

CPARB Public-Private Partnership Committee

Executive Summary of Draft Legislation

CPARB Pre-Reads for December 8, 2016

I. P3 COMMITTEE SUMMARY

- Representatives of public owners (Ports, WSDOT, Sound Transit, Counties, City), contractors, trades/labor, academia, including CPARB and PRC members. 30+ Participants.
- Numerous meetings over nearly 2 years. Discussed suitability of existing law (Transportation Innovative Partnerships, RCW 47.29), demand and opportunity for P3 in Washington, challenges and drawbacks, lessons learned from other jurisdictions. Consensus: propose new enabling legislation.
- Multiple drafts of legislation from June 2015 to reach consensus for initial presentation to CPARB in May 2016.

II. STATUS UPDATE FOR CPARB 12/8/2016

The Committee met on November 29, 2016 to discuss and resolve open issues from the 11/10 CPARB meeting and related stakeholder discussions.

The Committee's updated draft legislation incorporates the following modifications reflecting resolution of the open issues identified:

- PRC Subcommittee Review (.580) – The PRC Subcommittee will review applications and submit recommendations to CPARB, which will make the project approval decisions. This avoids the necessity of CPARB rulemaking to define specific review standards, reduces the number of layers between the legislature and the primary decision-making body, and ensures prospective projects are thoughtfully reviewed by individuals with appropriate subject matter expertise.
- Initial Implementation (.580) – A maximum of four projects per year may be approved from 2017 through 2021. In recommending projects for approval (if more than four apply), the PRC Subcommittee is to make reasonable efforts to balance the types of projects approved—ideally two vertical and two civil/horizontal, but ultimately at the Subcommittee's discretion. This allows for thoughtful implementation, with time to develop best practices and make any process modifications that may be warranted based on experiences in early projects. There are various views on this topic, and the current draft is intended to represent the balanced compromise discussed in the meeting.
- Contract Requirements (.520) – The prior list of mandatory contract terms is substantially pared down, focusing on terms unique to this methodology (e.g. property interest, user fees, financing) or necessary to preserve and promote important interests that the Committee has identified as priorities in this process (e.g. labor protections, diversity inclusion).
- Debt Limitations (.550) – Addressing concerns that provisions seeking to alter debt restrictions raise potential constitutional issues, those provisions are removed in the current draft. This issue is to be reviewed by specialty bond counsel and treasury experts, an action item following the Committee meeting.
- Honorarium (.510(e)(i)(5)) – After extensive discussion, the draft now generally mirrors the Design-Build honorarium standards, with the proviso that if an honorarium is to be provided, it must be sufficient to generate meaningful competition and consider the effort required to

CPARB Public-Private Partnership Committee

meet selection criteria. This recognizes that the honorarium should generally be provided and fairly compensate proposers for their often substantial efforts. While an owner may elect not to provide an honorarium, that is to be disclosed in the RFQ.

- Terminology (Global) – The draft adopts the term “Cooperative Project Delivery” to accurately describe the intended procurement methodology, reducing potentially inaccurate preconceived notions associated with “P3” as implemented in other jurisdictions.
- Public Hearing (.510(c)) – The draft incorporates an early public hearing requirement echoing the GC/CM hearing provisions.

III. KEY FEATURES OF COMMITTEE DRAFT LEGISLATION

Purpose: Provide public owners an efficient vehicle to deliver public works where P3 principles—consolidated design, build, finance, operate, and/or maintain—provide public benefit.

Goals: Provide owners flexibility to maximize public value across a spectrum of potential projects. Balance owner flexibility with safeguards for competition, value for money, high labor standards, and opportunities for participation by disadvantaged and underrepresented businesses.

What the Proposed P3 Legislation IS: A flexible, competitive, public procurement and delivery process that consolidates project design, construction, operations, maintenance, and/or financing by private entities, allowing public owners to efficiently utilize specialized private sector expertise and resources, provide performance-based incentives and compensation to maximize value, and allocate risk on projects with a long-term operating component.

What the Proposed P3 Legislation is NOT: A toll road statute. Limited to “megaprojects.” Limited to heavy civil projects. A limit on any existing public contracting methods.

IV. PARTICULAR TERMS INCLUDED

P3 Definition: Contract that relates to development, financing, maintenance, and/or operation. May implement Design-Build-Operate-Maintain, Design-Build-Finance, or Design-Build-Finance-Operate-Maintain.

Procurement: Competitive, structured, RFQ-RFP or RFP process. Honorarium disclosed in solicitation. If honorarium is to be awarded, amount must mirror current Design-Build standard.

Ownership: Property remains public and control reverts to the public body after contract term.

Financing: Owner may combine public and private financing and funding sources.

Labor Standards: P3 projects are public works, subject to payment bonds, prevailing wages, and mandatory plans for labor harmony.

Equity: Owner designates standards for outreach to small, disadvantaged, veteran-owned, minority and women owned, and other underutilized businesses.

Review: Substantive review and recommendation by proposed new PRC Subcommittee with specified subject matter expertise. CPARB approves/disapproves.