

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Special Meeting – Virtual Via Teams

Meeting Minutes - DRAFT

March 18 , 2024

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MEMBERS PRESENT

Janice Zahn (*Chair*)
Keith Michel (*Vice Chair*)
Corey Fedie
Lekha Fernandes
Bobbie Forch, Jr.
Senator Bob Hasegawa
Janet Jansen
Santosh Kuruvilla
Matt Rasmussen
Linneth Riley-Hall
Steve Russo
John Salinas II
Kara Skinner
Robin Strom
Robynne Thaxton
Olivia Yang

REPRESENTING

Ports
General Contractors
Public Hospital Districts
OMWBE
Disadvantaged Business
Senate (D)
State Government
Engineers
Counties
Transportation
Specialty Subcontractors
Specialty Contractors
Ins./Surety Industry
General Contractors
Private Industry
Higher Education

MEMBERS ABSENT

Bruce Hayashi
Karen Mooseker
Mark Nakagawara
Mark Riker
Irene Reyes
Rep. Mike Steele
Josh Swanson
Rep. Steve Tharinger
Senator Judy Warrnick

REPRESENTING

Architects
School Districts
Cities
Construction Trades Labor
Private Industry
House (R)
Construction Trades Labor
House (D)
Senate (R)

Staff & Guests are listed on the last page

CALL TO ORDER & ROLL CALL FOR QUORUM

Chair Janice Zahn called the virtual special meeting of the Capital Projects Advisory Review Board (CPARB) to order at 3:01 p.m.

A roll call of members confirmed a meeting quorum.

WELCOME BOARD MEMBERS & INTRODUCTIONS

Chair Zahn welcomed everyone to the special meeting to discuss the Board’s 2024 Legislative Work Plan.

BOARD MEMBERS OPENING THOUGHTS/SHARED COMMITMENTS – *Information*

Chair Zahn reviewed the Board’s shared commitments of Respect, Purpose, Listening to Understand, Accountability, and Inclusion.

CPARB 2024 LEGISLATIVE WORKPLAN – *Information*

Chair Zahn outlined the agenda to review recommendations on Prompt Pay (SB 6040), review and discuss SB 6167 to provide feedback on CPARB Bill 1621, which did not pass but includes some elements requiring completion by the Board for consideration by the Legislature in 2025, and a new assignment in a budget proviso for Project Delivery Review and Recommendation on four Washington State Department of Transportation (WSDOT) projects. Although the Governor has not signed the final bill or budget proviso, it is important to begin the work to ensure the Board has sufficient time to complete its recommendation(s).

SB 6040 – Review and Recommendation on Prompt Pay

Chair Zahn reported she testified on SB 6040 for Prompt Pay to both the House and the Senate sharing information on the Board’s ongoing work by the Business Equity/Diverse Business Inclusion Committee on prompt pay. She advised the Legislature of the Board’s willingness to continue the work and submit recommendations to the Legislature for the 2025 session. The bill adopted by the House and Senate includes that direction to the Board.

Chair Zahn invited Business Equity/Diverse Business Inclusion Committee Co-Chair Santosh Kuruvilla to review the legislative request, actions anticipated as part of the committee’s work, and whether additional members should be added to the Business Equity/Diverse Business Inclusion Committee. The language indicates the Board is to provide information to the Legislature no later than November 1, 2024. To meet Board and legislative deadlines, a final draft is required in September to render a final vote in October to afford time to finalize and deliver the package to the Legislature by November 1, 2024.

Section three of the bill speaks to areas of review for recommendations.

Co-Chair Kuruvilla reported the Business Equity/Diverse Business Inclusion Committee has conducted several meetings with the bill the topic of discussion. The last four meetings have been devoted to SB 6040. Ms. Yang created an outline of the discussions addressing how the issue impacts small businesses, requirements of the statute in terms of timely payment, and the payment application process. Members also discussed owner readiness, role of the contractor, and the role of the small business.

Chair Zahn asked whether the topics of the committee's discussion focused on new Section 1 requiring the state and local entities to pay the prime contractor within 30 days for work satisfactorily completed or materials delivered by a subcontractor of any tier that is a small business certified with the office of minority and women's business enterprises, and requiring that, within 10 days of receipt of payment, the prime contractor and each higher tier subcontractor must make payment to its subcontractor until the subcontractor that is a certified small business or recognized women or minority-owned business has received payment. Co-Chair Kuruvilla said the committee did not specifically address the language, but the next meeting would likely articulate the discussion specific to the new sections.

John Salinas II volunteered to serve on the committee as a subcontractor certified by OMWBE because the topic is important to him personally. He has also been engaged in other discussions with other groups about the topic. Co-Chair Kuruvilla invited him to attend the next meeting on Wednesday, March 20, 2024 at 1:30 p.m.

Lekha Fernandes joined the meeting at 3:13 p.m.

Chair Zahn invited Co-Chair Fernandes to provide information about the committee's work in support of SB 6040. Co-Chair Fernandes advised that the committee has been working on the issue based on current legislation. The bill is well within the scope of the committee's work and interest. She envisions expanding the committee to ensure all public owners are represented as larger entities can accomplish more than smaller owners because of the lack of resources. It is also important to ensure representation by the diverse business community. Robin Strom joined the committee along with three larger contractors. The committee welcomes individuals interested in participating. Many stakeholders actively participated in the legislative process. She plans to review the list and extend an invitation to those stakeholders to join the committee if they are not a member or offer them an opportunity to provide input.

Chair Zahn cautioned against the committee achieving a quorum of the Board. Currently the membership includes seven Board members. As a current member, she volunteered to forfeit her position for another Board member to participate.

Co-Chair Fernandes advised that the Washington Business Minority Business Development Agency (MBDA) has not been actively participating in committee meetings and cited recent national events as likely the reason.

Chair Zahn reported Bobby Forch has indicated interest in serving on the committee as well. The committee also has a vacancy for architects.

Lekha Fernandes moved, seconded by Santosh Kuruvilla, to appoint John Salinas II and Bobby Forch to the Business Equity/Diverse Business Inclusion Committee. A voice vote approved the motion unanimously.

SB 6167 CPARB Bill for 1621 Review Recommendation

Chair Zahn reported SB 6167 did not move from the House in time for consideration. The Board had identified some remaining work. The House Chair of the Committee indicated it would be helpful for her to attend one of the committee's meetings prior to the session to review the bill and assist in moving the bill forward.

Committee Co-Chair Keith Michel reported on the committee's recent meeting following notification that the bill did not move through the session. The committee is committed to completing the work on the recommendations by the Board. Outstanding issues surrounded technical provisions within the bill. The committee plans to pursue discussions and create a new bill to address the issues to update current RCWs.

The Board reviewed existing membership of the SB 1621 Review Committee. Co-Chair Michel commented that the existing membership is solid. The Board, earlier in the year, appointed several members to the committee including Ms. Yang to ensure representation of all entities affected by the bill. Next steps from the last meeting include a meeting between Michael Transue and Mark Riker to identify potential negotiation points and common ground on the provisions.

Budget Proviso – Project Delivery Review and Recommendation on 4 WSDOT Projects.

The WSDOT budget proviso directs the Board to complete a project delivery review and recommendation.

Talia Baker displayed the budget proviso outlining tasks.

Chair Zahn advised that one of the recommendations is due on July 1, 2024. The work must be completed over the course of two months. The Board was asked to review the planned procurement methods for four WSDOT projects and provide recommendations on procurement methods. The Legislature is requesting additional information as to how to achieve a higher degree of certainty in terms of anticipated bids and consideration of alternatives for components of the larger projects. She recognized the Board's intersection with WSDOT is limited primarily through the PRC for WSDOT project reviews for Progressive Design-Build projects. WSDOT is governed under a different RCW statute for traditional Design-Build projects. She invited representatives from WSDOT to provide an overview of the WSDOT projects and project delivery to provide some context for the work assigned to the Board. She introduced Art McCluskey and Chris Christopher with WSDOT to brief the Board.

Mr. McCluskey said he serves as a Design-Build Program Manager with WSDOT and serves on the PRC. Mr. Christopher serves as the Director of Construction for WSDOT. The four WSDOT projects total approximately \$1 billion in construction costs. WSDOT does not anticipate any decision by the Board at this time. The intent is to provide some background, answer questions, and assist in the formation of a task force. All information will be provided to the task force to complete its work as directed in the budget proviso.

Mr. Christopher reported that the Department is still assessing the legislative intent of the legislation including why the four projects were selected, as the timeframes are aggressive. If the engineer's estimates are exceeded by 5% on any of the four projects, WSDOT is required to pause the projects; however, it is also unclear as to next steps as part of any paused action.

Chair Zahn described the Board's review, deliberation, and recommendation process. Final recommendations approved by the Board would be forwarded to the Legislature. It is likely WSDOT will provide a similar presentation to the task force as the task force would include both members of the Board and other stakeholders.

Mr. Christopher reviewed the legislative language and provided an overview of the four projects. CPARB is directed to provide recommendations, which WSDOT will consider as it moves forward in structuring contracts to achieve the engineer's estimate. It appears cost escalation is an area of concern and the impetus for the legislative action. If bids are 5% over the engineer's estimate, WSDOT must report to the Joint Transportation Committee and pause the projects.

The first project is a widening project of SR 18 from Issaquah/Hobart Road to Deep Creek. The recommendation is due on July 1, 2024. The remaining three project recommendations are due in December 2024. R 18 is a crucial highway connecting the south Puget Sound area with I-90, the state's main east-west route. The original project scope was the entire section from Deep Creek to Issaquah/Hobart Road. Unfortunately, the estimate for the project was approximately \$1.6 billion. Instead, the current scope breaks the project into several phases. The first phase estimated at \$443 million is slated as a Design-Build project and would provide four lanes from the end of a current project at Deep Creek to Tiger Mountain Summit, as well as adding two roundabouts at the Issaquah/Hobart Road interchange. Prior to the legislation, WSDOT was planning to release Request for Qualifications (RFQs) in the September timeframe with Request for Proposals (RFPs) released in November for contracting in June 2025. Essentially, the project is WSDOT's second most challenging geotechnical project with issues along the roadway. The proposed delivery method is traditional Design-Build although WSDOT wants to shift the risk profile with WSDOT assuming more of the risk. Based on the bid environment over the last two years, WSDOT is assuming some of the risk to balance the risk appropriately and reduce bid prices.

Bobby Forch disconnected from the meeting at 4:10 p.m.

Linneth Riley-Hall inquired as to WSDOT's process for selecting the Design-Build delivery method for the project. Mr. Christopher advised of the Department's robust project delivery method selection process. For each project, WSDOT can provide a copy of the three-page assessment of each project comprised of the various components each team considered when evaluating different delivery methods and the reasons for the selection of Design-Build.

The next project, SR 9 – Marsh Road to 2nd Street Vicinity – Widening & Bridge Painting, widens State Route 9 between Marsh Road and 2nd Street near the City of Snohomish, builds southbound bridges directly to the west of the existing bridges converted to northbound lanes over the Snohomish River, and rebuilds the on-ramp from 2nd Street to southbound

SR 9. Painting of an existing bridge is included. The project delivery method is Design-Bid-Build. The project is estimated at \$100 million.

The third project is the SR 526 - Corridor Improvements project to improve portions of the State Route 526 corridor with construction of an eastbound lane between Hardeson Road/5th Ave NW and I-5, improved signal operations at the SR 526/527 intersection, and new ramp meters from eastbound SR 526 to northbound I-5. Work includes roadway widening in several locations, repaving, removal/replacement of median, shoulder barriers, and guardrails, re-striping and intersection modifications, signal and illumination modifications, noise and retaining walls, landscape, drainage, and runoff treatment and detention. The project delivery method is Design-Bid-Build for a small project of \$34 million.

The last project, US 395 – NSC I-90 Connection, is the final of four projects to construct the North Spokane Corridor and connection to I-90. The project is the last step to create a limited access 10.5-mile freeway north/south through Spokane that will remove freight and trips off the local system. Initially, the project was designated as a large Design-Build project. However, in light of all the challenges WSDOT has experienced across the industry of larger Design-Build projects coupled with feedback received through community outreach and a number of complicated utility components, WSDOT shifted the delivery method from one large Design-Build project to several smaller Design-Bid-Build projects. The project cost was estimated to be a \$400 million Design-Build project, which has since been converted to phased projects.

Chair Zahn questioned several of the Design-Bid-Build projects with an advertising date anticipated prior to the due date of the report to the legislature. Mr. Christopher affirmed the timing. Chair Zahn commented on the importance of reviewing the language because if bid exceed 5% of the engineer's estimate, the Department must pause the project.

Ms. Thaxton asked whether the designs of the projects have been completed. Mr. Christopher affirmed all projects have been fully designed, which is why it is unclear as to the selection of the projects. The team is implementing guidance provided from the Legislature, which may mean the projects could be delayed until the task force completes its work. WSDOT is currently scheduled to release ads on two of the projects.

Ms. Thaxton asked Senator Hasegawa why the projects were selected given such progress to date. Senator Hasegawa explained that he is not a member of the Transportation Committee and was unaware the projects were selected for review.

Ms. Thaxton commented on the importance of the task force knowing why the projects were selected prior to the task force offering a suggestion on other delivery methods.

Chair Zahn affirmed that she would contact the chair of the committee as he informed her of the budget proviso the committee was recommending. She was not aware of the timing of the procurements.

Mr. Salinas said the decision on the selection of the project was concurrent during the allocation of funds for the Portage Bay project, which was more than \$700 million more than the engineer's estimate, which may be the reason for the selection of the projects as the last two major Design-Build projects were significantly over budget. His assumption is the Legislature is questioning why the projects are so costly and perhaps a third party, such as CPARB, should provide a review prior to construction of the projects because budget outcomes have been much higher than the engineer estimates.

Chair Zahn agreed that it is likely the genesis of some of the concerns by the Legislature.

Mr. Kuruvilla offered that given the fact that the decision is from a budget lens, he recommended the team provide the Board with as much information to avoid any second-guessing.

Ms. Riley-Hall asked about the status of design for the first project. Mr. Christopher advised that the design was approximately 20% and 30% completed. WSDOT has been working on the project for some time and was comfortable moving forward with the Design-Build RFQ. The team was working through the process of revising the project scope. Ms. Riley-Hall recommended the focus of the evaluation should begin with the SR 18 project rather than delaying to receive responses to questions.

Chair Zahn agreed as the issue involves two timelines of July and December.

Mr. Salinas questioned membership of the committee and any potential conflict of interest of CPARB members participating on the task force. Chair Zahn addressed the issue. Within the RCW pertaining to the PRC Committee, language does not preclude members from pursuing any work on WSDOT projects. However, it is also important special or proprietary information is shared that would not be provided to the public to avoid any questions of conflict of interest.

Mr. McCluskey added that additionally, WSDOT does have a conflict-of-interest policy. However, this situation is not addressed within the policy. The type of information exposed could certainly be in conflict with some of the requirements in WSDOT's Conflict-of-Interest manual. It is likely WSDOT and the Board could work through that process. The WSDOT team would review all information for submittal to avoid any issues.

Chair Zahn commented on the importance of ensuring that some members of the task force are experienced in heavy civil horizontal projects, which means those members as likely pursuing other WSDOT projects. Mr. Christopher reassured the Board that WSDOT would ensure all information to be shared is in the public record.

Vice Chair Michel asked about other delivery methods the task force could consider since the charge of the proviso is to forward recommendations on delivery methods. Mr. Christopher cited the number of projects completed by WSDOT using Design-Bid-Build, Traditional Design-Build, GC/CM, and Progressive Design-Build. The recommendations would likely center on one of the four methods with GC/CM not the preferred recommendation. WSDOT would likely prefer Progressive Design-Build rather than heavy civil GC/CM because of the market.

Chair Zahn asked the Board to consider appointing Ms. Riley-Hall as one of the Co-chairs of the task force because of her experience in heavy civil horizontal projects. Ms. Riley-Hall accepted the recommendation.

Robynne Thaxton moved, seconded by Olivia Yang, to establish a task force to address CPARB requirements included in the budget proviso. A voice vote approved the motion unanimously.

No members objected to Ms. Riley-Hall serving as a Co-Chair of the task force.

Chair Zahn invited Jerry Vanderwood to offer comments representing AGC.

Jerry Vanderwood, with the AGC, asked the Board about soliciting volunteers to serve on the task force from the heavy civil community. Several members supported the proposal. Mr. Vanderwood said the discussion surrounding the conflict-of-interest was very helpful because any volunteers serving on the task force would want assurance that it would not preclude them from bidding on WSDOT projects.

Mr. Christopher advised that part of the challenge has been the lack of an opportunity to discuss with the Board to understand what the Board envisions in terms of membership of the task force. However, the commitment would be as airtight as possible. He would like an opportunity to review the issue with the Department's attorneys to avoid any conflicts.

Chair Zahn requested additional clarification from WSDOT to provide clarity on the steps necessary to ensure no one needs to be recused as the Board draws both from public owners and experienced contractors to provide good recommendations.

Mr. McCluskey cited one potential issue because WSDOT does not share information on engineer estimates with the public. It is also dependent upon task force discussions and whether the focus is more about delivery methods versus discussion of engineer estimates.

Ms. Riley-Hall said her concerns surround timing and the possibility of scheduling another special meeting to appoint another Co-Chair. Chair Zahn recommended the Board agree to appoint a person as designated by the AGC to serve as Co-Chair as well as recommend AGC members to serve on the task force.

Senator Hasegawa suggested it might be prudent for the Board to consult with its attorney for advice for granting a guarantee. Chair Zahn affirmed her intent of working with DES staff to review the proposal with the Attorney General's Office.

Ms. Deakins added that all committee work is posted on the CPARB website.

Ms. Thaxton volunteered to serve as a member of the Task Force.

Ms. Fernandes affirmed OMWBE's interest to serve as well.

Chair Zahn recommended appointing two AGC members to be identified later.

Mr. Salinas recommended adding a member representing specialty subcontractors as they can contribute unique viewpoints on different delivery methods. He offered to serve on the Task Force as he participates in many alternative procurement methods.

Metin Keies volunteered to serve on the Task Force citing his 20 + years of experience mostly in Design-Build and assisting Sound Transit on two projects as a consultant. Chair Zahn thanked him for volunteering to serve. Mr. Keies reported he works for a woman-owned business and for the last four years has been overseeing Design-Build on behalf of the owner.

Ms. Riley-Hall added that the company has been assisting Sound Transit with delivery methods on Sound Transit's behalf. She supports membership on the Task Force by this small business.

Chair Zahn reviewed the list of volunteers for membership on the task force: Robynne Thaxton, Linneth Riley-Hall, John Salinas II, an OMWBE representative to be determined, Metin Keies, and two AGC members to be determined.

Ms. Thaxton suggested including an engineer's perspective. She suggested contacting engineering organizations. Mr. Kuruvilla offered to serve on the task force.

Matt Rasmussen added that he is a licensed engineer and would serve on the Task Force if needed. Chair Zahn suggested adding an engineer position with the member to be determined by Mr. Kuruvilla and Mr. Rasmussen.

Janet Jansen moved, seconded by Olivia Yang, to appoint Robynne Thaxton, Linneth Riley-Hall, John Salinas II, OMWBE representative (to be determined), two AGC members (to be determined), Metin Keies, and an engineer representative (Santosh Kuruvilla or Matt Rasmussen) to serve on the task force. A voice vote approved the motion unanimously.

ADJOURNMENT

With there being no further business, Chair Zahn adjourned the meeting at 4:30 p.m.

Staff & Guests

Gerard Baechel
Talia Baker, Department of Enterprise Services
Melanie Baldwin
Rick Chapman
Chris Christopher, WSDOT
Nancy Deakins, Department of Enterprise Services
Valerie Gow, Puget Sound Meeting Services

Metin Keies
Cameron Kukes
Monique Martinez, Department of Enterprise Services
Art McCluskey, WSDOT
Brian Nielsen
Jerry Vanderwood, AGC
Charles Wilson, Department of Enterprise Services