

## **Reauthorization Committee Report to CPARB**

May 7, 2020

### **Submitted by:**

Chair: Rebecca Keith (WA Cities)  
Vice-Chair: Robynne Thaxton (Private Industry)

### **Committee Members**

Members: Loren Armstrong (WA Ports), Becky Blankenship (Architects), Neil Hartman (WA Building Trades), Janet Jansen (DES), Robin Heinrichs (School Districts), Santosh Kuruvilla (Engineers), Scott Middleton (Specialty Contractors), Eric Nordstrom (Counties), Mike Pellitteri (General Contractors), Linneth Riley-Hall (Transit), Lisa Van der Lugt (OMWBE), Olivia Yang (Higher Ed)

### **Committee Participants**

The Committee also had regular participation from CPARB members Andrew Thompson, Walter Schacht and Bill Dobyons and participation from stakeholder representatives of small business ownership, PRC, construction management industry, MCA of Western WA, specialty contractors and general contractors.

**CPARB Assigned Committee Task:** Achieve reauthorization of RCW 39.10

### **Background**

The Reauthorization Committee (RA Committee) was established by CPARB at the meeting held February 14, 2019. The RA Committee began meeting in April of 2019. Early tasks included adopting a work plan that included coordinating with the work of other CPARB committees, most notably the GCCM Committee and the JOC Committee and Business Equity/Diverse Business Inclusion Committees. The RA Committee's early work also focused on assessing what is working with alternative public works, collecting input from committee members and stakeholders on opportunities and areas for improvement and issues of concern.

The RA Committee established several key principles to apply to its work. First, the RA Committee agreed that it would pursue consensus decision making. Second, the RA Committee reviewed major topic areas of RCW 39.10 and identified issues of concern to stakeholders to discuss while recognizing that not all issues raised warranted changes to the statute. Additionally, the RA Committee recognized the substantial work that was being done by the GCCM Committee to do a comprehensive review of the

GCCM provisions of RCW 39.10 and determined early in the process that the RA Committee would not separately review GCCM provisions and would rely on the GCCM Committee to make recommendations to that statute. Interested RA Committee members actively participated in the GCCM Committee.

### **RA Committee Recommended Statute Changes**

Not surprisingly, the RA Committee's recent work was delayed when several committee meetings were cancelled as stakeholders were responding to the COVID 19 pandemic and resulting impacts on private and public sectors. Additionally, the GCCM Committee was also delayed in its recommendations due to the virus, but the GCCM Committee was able to complete its recommendations, and the RA Committee reviewed and approved the recommendations of the GCCM Committee.

As a result, the RA Committee has identified several issues that are still open for resolution. The table below summarizes the major topics that were discussed, the recommended statutory changes, and the items that are still open.

### **RA Committee Next Steps.**

The RA Committee welcomes CPARB input on the proposed changes and the open issues will continue to meet through the summer to bring a final proposed bill to CPARB for review in September. The RA Committee will coordinate with CPARB leadership to obtain legislative sponsors, reach out to stakeholders for support during the 2021 legislative session, perform legislative outreach and to input any feedback that results from the JLARC review process.

### **CPARB Next Steps.**

CPARB members are encouraged to provide RA Committee members feedback regarding the proposals, the open issues, and any other areas of concern. CPARB members are requested to perform stakeholder outreach to achieve broad stakeholder support of a reauthorization bill.

### **Summary of Issues, Recommendations, Open Items and Rationale**

Topic/Statute Reference	Summary of Issues Considered	Recommendation	Rationale
Sunset provisions and JLARC review	Whether to eliminate or retain a statute expiration date and requirement of JLARC review.	OPEN	The Committee intended to defer final discussion of this issue until after resolving other issues. Due to timing impacts of pandemic, this discussion is deferred to summer. CPARB encouraged to provide input.

Topic/Statute Reference	Summary of Issues Considered	Recommendation	Rationale
CPARB Membership (RCW 39.10.220)	<ul style="list-style-type: none"> <li>• Missing representation from transit/horizontal construction</li> <li>• Balance between public and private positions</li> <li>• Clarification of member qualifications</li> <li>• Representation from E. WA</li> </ul>	Committee recommends adding a position on CPARB for a transit member selected by WA Transit Association	<ul style="list-style-type: none"> <li>• Transit agencies are major users of alternative public works procurement and bring needed horizontal representation to CPARB.</li> <li>• Committee discussed proposals for adding construction management, private contractor/specialty or E. WA private position but did not have consensus to add another position.</li> </ul>
CPARB Roles and Responsibilities (See RCW 39.10.220 and .230)	Committee considered variety of viewpoints regarding CPARB's roles and responsibilities. Significant issues included whether CPARB should be advisory/policy board or have enforcement role; concerns about increased opportunity and fair and transparent procurement; and data.	Recommend following changes to RCW 39.10.230: <ul style="list-style-type: none"> <li>• Add language to CPARB's role to encourage competition and recommend best practices</li> <li>• Clarify CPARB's collection of data is subject to capacity and funding for purpose of supporting CPARB's work.</li> </ul>	Committee heard from stakeholders that CPARB's duties should include promoting transparency and competition in alternative public works. Statute is currently interpreted by some to require CPARB to collect data without connecting it to CPARB's resources and CPARB's work.
Design Build WSU Program	WSU authority to use DB for small projects under \$2 M proposed	OPEN	Committee to consider in summer for recommendation to CPARB in fall.
Pre-engineered metal buildings RCW 30.10.300 (3)	Preengineered metal buildings may be procured with DB without PRC approval for non-certified agencies, but there is not clear definition	OPEN	Committee to consider in summer for recommendation to CPARB in fall.
PRC	<ul style="list-style-type: none"> <li>• Is conflict of interest sufficiently addressed?</li> <li>• Does PRC have role in enforcement or evaluating projects after completion?</li> <li>• Should timing of PRC application for project</li> </ul>	Committee does not recommend statute changes at this time	<ul style="list-style-type: none"> <li>• Conflict of Interest is covered in numerous other provisions of RCW and caselaw and individual public body laws and regulations, and Committee determined statute change was not warranted.</li> </ul>

Topic/Statute Reference	Summary of Issues Considered	Recommendation	Rationale
	approval be addressed.		<ul style="list-style-type: none"> <li>No specific changes were proposed for PRC's role, though committee recommends a meeting to further evaluate PRC role in the summer.</li> <li>PRC by-laws and applications may be better way to address than statute.</li> </ul>
General Issues	Issues included accountability, use of interviews in selection process, prompt processing of change orders and transparency in selection	Committee does not recommend statute changes at this time .	Committee found most issues either 1) better addressed in best practice or policy not statute, or 2) were being addressed in context of GCCM recommendations
Business Equity/ Diversity	Committee noted the Business Equity/Diverse Business Inclusion Committee scope also included recommended changes to statute; discussions about procurement practices to increase inclusion; small business concerns and proposals	<ul style="list-style-type: none"> <li>See GCCM Statute recommendations regarding evaluation criteria including past performance in use of certified firms.</li> <li>OPEN - small business proposals</li> </ul>	<ul style="list-style-type: none"> <li>RA Committee adopted GCCM proposals to align the GCCM selection criteria with DB.</li> <li>Business Equity and Diverse Business Inclusion Committee to work on small business proposals for submission to RA Committee this summer.</li> </ul>
JOC Statute	Consideration of proposals from Gordian group raised in 2019 legislative session	<p>RA Committee adopted several technical changes recommended by the JOC Committee:</p> <ul style="list-style-type: none"> <li>Amending definition of "job order contract", amending definition of "unit price book" to delete references to profit, overhead and profit;</li> <li>In 39.10.430 (3)(f) replace reference to 'proposal price' with 'proposal coefficient'</li> <li>Delete reference to information about</li> </ul>	RA Committee expressed questions about some proposed changes from JOC Committee. Follow up meetings are scheduled in May but results not available in time for report.

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		<p>‘project’ in the solicitation/proposal – no specific project at that stage; and</p> <ul style="list-style-type: none"> <li>• make technical correction to delete moot reference to contracts prior to 2007.</li> </ul> <p>OPEN item - definition of “Co-efficient”</p>	
GCCM Statute and Issues re: alternative subcontract procurement under RCW 39.10.385	RA Committee received regular reports from GCCM Committee, and several members participated in both committees so that issues could be jointly tracked. Proposals from MCA of Western WA relating to RCW 30.10.385 were referred to GCCM Comm.	RA Committee recommends adopting the legislative proposals of the GCCM Committee – see separate report and draft bill	