

CPARB Reauthorization Committee Meeting Minutes

September 23, 2019 1pm-4pm

Columbia Center, Suite 2050, Seattle, Washington

In attendance:

Chair: Rebecca Keith (WA Cities)

Vice-Chair: Robynne Thaxton (Private Industry)

Members: Janet Jansen (DES) - phone, Lisa van der Lugt (OMWBE) - phone, Loren Armstrong (WA Ports) - phone, Neil Hartman (WA Building Trades) - phone, Olivia Yang (Higher Ed), Santosh Kuruvilla (Engineers) - phone, Scott Middleton (Specialty Contractors)

Guest: Nancy Deakens (DES) – phone, Dan Seydel (Entrepreneurial Institute of WA) – phone, Andy Thompson (general contractors) – phone, Walter Schacht (architects, CPARB), Jesse Gilliam (City of Seattle), Bob Maruska (Port) - phone

Meeting is called to order with a quorum present at 1:03 pm.

Welcome and introductions.

Approve agenda.

VOTE: Modify agenda to move the conflict of interest discussion to after check-in.

All in favor. No opposed.

Review and approve September 9 minutes.

Correct Walter Schacht's name spelling.

Will attach MCAWW proposals to the minutes.

VOTE: Olivia moves to pass. Robyne seconds.

All approve. No oppose.

Committee check-in.

Rebecca asks each Committee member to provide feedback on how the reauthorization process is going, what is working well, what could be improved.

Janet: She notes there are lots of moving parts. Doesn't have much to add regarding check-in. Appreciates the documentation sent to the group. We've still got a ways to go.

Neil: Agree with Janet's remarks. Many moving parts, looking forward to feedback still to come from committees. Happy with progress to date.

Olivia: Thanks to Rebecca. It is time to speak to a particular issue - sunset or not, require reauthorization or not. Anger is understandable, but would help us all to be better than that and move to a different conversation. Reauthorization is not necessarily a bag of goodies for owners – limiting public works procurement to design-bid-build is harmful for everyone. Public sector may have a utopian view and private may have a dystopian view, but alternative public works should help both public and private sector. The concern she hears is that the private sector is looking for accountability. She feels sunset is an accountability tool that is not nuanced and can be harmful to all. If you are looking for

accountability, let's find something that works for everyone. Accountability is the balance to flexibility of alternative works. Let's put a proposal forth for accountability.

Scott: Echo comments of thanks to Rebecca and Robynne for all the work. Alternative contracting does benefit the private sector if it is done the way it is supposed to be done. If MCCM and ECCM is truly qualifications based contracting, our goal is to find the sweet spot in the statute to move this forward. It works to go section by section through the statute and refer as appropriate to designated committees. Since other committees need to catch up, do we need to keep meeting twice per month?

Loren: Making good progress and feel positive.

Santosh: Both chairs have done a great job of keeping the discussion open. Only thing to add is we need to be thinking about the overall outcome and schedule – are we going to make it on time?

Lisa: Going well – she has been out for three weeks so not as engaged as she would have liked. It is very normal for frustration to come up with this type of work. We need to make room for and allow for frustration – both for process and the topics coming up. There is a timeline to be aware of and as long as we communicate that timeline on a regular basis there is still room and time for some more discussion around things where there is uncertainty or a lack of clarity with what we're doing.

Robynne: As one of the people helping to guide this, think we are doing a great job of trying to gather the issues. Very happy today we will be focused on the timeline. It will be good to think about what should be put in a subcommittee so we can focus on what we can agree on to move forward.

Dan: Thank you for the volunteer effort of everyone involved in this committee. We should keep our eye on the prize of what milestones are. CPARB has been responsible for a lot of movement to improve the atmosphere for small businesses across the state but it is not always consistent. The reason I am involved with this effort is around procurement. I need small business owners to have access and transparency around this process. I do not think it would be a bad idea to have a small matrix with each issue with reauthorization to know where things are and where they move forward. Small business is always the last and with Walter as our chair it will be good to have some experience dealing with large agencies. Also how does federal funding fit into this – this is a major concern in procurement.

Andy: Olivia is speaking as a good public owner. Please be patient with different issues moving through different stakeholders. Procurement process needs to be fair, transparent and competitive.

Bob: Thinks the committee should soon answer question what decision making are you looking to do moving forward? Looking for unanimous decision making? Consensus? Start thinking about it now in order to reflect a diversity of opinions coming to conclusion.

Walter: Hears Olivia speak for accountability and Andy speaking for thorough transparent and competitive process. What is accountability without CPARB becoming an enforcement agency? Is it a CPARB function or does it exist within the system although it is not CPARB's responsibility? Design professional lives in qualifications-based selection. Under 39.10 – (because of CPARB) you have a place to talk about this. 39.04 – you need a court or a lawyer. My dream is we put all our interests aside and focus on the outcomes. We cannot go to the lowest common denominator because with that we squeeze out flexibility – there is best practices and education and other forms of accountability. In Jewish culture there is the Torah, the laws, and the Mishnah, the Rabbi's interpretation. The beauty of more being left to interpretation is that interpretation can change over time to adapt to circumstance.

Rebecca:

- We will look at the timeline to deal with the moving pieces that are going on in other committees
- We'll work on the issues matrix – including getting a better understanding of federal requirements

- Best practices – how we make decisions – there is some room for discussion on process

Conflict of Interest.

Rebecca: Robynne asked if RCW 42.52 dealing with conflict of interest refers to PRC? Rebecca notes in the PRC's by-laws that 42.52 does apply. She also learned the PRC receives a training which is available on their website and that is same as online appointee training with review of ethics in government. Rebecca also notes 39.10.240 regarding conflict of interest.

Andy: Says 42.52 deals with ethics of public service, but not conflict of interest. Notes the mere conflict of interest is not inappropriate, it is using power to make changes. When looking at 39.10.240, any member of the committee directly/indirectly affiliated, does it make sense to have a separate conflict of interest form – such as with WSDOT? (Form B1 and Form B2 provided to committee).

Robynne: Notes the WSDOT forms are for organizations that are responding to the RFQ and RFP. Specific form is to show that no one on the team had input or part of putting together the procurement. Notes this is policy, not ordinance.

Rebecca: Asks for clarification about how use of WDOT forms would apply.

Andy: In the context of reading the statute – if the PRC member is directly or indirectly affiliated with a submittal they must recuse themselves.

Walter: If PRC is not undertaking this process, we should tell the PRC to follow their by-laws.

Andy: Feels this will create mayhem.

Rebecca: Asks Andy what needs to change to address the concern?

Andy: If a member of a committee sees a potential conflict of interest they should disclose it.

Robynne: Should this be put in writing?

Dan: There is not a pre-call for assigning members to panels for applications.

Robynne: Remembered that decision was made to not exclude anyone on PRC who might potentially submit response to procurement because there would be a limitation to qualified staff available to be on PRC.

Andy: What if they stack the committee?

Robynne: If that happens there can be an appeal to CPARB. They can report who is on each panel.

Rebecca: Can we have something in writing as a proposal?

Andy: The statute should change – it should be revealing a conflict of interest, not necessarily recusing.

Rebecca: Not sure this would follow the intent of the law.

Andy and Rebecca agree to have written proposal.

Walter: Notes that it may be competitive advantage issue rather than conflict of interest.

Robynne: Notes the avoidance/neutralization mitigation plan.

Walter and Robynne discuss competitive advantage, not possible to eliminate, issue is when unfair.

Walter: Can Andy cite instances where 39.10.250 has been abused?

Andy: Fair and competitive and transparent processes need to address a conflict of interest. It's best if this is written. It's in our best interest as CPARB to simply ask for that. Right now if we asked for it and it was disclosed, the way the statute is currently written it says you must recuse yourself.

2:15pm break.

2:28pm reconvene.

Review proposed update to timeline.

Note: Date-related changes are incorporated within the actual content of the timeline. The minutes reflect discussion regarding content.

Rebecca reviews the draft update to the original timeline document she prepared.

Olivia: With respect to individual committees that provide input, members should represent their stakeholders. Too much to expect committees to put forward something to CPARB they have not heard of before.

Walter: Not as concerned because Rebecca, Walter, Lisa, Janice are all in multiple committees.

Robynne: Hope is that CPARB committees get educated as they go. Report in October should be a timeline for CPARB with information available.

Walter: There are multiple issues happening in a variety of venues - data collection, business equity/diverse business inclusion, statewide initiatives/OMWBE/L&I – and reauthorization is where weaving together of these issues can happen.

Rebecca: Updates timeline, reminds Committee of its initial decision which was to take recommendations from committees as they happen, but make final decision.

Walter: Place other statewide initiatives on the issues list.

Rebecca: October 7 review JOC updates, then at October 10 CPARB meeting, given the short time at that meeting, high level report showing the timeline is appropriate. Notes that preparing for JLARC review and legislative resources is important.

Dialogue about time needed for committee work, including GC/CM committee and then anticipating changes from JLARC review.

Olivia: While MCA has been most organized in bringing forth the proposal, there are also concerns from AGC and others that have not yet surfaced. Is this mostly about the GCCM issues?

Scott: Agrees. As there has not been a committee on GCCM until recently, there has not been a chance to weed out all the issues.

All have general consensus on a May target for moving a draft proposal forward to CPARB.

Scott: What is the job of each committee – GCCM/reauthorization – how do we not do the same thing twice?

Olivia: Each stakeholder on the board should be doing their homework and talking to each other so everyone has all the information.

Rebecca: In response to Scott's question, her thought is the GC/CM committee should be subject matter experts. Business equity/diversity, subject matter experts. They make recommendations, and reauthorization committee looking at recommendations asks does this meet standards we set and do we agree there is a statutory change that is beneficial.

The other thing that RA Committee does that matters – is there something inconsistent with something else in the statute.

All note there will be people that will have additional input later in the process.

Robynne: Notes people who want to talk about GC/CM should be part of that subcommittee as meetings are all open.

Walter: Should there be time for the Attorney General's office to review? Should Anne Larson be part of doing advocacy outreach to legislators? Should we run this schedule by her? Should there be time for the code revisor to review? (Rebecca adds this to the timesheet).

Rebecca reminds committee what Bob brought up – how to make the decision.

Olivia: Points out sunset is still something to bring up.

Walter, Robynne, Rebecca note it is not only public owners interested in speaking about the sunset issue.

Rebecca: As a public owner we cannot be tone deaf – she would like to propose we pick a meeting as a committee to talk about what accountability could look like. Asks again, should we do every other week?

Robynne: Hold on the discussion of committee timing for the spring time. Cancel October 21 meeting. Other comments recorded in the timeline itself.

Dan: Asks if a class held reflects Andy's concerns about conflict of interest.

Rebecca: Knows there is an online training for members.

Dan: Seconds the need for AG review and code revisor.

Olivia: Revisits sunset/accountability proposal. Can accountability include pre-approval so qualified users are using the MCCM and ECCM tools?

Scott shares GC/CM agenda issues and how timing for GC/CM Committee report could work with the proposed timeline (again, all captured in the timeline itself).

Additional discussion about the agenda and timing, all of which are accounted for in the timeline.

Lisa: Would like to discuss accountability. Cautions against the word "policing" as it has negative connotations in some communities. Would like to have pre-read before this work.

Scott notes the GCCM committee meeting is October 22.

Walter: This schedule discussion made him think about all committees should think about the matrix and what other issues should come up to put in a matrix so that all these things can be addressed in CPARB.

Robynne: Says she will work on re-doing the matrix.

Santosh: Notes there is no January CPARB meeting, so Rebecca adds due date of December 11 to have a committee report.

Review updated open issues list.

Discussion on CPARB membership.

Walter: is there a need for CM representation on CPARB. How shall we add the position for transit (association or governor appointment?)

Rebecca and Walter note not to focus the discussion on named members, but instead focus on representation categories.

Santosh, Rebecca note that having more horizontal expertise is important. Walter agrees.

Robynne has found a specific statute and we could add a transit agency created under a specific statute rather than leaving totally open.

Rebecca: Is it important to have Sound Transit specifically on the CPARB Board?

Robynne: Notes that other transit agencies could do capital projects, but don't generally – they do buses, curbs. Sound Transit is the only agency doing work like they do at the moment.

Rebecca: Specify a transit agency doing heavy civil? Horizontal? If anyone else has recommendation, please send to Robynne and Rebecca.

Walter: In 2013 it was put forth to add Sound Transit as a position. This was eliminated due to a budget decision.

Bob: Notes that records of Sound Transit proposal should be in the CPARB minutes. CPARB did not put forth Sound Transit in the bill – it was Sound Transit. As a Board member, Bob supports Sound Transit being part of the bill, but does not know how much political capital Sound Transit will want to spend on this.

Loren: Proposal – an agency engaged in the design and construction of mass transit rail facilities – language comparable to how some statutes apply to populations over [TBD] number.

Conclusion: provide additional language to reflect options.

Rebecca: New topic - is there a need for CM representation on CPARB?

Robynne: Sees a benefit to having a voice but the logistics problem is there are not that many CMs out there.

Olivia: That we know of.

Robynne: CMAA, not everyone registers or belongs.

Olivia: ESDs – Educational Service Districts take on this role – we are talking about for-hire construction managers. Talking about CMAA does not always cover everyone.

Robynne: There are many owners reps out there – some are accounting based, some are at the very beginning, don't know that there is an organizational structure with a comprehensive or close to comprehensive population of these folks.

Olivia: private industry slots – two. Joaquin did not reapply. We could encourage the position to be filled by a contract owners rep. Says this is a good spot to get to the bottom of this.

Robynne: Does not disagree but does not know there needs to be a specific position on CPARB for this.

Scott: Would support addition of the Sound Transit position as Loren defines it. To add a public position we will need to add a private position as well, however.

Rebecca: Needs to follow up with Public Hospitals now that they have a new ED.

Robynne: Not completely opposed to private industry slot, especially if it satisfies balance issue.

Turn to look at 39.10.230 – powers and duties.

Robynne: Changing powers and duties to authority takes out the concern that we should be doing it all the time (Olivia agrees).

Bob: Be careful striking because if we want to advocate for an ITB or something not currently in statute then we have the ability to go directly to the legislature to make proposals or reports without DES permission, as CPARB was given authority to directly report. If authority was changed to powers and duties how would it impact these edits?

Rebecca will run this through the code reviser and AGO.

The matrix notes both eliminating and retaining the sunset provision.

Next meeting October 7. We will get JOC updates in advance of the meeting.

Meeting adjourned at 3:56pm.

Minutes prepared by Jesse Gilliam and Rebecca Keith