

CAPITAL PROJECTS ADVISORY REVIEW BOARD

Via Teams

Special Meeting Minutes - **Final**

June 3, 2024

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MEMBERS PRESENT	REPRESENTING	MEMBERS ABSENT	REPRESENTING
Janice Zahn (<i>Chair</i>)	Ports	Lekha Fernandes	OMWBE
Keith Michel (<i>Vice Chair</i>)	General Contractors	Karen Mooseker	School Districts
Bobbie Forch, Jr.	Disadvantaged Business	Irene Reyes	Private Industry
Bill Frare	Dept. of Enterprise Services	Mark Riker	Construction Trades Labor
Senator Bob Hasegawa	Senate (D)	Rep. Mike Steele	House (R)
Bruce Hayashi	Architects	Rep. Steve Tharinger	House (D)
Santosh Kuruvilla	Engineers	Senator Judy Warnick	Senate (R)
Mark Nakagawara	Cities	<i>Vacant</i>	Public Hospital Districts
Matt Rasmussen	Counties		
Linneth Riley-Hall	Transit		
Steve Russo	Specialty Subcontractors		
John Salinas II	Specialty Contractors		
Kara Skinner	Ins./Surety Industry		
Robin Strom	General Contractors		
Josh Swanson	Construction Trades Labor		
Robynne Thaxton	Private Industry		
Olivia Yang	Higher Education		

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 9:31 a.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 report to the Legislature on the Washington State Department of Transportation's (WSDOT) SR 18 Project. She welcomed Bill Frare representing the Department of Enterprise Services to the Board as both a former member and Chair of the Board.

BOARD MEMBER OPENING THOUGHTS/SHARED COMMITMENTS *Information*

Chair Zahn reviewed the Board's shared commitments of Respect, Purpose, Listening to Understand, Accountability, and Inclusion. She thanked and acknowledged Co-Chairs Linneth Riley-Hall and Tom Zamzow and members of the WSDOT Project Delivery Method Review Task Force for their review on procurement methods of four WSDOT projects and recommendations on the procurement methods. The report is due to the Washington State Transportation Commission and to state transportation legislators by July 1, 2024.

WSDOT PROJECT DELIVERY METHOD REVIEW TASK FORCE

– WSDOT Legislative Report on SR 18 (L100199 Issaquah/Hobart Road to Deep Creek) *Discussion & Action*

Co-Chair Linneth Riley-Hall thanked members of the WSDOT Project Delivery Method Review Task Force (Task Force) for their many discussions and feedback in support of creating the draft report. All participants engaged in discussion at all meetings. She thanked representatives from WSDOT for attending each meeting and providing on-time responses to questions or comments to clarify information. She thanked Robynne Thaxton for consolidating the input from all meetings and drafting the report on behalf of the Task Force.

The Task Force was established by the Board to address the concerns of the Legislature. The mission is to review the planned procurement methods for specified WSDOT projects and provide recommendations on the procurement methods. Prior to initiating new advertisements or Requests for Qualifications (RFQ) for any of the four projects, the Task Force was tasked with completing its recommendations. Included in the legislation are the SR 9 March Road to Second Street Vicinity project, SR 526 Corridor Improvements project, US 395 North Spokane Corridor project, and SR 18 Widening of Issaquah to Hobart Road project. Recommendations on SR 18 procurement methods are due by July 1, 2024. The intent of

the special meeting is to review and discuss the draft report, receive comments and feedback, and respond to questions. The Task Force reviewed the report and provided comments. All additional comments and feedback are welcome during the review of the report. Delivery methods of Design-Build, Design-Bid-Build, GC/CM, Heavy Civil GC/CM, and Progressive Design-Build were reviewed by the Task Force to form the recommendations.

The Task Force unanimously supported WSDOT's delivery method of Design-Build for the SR 18 project.

Robynne Thaxton described the review and discussion process by the Task Force, WSDOT delivery methods, and RCW 39.10 delivery methods of GC/CM and Progressive Design-Build. Members distinguished the differences between Progressive Design-Build under RCW 39.10 and traditional Design-Build under RCW 47.20. WSDOT presents project proposals for Progressive Design-Build to the Project Review Committee (PRC) for approval. WSDOT received approval of four Progressive Design-Build with two projects in progress, one project in procurement, and one project on hold.

Members discussed the Task Force process and received a substantial amount of information from WSDOT. Ms. Thaxton reviewed the sections of the report. Statements in Section 4.1 include corresponding information from either a WSDOT presentation or clarification of questions from the Task Force by WSDOT team members, which were fact checked by Art McCluskey and his team. If not fact-checked, the information was not included in the report.

WSDOT representatives reviewed the rationale for the selected delivery methods. The Task Force recommended WSDOT continue to pursue the SR 18 project pursuant to Design-Build under RCW 47.20.785 with rationale included in Section 5.1.2 of the report.

The Task Force reviewed additional recommendations as another provision in the statute requested additional review to provide recommendations to WSDOT, which are included in Section 6.1 and Section 6.2 of the report. Section 6.3 provides citations for each research project completed by the industry, research projects requested by WSDOT, or research projects completed by universities as PhD projects.

Co-Chair Riley-Hall invited comments and feedback.

Bob Armstead, President, Washington State Chapter-National Association of Minority Contractors (NAMC), commented that the report is well formatted and thorough and will serve as a good information source for readers. His comments pertain to the recommendations. In Section 6.1, he supports the recommendation but does not necessarily agree with the individuals or organizations identified for providing information to WSDOT. To avoid any appearance of conflict of interest, the information that is being sought should be obtained from others in the construction industry rather than from the proposers as cited in the recommendation. The proposers could be a member of a group that provides the information, but proposers should not be the only groups providing the information. Other organizations within the construction industry provide estimating and cost services and those sources should be utilized as well.

When asked to clarify the appropriate section, Mr. Armstead said his recommendation focuses on the second and third bullets within the section. He supports retaining the bullets; however, sources of information should be from others in the construction industry and not just proposers on the project.

Ms. Thaxton noted that the committee discussed the importance of communicating with proposers; however, if the recommendation is not only to communicate with the proposers but with others in the industry it would broaden the pool. Proposer feedback is relevant; however, the recommendation is appreciated, as WSDOT should be sourcing information from other groups.

Mr. Armstead agreed the language could reflect a combination of proposers and others. However, if the primary impetus is seeking information for the best interests of the citizens of the state, it is important to ensure competition is one of the elements of cost. By restricting language to reflect only proposers to determine specific costs, it could weigh the cost factor in favor of the proposers and not to the citizens in the state. Other groups include engineers, estimators, architects, and others that complete cost estimating on projects.

Co-Chair Riley-Hall responded by asking whether the language could be reflected as a question from WSDOT to the contracting community. Mr. Armstead agreed with the suggestion.

Ms. Thaxton asked about specific industry groups to recommend. Mr. Armstead recommended against identifying any specific industry group. Ms. Thaxton supported including the broader community as well as the proposers as members of

the broader community are a resource to ensure appropriate project risks. She was, however, unsure whether language reflecting the broader community would also encompass other stakeholders such as environmental groups or tribes.

Chair Zahn pointed out that the section prior to the bulleted items speaks to whether WSDOT should allow finalists to provide input. The subject bullets speak only to input requested from finalists. The conversation speaks more to a new, stand-alone bullet not only asking questions of proposers but how WSDOT reaches out to other consultants, subject matter experts, and industry groups. She believes the first bullet is focused on finalist input while the discussion speaks to warranting a separate bullet as well to avoid the perception that proposers have a larger role. It might be possible to reorder the bullets to avoid unintentional weight afforded to proposers.

Mr. Armstead supported Chair Zahn's suggestion.

Co-Chair Riley-Hall affirmed the addition of a separate bullet addressing other stakeholders to avoid the appearance of targeting only proposers.

Mr. Armstead questioned the placement order of the new bullet. Co-Chair Riley-Hall recommended adding the bullet as the first bullet. She encouraged Mr. Armstead to forward any specific language for insertion as soon as possible.

Mr. Armstead said the impetus of the current situation was not WSDOT's choice of a delivery method; it was because WSDOT did not adequately complete the communication function under project management. The recommendation should be focused on that issue rather than focusing on recommendations for other delivery methods because WSDOT is working through problems with the delivery methods it is authorized to utilize.

Ms. Thaxton pointed out that the report is the first submittal of two reports to the Legislature. She suggested deferring the bullets to the final report to the Legislature to ensure the report addresses future use of other delivery methods. The language is reflective of delivery methods as one recommendation the Task Force discussed; however, it might be appropriate to defer the suggestions to the next report. Section 6.3 was not intended as a recommendation but to provide information on research. Section 2 speaks to delivery methods while Section 6.3 suggestions could be deferred to the next report.

Mr. Armstead agreed with the suggestion. Co-Chair Riley-Hall and Ms. Thaxton supported deferring the language to the final report.

Chair Zahn offered that instead of removing Section 6.2, the language could be refined to reflect that the committee discussed those issues and that the second report would include more information rather than eliminating the entire section. Co-Chair Riley-Hall offered an alternative of including information at the end of the report addressing the contents of the next report.

All parties offering feedback supported Chair Zahn's recommendation.

Mr. Armstead suggested Section 6.3 in its entirety should be deferred and included within the final report.

Ms. Thaxton commented on the importance of ensuring the report reflects the extensive volume of research available on Design-Build and GC/CM as delivery methods for their efficiency and utilization within the industry because it appears there have been some misunderstandings that the delivery methods have not been studied. For that reason, it would be beneficial to retain the section as it speaks to available resources and studies on delivery methods.

Co-Chair Riley-Hall commented that her concern with removing the section surrounds the recommendation for one project (SR 18) and eliminating language about cost certainty because it could affect how the Legislature either allows WSDOT to move forward with the project or possibly defer action on the project until the Legislature receives the final report.

Chair Zahn agreed as the committee specifically pulled three paragraphs from the proviso tasking WSDOT. The first paragraph outlined the expectations of CPARB and the second paragraph outlines cost certainty to provide some context and framework to the concerns by the Legislature. She recommended including some information on cost certainty by adding articles and references as a footnote directly attributed to cost certainty versus reference materials, which could be included as an appendix to the final report.

Co-Chair Riley-Hall offered that the information could be included in the final report or as an appendix of those specific references within the first report and ending the first paragraph at, *“Unique projects require unique solutions to achieve cost certainty and ultimately best value to taxpayers.”*

Chair Zahn noted that the reason for not recommending removal of the articles completely from the first report is that part of the Task Force discussions were derived from the reports. At one of the meetings, she shared the DBIA-ACEC Research Institute Design-Build Report. Some information from that report is included within the recommendations that WSDOT should consider. If the request is to eliminate some of the information as part of the Task Force conversations, retaining the information would be helpful to provide some context. Co-Chair Riley-Hall agreed.

Ms. Thaxton offered an alternative of posting some of the studies on the Task Force webpage with reference to the Task Force review that included obtaining research and reviewing studies. The webpage could include a link to the research and studies.

Mr. Armstead remarked that Section 6.3 is reflective of good information that is appreciated. However, his concern surrounds the second sentence that speaks to the recommendation for CPARB to consider expanded use of alternative delivery methods as it relates directly to the recommendations in Section 6.2. If a revision of Section 6.3 does not include the second sentence that would be acceptable.

Ms. Thaxton offered alternative language of, *“The recommendations above are supported by research by universities and industry organizations.”* The final report would speak to exploring other delivery methods. Mr. Armstead supported the suggestion.

Co-Chair Riley-Hall confirmed no other edits or changes to Section 6.3 other than suggested by Ms. Thaxton.

Vice Chair Michel thanked the Task Force for its efforts to draft a report in a short timeframe. He questioned the appropriateness of including the last two bullets in Section 6.1 identifying two statute provisions that serve as guardrails/thresholds because the report is comprised of recommendations for a specific procurement. He does not necessarily disagree with the language but questions whether the language is applicable as it effectively lowers the bar to enable WSDOT to move forward. If the recommendation retains the course of the delivery method WSDOT selected, he encouraged more direct language whereby WSDOT pursues other measures throughout the process such as receiving more feedback from proposers or even issuing an addendum that speaks to issues arising from proprietary meetings, especially if it reduced cost but not necessarily improving certainty.

Co-Chair Riley-Hall cited the second to the last bullet stating, *“The statute sets a very low threshold.”* She asked whether that language would be appropriate to include in the report. Vice Chair Michel said the language essentially identifies current law and could cause an inappropriate constraint on actions that might be more appropriate after reading proposals. To simultaneously advocate for a wider margin from a variation from an estimate and still allow WSDOT to issue an award could benefit from additional oversight as a step.

Co-Chair Riley-Hall suggested deferring the language to the final report and adding additional discussion.

Arthur Antoine, Axiom Project Management, commented that the last two bullets were included because of contributions from the perspective of practitioners, as many believed including a higher threshold might lead to higher risk premiums and less participation, particularly when typical awards are 10% or more. An average of 10% growth on a threshold appears to be low based on his opinion.

Ms. Thaxton explained that WSDOT must pause if the bids are more than \$10 million of a \$450 million project. Even receiving an award of 2.5% for a large project, it would likely result in a good estimate. The problems occur with much larger differences for mega priced projects. Signaling to the Legislature that requiring a pause could do more harm. If proposers believe there would be a delay, they typically include risk within their lump sum bid, which is not transparent to owners. She supports retaining the bullets.

Vice Chair Michel agreed with the perspective as well as the two bullets highlight the possibility of potential changes in law. However, in the context of this report to the Legislature about a specific project, the converse of trying to help WSDOT provide more cost certainty and validate its position for selecting a contracting method speaks to a different task that CPARB might consider pursuing for a legislative change.

Ms. Thaxton noted that the report would be transmitted to the Legislature and copied to WSDOT with recommendations.

Vice Chair Michel responded that the \$400-\$500 million project is often referred to as a mega project. The report includes five sub-bullets in the section on ways to evaluate national trends on risk transfer. The language explains why risk transfer is so important, especially for a mega project. He questioned whether breaking the project into two \$250 million projects would attract more applicants. A smaller pool of proposers is assumed for mega projects of \$500 million or more, resulting in a narrow pool of applicants willing to assume risk and guarantee a lump sum bid. His goal would be to steer WSDOT to Progressive Design-Build delivery methods so that cost reimbursables with a guaranteed maximum price could be utilized because it would demonstrate value compared to risk transfer behind the lump sum veil, which likely translates into more profit. Most firms competing for mega projects are experienced in managing risks with profitability in mind.

Chair Zahn referred to Mr. Antoine's comments concerning the two bullets in Section 6.1. The bullets do not reflect the concerns conveyed by Mr. Antoine. She recommended revising the language to provide more clarity regarding risk. She questioned whether the two bullets should be included in Sections 6.4 or 6.5 as Section 6.1 speaks specifically to Design-Build delivery under RCW 47.20 and addresses the procurement method whereas the two bullets in question are intended to convey to the Legislature that by implementing a limitation requiring a pause at \$10 million or 2.5%, automatically introduces risk that affects cost certainty or cost increases. She recommended moving the two bullets to a new section in the report because of the importance of including the information within the first report to the Legislature.

John Salinas affirmed feedback from general contractors during the meetings about the dollar threshold of approximately \$450 million to \$500 million eliminating many general contractors from bidding because of bonding constraints. Bonding companies are typically opposed to projects greater than \$500 million. Consequently, if competition is an important goal because it helps to lower costs, WSDOT would need the greatest number of proposers during the RFQ process by capping contracts under a certain dollar threshold to encourage as much competition as possible.

Bobby Forch said that based on his experience, projects of \$500 million or more tend to reduce the pool of bidders dramatically leading to increased project costs. Projects generating good participation range between \$250 million to \$300 million.

Several members discussed options of adding a recommendation of a project cost threshold of \$300 million to increase competition.

Bobby Forch disconnected from the meeting at 10:37 a.m.

Bill Frare said an owner should have the flexibility to prepare a project proposal to enable cohesiveness of the project. Recommending a dollar limit on a project, such as a bridge with a project cost limit of \$300 million would likely result in completion of only three-quarters of the bridge. Splitting a project into two projects would not be sensible. Additionally, the same analogy could be applied to other projects. The Department of Enterprise Services (DES) often forwards project proposals to the Legislature outlining the scope of the project with the Legislature viewing the proposal as *à la carte*. By not funding the project appropriately, more work is often necessary or more problems are encountered. He does not favor adding a dollar value but supports a statement that indicates WSDOT should consider whether projects make sense, are comprehensive, or separated into smaller components.

Co-Chair Riley-Hall commented that she believes the checklist used by WSDOT includes project size.

Ms. Thaxton agreed with Mr. Frare, as the recommendations should not reflect direction to WSDOT that the project should be split or limit the dollar amount.

Chair Zahn requested clarification as to the discussion as it appears the project is a traditional Design-Build whereby bidders are asked to provide a cost during the solicitation process. The language appears to acknowledge the increase in risk when a project reaches the category of a mega project as proposers providing the best value price encounter more risks creating the potential of bidders including risk within their respective proposal. She is unsure whether the bullet conveys the conversation. She supports not setting a limit or requiring the splitting of mega projects. However, she recommends the Board capture the comments and modify the bullet to provide that context.

Olivia Yang said she understands the merit of the comments by Vice Chair Michel and others that speak to the benefits of smaller projects as more bidders are able to bond. However, as a representative of a public owner, public owners need to

have the ability to render decisions. Alternatively, she suggested it would be helpful for WSDOT to understand that for Design-Build projects of a specific size, the agency should consider the realistic number of bidders for the project. It would be helpful for WSDOT to use market analysis to establish the size of the project in addition to the scope.

Stuart Moore noted that the issue is not restricted to only \$500 million Design-Build, GC/CM, or Progressive Design-Build projects, the issue impacts projects costing \$1 billion or more because of the project size.

Mr. Armstead agreed with Ms. Thaxton, as the discussion is only about one project. Many project elements have been completed resulting in time constraints for the project to avoid redoing many of the completed tasks. He supports retaining existing language.

Ms. Thaxton suggested adding a sentence to the end of the bullet stating, *“When projects are very large, design builders and contractors will include additional costs as a contingency to reflect the increased risk for the project”* as it recognizes the issue and retains existing language.

Kara Skinner suggested removing *“should”* from the bullet to satisfy all the concerns. She agreed mega projects will limit the entities able to bid. To enable the owner to make an informed decision, knowing the limited pool is important but telling owners that they should do something might convey the wrong message.

Co-Chair Riley-Hall recommended changing *“should”* to *“could.”* She asked for any opposition to reviewing the document to identify other occurrences *“should”* to change to *“could”* to enable flexibility.

The Board supported language recommended by Ms. Thaxton stating, *“When projects are very large, design builders and contractors will include additional costs as a contingency to reflect the increased risk for the project.”* The Board supported Chair Zahn’s recommendation to move the last two bullets in Section 6.1 to a new Section 6.4.

Co-Chair Riley-Hall reviewed comments submitted by Irene Reyes who was unable to attend the meeting. Her first comment questioned whether there is a balance between GC/CM and Progressive Design-Build projects.

Ms. Thaxton responded that the report’s comments speak to WSDOT’s preparedness to pursue Progressive Design-Build, which has progressed beyond GC/CM. However, WSDOT currently lacks the capacity to pursue Progressive Design-Build as a delivery method. The Task Force conveyed interest in WSDOT exploring options. Comments on all the delivery methods were deferred to the final report providing time to Ms. Reyes to offer additional comments on the issue.

Ms. Reyes also questioned how to create the balance for other project delivery methods as the report demonstrates a preference for Design-Build and Progressive Design-Build delivery methods. Ms. Thaxton emphasized that the report speaks to one project and the status of WSDOT’s ability to pursue Progressive Design-Build. The report is not reflective of any particular preference to a delivery method. Several Task Force members spoke to WSDOT exploring GC/CM and Heavy Civil GC/CM.

Mr. Armstead supported Ms. Thaxton’s response.

Ms. Thaxton recommended including the topic on the agenda at the next Task Force meeting for further discussion.

Ms. Reyes also spoke to internal and external communication concerns and ambiguities at WSDOT. Co-Chair Riley-Hall admitted that she was not familiar with the concerns. Ms. Thaxton suggested contacting Ms. Reyes and inviting her to attend a Task Force meeting to discuss WSDOT communications.

Chair Zahn noted that the communication from Ms. Reyes included some context for the comment regarding communications at all levels, especially to subcontractors. Co-Chair Riley-Hall confirmed the recommendation to invite Ms. Reyes to a Task Force meeting to follow up on the comment.

With no additional comments, Co-Chair Riley-Hall requested approval to incorporate edits into the report and forward to the Board and Task Force members. Based on edits and recommendations, she asked for approval by the Board to finalize the report for distribution.

Bill Frare moved, seconded by Olivia Yang, to approve the CPARB Report Regarding Review of WSDOT Projects Pursuant to ESSB 2134, Part 1: SR 18 – Widening – Issaquah/Hobert Road to Raging River – Phase 1 (L1000199) with authority to the Task Force to amend and incorporate the edits as discussed by the Board. A voice vote approved the motion unanimously.

Co-Chair Riley-Hall thanked members for their time to review and provide input on the report.

Ms. Thaxton disconnected from the meeting at 10:56 a.m.

Chair Zahn noted that as an active participant during Task Force meetings, she is interested in appointment to the Task Force. She thanked members of the Task Force for their efforts to produce the report. A cover letter signed by the Chair will accompany the report to the Legislature.

ADJOURNMENT

With there being no further business, Chair Zahn adjourned the meeting at 10:58 a.m.

Staff & Guests

Arthur Antoine, Axiom Project Management

Bob Armstead, National Assn of Minority Contractors

Talia Baker, Department of Enterprise Services

Nancy Deakins, Department of Enterprise Services

Valerie Gow, Puget Sound Meeting Services

Joseph Kline, Washington State University

Don Laford, AECOM Corporation

Jessica Letteney, Maul Foster & Alongi, Inc.

Art McCluskey, WSDOT

Stuart Moore, Atkinson Construction

Michael Transue, MCAWW

Tom Zamzow, Walsh Group