan, which does not reflect any history for inclusion. She recommended adding "must" for the inclusion plan for the RFP and retaining the requirement for past history of inclusion of disadvantaged businesses within the RFQ.

Aleanna Kondelis agreed, as the committee's intent was for the RFQ to include the past performance as a demonstration for fulfilling project requirements. The committee recommended the RFP must include the inclusion plan. Retaining that language distinction is critical.

Ms. Reyes agreed, as "must" should be included because historical performance is crucial in construction based on her personal experience.

Steve Goldblatt spoke to the potential of the language interpreted in multiple ways and may be pressing against other statutes. Because RCW 39.10 is periodically renewed, his concern is that it might disappear because some language might not pass the legal test.

Vice Chair Thompson said the meeting appears to be a committee meeting and while the Board is reviewing and discussing issues at the Board level, those issues are typically discussed at the committee level. While respectful of all feedback and acknowledging that the amendment is moving forward for consideration, it also appears to have "no brakes" while there is a vehicle that could address it. The Board will continue moving forward but he cautioned against dangerous "curves" as mentioned by Mr. Goldblatt.

Bill Dobyms echoed similar concerns. In the many meetings of the Reauthorization Committee, special attention was applied to the language that the committee approved for the same reason of not including provisions that were unenforceable or that jeopardized other provisions or the entire statute. His first view of the document spoke to jeopardizing a lot of the committee's work and unraveling some of the language while not making significant changes to any outcomes. That is concerning to him that the Board would take the last minute approach of undoing the hard work completed by the Reauthorization Committee that was focused on achieving the same goals. The committee included equity and inclusion during the discussions and in the creation of changes and recommended language. It is concerning last minutes changes would be added that have not been vetted, discussed, or might jeopardize the entire statute.

Ms. Reyes pointed out that legislators requested the Board to focus on diversity and inclusion.

Chair Keith clarified that the discussion surrounds "must" include past experience or past inclusion as part of the evaluation at the RFQ stage. At the RFP stage, the committee proposed language that speaks to "may" evaluate and score the inclusion plan. The proposed amendment states, "must evaluate the inclusion plan in the RFQ phase." There appears

to be two concerns. The first is that an inclusion plan is more meaningful and helpful at the proposal phase, which was pointed out by Ms. Thaxton and Ms. Kondelis. The second concern as noted by Mr. Goldblatt and Mr. Dobyms is by making it a mandatory scoring for the RFP process, there is the risk of a legal challenge. Previously the GC/CM statute language spoke to scoring the inclusion plan with additional language stating, "to the extent permitted by law." However, the proposed change does not include that limitation.

Ms. Reyes referred to her experience in contracting and noted the language has changed, as all contracts requires an inclusion plan regardless of the type of project. The language should not result in any lawsuits as all federal, state, and local contracts include the requirement.

Ms. van der Lugt commented that the terms "dangerous curves" and jeopardizing the statute" are serious terms and although she does not discount them, Representative Santos submitted an amendment and the Board has an opportunity to provide feedback on that amendment whether line by line or as a whole. The Board has an opportunity to point out where there are concerns or if some truly believe there are "dangerous curves" or jeopardizing the statute." The Board has an opportunity to provide feedback.

Bill Frare remarked that as the committee reviewed the statute last fall, language was included for requiring inclusion plans as part of the scoring criteria. DES had required inclusion plans within the scoring criteria for a number of years until late 2017 prior to the release of the disparity study. DES was advised by the department's Assistant Attorney General that the requirement was somewhat "too far" and that inclusion plans should not be scored because of issues surrounding the 14th Amendment and the U.S. Constitution Title VI in terms of carrying out diversity efforts too far. The department was advised that it needed foundational information such as the disparity study or efforts for non-mandatory requirements or voluntary methods in order to change results without requiring an inclusion plan. The department was also advised that a legal challenge could result. If voluntary methods proved ineffective, mandatory methods could be used. A broad audience uses the contracting method to include ports, counties, cities, and school districts. The disparity study for the state is not a disparity study for other sectors. The Department of Transportation also completed its disparity study. His concern is using a broad-brush approach to increase inclusion on projects while increasing exposure to legal challenges that cannot be supported by data from the disparity study or through voluntary methods.

Chair Keith cited information she posted in the zoom chat depicting an excerpt of Section 20 that speaks to how the Board planned to address the issue moving forward.

Mr. Dobyms clarified that his comments did not pertain to a specific paragraph, but was more aligned with the comments offered by Mr. Frare in cautioning that a broad-brush approach is jeopardizing by a few simple words that would make a provision unenforceable, illegal, or impractical. The provisions pertaining to the PRC panels is a good example. He questioned the result if a PRC panel failed to include an OWMBE panel member during a project application review because of unavailability. He asked whether that would result in the delay of the agency receiving consideration of a project. Some of the suggested changes appear to begin unraveling the process that provide no appreciable benefits. Additionally, the issues were discussed in detail during Reauthorization Committee meetings.

Chair Keith re-emphasized that the special meeting provides an opportunity for the Board to support the intent of the provisions. She also believes other amendments are likely. Representative Tharinger acknowledged that the Board did not have an adequate opportunity to review all the issues in Section 20. She asked members whether they prefer focusing efforts on identifying provisions that are unworkable or are of serious concern.

Mr. Armstead said he is very concerned surrounding Mr. Frare's concerns about legal issues as it speaks to a flashback to one of the subcommittee meetings where Mr. Frare raised an I-200 concern about collecting data, which is untrue. The same is true in this instance. He referred to an opinion by the department's attorney. He asked whether Mr. Frare or the Board have sought opinions from Attorney General Bob Ferguson. None of this is a concern appears in his (Ferguson's) document. It appears to be a nick-picking effort not to pursue any changes.

Chair Keith proposed (*unless there are other issues in addition to the mandatory inclusion plan in the RFQ phase rather than the RFP phase*) the Board spend five minutes providing an opportunity for members to speak to any issue of concern

that is unworkable in the proposed amendment. She will summarize the feedback and request a vote on a position with respect to any additional changes to the amendment.

Ms. Deakins displayed a tracked document reflecting the Board's approved changes to the RCW.

Chair Keith spoke to the pilot program that was to focus on small businesses and asked for feedback from Olivia Yang. Ms. Yang reported higher education has invested in the reauthorization process and would prefer to keep the process for the pilot project because it is viewed as a service to the Legislature to vet and evaluate as many of the unintended outcomes as possible. Higher education also acknowledges that the Legislature has the authority to make any changes and that it is very likely amendments are possible. In terms of Washington State University's pilot project, the additional language is likely not needed, but retaining the language would not impede the process. She suggested adding, "*as allowed by law*" to help respond to some of the concerns.

Chair Keith asked whether the proposed change in the amendment stating, "*Any contract must require the firm awarded the contract to track and report to the public body and to the office of minority and women's business enterprises its utilization of the office of minority and women's business enterprises certified businesses and veteran certified businesses.*" would impact OMWBE.

Ms. van der Lugt responded that the agency received funding for the second phase of the data reporting system. At some point, the agency will begin inputting data. Currently, the agency is readying the system with implementation to follow.

Andrew Thompson moved (w/reservation), seconded by John Salinas II, to support the Amendment by Representative Santos under the following conditions:

- 1. To understand that any fiscal note may indicate a cost associated with the amendment.***
- 2. Align amendment with disparity studies***
- 3. Afford a courtesy to the Attorney General to provide input.***
- 4. Add a definition for "equitable participation" in Section 20 of SB 5032.***

Chair Keith questioned the appropriateness of the Board addressing the fiscal note and is unsure of how to interpret the request for alignment with disparity studies.

Ms. Thaxton offered a friendly amendment addressing her concerns that the change to the RFQ and RFP processes has removed the historic use of OMWBE certified businesses as an evaluation factor. She does not want to lose the ability to review a company's history as a required evaluation factor. She asked for inclusion of her concern within the motion.

Vice Chair Thompson accepted the friendly amendment of adding the recommendation and striking #1 and #2 if it assists in the passage of the motion.

Representative Tharinger said it would be helpful to mention the fiscal aspects. The Board should not be concerned about its role, as the Legislature understands that the Board does not serve as a data collection group but is a policy advisory group. However, it is important to address the fiscal note issue within the motion.

Ms. Zahn supported Ms. Thaxton's proposal to include historical inclusion within the RFQ process and the inclusion plan within the RFP process. The proposed change is consistent through the lens of best practices when reviewing past histories of proposers. In terms of the concerns by some members of the terminology stating, "*to the extent allowed by law*", Senator Hasegawa has shared in previous meetings that the language does not require a certain percentage or number of actual inclusion efforts. The idea that public owners cannot require evaluation factors to understand what proposers have done and intend to do is part of the role of public agencies. It speaks to "*moving the needle*" to ensure equitable participation and opportunities are occurring. She appreciates the recommendation to extend a courtesy to the Attorney General to ensure the language does not violate laws.

Chair Keith asked Representative Tharinger whether there is a preferred method for the Board to communicate the feedback on the amendment. Based on the discussion, there is a concern about the RFQ and RFP process.

Representative Tharinger recommended forwarding the concerns and he will work on incorporating them within the bill before executive action or after the bill moves to the floor as another amendment. He conveyed appreciation to members for their time and efforts. The amendment may be accelerating the work the Board has planned to pursue. He will speak to the bill sponsors and make adjustments to the bill either before executive action or when the bill moves to the floor for consideration by the House.

Discussion followed on the motion and next steps.

Mr. Schacht advised that in lieu of the motion, he suggested the Board render a vote to embrace the intent of Representative Santos' amendment, which is to increase opportunities for inclusion for participation by diverse business entities, and empower the Chair to work directly with Representative Tharinger and his committee to work out the language. The Board will serve its interests better by conveying that the Board supports inclusion along with stakeholders and colleagues.

Andrew Thompson and John Salinas II rescinded their motion.

Walter Schacht moved, seconded by Rebecca Keith, to approve the following:

The Board conveys its appreciation and embraces the intent of Representative Santos' amendment to the proposed reauthorization statute. The Board empowers the Board Chair to work directly with the Legislature to refine and resolve language related to concerns identified during the Board's special meeting.

Chair Keith reviewed the next steps of the legislative process for SB 5032. She does not perceive any consensus for any other changes to the proposed amendment other than the concerns of the RFQ and RFP past performance factors, future inclusion, and potential fiscal concerns.

Kelci Karl-Robinson offered a clarification on the proposed amendment. The proposal speaks to evaluation factors must include but are not limited to the proposer's past performance and utilization of small business entities and the inclusion plan. The proposed amendment does not strike the Board's language other than for adding "must."

Chair Keith indicated that she would work with Ms. Karl-Robinson to interpret the proposed amendment, as it appears to move it from the RFP phase to the RFQ phase.

Representative Tharinger reassured the Board that time is available to work through the issues and submit an amendment as the bill is scheduled before the House next week. The committee plans to accept the Santos amendment tomorrow and move it out of committee. Any changes offered by the Board can be included as an amendment on the floor. He agreed the statement of "*The Board conveys its appreciation and embraces the intent of Representative Santos' amendment*" is important. During the acceptance of the Santos amendment, the committee will discuss potential language changes to the bill when the bill moves to the floor.

Chair Keith cited a friendly amendment by Ms. Reyes to add the intent of Representative Santos' proposed amendment. Mr. Schacht and Chair Keith accepted the friendly amendment.

A roll call of voting members present unanimously approved the motion:

Chair Keith thanked members for attending the special meeting.

ADJOURNMENT - Action

Chair Keith adjourned the meeting at 1:46 p.m.

Staff & Guests

Bob Armstead, National Assn. of Minority Contractors

Talia Baker, Department of Enterprise Services

Nancy Deakins, Department of Enterprise Services

Quinn Dolan, Centennial Construction

Steve Goldblatt, Resolve Disputes

Valerie Gow, Puget Sound Meeting Services

Chris Herman, WA Public Ports Association

Janet Jensen, Department of Enterprise Services

Kelci Karl-Robinson, Washington State Legislature

Joe Kline, Washington State University

Aleanna Kondelis, University of Washington

Ann Larson, Department of Enterprise Services

Art McCluskey, Department of Transportation

Scott Middleton, MCA

Sheri Sawyer, Governor's Office

Linda Shilley, Pierce Transit

Steve Tatge, University of Washington

Michael Transue, MCA

Jerry Vanderwood, AGC

Melissa Van Gorkom, Washington State Legislature Staff

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