

MEETING MINUTES

DATE: 28 March 2018

TIME: 1:00 PM to 3:20 PM

LOCATION: Schacht Aslani Architects, 901 Fifth Ave, Ste 2720, Seattle, WA 98164

ATTENDEES:	Art McCluskey	(AM)	WSDOT
	Brett Earnest	(BE)	Clark Construction
	Curt Gimmestad	(CG)	Absher Construction
	Debra Delzell	(DD)	DES
	Elisa Young	(EY)	OMWBE
	Janice Zahn	(JZ)	Port of Seattle
	Joe Kline	(JK)	Washington State University
	Nancy Deakins	(NDs)	DES
	Nick Datz	(NDz)	Sound Transit
	Rebecca Keith	(RK)	City of Seattle
	Robynne Parkinson	(RP)	DBIA
	Rustin Hall	(RH)	ALSC Architects
	Steve Tatge	(ST)	University of Washington
	Tim Thomas	(TT)	Bouten Construction
	Walter Schacht	(WS)	Schacht Aslani Architects

I. WELCOME, INTRODUCTIONS & AGENDA

Attendees introduced themselves. WS reviewed the agenda. RH moved to approve the agenda. JK seconded the motion. The motion carried.

II. BACKGROUND: D-B BEST PRACTICES & STATUTORY ISSUES / COMMITTEE GOALS

WS indicated that CPARB asked the Attorney General's office to provide an informal opinion on whether honorarium payments are required for all design-build procurements under RCW 39.10. The AGO indicated that they are required. This committee should consider the existing requirements for the amount of the payment. Teams are rarely compensated for their level of effort in traditional procurements.

WS identified a number of issues to consider regarding progressive design-build. The statute was originally written for traditional and bridging design-build procurement methods. He asked if there should be an alternative description of the RFP requirements for a progressive procurement including the owner's "detailed project description" and the "technical approach design concept" submitted by finalists. He asked if progressive design-build procurements should be defined as a discreet entity within the statute.

WS stated that the committee should renew CPARB approved legislation to remove constraints on the number of public projects between \$2 million and \$10 million.

WS noted that the committee could propose one bill that encompasses all of the committee's recommendations or separate bills depending on the strategy to ensure passage. Overall, the committee's goal should be to recommend all the changes that benefit the project delivery method to CPARB.

JZ asked if CPARB's data collection has provided information on MWBE inclusion. She noted that unlike the GC/CM statute, early release of retainage does not exist in design-build. This can be a challenge in large

projects when the retainage is held until the very end of the project. She also indicated that sales tax on design services in design-build should be discussed.

RP indicated that other states have rules that might benefit RCW 39.10 with respect to the need to bond design work and release retainage.

RP noted that there are small issues in RFP and RFQ requirements that could be improved to clarify their intent. For example, there is a missing comma between “technical approach” and “design concept.” The comma was originally there and subsequently deleted.

RP said that in 2013 there was concern that the statute would not be reauthorized. Some legislators indicated an interest in eliminating design-build altogether. As a result, the proposed changes were limited to the minimum. She noted that the constraints on the number of projects between \$2 million and \$10 million were provided because they were pilot projects.

RH said it would be better to establish a separate statute for progressive design-build for two reasons: (1) it is fundamentally different, especially during the selection process, and (2) some applicants to the PRC applicants do not understand the differences.

JK said that the less change to the statute would be better. WSU is concerned that overly prescriptive statutory language would prevent owners from taking advantage of the best attributes of progressive, traditional and bridging, which can be used together. He indicated that design-build should not become as prescriptive as the GC/CM statute.

ST indicated that the committee should focus on cleaning up the existing statute, not major changes. Changes should not be overly prescriptive. Having flexibility within the statute is helpful to owners.

RK expressed concern about substantial changes that might lead to unintended effects. She noted that reauthorization is coming faster than people realize. She stated that public owners are still very interested in the CPARB approved amendments to the statute regarding lifting constraints the number of small projects that were not considered by the legislature.

RH asked for clarity about “qualifications-based selections.” Asking for more than the “best qualified firms,” and “we want to see some ideas” creates a different meaning for “qualified”. Flexibility should be maintained but the committee may need to consider some action. He indicated he would share his experience with PRC applications.

CG said that contractors have seen the “progressive qualification-based selection process” morph into something different than what was understood at the beginning of the process. Additional requirements create a “hybrid progressive.”

WS said public owners’ application of the design-build method is more important than how the statute is written. He noted there is a fundamental difference between progressive and other methods. In progressive, the team is picked prior to the time that the cost of construction is established. Price factors are required, but not the cost to build the project. He said that the key to fair competition is a level playing field. He added that the committee should focus on what is not working and requires statutory change, differentiating those issues from ones that could be resolved by reference to best practices guidelines.

BE said it would be interesting to do a test study of JK's hybrid scenario of progressive with some design requirements to ensure it meets the guidelines. Does the statute give WSU that latitude and ensure that design-build team is fairly compensated when there is more work than putting together narrative RFP and RFQ submittals?

RP said that outreach to owners and design-builders is important. Ask them what is working and what is not in terms of procurement.

JK added that a smooth reauthorization process should be one of the committee's goals.

JZ said there is a need to have a broad range of representative voices, more than just designers, contractors and owners. We must consider all the political forces that come into play. We need to connect with different voices. Those connections should be considered in our schedule.

WS indicated that the committee should make an initial presentation of the issues it has identified at the May CPARB meeting, an initial report on its recommendations at the September CPARB meeting and a final report at CPARB's October meeting. CPARB approval in October would enable the board's leadership to start the advocacy process with legislators before the beginning of the session in December. He indicated that the committee should meet every month between now and September because time is limited.

JZ indicated that the issues could be discussed at the PRC's May 24 meeting.

III ELECT COMMITTEE CO-CHAIRS

WS asked the committee to elect co-chairs and opened the discussion for nominations. He indicated that it would be helpful to have representatives from the private and public sectors. JK said he would be glad to nominate himself, but he will not be in Seattle every month. JZ said she is willing to be the co-chair. WS said that one of the chairs needs to be CPARB member, so he is willing to do that. JZ said that she can be a bridge to the PRC. RP volunteered to help with drafting and putting together the documents.

RK nominated an executive team of WS, JZ, JK, ST and BE. BE moved to approve the motion. JZ seconded the motion. The motion carried.

IV. ASSIGN TASKS

The committee agreed to a regular meeting schedule on fourth Wednesday of every month, between 10 AM and 1 PM as follows:

- April 25, 2018
- May 23, 2018
- June 27, 2018
- July 25, 2018
- August 22, 2018
- September 26, 2018

WS suggested the next meeting start with the question "what is and is not working?"

WS asked if there are any statutory issues that have been problematic for DES. NDs said that a number of issues that have already been mentioned including clear identification of what needs to be provided in an RFP, bonding and sales on professional services.

RP said that some of the evaluation factors required for the RFP are more appropriate for the RFQ. For example, owners should know if a proposer has adequate bonding capacity before they get short-listed. Some of the elements are more prescriptive than they need to be. Cost or price-related factors are not supposed to include "include operating costs." There are some issues with respect to public records that need to be fixed. Some references need to relate to the entire statute rather than just certain pieces of it. RP recommended that maintaining flexibility is important. A lot of projects have elements of each kind of design-build method. Some owners have very prescriptive requirements for certain elements of a project, other elements can be identified before a final price is agreed upon. Those types of procurements need flexibility to allow the owner where in the process to agree to the final price. Increasing legislative definitions and parameters may decrease flexibility. Some issues are better resolved through guidelines.

BE said that there should be guidelines for price factors and the way they are scored. JK noted that this would be in a white paper or guideline. WS indicated that statute review process might lead to an update to the CPARB Design-Build Best Practices Guidelines.

WS stated that sales tax on professional services may not be an issue for the committee since the requirement is not part of 39.10.

DD indicated that a number of states require bonding only construction services, not for design services. The result is a lower cost for the bond. Retainage on design services may not be required.

JZ noted that the GC/CM statute allows owners to release retainage prior to the first half of the contract with no regard to how much work was completed.

ST indicated that for selection criteria the statute says that factors for evaluating finalists' proposals in the RFP phase refers back to the RFQ. He indicated that is unnecessary and indicates that UW does not typically require the same information to be submitted or evaluated twice.

RP said the committee should look at what people are utilizing, what should and shouldn't be mandatory. There are things in the RFP that should be in the RFQ. She asked the committee to identify the necessary evaluation factors and to consider developing a repository of procurements so people can see what works. WS that the best practices committee collected a number of procurement documents as part of its research.

JZ asked the committee to consider which issues need to be resolved to modifications to the statute and which can be resolved through the best practices guidelines.

RP said she wants to hear from the design-builders what they need to know during the RFQ/RFP process to assemble the right team. WS said that detailed description and budget should be at time of RFQ.

WS noted that the statute requires the owner to maintain a 5% contingency on the contract award, but the PRC reviews applications on the basis of construction cost. Project budgets determine feasibility, not just construction cost.

BACKGROUND READING RCW Chapter 39.10: http://app.leg.wa.gov/RCW/default.aspx?cite=39.10 CPARB Design-Build Best Practices Guidelines: https://des.wa.gov/sites/default/files/public/documents/About/CPARB/2017Meetings/11-Nov/DBBP-Guidelines_Draft.pdf	All
BONDING Should bonding apply to the entire contract or only construction services? When in the RFQ/RFP process should bonding capacity be evaluated?	BE
RETAINAGE Should early release of retainage be allowed?	JZ
OPEN RECORDS REQUIREMENTS What should the open records requirements be during the procurement?	RP
RFQ/RFP EVALUATION FACTORS Current and projected workloads (currently in the RFP, should they be in the RFQ?) Bonding capacity (currently in the RFP, should they be in the RFQ?) Application of “technical approach design concept” to progressive, traditional and bridging procurements. Would adding a comma between technical approach and design concept solve the problem? Should there be a clear definition of management approach as an alternate evaluation criterion for progressive? Opportunities to reduce redundancies between the RFQ in the RFP. Clear definition of “price-related factors.”	ST/NDZ
RFP/RFQ INFORMATION REQUIREMENTS Should the owner’s target budget be provided in the RFQ? Should the entire RFP be included in the RFQ? How does the requirement for the owner’s detailed project description apply to progressive procurements?	WS
MWBE REQUIREMENT Should MWBE requirements be more clearly identified?	EY
RCW 39.10.330(5)(B) Should this provision be eliminated, “(b) If the public body determines that all finalists are capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price.”	NDz
HONORARIUM PAYMENTS Is there a better definition of “consider the level of effort” that would provide equitable compensation?	WS
DEFINITION OF DESIGN-BUILD METHODS Should progressive, traditional and bridging be defined in statute? Should progressive have a separate definition within the statute?	RP/DD
PROJECT REVIEW COMMITTEE Should the PRC evaluate the owner’s estimated construction cost or their project budget? Can data collection requirements be strengthened? Is MWBE utilization data included? Is there a mechanism that allows PRC to determine how a project performed? Are projects that change their procurement method (progressive, traditional or bridging) required to report back to the PRC?	RH/JZ/NDs

OSPI How is design-build being applied in K – 12 projects? What is OSPI's take on the process?	RH
SMALL PROJECTS Review CPARB proposed legislation to remove constraints on projects between \$2 and \$10 million	ST
WSDOT What are the relationships between RCW 39.10 and RCW 47.20.780 / 47.20.785	JZ

V SET DATE/AGENDA FOR NEXT MEETING

Next meeting will be April 25, 10:00 AM to 1:00 PM, at Schacht Aslani's office.

WS asked about the development approval process for proposed changes to the statute. NDs said CPARB committees typically propose conceptual changes to CPARB for approval. The board appoints a drafting committee which prepares a draft that goes to the code reviser. WS noted that the proposed schedule indicates that the committee will make its final recommendations to CPARB in September. If CPARB appoints a drafting committee that provides proposed legislation for the October, CPARB meeting which then goes to the code reviser will be provide adequate time?

RP responded: "It depends on what we are proposing". JZ said it would be conservative to look at September to have a flushed-out piece. RP said that the committee does not have much time. We might want to include a draft legislation with our recommendations, and then have the drafting committee bless them.

WS said we will surely be ready to propose removal of constraints on the number of small projects. If the rest does not come together in time it may have to wait until the next legislative session.

RP indicated that she will not be able to attend the April meeting.

VI. ADJOURNMENT

The meeting was adjourned.