

Capital Projects Advisory Review Board
Project Feedback Process Committee

Meeting Notes 8/17/2023

Page 1 of 4

Committee Members: (14 members, 8 = Quorum)

- | | |
|---|--|
| X Dave Johnson <i>Co-Chair</i> , Owners State | X Art McCluskey, Owner General Public |
| X Jeff Gonzalez, <i>Co-Chair</i> , General Contractors | Karen Mooseker, School Districts |
| X Kurt Boyd, Specialty Subcontractors | X Mike Pellitteri, Specialty Subcontractors |
| X Marvin Doster, General Contractors | Irene Reyes, Private Industry |
| Lekha Fernandes, OMWBE | Linneth Riley Hall, General Owner |
| Bobby Forch, Jr., Disadvantaged Businesses | X Robynne Thaxton, Private Industry |
| X Thomas Golden, Design Industry-Architects | X Olivia Yang, Higher Ed |

Guests:

Nancy Deakins, DES Staff

Colleen Newell, MFA

Monique Martinez, DES Staff

Co-Chair Dave Johnson called the meeting to order at 3:02 p.m. A quorum was established.

1. Review and approve agenda - Action

Co-Chair Johnson reviewed the agenda and asked the group for any edits before proceeding. *Co-Chair Gonzalez moved, seconded by Olivia Yang, to approve the agenda. The motion was approved by a voice vote.*

2. Establish/Draft a Group Charter - Discussion

- a. Co-Chair Johnson shared that he and Co-Chair Gonzalez would like to propose a framework for what this workgroup could accomplish based upon last meeting's discussion. There were a few key categories from that discussion that could be developed into objectives, and the focus of this meeting would be to discuss the objectives rather than going into solutions. The objectives include:
 - i. Ensuring owners comply with the RCWs and best practices in order to avoid issues.
 - ii. Establishing a complaint department, or some way to capture issues and work with owners to resolve anything that may come up.
- b. Mike Pellitteri added that the objective should not be limited to educating owners, but feedback should be extended to GC/CM and Design-Build contractors and subcontractors if appropriate. Kurt Boyd agreed, adding that this should include anyone representing the owners at the PRC meeting.
- c. Robynne Thaxton noted that providing feedback is helpful, however both CPARB and the PRC are limited in their statutory authority to implement aspects of the RCW. There is zero statutory authority to enforce best practices. She clarified that this effort should be educational rather than regulatory. PRC has no power to regulate except for what is identified in the statute and suggested reaching out to the Attorney General's (AG) office if there is an intention to issue regulatory actions outside of the statute. There are requirements under the Administrative Procedures Act that the PRC must follow.
- d. Co-Chair Johnson clarified that the objectives are not related to regulatory actions. He noted there are best practices documents for MC/CM and EC/CM that is not very well known, as well as a subcommittee for GC/CM that is implementing best practices. The intent is to ensure that people know these resources exist. Robynne agreed but clarified that those best practices documents cannot be used to regulate or restrict practices--they are educational only.
- e. Co-Chair Johnson noted that the second part of the objective is to collect information about issues occurring within the industry. He noted this was not regulation but rather gathering information for the PRC. What the PRC can do is approve or reject applications or certifications, based upon what the statute indicates. Within the approval process, PRC members have scoresheets that include items such as an agency's experience with or success rate in delivering projects for GC/CM. If an agency is not doing those things, the application or public comment is an avenue in which issues can be raised if things are not being carried out correctly.

Project Feedback Process Committee

Meeting Notes 8/17/2023

Page 2 of 4

- f. Robynne noted the PRC has ability to put together scoresheets, however, if someone is rejected based upon an issue that is not in the RCW 39.10.280, there may be a protest and objection. The scoresheets are not what establishes what you can evaluate based on the statutes, as they do not follow the statutes exactly.
- g. As it pertains to the PRC, if something is going to be regulated, there must be knowledge and understanding, as well as statutory and regulatory authority to do so. The scoresheets used on the PRC for approval are fine, however they do not necessarily follow RCW 39.10.280. If the PRC would like to reject an application based upon something that is not in the RCW 39.10.280, such as not following best practices, the PRC must have followed the Administrative Procedures Act requirements to be able to reject someone based upon that.
- h. Regarding the notion that the PRC is doing education, Olivia pointed out that there is a CPARB Education Connection Committee, which is chaired by Curt Gimmetad. She suggested that Co-Chairs Johnson and Gonzalez connect with him, noting that there should be a connection between that committee and this one.
- i. Olivia noted that the only thing that PRC can do, based upon the RCW criteria, is accept or reject an application from an owner for a project, or be certified/recertified. She inquired about whether more attention could be put on how approval or rejection happens. This may help address concerns that have been expressed among members of the PRC, as well as include some of the concerns Robynne brought up regarding following the statute.
- j. Co-Chair Gonzalez agreed, noting the PRC does not want to be an enforcement agent. This can be added to the objective language and that the education and outreach will help prevent these issues from arising. Olivia suggested that instead of saying the PRC is there to educate owners, frame it in a way to inquire if owners are educated. Rather than focusing on the curriculum, the PRC could be seen as the testing agency.
- k. Robynne noted that if the intent is to ensure they are following best practices and collecting information on what is not going well, this will be helpful to monitor whether there are necessary changes needed for the statute. However, if any agency is rejected on grounds that aren't specifically set forth in statute, this is outside of the PRC's purview.
- l. Kurt emphasized the importance of the PRC collecting information so that they can make a recommendation to CPARB if a statute needs to change. There have been many instances in which an owner comes to the PRC with an application noting they will follow statute a certain way, but later it is discovered that they did not follow statute or changed the process.
- m. Robynne noted that the process of owners' getting permission to carry out the work happens so early that often circumstances modify how owners move forward with the project. As long as they follow the statute, this modification is allowed.
- n. Mike brought up a concern regarding owners stepping out of line for those following the statute and the PRC's role in being able to address this. Robynne reiterated that the PRC's authority is limited by statute and must stay within the lines of what they can do under the statute.
- o. Dave shared that in the certification process, one criterion is that the public body must demonstrate successful management of at least one GC/CM or Design-Build project. If they are not following the parameters of the RCW and are not managing the project, then this could be a way to clearly evaluate whether the agency should be certified or not.
- p. Robynne noted that it may be difficult to define what "successful management" means. The act of denying an entity a certification based upon an unregulated analysis on whether they are successful is a problem. Successful could mean following all requirements set forth in RWC 39.10. Anything outside of statute or regulation would be difficult for the PRC to justify denying the certification based upon that.

Project Feedback Process Committee

Meeting Notes 8/17/2023

Page 3 of 4

- q. Co-Chair Johnson shared that there are owners who are not following the RCW, which is why this subcommittee exists--to find a way to help ensure that the PRC has the right information and a way to deal with it. Robynne raised concern about the PRC denying certification or project approval based upon factors outside the statute.
- r. Olivia reiterated that what the PRC can do is approve or deny projects and certifications. In both instances, there are nuances to determining whether to approve or deny. She shared that the objective should focus on the application and preapplication process and how it can be designed to ensure that owners and projects are successful. However, success needs to be defined.
- s. Kurt raised the question about how to prevent applicants from playing the system. For example, there are different point structures during a submission process that would allow the applicant to skew the scoring throughout the process. He inquired about whether this would be a regulatory category or just a suggested way of educating clients that it should be done a certain way, with less subjective information.
- t. Co-Chair Johnson agreed that the best and easiest way is to ensure this this does not happen in the first place, and noted that he liked the idea of having some way to collect complaints or suggestions regarding the process. This information would help determine whether a recommendation to CPARB is needed regarding whether something needs to change from a regulatory standpoint.
- u. Robynne shared that the remedy for owners failing to follow the RCW is a protest. There are very specific limitations on how a protest can be conducted and what needs to be done in order to protest it, but the statute has no additional remedy beyond that. However, the PRC needs to be thoughtful if there was a situation in which someone was coming up for certification or project approval and it was brought up that they did not follow certain aspects of the statute, this issue would need to go through normal channels. The PRC needs to consider bringing these issues up prior to a meeting with the full PRC in a forum. It should be avoided during a hearing where they only have 20 minutes of question and answers.
- v. Co-Chair Johnson commented that this is one of the reasons he would like to get a repository or collection of issues on the table. It would bring to light many of the issues so that we do not encounter a blindside during a meeting.
- w. Robynne gave an example from the perspective of a lawyer in which someone objected to the way their clients performed their procurement and the PRC put it on the issues list. The lawyer could then come back and say take it off because there is no evidence. This may raise potential issues with respect to defamation.
- x. Co-Chair Gonzalez noted that they would need to be mindful of posting incidents, and what happens with this information. It comes back to the objective of collecting information. There needs to be a plan of what do we do with information that is found.
- y. Co-Chair Gonzalez provided a summary of the objectives that were discussed:
 - i. Establish a preapplication process that can help owners be successful, and define what success means.
 - ii. Create a process to manage post-incident occurrences and establish ways to ensure the issue does not happen again.

3. Workgroup Future Planning – Discussion

- a. The group agreed that a monthly meeting cadence would be appropriate for this committee and established the meetings on the third Thursday of the month from 11:00 am - 12:30pm. This will not interfere with future CPARB meetings.
- b. Olivia inquired whether it make most sense to meet as a whole committee or have smaller workgroups. She has seen smaller workgroup formats work but acknowledged that the committee is small enough where having two groups may run the risk of discussing the same issues.

Project Feedback Process Committee

Meeting Notes 8/17/2023

Page 4 of 4

- c. Tom Golden noted this group has been narrowing down the objectives well, and now they should discuss what steps they can take to achieve these objectives. The focus will be on information gathering and determining how to use the information with an understanding of the limitations of PRC.
- d. Mike noted that peer pressure is a strong force, and conversations with peers may be effective in addressing these post-incident issues informally. Olivia noted that when there was preauthorization on the PRC, she had been discussing the notion of "owner readiness." She posed the idea whether there could be a consensus about what "owner readiness" means, as it is key to the success of a project. Ensuring owners are ready to take on alternative procurement would prepare them to mitigate issues as they arise. The focus should be on supporting owners and preparing them to understand what it means to be a successful applicant to get their project certified, which is a good way to incorporate best practices.
- e. Robynne noted that when working with first time owners, a lot of them are not aware of what the process is, so having a document or presentation about what the process is would be helpful. Providing an explanation that outlines what is needed to get approval would be helpful for first-time owners.
- f. The purpose of the PRC was to ensure owners had the ability to determine under the statute whether the project was sufficient and that they were able to successfully procure and manage the project. It would be helpful to continue providing support to new owners to ensure they are successful.
- g. Co-Chair Johnson noted that there are two separate objectives, one is the front-end education piece and the back-end is dealing with challenges that arise from industry. He proposed addressing one objective at a time, with next meeting focused on pre-education approach and figure out the preventative maintenance piece of it. After that, then the workgroup could figure out the bad actor approach.
- h. Olivia agreed with that approach, noting that she has heard from PRC members, several of whom are on this committee, that they are aware of grievances or allegations of wrongdoing, and that they should be able to address these and move into something that could help with preventing this from happening.
- i. Kurt shared that a potential third objective could be creating a forwarding system for recommendations to CPARB based upon the first two objectives. Co-Chair Johnson noted that may correlate with the second objective.
- j. Kurt said that keeping the committee together would be best, as the group is comprised of people from various industries, and having those folks with different knowledge would be very helpful for meetings.
- k. Co-Chair Gonzalez stated he will connect with Curt Gimmestad to discuss the education work he has been doing to bring back for discussion at the next meeting.

4. Next Meeting Agenda - Discussion

- Thursday, September 21, 11:00am – 12:30pm
- Approve Agenda
- Pre-Education / Preventative Maintenance Approach
- Next Meeting Agenda
- Adjournment

5. Action items

1. Jeff Gonzalez will connect with Curt Gimmestad to discuss his work on the Education Connection Meeting.
2. Monique Martinez will send out a recurring meeting invite for the third Thursday of each month from 11am – 12:30pm.

Meeting Adjourned at 12:17 p.m.