

CAPITAL PROJECTS ADVISORY REVIEW BOARD

REAUTHORIZATION COMMITTEE

MINUTES

Friday, May 1, 2020 Noon – 4:00 pm

Members present: **Chair:** Rebecca Keith (WA Cities)
 Vice-Chair: Robynne Thaxton (Private Industry)
 Loren Armstrong (WA Ports), Becky Blankenship (Architects), Janet
 Jansen (DES), Santosh Kuruvilla (Engineers) (left at 2 p.m), Scott
 Middleton (Specialty Contractors), Mike Pellitteri (General Contractors),
 Linneth Riley-Hall (Transit) (left at 3 p.m.), Lisa Van der Lugt
 (OMWBE), Olivia Yang (Higher Ed)

Others present: Nancy Deakins (DES), Bill Dobyns (General Contractors), Nick Datz
 (GCCM), Jesse Gilliam (City of Seattle), Howard Hillinger (PRC), Andy
 Thompson (CPARB - General Contractors), Walter Schacht (CPARB
 Chair), Dan Seydel (Platinum Business Group, Small Business), Melissa
 Van Gorkom (Staff to WA Legislature), Janice Zahn (Port of Seattle)

Committee Task: Achieve reauthorization of RCW 39.10

12:00 noon

Welcome and Introductions

Meeting convenes 12:02 p.m.

Rebecca affirms there is quorum.

Approve agenda

DECISION: Approve agenda with no changes.
Robynne moves to approve agenda. Janet seconds. All
approve. No objections.

Review and approve meeting notes from April 23, 2020
– Rebecca Keith

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DECISION: Approve minutes as distributed. Robynne moves to approve. Becky seconds. All approve. No objections.

12:15

Process for GCCM Committee Recommendations – Robynne Thaxton and Rebecca Keith

REBECCA: Reminds group that our charge from CPARB is to achieve reauthorization for 39.10.

ROBYNNE: Notes that the timeline is tight and also that people just got materials last night.

Notes original agreements:

- 1) Work would be done in subcommittee – if people want to be part of that work, they should be part of the subcommittee.
- 2) That said – this is not a rubber stamp process. Everyone should have a chance to review the document thoroughly.

Robynne suggests that there may be a need for a meeting early next week to do final approvals after reviewing.

Robynne also notes not everyone in the GCCM committee may have had the time to look at the documents in their final form.

Asks people to speak up if they need more time. At the end of the meeting we will regroup and assess if we need a meeting early next week.

REBECCA: Notes CPARB needs information for pre-reads either May 5 or May 8 (later clarified to May 8), which is why the committee decision needs to move quickly in order to provide draft to CPARB.

12:22

- *Presentation of GCCM Committee recommendations of statute changes for RA bill – Scott Middleton and Nick Datz*

SCOTT: Notes he will discuss the background for the process, and then review legislative recommendations.

GCCM has met twice monthly to discuss and debate inclusion of GCCM in the statute.

Robust and regular participation from committee members developed legislative recommendations.

There has also been regular participation from key stakeholders, including Mike Pellitteri, Andy Thompson and more.

There's also been strong crossover. Rebecca, Scott, Olivia, Santosh are on both committees. That's been a benefit to both committees and will hopefully reduce surprises in what is presented.

While the committee has met twice monthly, there have also been numerous other phone calls and conversations.

These recommendations were passed unanimously – which means the proposals have been well vetted and discussed to get to unanimous, approved recommendations.

We hope we will go into these discussions with the knowledge the GCCM committee recommendations are unanimous.

Notes that there will be one more chance for feedback from the GCCM committee – so you might see some typos and such – these will be corrected.

Scott goes into the summary of legislative recommendations (see attachment for complete details – please note that these minutes reflect the discussion rather than the content of the attachment)

1 - Define “Risk Contingency” and “Budget Contingencies”

SCOTT: Hope is these definitions set clear expectations at the review level to better ensure they are used for their intended purposes.

When it comes to how contingencies should be used, group decided this should be moved to a best practices discussion.

Group also decided to not build a design contingency into definitions.

2 - Heavy civil

NICK: Make definition easier to understand. Consolidate definitions throughout code into one section. There are no substantial changes to the language, but references have been updated.

Item that has been added is audit of heavy civil (will discuss more soon).

SCOTT: Have discussed this several times at the committee level. Everyone in the group reached out to stakeholders about why there was separation into different sections of the statute. Did not get any opposition to consolidation.

3 – Timelier processing of equitable adjustments, change orders, and claims

NICK: Notes this addresses delays and gives opportunity for parties to engage before escalation. Also works to protect rights of contractor and subcontractor to get adjustments and claims processed in a more timely manner.

REBECCA: Notes this is also intended to be a balance between public owners right to reject a change order request and contractor rights. A public owner cannot refuse to respond and then say you waived your rights to the process.

4 – Clarify scope of independent audits

SCOTT: Notes this discussion has also taken place at ECCM/MCCM committees. There is little discussion of independent audits in 39.10. The issue is when contract elements are converted into lump sum – how do we deal with that through an audit process?

Did not agree how scope of audits should look, but scope of audit should be defined in the contract and at the beginning of the solicitation process.

Put same consideration in 39.10.385 as community could benefit from best practices about scope of audits.

NICK: Would have been added in provision 5 of .350, but has moved to end of section and also in .385.

Want to give owners flexibility for the scope of the audit but also to have it up front so GCCM can start tracking right away.

5 – Clarify use and scope of the fee and any related price factors in the GCCM evaluation process

NICK: Notes there was discussion about general conditions, as project goes along numbers can get changed as the project is understood in more detail. Language is changed to give owners flexibility, while also promoting transparency by defining what factors are in evaluation process so there are no changes in the procurement process.

6 – Aligning the public solicitation advertisement language

NICK: Makes advertisement language consistent so adds same language as in the DB statute to .360 and .380.

7 – Align evaluation factors for GCCM selection

NICK: Also looking to not limit firms that can compete for the general contract - looking for experience and technical competence of personnel.

8 – ECCM and MCCM

9 - Expand RCW 39.10.385 to all trades

SCOTT: Discusses process for inclusion of these recommendations – GCCM and ECCM/MCCM committee all contributed feedback.

The language proposals are scaled back based on these ongoing discussions.

Scott and Nick went through the redlines in detail for 9 and 10 – see the attachment of actual legislation draft

Key changes for 9:

PRC approval for non-certified public bodies, notice of public hearing in same publication as call for proposals, cumulative scoring of price and nonprice factors, narrowing of evaluation factors to project-at-hand, and clarification regarding SGCs and fee, written final determinations, protests, interviews and independent audits.

Key changes for 10:

Earlier subcontractor involvement can avoid cost issues down the road. Expanding to other trades allows this effective engagement in preconstruction while using the refined selection process based on lessons learned from MCCM and ECCM.

ANDY: Is there any discussion about allowing situation to be used between third parties?

SCOTT: There was a little bit of discussion but what came out is what is reflected: \$3M threshold for all subs.

REBECCA: Discussion of committee was that it could not be any sub, and idea was to bring on trades when there could be value to the project, there is still work that could be done, but committee did not want perfect to be the enemy of the good.

ANDY: Notes as a contractor he is fine with this but wonders if public agencies would want to bring on someone for less than \$3M. He does not want to side track progress today, however, about this discussion.

ANDY adds in comments: should we look at the \$3M Threshold and consider: With agreement between the Public Body and GC/CM for subcontractor scope of work less than \$3M, the alternative selection process may be utilized.

SCOTT: From MCA's perspective – allowance of all trades to do this is when the \$3M threshold is still in place.

LINNETH: Page 27-28 – protest section – public body shall not proceed with selection protest until responding in writing – is this this equivalent of making a determination, or is it an acknowledgement?

SCOTT: Intent was for a response based on the merits of the protest.

LINNETH: Fine with it being broad, but also could be clearer.

10 - Add language to make negotiated support services (NSS) an "allowance" to be reconciled at conclusion of the work

NICK: Wanted to have flexibility to not use a lump sum – added language where it is an allowance that could be reconciled at the end of the work.

11 - Provide greater flexibility when all responsive bids exceed available funds

SCOTT: Bid package estimate provides more clarity than available funds.

Changes and updates fees. None want time and expense of rebidding.

12 - Clarify subcontractor bid packages

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NICK: Bid packages lumped together makes it harder for smaller subcontractors to do work – this will support maximizing participation by subcontractors.

REBECCA: Notes contractors also pointed out some reasons for big packages so thinks the language represents a compromise.

LINNETH: What do we mean by consistent with industry practices? Depending on who you talk to that's going to vary.

NICK: Agrees and says that is the flexibility we were trying to give into it.

SCOTT: Statute will give flexibility but the best practices process will supplement and provide clarity.

LINNETH: Likes that approach.

REBECCA: States it is fair to say that there were many issues that were on people's lists that did not make it onto the final list.

SCOTT: Notes non-certified public bodies would need to go to PRC at the same time as project approval to GCCM would get approval.

WALTER: In definitions – maximum allowable construction (MACC) cost means one thing in definitions but means something completely different on other state funded projects. There should be only one meaning for the term MACC.

This issue causes a lot of confusion. What can we do to create a different term that means the owners intended construction budget for the entire amount of construction procurement A-Z for design bid build v. in GCCM a subset of construction cost?

Walter continues to explain issues with the process with different examples.

SCOTT: Notes these are good points. Could go back to GCCM committee or could address at this committee.

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WALTER: Believes this is wordsmithing and does not impact how GCCM works.

SCOTT: Preference would be to nail this at reauthorization level.

REBECCA: Needs more information to understand the proposal.

WALTER: Does not propose deleting but wants to rename MACC in GCCM – leave it where it started as the total cost of a construction contract.

NICK: Wonders how language in other statutes could be impacted.

REBECCA: Clarifies – keep definition the same but call it something else?

WALTER: Correct.

ROBYNNE: Impressed with the thoughtfulness of this work and work that has been done to create consensus.

As started journey, noted that what we are looking for from reauthorization committee is fatal flaws and typos.

Notes that what has been represented is a substantial amount of work to get to consensus.

Asks if the items are a package deal?

SCOTT: Yes.

NICK: Agrees.

ROBYNNE: Asks again about fatal flaws.

REBECCA: Agrees and also asks to bring things forward to make sure absolutely everything is on the table.

JANET: Applauds committee. Does not see fatal flaws.

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OLIVIA: Seconds Janet's comment. Until about two weeks ago – did not think we would get there. Appreciates flexibility of stakeholders in coming to consensus and compromise. Says there was good wordsmithing to get us where we are. Not to say we cannot continue conversations in best practices but notes this is good stuff and she's impressed by the other members of the committee and proud to support this recommendation.

LINNETH: Agrees.

BECKY: Agrees and has appreciation for work.

SANTOSH: Nothing additional to add. Thanks to GCCM committee.

HOWARD: Compromises are good. Clarification – plan to require disclosure of ECCM/MCCM will be a bit challenging as owner won't necessarily tell GCCM to do. Will have to grapple with how to do this work.

SCOTT: Public body needs to present plans to do 39.10.385 – not a requirement they use that, understands the GCCM in many cases is part of that process and helps inform that decision. Key is this is an opportunity ensure public body engaging in process is showing the PRC at the project approval level phase that they understand all the requirements.

ROBYNNE: Approval does not necessarily happen at the same time – is that correct?

SCOTT: That is correct – public owners using process for the first time may not be sure of alternative selection v. low bid. Wants to give flexibility for public body with GCCM on board to go back to PRC to use .385.

ROBYNNE: From PRC level, does it make sense to create several options – concurrent approval, approval after GCCM has been selected?

HOWARD: This often comes up during presentations – agrees they will need to work on developing that part of process and get input from PRC.

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JANICE: In statute currently nothing that says this has to happen right now – this would give PRC the venue to see if owner really understands GCCM and see if they understand different nuances in the tool.

HOWARD: Agrees this can be accommodated and is supportive.

REBECCA: Asks – are we ready to vote on recommendations today or does there need to be more time to review language?

MIKE: Asks what process of establishing best practices looks like.

NICK: That is the next step to look into after finishing and approving the legislative recommendations.

LINNETH: Asked about whether includes heavy civil best practices.

NICK and SCOTT: Did touch on this issue but did not go in depth into the issue. There's still more to talk about.

NICK: Reached out to a number of contractors and owners but there was not an issue that elevated to the level of spending time on.

REBECCA: Asks again if the committee is ready to vote today. Would like to go to CPARB May 14 with a report that demonstrates what we would agree to support in the statute.

NANCY: Confirms pre-reads are due May 8.

ROBYNNE: Moves for break.

REBECCA: Breaks until 2:10.

1:50

Break

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2:11

- *Continue group discussion of GCCM Committee recommendations*
- *Take action on GCCM proposals*

ROBYNNE: Wants to give GCCM committee opportunity to review; and also wants to thread the needle of reasonableness and review with a short timeline.

Group decides it is possible to meet Tuesday at 3 p.m.

Options:

- Approve today with possibility of wordsmithing later.
- Approve at 3 p.m. Tuesday.

SCOTT: Package is a compromise package. Asks to vote as a package, rather than item by item.

OLIVIA: Asks to vote on entire package up/down as a concept, rather than holding for the wordsmithing.

LINNETH: Notes she has not reviewed as it is her first time seeing it.

JANET: Has not reviewed but thinks we should move forward for a vote based on review and trust in work done.

BECKY: Okay with vote today.

REBECCA: Explains tension between review and timeline, encourages honesty about wanting to delay vote if needed.

DECISION: Approve entirety of GCCM Committee legislative recommendations (items 1-12) subject to any later non-substantive editing. Scott makes motion. Becky seconds motion.

DISCUSSION:

LINNETH: If approved, and someone sees someone of significant concern, would there be further conversation or is that opportunity lost?

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ROBYNNE: If there is a concern that would be a significant problem then we should pause to next week for holistic up or down vote.

REBECCA: Committee is likely to have more work/some open issues this summer (for example, discussing sunset). If there is a fatal flaw that comes up between now and when the bill is introduced, we will hear about it and decide when we're going to deal with it.

No further discussion, Rebecca calls the vote.

VOTE:

Robynne: Yes

Olivia: Yes

Scott: Yes

Santosh: Yes

Janet: Yes

Loren: Yes

Linneth: Yes

Becky: Yes

Rebecca: Yes

All present approve. None opposed. Motion carries.

REBECCA: With any comments on GCCM wording, please send to Scott and Nick and copy Rebecca and Robynne.

2:44

Design Build Proposals:

- *Remove pre-engineered buildings as exception to PRC approval*

ROBYNNE: Would like to hear from pre-engineered building community. Also would like to hear from larger public agencies on impact.

REBECCA: Still can use statue but must be pre-approved or get approval.

LOREN: Why is this proposed?

WALTER: In past modular building and pre-engineered

buildings were the same thing. At that time process of setting up a modular building on a slab was a different process. Over time pre-engineered buildings have moved from stock items to a huge variety of different buildings. Gives a number of examples of this type of situation, including one project involving a school building.

ROBYNNE: Notes school case brought up was not needed for PRC. Has a concern that we have not heard from enough owners using this, or the pre-engineered metal building lobby. Concerned this is stalling reauthorization process and thinks this should be addressed in the summer.

DAN: Asks how many projects were an issue.

WALTER: Notes he is aware of two projects he thought needed to go to the PRC.

DAN: Remembered several applications for pre-engineered metal buildings at PRC.

JANET: Since we haven't had many issues, hesitant to take out issues.

OLIVIA: Suggests we define pre-engineered buildings so ones that are already intended are an exception, but ones that are not go before PRC. Asks this go forward as a WAC.

ROBYNNE: Reiterates this should be held. This has not come up in detail and needs to have an opportunity to be vetted in more depth.

SANTOSH: Shares Walter's concerns. Believes some pre-engineered buildings can go through this loophole.

WALTER: Shows image of pre-engineered building.

OLIVIA: Clarifies – objection is not in old-fashioned, original definition of a pre-engineered building. It is the current evolution that makes it problematic.

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If we could define it instead of cross it out it would be a good solution. Definition could be in a WAC.

ROBYNNE: Re-iterates project in question was not subject to PRC, although they did make corrections. Her concern is about the process of deleting something without enough information.

HOWARD: Notes solution is not as simple as deleting words – it should be studied more closely.

REBECCA: Hearing people think there are categories of pre-engineering buildings that would require review or not require review. Proposes that we explore the issue further in the summer as open issues are coming up.

OLIVIA: Proposes forming a group to look at it now – Walter, Santosh, Robynne, Janet?

REBECCA: Asks for volunteers. Becky, Santosh, Robynne, Janet, Dan, Howard join sub workgroup.

REBECCA: Notes JOC Statute will stay open for now.

- *WSU proposal for DB below \$2 M*

OLIVIA: This could be in RCW 39.10 – if in RCW 28.30 she would like the committee's supports.

Not sure if this is only WSU – that is not her exclusive intent.

MIKE: Does not think it is a good idea. Large contractors with experience will move into lower priced projects – will have same players and no new people.

OLIVA: Notes her experience is that the larger contractors have stated they are not interested in these issues, and smaller ones are – this is a good chance to build pool of contractors.

MIKE: Agree to disagree on that issue – notes that maybe this should be on a time period to see if same players are getting all the work.

BECKY: Likes this as a test for WSU to do this as she has worked on several projects and thinks this could be a good test case. Notes her experience with working on a fire station in Richland as a newer DB contractor in a smaller project.

SANTOSH: Supports – precedent with WSDOT.

REBECCA: Asks for clarity – limit to WSU, or bring into 39.10? Notes there is a point to the concern about parsing out pieces of 39.10 to other areas. Also notes that the proposal is to remove limitation of \$2M entirely.

OLIVIA: States the proposal is correct as Rebecca understands it.

NANCY: Says this is a bigger policy issue that needs more time and stakeholder work. Recommends it does not be put through with reauthorization.

REBECCA: Notes an example of a pilot project – would that be something that works?

ROBYNNE: Expresses confusion and asks for clarity on proposal.

OLIVIA: What might be feasible is 39.10 pilot projects – designating WSU would be great but otherwise would accept. WSU has at least 15 if not 25 small projects that could go forward.

ROBYNNE: Agrees with the idea to couch as pilot project.

WALTER: Observes GCCM statute has no limit on dollar amounts, so there could be some parity. Notes as well that large firms will chase small projects in DB and GCCM. Not clear that just because it is a DB project a firm that does large projects and does not do TI and rooftop replacement would be doing that work because it is design build.

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REBECCA: Poses issue for the committee is if this is short or long term discussion.

OLIVIA: Proposes small group work on this issue.

Reiterates they have had a long history of working to grow pool. Would be happy to work on if it's a demonstration or some other criteria.

REBECCA: Closes discussion.

3:47

Confirm Committee next steps. To include: report to CPARB, issues still open, Small business/Business equity committee work, summer meetings

REBECCA: Next steps:

- Work with Scott and Nick on GCCM drafting issues.
- Rebecca needs to update issues matrix.
- See if there are any issues still open (sunset, JLARC review, term of reauthorization).
- Issues for pre-engineered and design-build.
- Check in on feedback from CPARB.

SCOTT, ROBYNNE, SANTOSH, BECKY, MIKE agree to meet – general agreement.

General discussion about moving to zoom or uber conference.

General discussion about avoiding Mondays and Fridays over summer months.

REBECCA: Commits to sending out doodle poll Tuesday – Thursday with several options.

Notes CPARB meeting will be May 14 – will be a very long meeting. GCCM and reauthorization will be combined.

SCOTT and REBECCA agree on Tuesday COB to finalize GCCM suggestions.

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OLIVIA: Asks who would like to speak about the small DB projects – says she will contact everyone.

Meeting adjourned at 3:58 p.m.