

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Meeting Excerpt from December 11, 2019

Special Meeting Topic

SB 5457

NEW BUSINESS

2020 Legislative Session

Chair Schacht invited Representative Steele to share any information on legislation of interest with the Board. There was no response from Representative Steele. Vice Chair Keith mentioned that there are several bills previously mentioned by Mr. Frare. There appeared to be general agreement that if any individual had any particular concerns with any legislation that the individual or parties would share those concerns and/or any advocacy requests with the Board.

Ms. Zahn reported that at the October meeting the Board discussed the bill pertaining to subcontractor listing. The Board discussed options but did not arrive at any conclusion. Ms. Keith recalled that the Board encouraged individuals or agencies that wanted the Board to render a position to attend a meeting and share information.

Ms. Deakins affirmed that other than the Board's conversation, there was no other action by the Board.

Chair Schacht reminded members that any position rendered by the Board on any bill would need to occur during the meeting because of the short legislative session. The next meeting in February would not afford sufficient time for advocacy of any legislation. He asked for feedback on any bills the Board should consider.

Mr. Thompson said the contractor listing bill would likely be considered during the 2020 session and the Board should spend some time discussing the proposal.

Chair Schacht asked whether any member believes the Board should take a position on the bill, and if so, what should that position be as a Board.

Andrew Thompson moved, seconded by Bill Dobyms, to consider House Bill 1571/ Senate Bill 5457 if reintroduced during the 2020 legislative session and engage in a discussion and render a position opposing the bills.

Chair Schacht described the intent of the bills. The legislation would require general contractors to list all subcontractors at the time they submit a bid for a project. The bills affect RCW 39.04. The Board's major obligation is RCW 39.10. However, the Board's authority and responsibility in RCW 39.10 directs the Board to consider all capital projects. The proposed bills would not apply Job Order Contracting or Design-Build. The question is whether the proposal would apply to GC/CM.

Mr. Dobyms said that the application to GC/CM is why he would like the Board to address the legislation. He does not believe the proposed legislation would apply to GC/CM because at the time of a bid submittal by the GC/CM, no subcontractors are involved.

Chair Schacht said the GC/CM has the option of bidding all elements of the work separately, bidding elements in packages, or bidding the entire package. In the instance of the GC/CM bidding the entire package, the issue is whether the GC/CM would be required to publish a list of subcontractors at the time the bids were received.

Mr. Thompson responded that the example is the reason why he opposes the legislation because in a Heavy Civil GC/CM project, there is the potential of subcontractors included within the bid, which adds another element of confusion to any potential protest.

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Vice Chair Keith asked whether any legal opinion has been sought on whether the legislation applies to GC/CM. Mr. Dobyns replied that RCW 39.04 by reference includes RCW 39.10 and all procurement is required to comply with RCW 39.04 for any public procurement.

Mr. Andrews added that the threshold for any public project is over \$1 million. Vice Chair Keith said RCW 39.04 speaks to public owners, which do not bid on GC/CM packages. Mr. Andrews responded that those are some of the reasons why the proposed legislation is confusing as someone could step forward and protest.

Chair Schacht recommended the Board consider discussing the motion as offered and debate the merits and agree to an outcome. If the Board elects not to oppose the measure in its entirety, the Board could consider a second motion of a more targeted goal excluding projects procured under RCW 3910 from the proposed legislation. The Board's options include two options of one as more tightly prescribed within the Board's purview or an option that all procurement under RCW 39.10 would be excluded from the statute. He asked for feedback on the motion to oppose the proposed legislation in its entirety.

Vice Chair Keith commented that labor representatives are not in attendance and the Board is lacking a fully-fleshed rationale. CPARB could convey concerns and that the proposal should be further investigated; however, she has concerns and suspects the motion was offered as a way for the Board to discuss the proposal.

Mr. Andrews clarified that out of respect for members and other participants that are not in attendance, he wants to ensure they are part of the conversation because they are an important part of the discussion.

Chair Schacht pointed out that the only way the Board could be effective in advocating a position is by scheduling a special meeting because the February meeting would be too late to advocate for or against the proposed legislation.

Ms. Reyes noted the first reading of the bills will be on January 21, 2020.

Chair Schacht pointed out that at the end of the discussion, should CPARB decide to advocate one way or the other for the legislation it would be the responsibility of the Chair to pursue advocacy of the Board's position.

Ms. Deakins added that the Policy Committee cut-off for house of origin is February 6, 2020.

Chair Schacht acknowledged that as the Chair, he understands that there are very strong proponents of the proposal in both the House and Senate Democratic Caucus. As a representative for architects, it is important when the Board renders an advocacy position to identify the target of the advocacy. The first step should involve members conducting some homework in order to render a position, meet with all legislators, and then meet as a Board to take action. If those steps are of interest to members, then the Chair and the Vice Chair would need to receive some support and assistance from members without forming another committee and potentially schedule a special meeting sometime in January. The question is whether the Board is interested in investing a substantial amount of effort in scheduling a conversation.

Ms. Thaxton inquired about any knowledge the Board might have about the level of support by the Legislature for the bill. Chair Schacht said he is aware that in the 2020 session, there is strong support for the bill by the Democratic Caucus.

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Mr. Thompson noted that during the last session, Mr. Frare shared that as a DES representative he was asked to take an agnostic position on the proposed bill, which changes the equation to some extent and indicates the need for the Board to spend some time discussing the proposal. Should the Board meet in January there could be other bills that might benefit from the Board's review and limiting reviews to those re-emerging from previous bills.

Ms. Kondalis shared that she meets regularly with the University of Washington's legislative representatives and it is rare for legislators to ask her to share an opinion about a specific bill. However, this bill was addressed during the last meeting with legislators as they indicated they had been contacted to determine the University's position on the bill. It speaks to the Chair's comments that there is heightened awareness of the bill and that the bill will probably move forward.

Chair Schacht asked about the University's position with respect to the proposed legislation. Ms. Kondalis responded that if she is designated to advocate for the University's position, the University would oppose the proposed legislation.

Ms. Mooseker commented that given the lack of timing and a full discussion with all members and different perspectives, she assumes that many members are part of a larger organization or constituents who may view the bill differently and might have a different position. She would like to avoid putting the Board to be in a situation that would preclude that process and recommended the Board should focus on the applicability of the proposal to CPARB and RCW 39.10.

Mr. Dobyms inquired about the possibility of refraining from any action and enabling the bill follow its legislative course and if adopted, the Board could discuss and attain a consensus position that would be included in language within the reauthorization language to preclude the legislation from RCW 39.10 rather than advocating for a particular position at this time. Chair Schacht said the option is likely a "maybe" because the question is whether the bill would be a subset of another statute or a new statute. Ms. Deakins advised that the bill would revise RCW 39.30.

Chair Schacht asked about the AGC's position on the proposed bill.

Jerry Vanderwood, Associated General Contractors, said the organization opposes the bill.

Ms. Zahn said the Board spends much time discussing ways to encourage competition. Within the Business Equity and Business Inclusion Committee, members have involved RCW 39.04, which is the low-bid statute. It appears that from that lens, some of the concerns have been generated that if the requirement is imposed at the time of bid (closure) it could potentially create some unintended consequences that the Board should discuss. Whether the Board renders a position or identifies some of those concerns that apply broadly within the industry, the Board is the appropriate venue to vet the proposal and a special meeting would be warranted.

Vice Chair Keith commented on the motion on the table. Options the Board could consider are withdrawal of the motion, amending the motion, or calling the question. She is concerned that should the motion move forward she would need to oppose the legislation but does not want her vote to be construed that she does not have concerns with respect to other stakeholder positions.

Chair Schacht suggested the makers of the motion consider withdrawing the motion and introducing a new motion. However, future efforts will require several members to complete some research and ascertain the political implications with all members following up with their respective stakeholders to receive input and attending a special meeting in January with a single agenda topic with representatives from both sides of the issue attending and presenting their

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respective positions. He asked staff whether it would be possible for the Attorney General's Office could provide an informal opinion as to whether the proposed language does or does not influence RCW 39.10. Ms. Deakins replied that an opinion likely could be provided; however, she is unsure as to the timing.

Chair Schacht outlined the process:

- All members query their respective stakeholders
- The Board should receive feedback from a broad group of people
- Encourage all four legislative members to attend the special meeting

Chair Schacht added that the effort would intersect with the process of considering new reauthorization as the Board has a limited number of members who complete the heavy lifting on most issues before the Board. The architects are opposed to the measure. All those factors must be considered.

Ms. Van der Lugt agreed on the importance of all members attending and participating in the discussion. She encouraged the Board to consider a way to reach out to member legislators if they are unable to attend the special meeting to provide them with the information and receive their feedback to ensure all members have had an opportunity to provide input.

Mr. Thompson and Mr. Dobyms withdrew their motion.

Discussion ensued on the ability for some members to pursue the additional research and the Board's active work as a body for any position on a bill. Vice Chair Keith asked whether the Board has ever pursued the option of forwarding comments without stating a particular position on a bill but expressing concerns about unintended consequences. Ms. Deakins affirmed the Board has previously conveyed a letter to the Legislature recommending more stakeholder vetting rather than advocating for a particular bill.

Chair Schacht agreed that the Board could draft a letter stating the bill requires more input. However, in the past that course of action generally involved issues relative to RCW 39.10 and not issues outside of RCW 39.10. Ms. Deakins said the Board has weighed in on a number of issues. Another option is engaging more in the reauthorization discussion on a broader set of policy issues whereby if a bill would substantially change public works procurement, the sponsor should present the proposal to CPARB first. Bringing the industry together at the Board is a matter of time and energy and the issue is whether it could be pursued during the reauthorization work. Beyond the letter, other steps include entail members attending public hearings at the House and Senate, or attend and sign-in and speak, or visit with key stakeholders. The level of engagement has an extensive range.

Walter Schacht moved, seconded by Andy Thompson, to direct the Chair with assistance by Andy Thompson to explore scheduling a meeting during the first or second week in January 2020, ascertain how to ensure all members attend, invite advocates for and against the bill to attend and share their respective concerns or support, request DES determine if budget support could be extended for the special meeting, and request DES contact the Attorney General's Office to seek an informal opinion either in writing or by attending the special meeting on whether the provisions of the bill have any impact on capital procurement as defined in RCW 39.10.

Mr. Vanderwood, AGC, expressed appreciation for the willingness of the Board to schedule a meeting. However, the question is whether the Board supports or opposes the bill or could the discussion encompass the Board's position that

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perhaps there could be another route to pursue. If for instance the bill did not impact RCW 39.10, the question is whether the Board would render an opinion on the bill and what would that opinion represent.

Chair Schacht said the Board is not in a position at this time to determine the outcome of the discussion. The Board will seek perspectives from multiple stakeholders and then consider options and how to pursue the next steps.

Motion carried unanimously.