Location: via Teams
Meeting ID: 245 443 935 94 **Passcode:** tKAuFM

Committee Members: *(12 members, 7 = quorum)*

x	Linneth Riley-Hall (Transportation), Co-Chair	x	Tom Zamzow AGC (Walsh Construction), Co-Chair
x	Bob Armstead, MBE	x	Santosh Kuruvilla, Engineers
	Lekha Fernandes, OMWBE	x	Jessica Murphy, City of Seattle, with Janice Zahn, CPARB, as proxy from 4–5 p.m.
x	Bobby Forch, MSPW	x	Stuart Moore, Atkinson Construction
x	Metin Keles, WBE	x	John Salinas II, Specialty Subcontractors
x	Olivia Yang, proxy for Joseph C. Kline, WSU	x	Robynne Thaxton, Private Industry

Guests:

x	Talia Baker, DES/CPARB Staff	x	Ping Liu, Flatiron Corp
x	Nancy Deakins, DES CPARB Staff	x	Art McCluskey, WSDOT
x	Conrad Guadagni, WSDOT	x	Jerry Vanderwood, AGC
x	Jessica Letteney, MFA	x	Janice Zahn, CPARB Chair and Ports Rep

The meeting began at 3:06 p.m.

Call to Order and Roll Call for Quorum
A roll call of members confirmed the meeting quorum. Co-Chair Linneth Riley-Hall welcomed everyone to the Capital Projects Advisory Review Board (CPARB) WSDOT Project Delivery Method Review Task Force (TF).

Approve Agenda
Jessica Murphy moved to approve the agenda, and Santosh Kuruvilla seconded the motion. The agenda was approved by a unanimous voice vote.

Approve Minutes from 4/24/2024 Meeting
Jessica Murphy moved to approve the minutes of the April 24, 2024, meeting, and Metin Keles seconded the motion. The motion to approve the minutes was approved by a unanimous voice vote.

Delivery Methods for SR 18 Project

- **RCW Criteria**

TF members viewed the Project Evaluation Criteria General Contractor/Construction Manager (GC/CM Criteria) that is used to evaluate GC/CM projects. When an owner wants to use an alternative delivery method, they submit an application to the Project Review Committee (PRC) who reviews the application, presentation, and asks questions regarding the project to determine if the project and team meet the RCW 39.10 requirements for the chosen delivery method. The TF used the GC/CM Criteria as a template to help evaluate whether WSDOT should have chosen GC/CM as its project delivery method for SR 18.

RCW 47.20.785 allows WSDOT to use Design-Build (DB) as its delivery method without having to apply to the PRC. To select GC/CM; however, WSDOT would have to go to the PRC because RCW 47.20.780 & 47.20.785 does not include GC/CM or Progressive DB. But for best-value or design-competition DB projects WSDOT follows its own statute.

Robynne Thaxton said that the comparison being made in the GC/CM Criteria is between GC/CM and Design-Bid-Build (DBB), not DB. The processes and evaluation criteria to determine whether a project is suitable for DB or DBB, are similar: whether the project has a complex schedule, get designer involved early in the project.

Co-Chair Riley-Hall noted that the discussion of the GC/CM Criteria is focused on areas A through C. To choose GC/CM, the project just has to meet one of the criteria in Section B.

Robynne noted that the SR 18 project would meet criteria of item 4 in area B (Project meets qualifying criteria under RCW 39.10.340): Complex scheduling, issues regarding traffic, and permitting. However, under GC/CM, the owner would be responsible for obtaining the permitting, and WSDOT's materials note the desire for a contractor to manage the permitting process.

Santosh Kuruvilla said that, in context of SR 18, project complexity drove WSDOT's choice of DB. But looking at the criteria under C (Public Body has necessary experience or team), WSDOT has completed more projects using DB than it has using GC/CM. Though WSDOT used GC/CM for Coleman Dock, a vertical project, GC/CM is less of a fit than DB in that regard.

Robynne agreed that the project might fit the criteria under A and B, but WSDOT does not have the experience. She is not aware of an owner that has used the GC/CM method on a large horizontal project such as a highway.

Jessica Murphy agreed that, with regard to C, the delivery method must fit the agency's capabilities.

Bobby Forch also agreed that the criteria in C are the key deciding factor. WSDOT has only used GC/CM on one project, Coleman Dock, but it has an extensive DB team, with a manual, and well-established processes. WSDOT might not meet the standard in C for experience with GC/CM.

Co-Chair Riley-Hall noted that WSDOT also has to go to the PRC to use the Progressive DB method. In its December 2023 application to do Progressive DB on SR 167, I-5 to the SR 161 Expressway, the application says that WSDOT:

> "*manages a multi-billion-dollar annual capital program. Since 2001, an increasing volume of work has been delivered using alternative project delivery contracting methods. Through WSDOT's Design-Build Program, WSDOT develops and administers Design-Build Institute of America (DBIA) certified training to internal staff, local agencies, other DOTs, consultants, contractors, and Design-Builders. Since 2017 WSDOT has supported ongoing staff training in DB delivery and has numerous staff with DBIA certification and pursuing certification. WSDOT is an Industry Partner member of DBIA, has served as co-chair of the annual DBIA Transportation/Aviation Conference, and made numerous presentations at DBIA conferences."*

The point of this is that WSDOT's communications about this are about WSDOT's extensive experience in DB. GC/CM is not mentioned once in the application.

Robynne noted that, during the April 24th meeting, the TF learned that WSDOT has a well-established manual and processes for DB and not for GC/CM. She asked WSDOT whether staff have the project delivery knowledge in GC/CM to do the SR 18 project.

Art McClusky noted that the GC/CM Coleman Dock project, just finished last year, was a single GC/CM project. The experience and lessons learned from that project have not yet been disseminated though to staff and contract administration for GC/CM has not yet been well established.

Santosh noted that SR 18 would fall under the American Association of State Highway and Transportation Officials type of project. The Seattle Department of Transportation (SDOT) has been successful doing GC/CM because SDOT did a lot of work modifying specifications to be suitable for the GC/CM method. WSDOT would have to modify its specifications to use GC/CM. WSDOT's decision to use DB on SR 18, given the resources and framework of construction acceptance seems logical.

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Co-Chair Riley-Hall called the TF's attention to the Reason for Determination section at the bottom of the GC/CM Criteria form. The TF's focus is on Section C.

Robynne observed that it is possible for an agency to do a GC/CM project by hiring the expertise from an outside firm; however, making that shift is not a fast process, especially not on a large project like SR 18. When WSDOT used Progressive DB, the procurement process took a long time. WSDOT would have to bring in a consultant to help write the management plan and contract package as well as do the GC/CM procurement. WSDOT is a deliberative agency and it would have to evaluate how a shift to GC/CM would be affected by issues like federal requirements. WSDOT just doesn't have the background preparation in place now to use a GC/CM delivery method.

- **Cost Certainty and Schedule**

Co-Chair Riley-Hall said that the TF needs to evaluate whether the GC/CM procurement method helps with cost and how making that change affects the project schedule.

Stuart agreed that the TF needs to evaluate how using GC/CM would affect cost. The key is evaluating how competition factors into each delivery method. The DBB method can be characterized by a low project cost based on competition. DB also may have a low price based on competitors. In the GC/CM method, there is less competition, often one bidder, so the negotiations on price happen after the design is done. In summary, one issue with pricing is how it affects competition.

Co-Chair Zamzow agreed that GC/CM method takes longer to establish cost certainty. At some point a guaranteed maximum price is established, but it appears to be WSDOT's desire is to establish cost certainty early in the project.

John Salinas II said that, under DBB, there is as much competition as the market allows, meaning there is guarantee of the number of bidders. One of the issues he has seen is getting even three short-listed qualified bidders for a procurement. There have been projects where only a single firm went through the Statement of Qualifications process. Cost certainty is another issue. The statute stipulates that, if the project costs come in greater than the Engineer's Estimate by 5%, then there is a pause in the process. It is hard, therefore, to advise recommending using the GC/CM method, given this requirement about if a project comes in over the 5% over the Engineer's Estimate category.

Jessica Murphy noted that achieving cost certainty later in the life of the project is not all bad. In a GC/CM project, the agency takes the input of the GC/CM contractor into consideration for the project design and the budget. GC/CM leaves open the possibility to work on the design and estimate to fit within a budgeted amount. GC/CM provides for a more complete risk negotiation conversation that can improve change order rate down the line. Delaying cost certainty is not entirely negative, and having reduced change orders is a good thing to come out of the GC/CM method.

Santosh noted that a complementary point is that GC/CM gives the owner a greater opportunity to be a stronger owner because it provides for ongoing engagement during the life of the project.

Janice Zahn noted that the Port of Seattle uses the heavy civil GC/CM project delivery method and has experienced the benefits of being a more involved owner throughout the project life.

Stuart agreed that, with GC/CM, the owner has the ability to keep costs down. Under the DB method, the contractor puts in a number for project cost and it is the responsibility of the contractor to keep to the project cost. The delivery method an agency chooses is related to which party controls keeping costs down as design progresses. A key question to consider on this topic is which party is to be responsible for keeping costs down.

A related question is whether WSDOT has the ability to be a strong owner. It's the nature of projects that features may be added in that seem to improve the project. One of the risks of GC/CM is that, if the owner adds features that increase costs, there is no contractor pushing back; the contractor executes what the owner wants.

Janice shared a video clip of Representative Jake Fey discussing WSDOT projects and cost certainty during a hearing on the Washington Climate Commitment Act. The clip sheds light on the charge from the legislature to this TF and the context in which the TF was formed. In the clip Representative Fey mentions two recent WSDOT projects, Portage Bay and Bus Rapid Transit, for which the final project cost was much higher than the initial Engineer's Estimate. A key moment in the video is Representative Fey saying that:

> *"[WSDOT has to] have the confidence that they can live within the budget so that we don't have the situation that we have with the Bus Rapid Transit or Portage Bay [projects] going forward. So that we have a way of doing a project but maybe not all the project until we have further resources...It's potentially the case that Design-Build is no longer the procurement method of choice."*

Art noted that GC/CM procurement is being evaluated. WSDOT would not meet the criteria in Part C of the GC/CM Criteria in terms of budget and schedule. WSDOT could hire consultants with the knowledge to do GC/CM as they are doing with Progressive DB, but that has not been part of WSDOT planning to date. RCW 47.20, that governs WSDOT projects, strongly encourages the use of the DB method.

The TF looked at the Project Evaluation Criteria for Design-Build (DB Criteria).

Robynne noted that the requirements under RCW 39.10 mimic the requirements for RCW 47.20. If the TF decides that the SR 18 project meets RCW 39.10 criteria, then it meets the RCW 47.20 criteria.

Through WSDOT's presentations and answers to questions, it has demonstrated that it has in-house DB experience. Of interest is whether WSDOT has experience in Progressive DB. If WSDOT chose that method, would it have to hire a contractor to assist and if so, the TF would like to know the impact to the SR 18 project schedule, a second large horizontal project, given that WSDOT is working on the SR 167 project as a Progressive DB already. The TF would like to hear WSDOT's assessment of its capacity and ability to manage risk.

Art said that when WSDOT made the decision to use Progressive DB for the SR 167 horizontal project, a typical highway improvement project, it increased its capacity with staff that had that type of experience. The contract was much different than a contract for the Gateway project. To do an additional major project similar to SR 18 using Progressive DB would not be possible right now. The in-house capacity is not available to do that. In addition to staffing, WSDOT would have to develop processes and WSDOT staff do not yet have experience negotiating as owners. Negotiation is an area in which WSDOT is trying to get better through the current Progressive DB project, but would want to be cautious about extending too far beyond that project.

Co-Chair Riley-Hall asked about WSDOT's project goals and how they relate to the delivery method.

Art noted that WSDOT project goals differ for every project. Typical goals include minimizing public impacts, environmental stewardship, or quality. The goals relate to how WSDOT selects the best value. In the process, the goals relate to the evaluation of whether to use DB or DBB.

Co-Chair Riley-Hall noted that an action item was to ask WSDOT for the project goals for SR 18 and other projects.

Conrad Guadagni identified himself as the WSDOT Project Engineer for the SR 18 project and noted that the project goals have not been finalized but may include minimizing public impacts, reducing exposure to traffic hazards, environmental stewardship, collaboration, project management, using a disadvantaged business enterprise (DBE) on the job.

Co-Chair Riley-Hall noted that Sound Transit develops project goals and selects the delivery method that best supports the project goals. As an example, DBE participation might be selected as a goal, so delivery methods are evaluated as to how they would foster or improve DBE participation.

Art said that WSDOT uses the PDMS checklist that includes questions besides those in the RCW but does not include the project goals. When WSDOT uses the matrix to evaluate project delivery, the goals are taken into account. WSDOT uses the matrix about half the time.

Co-Chair Zamzow noted that the clip of Representative Fey indicates that some of the goals are not WSDOT's. Representative Fey's comments indicate that cost certainty is an issue as well as possibly schedule. Perhaps not building the entire job should be part of the conversation; for example, perhaps the SR 18 project gets scaled back to a three-lane highway from a four-lane highway. With some delivery methods, it is easier to adjust scope. Perhaps part of the conversation is what WSDOT can build for $430 million—it's a different question than the project delivery method. He would like to hear what others have to say about the issue of addressing cost certainty.

Janice says that the words 'cost certainty' are part of the charge from the legislature to the TF. The TF needs to determine which delivery method is best if an agency is designing to a scope and the budget from the legislature.

John noted that perhaps one of questions on the checklist needs to be "Does the agency have the budget to use this delivery method?" Representative Fey made it clear there may not be certainty that DB is the preferred standard practice because of the two recent jobs for which the bid price was far over the Engineer's Estimate. It depends on what the project goal is. The question arises whether the project goal is to fit into a budget, complete a task by handing off the risk to a contractor, or having a competitive bidding process, which might bring about a different outcome. It is fundamental to understand what the legislature's goal is. Without an understanding of that goal, the TF can present various options and explain the differences between them, but it can't necessarily make a recommendation for one project delivery method.

Robynne said it is possible to evaluate in DB best practices how prescriptive DB is, and how much design or scope drives it. DBIA would say that a project with extensive prescriptive requirements is not a candidate for DB. It is not possible, however, to provide a side-by-side comparison and say whether one project delivery method or another gives more or less cost certainty. The risks and issues from project to project are never the same. In DB, an agency can arrive at cost certainty earlier than in DBB. In a DBB project, an owner must use the lowest responsive bidder. There are studies of DB, DBB, and CM at risk that show that the earlier parties collaborate in a design the more likely there will be cost certainty.
The collaboration is more important than the delivery method. The factors related to whether a project's bid price is over or under the Engineer's Estimate are related to how accurate the estimate was to begin with, inflation, and how busy the market is.

Santosh observed that, if an agency doesn't have in-house capacity to engage in the design, then Progressive DB project delivery can be challenging. Also, an agency should be prepared to have a difficult conversation about scope and bid price. If the project cost starts to outweigh the benefits or allocated budget, the agency must have the willingness to stop or rethink the project.

Stuart agreed with Robynne that changing the project delivery method is not the way to control whether the project is close to the Engineer's Estimate. If the Portage Bay project was off by a huge percentage, something else was going on.

Co-Chair Riley-Hall observed that WSDOT said it does not have enough staff to do two Progressive DB projects at the same time and that staff don't have experience negotiating Progressive DB projects. These two factors would be a disincentive to recommend using Progressive DB delivery method.

John said that, in an earlier meeting, WSDOT said SR 18 had been rated as a level 3 project with the highest amount of risk associated with the scope of work. This indicates that on the SR 18 project, there is a higher risk that the project bid price might exceed the Engineer's Estimate and come out more like Portage Bay or Brickyard in terms of cost. Therefore, it is advisable that the TF be clear on whether the goal of the deliberations is to help the project stay within the budget or not exceed 5% of the Engineer's Estimate.

Co-Chair Riley-Hall said that there is a path forward for the TF. The task is to look at the different delivery methods and come up with recommendations. For example, the TF may determine that DB is the best method for SR 18 but also recommend value engineering for cost certainty or that WSDOT get an independent cost estimate.

Stuart observed that there is a commonality in the discussions of cost certainty: the larger jobs limit which firms are qualified to bid on them, they are more difficult for WSDOT staff to manage, and are more challenging for contractors to staff.

Robynne said that the TF needs to consider whether WSDOT chose the delivery method as appropriate based on project issues or on WSDOT's authority to do DB. Previous presentations show that the factors present in RCW 47.20 are present in the SR 18 project. The decision that WSDOT made to use DB is reasonable, given the consideration they made, the constraints, the limitations on permitting, the responsibility for the design, and the statutory requirements. It is easy to see why they chose DB. WSDOT's handout shows the schedule for DBB compared to schedule for DB supports the selection of DB over DBB. DB takes several years less time than DBB.

John noted that the conversation has circled back around to completion date but the deciding factors about project delivery method are related to what the goal is. The schedule shows that the project would finish earlier. But the goal for the project is not yet clear. DB is more open-ended and it's hard to say what the goals are, which is why there has been a focus on schedule thus far—the materials suggest that DB would finish significantly earlier under DBB.

Co-Chair Riley-Hall said that the focus on the schedule was to provide the comparison on schedule alone for the two methods that WSDOT currently considers using, DB and DBB.

Santosh said that, by making the decision to use DB, WSDOT also lost the opportunity to have ongoing engagement with the general contractor, look at cost savings, and work within the funding limits of the program.

Co-Chair Zamzow agreed with Santosh that WSDOT made the right decision based on the goals and inputs at the time. The goal of cost certainty is a different factor—the matrix and checklist do not have a parameter that says that WSDOT will design to the budget provided by the legislature.

Co-Chair Riley-Hall noted that one of the TF recommendations may be that WSDOT include adherence to the legislative budget as part of the process of evaluating its project delivery method.

Stuart said that a $450 million project is too big to do as a DBB job. The two delivery methods under consideration should be Progressive DB and traditional DB. The issue is who is better-suited to handle risks of managing design and all other escalation risks. If the owner is really engaged and wants to handle escalation risks, the owner might be able to have that kind of control and have a firm price. Currently, in the field, there is not much of a push to save money. Owners want to build the project with the most scope possible and that was the deciding factor to use DB.

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John said he believed WSDOT did what they thought was correct to get the project built. Since WSDOT made the project delivery method decision, the legislature seems to have shifted the goal—the objective now seems to be to get the project built according to a budget amount. A key issue is whether the TF should focus on determining whether WSDOT acted correctly when they first started the project or addressing the cost certainty issue that appears to be a legislative concern.

Co-Chair Riley-Hall observed that the TF is reviewing WSDOT's decision after the fact. One TF recommendation to the legislature may be to consider this kind of review at an earlier stage, or at the earliest possible stage, in the life of a project. Another recommendation might be to strike the preference for DB from the statute and give WSDOT the ability to evaluate all delivery methods.

Janice agreed. In the charge for the TF, the legislature made it clear that WSDOT must not advertise for projects until the TF report of recommendations is submitted. The original draft of the proviso included a mention of costs. She will find Engrossed Substitute House Bill 2134 and confirm the full language.

Art noted that in Section 304, Part 25, the following paragraph (page 127, starting line 12) mentions cost certainty.

Co-Chair Riley-Hall requested that TF members review minutes from this meeting.

Bob Armstead said his impression is that the TF is trying to fit a square peg into a round hole. Cost is what is driving the legislature. It is difficult to say whether WSDOT did something right or wrong without knowing what caused the difference between the Engineer's Estimate and the current cost. Doing something after the fact.

Co-Chair Riley-Hall requested that, if WSDOT has done any analysis on why projects come in over the Engineer's Estimate, the TF would be interested in seeing it.

Art said he would investigate whether an analysis of costs exists and provide it if available.

Jerry Vanderwood said that no matter what the project delivery method is, it doesn't guarantee that the Engineer's Estimate will be met. He had a chance to talk to Senator Elias who said that the legislature is looking for lessons learned and wants to hear what the TF would recommend in a best-case scenario. Jerry believes that both the procurement method and the cost estimate issue should be discussed and that recommendations that are a bit broader than the stated parameters for the TF would be appropriate.

Identify Next Steps
Co-Chair Riley-Hall and Co-Chair Zamzow will develop the draft executive summary and report outline and provide it to TF members at the next meeting.

TF members will look at the minutes from past meetings to refresh their memory on the rationales for any recommendations the group might make.

Establish Next Meeting Agenda – *Discussion*

The agenda for the May 22 meeting will include the following:

- Review and approve notes from the May 8 meeting.
- Review entire budget proviso language.
- Review draft executive summary and outline of the report.

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Co-Chair Riley-Hall moved to adjourn the meeting. Robynne Thaxton seconded the motion. The meeting was adjourned.

The meeting adjourned at 4:58 p.m.

Next meeting: May 22, 2024, 3:00 p.m.

Action Items

1. Janice Zahn will find the original proviso language and confirm the full language of the charge for the TF.
2. WSDOT will provide the project goals for SR 18 and the other projects.
3. For projects that went over the Engineer's Estimate, WSDOT will provide an analysis of why costs escalated.
4. All TF members will look at the minutes from past meetings.
5. Co-Chairs Riley-Hall and Zamzow will develop the draft executive summary and report outline.

References\Resources:

- WSDOT Project Delivery Method Review Task Force Homepage
- RCWs 47.20.780 and 47.20.785
- RCWs 39.10. 300 and 39.10.340
- GCCM Certification Application
- Project Evaluation Criteria General Contractor/Construction Manager
- Project Evaluation Criteria Design-Build
- WSDOT SR 167, I-5 to SR 161 – New Expressway DB Project Application
- Engrossed Substitute House Bill 2134

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