

**CAPITAL PROJECTS ADVISORY REVIEW BOARD
ALTERNATIVE PUBLIC WORKS PROCEDURES
(CHAPTER 39.10 RCW)**

SUNSET REVIEW PERFORMANCE SUMMARY
to the
JOINT LEGISLATIVE AUDIT REVIEW COMMITTEE
from CPARB Chair

August 1, 2020¹

¹ This report provides updates and corrections to an earlier report dated June 12, 2020. This report supersedes and replaces the earlier report.

Background and Introduction

In 2013 the Washington State Legislature reauthorized the alternative public works statute, RCW Chapter 39.10, as recommended by the Joint Legislative Audit Committee (“JLARC”) following a sunset review conducted under the requirements of RCW Chapter 43.131. In JLARC’s Report 13-2: 2013 Alternative Public Works Sunset Review (the “2013 Report”), JLARC concluded that the alternative public works procedures were being used in a manner consistent with the legislature’s intent and consistent with public interest.² As recommended by JLARC, in 2013 the legislature reauthorized RCW 39.10 and again made the statute subject to review under the Sunset Act prior to expiration of the statute on June 30, 2021.³ As a result, the JLARC review being conducted in 2020 is the second such review.

This report is provided at the request of JLARC for the purpose of summarizing the performance of the Capital Projects Advisory Review Board (“CPARB”) for JLARC’s sunset review conducted in anticipation of the 2021 legislative session. Because JLARC did a thorough review of CPARB and RCW 39.10 in 2013, this report focuses on CPARB’s performance since the 2013 Report.⁴ This summary report is organized as follows:

- Section I Summary of value of alternative public works.⁵
- Section II CPARB’s performance in an efficient and economical manner that benefits the public.
- Section III CPARB’s performance of specific statutory duties.
- Section IV CPARB’s work to respond to JLARC’s recommendations #2, #3 and #4.
- Section V Possible impacts if RCW 39.10 is not reauthorized.

I. Alternative public project delivery methods authorized by RCW 39.10 are firmly established in Washington and have a proven track record of delivering successful projects and providing value to the public.

Alternative public works have a sixteen-year track record of delivering successful projects to the public in Washington. They provide public agencies with procurement tools that fit

² JLARC Report 13-2: Alternative Public Works Sunset Review, part 4, pg. 25.

³ SHB 1466, see Section 22.

⁴ In the normal course, performance metrics for review would have been established following enactment of the statute requiring the sunset review. Performance metrics updated after the 2013 review have not been located. As a result, this summary focuses performance of statutory duties and achievement of the recommendations in the 2013 Report.

⁵ This report does not provide an in-depth analysis because JLARC is also interviewing public owners and private stakeholders which will provide more valuable insight about the value of alternative procurement.

project-specific needs in terms of scale and complexity. They include qualifications to the contractor selection process, and facilitate teamwork, creating opportunities to increase value and certainty about cost and schedule. The General Contractor/Construction Manager (GC/CM) method allows for selection of a contractor suited to address complex and challenging project needs through preconstruction services, encouraging innovation in the design phase and providing a more collaborative approach to early identification and management of risk issues in construction. It further allows public projects to benefit from early engagement of electrical and mechanical contractors whose input during the design phase can be critical to project budget and schedule and delivery. The design-build (DB) method provides value by integrating design with construction, providing a single design-builder as the responsible entity, and allowing public owners to focus on what is best for a particular project, whether it is the project approach provided by the design-builder, qualifications, cost, or some combination. And job order contracting (JOC) allows public bodies to efficiently contract for smaller projects through a prime contractor using work orders based on a competitively bid adjustment to published price books, while simultaneously providing opportunities for smaller firms in the subcontractor role.

Because it is not possible to design and build the same project on the same site at the same time with multiple delivery methods, it is challenging to quantify the differences. But the fact that experienced public owners continue to turn to alternative project delivery and the fact that the industry has embraced it are testimony to the value alternative public works provide. Currently seven agencies are certified to use design-build. In 2019 alone, six projects were approved with estimated value of \$210 million. Currently, twelve agencies are certified to use GC/CM.⁶ In 2019 alone, sixteen projects were approved with an estimated value of \$891 million.⁷ In 2018, there were 37 project approvals with a combined estimated value of over \$2 billion.

Public projects that have been delivered through RCW 39.10 include K-12 schools, hospitals, college campus buildings, electrical substations, water quality projects, aquatic centers, fire stations, parks, and transportation infrastructure. Numerous alternative public works projects in Washington State have been recognized for their achievements through awards from organizations such as Daily Journal of Commerce, ENR Northwest, American Public Works Association, and Design-Build Institute of America, including the University of Washington's Life Sciences Building (GC/CM), Mountlake Terrace Elementary School (GC/CM), Pt. Defiance Waterfront (GC/CM), the Elliot Bay Seawall Replacement Project

⁶ For complete list of certified agencies see https://des.wa.gov/sites/default/files/public/documents/About/CPARB/PRC/2020Meetings/Certification_Status_6-2020.pdf?dd310

⁷ For more complete project approval information see https://des.wa.gov/sites/default/files/public/documents/About/CPARB/PRC/2020Meetings/Project_Data_3-2020.pdf?3134a

(GC/CM), the University YMCA in Tacoma (DB), Port of Seattle's Concourse D annex at SeaTac Airport (DB), and the WSU Elson S. Floyd Cultural Center (DB).

II. CPARB is an advisory and policy board that has engaged a broad coalition of experienced stakeholders with the expertise to successfully carry out its statutory duties while utilizing minimal state dollars.

A. CPARB's role is primarily policy oriented and advisory.

CPARB is primarily a policy advisory board. The legislature created CPARB to provide an evaluation of public capital project processes, including the impact of contracting methods on project outcomes, and to advise the legislature on policies related to public works delivery methods.⁸ A review of Chapter 39.10 demonstrates that CPARB's regulatory authority is limited to 1) appointing members to the Project Review Committee (PRC), which approves or denies public agency applications to use GC/CM and design-build procurement methods, and 2) deciding appeals of PRC decisions (the PRC is discussed in more detail below). The remainder of CPARB's duties are policy and advisory in nature.

In addition to understanding CPARB's advisory role, any review of Washington's alternative public works statute and CPARB's role should take into consideration the fact that RCW 39.10 is primarily focused on procurement. While there are some provisions of the statute that address what happens during or after construction⁹, most of the statute is focused on contractor solicitation and selection requirements. And while CPARB is charged with evaluating public works methods and laws with reference to the public interest, that evaluation does not extend to acting as an auditing body or regulator of specific public works projects.

CPARB successfully provides policy and advisory work relating to implementation of alternative public works statutes in many ways, including development of best practice guidelines, review and update of legislation in order to align procurement with requirements for project success, and through PRC reviews that ensure public bodies have the knowledge and expertise to successfully use alternative public works. But CPARB does not have the authority to supplant or substitute for internal agency controls and accountability of individual public agencies to their constituents with respect to project costs and outcomes, which appropriately resides with the agencies.

⁸ RCW 39.10.200.

⁹ Examples of provisions that are not procurement focused are the agreed-change provisions under RCW 39.10.350 (4), the audit provisions in RCW 39.10.350 (5) the end of project audit requirements for a heavy civil GC/CM project.

B. DES provides CPARB critical staffing support.

The legislature created CPARB within the Washington State Department of Enterprise Services (DES)¹⁰. DES provides critical administrative and staff support to CPARB that includes:

- Staff attendance at CPARB and PRC meetings to oversee public meeting compliance and provide administrative support;
- Taking meeting minutes at CPARB meetings and at PRC meetings;
- Managing the administration of JOC questionnaires;
- Maintaining the CPARB website, including posting of meeting notices, agendas, and minutes for CPARB and PRC meetings and posting ad hoc committee meeting information as provided;
- Scheduling and providing meeting space and meeting support services for CPARB and PRC;
- Tracking CPARB and PRC member completion of on-line training regarding service on a public agency committee as required for state boards and commissions;
- Providing CPARB members with guidance regarding state government, coordination with elected officials, and coordinating legal assistance from the Attorney General's Office as needed; and
- Responding to public records requests and assisting with informational requests to CPARB.

Because CPARB and PRC members serve without compensation for limited terms, DES serves as a stabilizing influence for CPARB in terms of providing institutional knowledge and support resources. DES has consistently provided this important support with limited state funding. The portion of the state's budget allocated to CPARB in the last six years has varied widely from \$11,000 to \$59,000 with DES supplementing up to \$107,000 per year to cover CPARB costs.¹¹

It is beyond the scope of this report to address whether the funding is appropriate. However, what is important for JLARC's review is the fact that this minimal funding in turn leverages a significantly greater amount of additional services provided through the volunteer efforts of CPARB, PRC, and committee members.

¹⁰ RCW 39.10.220.

¹¹ DES is providing budget information separate from this report.

C. CPARB's board members and committees represent a wide variety of public and private entities from throughout the state who bring diverse perspectives and inform CPARB's policy and advisory work.

While DES plays a critical role in CPARB's performance, the majority of CPARB's advisory and policy duties are performed by its board and committee members, who together represent diverse perspectives and broad stakeholder involvement from across industries and geographic locations of the state.

The broad range of private and public interests and organizations represented by members on the current PRC and appointed committees demonstrate the breadth of CPARB's stakeholder input. Committee members comprise individuals from: four Washington State agencies (OMWBE, DES, L & I, WSDOT), at least 15 public entities or public owner associations, approximately 29 private businesses (including at least two certified women and minority owned businesses and several small businesses), at least three private associations, and four labor organizations. These numbers would be even greater if participation from past committee members were counted. The individuals participating on CPARB and in its committees represent organizations located across the state of Washington, including Bellevue, Bellingham, Chelan, Everett, Kent, Kirkland, Lacey, Lynnwood, Mercer Island, Mukilteo, Olympia, Pullman, Seattle, SeaTac, Spokane, Tacoma, and Woodinville.

Consistent with RCW 30.10.230 (4), CPARB appoints committee members to support the board's work. While CPARB does not have formalized appointment criteria for board-created committees, review of CPARB meeting minutes supports that the board has typically made appointments based on several factors: ensuring representation of stakeholders interested in a particular committee issue or work product; individual expertise applicable to the work; and availability to participate. Individuals are nominated by CPARB members or may self-nominate. Additionally, when CPARB identifies the need for a representative from a particular stakeholder group but no individual is identified at the time of committee creation, the board has often designated a specified position and delegated finding an individual to fill the position to the appropriate CPARB representative or stakeholder group.¹² This allows CPARB to conduct additional outreach as needed to ensure stakeholders are represented by individuals knowledgeable in the subject matter and willing to dedicate time to the committee. While some committees are currently more active than others, CPARB has formed each committee based on an identified need and scope that is established at the time of their creation. As provided by CPARB's by-laws, committee action is limited to the committee's scope established by CPARB. Committee chair(s) are expected to create a forum for diverse opinions and to strive for consensus when possible.

¹² An example of this occurred in the meeting on May 14, 2020 when the board formed the Local Government Public Works Committee to work on the study specified in SB 5418. Recognizing the relevance of the work to public utility districts, a stakeholder group not present or represented at the meeting, the board created a position for public utility districts and the CPARB chair was authorized to find an individual to represent PUDS on the committee.

CPARB's current committees and a summary of each committee's history and work follow.

Board Development Committee

This committee was formed by CPARB in December 2018 in response to a 'SWOT' (strengths, weaknesses, opportunities, and threats) analysis the board did in fall of 2018. Board members recognized its strength in having experienced board members and leadership but also recognized the need for a more strategic and intentional way of developing future leadership and engaging newly appointed members. The committee's ongoing task is to aid in candidate outreach, recruitment, improve transitioning, and educating new board members on the roles, operating procedures, and the scope of the board.

Business Equity/Diverse Business Inclusion Committee

This is a newer committee that was formed by CPARB in early 2019 reflecting the leadership of the two former chairs (Bill Frare and Walter Schacht) and several years of increased discussions at CPARB regarding the importance of equitable opportunities for a variety of businesses to be able to compete and succeed in public works, and in particular concerns expressed by minority- and women-owned businesses and small businesses. CPARB charged the committee with comprehensively reviewing RCW 39.10 and other applicable statutes to create consistency in language regarding inclusion, to find ways to increase opportunities, and to concurrently evaluate effective strategies public agencies may use to increase opportunities for firms to compete. As part of the Business Equity/Diversity Committee's work, it has been tracking the results and recommendations of Washington State's Diversity Study. Representatives from OMWBE have provided CPARB with several presentations about the study.

It should be recognized that even before this committee was formed, CPARB's policy work was making progress in this area. For example, the Design-Build Best Practices features an entire chapter on encouraging competition, including practices to address challenges faced by disadvantaged businesses and the need for business development, all in the context of design-build procurement.¹³ While this committee's work is important, CPARB also recognizes that increasing opportunities for diverse businesses cannot be limited to the work of one committee and must be included in all CPARB's policy deliberations.

Data Collection Implementation Committee

The history of this committee as well as the committee's current charge and work is discussed in more detail in Section IV below.

¹³ See Design-Build Best Practices Guidelines, Chapter 4.
https://des.wa.gov/sites/default/files/public/documents/About/CPARB/AdminDocs/DBBP-Guidelines_Revised_5-2018.pdf?f394e

Design-Build Statute Review Committee

This committee was formed by CPARB at the recommendation of the Design-Build Best-Practices Committee, which identified the need to review and update provisions of the design-build provisions of RCW 39.10 to align with best practices. This committee's work is also discussed in Section III.A below.

Education, Outreach, and Web Development Workgroup Committee

This group also resulted from the SWOT analysis conducted by CPARB in September of 2018 with the intention to help the board be more outwardly facing in its work. Recognizing that numerous training groups already exist and that CPARB has limited resources to devote to conducting trainings, CPARB members involved in this effort have worked to identify a wider variety of trainings specific to public works with the ultimate goal of providing comprehensive information on CPARB's web-site. Additionally, in summer 2018, CPARB partnered with UW and others to present a public forum that included representatives of numerous public agencies and private contractors focused on business teaming development in design-build.

This group developed a public forum on alternative public works that included panel presentations on business inclusion, lessons learned, and innovations in alternative procurement and was scheduled for April 2020. Public health concerns due to the COVID-19 pandemic caused the forum to be cancelled, however the board plans to re-schedule it at some point in the future.

General Contractor/Construction Manager Committee

There were several issues that motivated CPARB to create the GC/CM Committee in May of 2019. First, CPARB had completed comprehensive review and updates to the design-build and job order contract provisions of RCW 39.10 but had not undertaken such an effort for GC/CM. Additionally, just as a CPARB committee had created a best practices guideline for design-build, CPARB recognized that a similar review would be valuable for the GC/CM process. CPARB also recognized that some stakeholders had concerns about provisions of RCW 39.10.385 relating to alternative procurement of mechanical and electrical subcontractors in GC/CM. Finally, after HB 2208 added heavy civil GC/CM procurement for use on infrastructure projects, both private and public stakeholders expressed interest in improving use of the statute through best practices and possible legislative updates.

This committee has been one of the most active at CPARB in the last year, meeting at least fifteen times and devoting countless hours to review of the statute culminating in recommended legislative changes that will be wrapped into CPARB's proposed reauthorization bill. The committee is now moving to the second phase of its work to develop best practices guidelines.

Job Order Contract (JOC) Evaluation Committee

CPARB created the JOC Committee in February 2017 to review and evaluate JOC data, review best practices and recommend updates to the job order contracting provisions of RCW 39.10. This committee's work was incorporated into SHB 1295, discussed in

Section III.A below. Additionally, the committee worked to review and advise the Reauthorization Committee regarding updates to the statute proposed by a private party (Gordian Group) during the 2019 legislative session. The committee is now working on best practices guidelines.

Reauthorization Committee

CPARB established this committee in February 2019 with the purpose of achieving reauthorization of RCW 39.10. It has also been quite active, having met 15 times as of the date of this report. One significant element of the committee's work has been coordinating with other committees tasked with statute review (JOC and GC/CM and Business Equity) through Reauthorization Committee member participation on those committees and regular reporting. Ultimately, recommendations of the GC/CM and JOC Committees were incorporated into the Reauthorization Committee's work, with anticipated input to come from the Diverse Business/Business Equity Committee. This committee coordination is intended to help CPARB develop a reauthorization bill with broad stakeholder support. Additionally, the Reauthorization Committee has independently reviewed and considered issues and proposals relating to CPARB membership, CPARB powers and duties, creating a fair, transparent and competitive forum, inclusion of small, minority and women-owned business, the PRC's role, and whether to include additional statute sunset provisions going forward.

Subcontractor Bid Listing Policy Inclusion Committee

This committee is a good example of how CPARB can provide responsive, stakeholder-informed, consensus-based feedback to elected officials. In January 2020, because of stakeholder discussions regarding SB 5457, which proposed changes to the subcontractor bid listing statute at RCW 39.30.060, CPARB held a special meeting. SB 5457's sponsor, Senator Karen Keiser, attended the meeting. Stakeholders expressed understanding of the issue the bill was working to address – bid shopping – but also identified several concerns with the scope and timing of the requirements.

CPARB offered to form a committee to include subcontractors, labor, minority, women, veteran and small businesses, contractors, design professionals, and public owners with a goal to find a consensus-based solution that ensures fairness to subcontractors and construction trades labor while protecting public owners, general contractors and design professionals from unnecessary risk. As enacted, ESB 5457 includes a requirement for CPARB to evaluate current subcontractor listing policies and practices and submit recommendations in a report to the governor and appropriate committees of the legislature by November 1, 2020.¹⁴ This is an example of the benefit CPARB can provide to stakeholders and elected officials alike.

Local Government Public Works Committee

This is another committee that was formed in response to the legislature's direction and need for stakeholder input and consensus. In the 2019 legislative session, ESSB 5418

¹⁴ CPARB had originally been led to understand that it would have until the end of the year to provide the report, however our information is that there was an oversight in the date being adjusted in the bill. CPARB is doing its best to meet the time schedule though it may not be feasible.

was enacted relating to local government procurement. The bill requires CPARB, subject to available resources, to provide the legislature a comprehensive report regarding local government procurement methods along with requested recommendations regarding efficiency, barriers to participation, and potential application of inflation escalators to bidding thresholds.

On behalf of CPARB, DES engaged the Municipal Research and Services Center (MRSC) to conduct the study. MRSC is utilizing the limited budget provided for this effort to conduct the research portions of the report and engage with CPARB's committee to evaluate the results and develop recommendations. MRSC has the capacity and the expertise to do research and analysis, but CPARB committee members are providing valuable stakeholder input that will guide any policy recommendations. The fact that CPARB was tasked with this is more evidence of the value the legislature finds in the stakeholder expertise and engagement provided by the board.

In addition to current committees, since the 2013 JLARC Report several other CPARB committees of note have completed work discussed under Section III:

Design-Build Best Practices Guidelines Committee

This committee was formed in 2015 to develop guidelines to assist public agencies to effectively utilize design-build. This committee's work is discussed in more detail in Section III.B.

ECCM/MCCM Best Practices Committee

Formed by CPARB in 2015 in response to concerns raised by mechanical and electrical subcontractors, the committee was charged with reviewing recent projects that utilized the RCW 39.10.385 process for alternative selection of mechanical and electrical subcontractors on GC/CM projects, identifying significant successes and concerns, developing model procurement for M/E CCM under RCW 39.10.385; identifying best practices; and recommending to CPARB changes to RCW 39.10.385, if necessary. The work of this committee, Principles for Alternative Subcontractor Selection Process, is also referenced in Section III.B.

Public-Private Partnership Committee

This committee was formed based on interest from legislators, public agencies, and private parties and with the understanding that Washington's public - private transportation statute was not often used. The committee's task was to focus on public works and alternative delivery methods, evaluate the existing statute (RWC 47.46 Public-Private Transportation Initiatives Partnership), and if the existing statute was deemed not appropriate, to draft proposed statutory language. This committee's work is also referenced in Section III.C.

D. CPARB members and its committee members provide substantial services at minimal cost to the state.

Support for CPARB's work by the public and private sector demonstrates its value. CPARB's board and committee members voluntarily contribute their time to the state. The only reimbursement is travel expenses for board and PRC members. Public owners provide representatives who invest countless hours at no expense to the state. Private sector members, whether employees or independent business owners, donate their time for the benefit of the state's public works procurement processes. Both public agencies and private firms and organizations provide CPARB committees with in-kind support, including donated meeting space, additional staff support for minutes and scheduling, resources for creation of reports and materials, and valuable professional expertise.

Private and public sector board and committee members commit hundreds of hours in service to the state working on research, meeting organization, agenda preparation, meeting minutes, etc., often in the evenings and on weekends.¹⁵ These members have significant professional experience and expertise in a variety of areas, including specialty trades, general contractors, labor representatives, architects, engineers, attorneys, construction managers, private business owners and public employees.

III. Since the 2013 Sunset Review, CPARB successfully carried out its statutory duties by recommending three bills that were enacted into law, publishing a comprehensive design-build best practices volume following a multi-year effort, providing a statutory procurement framework for public-private partnerships, publishing reports to the legislature with two more in process, and publishing additional reports and white papers.

As described in Section II, CPARB largely carries out its work through its members and stakeholder committees. This section tracks CPARB's performance of the specific powers and duties outlined in RCW 39.10.230 and .240.

A. RCW 39.10.230 (1) and (2) - CPARB has successfully developed policies and made recommendations to the legislature that have resulted in expansion, modification and improvements to alternative public works contracting and CPARB has evaluated the use of other alternative contracting procedures.

Since the legislature's 2013 reauthorization of RCW 39.10, CPARB has developed and recommended four alternative public works bills which were enacted into law, and has been involved in the development of additional bills as follows:

¹⁵ While CPARB has not tracked these hours, it is currently working on an informal report of the volunteer hours.

Session	Bill	Summary	Pass
2013	HB 1466	Revising alternative public works contracting procedures, reauthorizing 39.10, adding definitions and evaluation factor considerations for disadvantaged and small businesses, adding life-cycle cost analysis study, revisions to design-build use criteria and selection, addressing protests during GCCM, ECCM, & MCCM selections, increasing annual limit of Job Order Contracts to \$6M for counties with populations > 1M.	Yes
2014	HB 2555	Not a CPARB bill, but legislation was developed through the life-cycle cost analysis study completed by CPARB at the request of the legislature. This legislation required design-build proposals to include building performance goals and validation requirements.	Yes
2014	HB 2208	Authorizes the use of heavy civil GC/CM projects. Because heavy civil horizontal construction is often performed by contractors who invest substantial sums of capital into specialized equipment, heavy civil projects may be delivered more cost effectively if the GC is permitted to self-perform a greater portion of the work. Made heavy civil projects possible while including audit provisions and other provisions to protect public interest.	Yes
2017	HB 2052	Concerning recertification of public bodies using alternative contracting methods – allows the Project Review Committee to accept late recertification applications, if administratively feasible on a case-by-case basis, to avoid lapse in certification.	Yes
2018	SB 6546	Based on review of design-build projects between \$2 M and \$10 M, CPARB found that the design-build process was effective at achieving cost certainty, schedule requirements and desired quality on projects in this estimated cost range. CPARB recommended this bill to remove the limitation on the number of design-build projects that could be done in this price range. Additionally, the bill expanded JOC process to all public owners and increased the threshold for work orders from \$350,000 to \$500,000 to better size projects eligible for this method.	Not in this session, but was basis for bill enacted as SHB 1295
2019	HB 2726	This was not a CPARB bill, but a CPARB committee developed a proposal for a new, alternative public-private procurement process for legislative review and treasury input.	No

2019	SHB 1295	Legislation to improve design-build and JOC processes: clarifying that design-build statute includes authority to use progressive design-build and better aligning statute with progressive procurements; increasing flexibility and reducing risk; provisions included to increase ability of number of parties able to compete by making less prescriptive, to align with best practices, and provide for inclusion of certified women and minority businesses; amending JOC to open it to all public bodies, increasing the work order threshold for \$350,000 to \$500,000, adding apprentice requirements, providing for inclusion of women and minority businesses	Yes
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B. RCW 39.10.230 (2) and (5) – CPARB has evaluated the use of existing contract procedures on alternative public works through qualitative data collected through extensive committee work which has resulted in comprehensive design-build best practices guidelines, reports requested by the legislature, and several studies and white papers.

In addition to making recommendations to the legislature that were enacted into law, one of CPARB’s most notable achievements since the 2013 Report has been the Design-Build Best Practices Guidelines. They were created following a comprehensive, multi-year effort informed by the qualitative data and information provided by numerous public owners, DBIA representatives, architects, engineers, contractors and business owners who participated in committee meetings and at outreach presentations at the Design-Build Institute of America (DBIA) forums in Seattle and the annual Washington State University Design-Build Forum on the Pullman campus in July of 2015, 2016 and 2017. Meeting agendas, minutes, drafts of the guidelines and presentations were posted online and distributed via email to an open list that reached 111 people.

The Design-Build Best Practices Guidelines demonstrate the power of CPARB to bring stakeholders with diverse interests to consensus. They are a significant resource that is available to the public on CPARB’s website and form the syllabus of the twice-yearly Design-Build Workshop that CPARB teaches in coordination with the AGC Education Foundation. The workshops are attended by public owners, design professionals, contractors, and subcontractors.

Based, in part, upon the success of the Design-Build Best Practices Guidelines, CPARB’s GC/CM Committee and JOC Committee are developing guidelines. These efforts reflect CPARB’s understanding that statutes are a framework that must be fleshed out through education, information, and communities of practice.

In addition to the Design-Build Best Practices Guidelines, CPARB has provided or is working on reports requested by the legislature as follows:

- High Performance on Design-Bid-Build¹⁶
- Life Cycle Cost Analysis and Energy Efficiency Report provided to the legislature in December 2013.¹⁷
- ESB 5457 – Subcontractor Listing Statute Study¹⁸ (discussed above, report pending)
- MRSC Public Works Study¹⁹ (discussed above, report pending)

Other white papers and reports completed by CPARB include:

- GC/CM Principles for Alternative Subcontractor Selection Process
- Study regarding design-build pilot projects between \$2-10 M
- Updated suggested guidelines for bidder responsibility

C. RCW 39.10.230 (3) – CPARB has submitted recommendations to appropriate committees for alternative processes not already provided for under the chapter.

Based on the interest of stakeholder groups, a CPARB committee studied the potential for developing a public-private partnership bill and developed a draft for discussion. CPARB did not elect to adopt the bill as a CPARB bill, but CPARB did forward the bill to the state for further review. Representative Buys proposed the bill and subsequent discussions with the State Treasurer’s Office about the financial structuring of P3s identified issues to be resolved if the state eventually moves forward with legislation to authorize the method. Notwithstanding the result, CPARB provided value by bringing together stakeholders interested in pursuing this method and by identifying additional work for consideration.

D. RCW 39.10.230 (4) and RCW 39.10.240 (2) – CPARB has appointed committees to support CPARB’s work and has fulfilled its statutory duty regarding appointments to the Project Review Committee.

Section II. C above describes CPARB’s appointment of committees under RCW 39.10.230 (4) and the success of the committees is evidenced by the legislation and work product discussed in this report.

With respect to Project Review Committee appointments, RCW 39.10.240 (2) provides that CPARB shall appoint individuals who are knowledgeable about design-build and

¹⁶ This workgroup’s efforts did not result in a report, as lack of capital budget passing in 2017 precluded committee leadership time by DES staff. CPARB disbanded the committee after the requesting legislator was no longer in office.

¹⁷ Report was requested under SHB 1466, codified at RCW 39.10.230 final paragraph.

¹⁸ Proposed by CPARB in letter to Senator Keiser and provided for under ESB 5457.

¹⁹ ESSB 5418.

GC/CM contracting procedures and that appointments shall represent a balance among the industries and public owners on the board listed in RCW 39.10.220.

CPARB ensures that the PRC members are knowledgeable about design-build and GC/CM contracting procedures in two ways. First, candidates are required to submit a resume and letter of interest prior to CPARB consideration. Second, before CPARB votes on a candidate for a position, the candidate is offered the opportunity to speak to the board and for members to ask questions. In the past, board members have inquired about experience with alternative public works when the resume and letter of interest did not demonstrate this knowledge. Candidates who were not able to demonstrate this knowledge have been rejected on that basis in the past. The credentials of current PRC members reflect a wealth of knowledge and experience in GC/CM and design-build, making them well-suited to evaluate the qualifications of agencies seeking certification and project approvals.

It is not unusual for CPARB to receive letters of interest for a position from multiple candidates who are all knowledgeable and have experience. In those cases, CPARB's representatives have worked to reach consensus on appointments through discussion and by taking into consideration several factors, which have included:

- CPARB's goal to ensure PRC includes representation from throughout the state;
- For incumbents, the number of terms served;
- Stakeholder endorsements; and
- Diverse representation, which may come in multiple forms (for example, a representative for the design community that is also a woman, a minority and/or a small business owner).

In addition to appointing committee members who are knowledgeable in alternative procurement, CPARB has also fulfilled its statutory duty to make appointments that represent a balance among the industries and public owners of the board. CPARB has done this by designating PRC job titles based on stakeholder groups represented on CPARB, though the PRC includes more positions to ensure sufficient members available for panels for project approval.²⁰ The job titles also include job descriptions which CPARB has used as a guideline for determining whether a candidate represents a particular stakeholder group. However, CPARB does not treat the descriptions as mandatory requirements. Additionally, at times when a position has been vacant, with approval of the applicable stakeholder representative on CPARB, the board has allowed a PRC member from a different stakeholder group to be appointed.²¹

²⁰ CPARB has 19 voting members, 8 public owners, 9 private, and 2 labor positions. In contrast, the PRC has 30 members, 11 public owners, 17 private, 2 labor.

²¹ For example, the position on PRC designated for counties was vacant for some time and the board appointed a city employee to fill the position with the caveat that the position was still designated as one for representation of counties.

PRC members also receive on-line training created by a former PRC chair. DES forwards the training to PRC members and the new members are asked to review it, the RCWs and the Bylaws. The chair and current members answer the new member questions, share lessons learned, discuss how to fill out the score sheets and discuss best practices at the PRC business meeting.

The board's PRC recruitment and advertising process may be found at:

<https://des.wa.gov/sites/default/files/public/documents/About/CPARB/PRC/Members/PRC-RecruitmentPlan.pdf?b7c01>

The guidelines in the process may be modified based upon actual applications (there have been times when there has not been an applicant for a particular position on the provided timeline and there have been times when CPARB has held a position open to seek qualified candidates).

As provided under RCW 39.10.290, public owners may appeal PRC decisions to CPARB. Since the 2013 Report, there has only been one appeal of a PRC decision, which CPARB reviewed as provided by statute. CPARB upheld the PRC's decision.

E. CPARB has complied with the spirit of RCW 39.10.230 (5) regarding questionnaires by collecting qualitative and quantitative data through PRC applications, committee work and stakeholder outreach while working on annual JOC reporting process in coordination with DES.

CPARB has interpreted RCW 39.10.230 (5) in conjunction with Recommendation #4 in JLARC's 2013 Report. CPARB obtains qualitative data and information to inform policy and evaluations of alternative public works processed through the countless hours of work performed by CPARB's committees, through PRC reviews and applications, and through stakeholder outreach. With respect to questionnaires, RCW 39.10 requires CPARB to administer only one specific type of questionnaire – the annual JOC report to be submitted by agencies using JOC contracting. As of the 2013 Report, the questionnaire was administered by DES. At some point, DES stopped administering the questionnaire and the JOC Committee began working in conjunction with DES to complete the annual questionnaires. The committee is currently compiling reporting information and will post this to the CPARB website when complete.

IV. CPARB has implemented JLARC's Recommendations #3 and #4 effectively and with limited financial resources.

A. CPARB has collected data regarding compliance with GC/CM self-performance and has focused on obtaining data through committees and other methods.

Following the 2013 Report, CPARB initially attempted to address both JLARC Recommendations #3 and #4 through a unified approach of an online data collection system. By December 2015, CPARB identified data that would be useful to collect in addition to the GC/CM self-performance data described in Recommendation #3 and the

CPARB chair's status report to JLARC in 2016 outlines the plan to implement an online data collection system.

However, CPARB's efforts received several setbacks. First, the higher education representative on CPARB was the primary contact working with UW to implement the online portal, and that representative retired. Second, the CPARB Chair's status report provided to JLARC in 2017 reported that the financial resources were unavailable to fully implement the system on the original timeline. These budget constraints begged the question of whether CPARB would have the budget to sustain such a system once launched.

While CPARB struggled with the challenges of launching its own hosted online platform, board leadership recognized that CPARB was already meeting JLARC's Recommendation #4 through its other efforts. As a result, CPARB changed the data collection implementation committee's charge to be focused on fulfilling Recommendation #3. The committee quickly shifted gear, and by utilizing an existing structure – PRC certification applications – the committee was able to collect data that is responsive to JLARC's Recommendation #3. For further information on CPARB's compliance with Recommendations #3 and #4 as well as a summary of the data collected, please see the following:

- Attachment 1: Data Collection Memo dated June 14, 2018 from Walter Schacht, Past CPARB Chair
- Attachment 2: Memo dated May 11, 2020 from Aleanna Kondelis and Andrew Thompson, Co-Chairs of CPARB Data Collection and Implementation Committee

B. CPARB has data collection lessons-learned and recommendations for reauthorization.

As a volunteer board with limited budget and staff support, CPARB does not have the resources to launch and manage a uniform, comprehensive and reliable data collection and reporting system, whether online or otherwise. It does not have the resources to gather and compile data in as many different formats as third parties may desire. While CPARB and DES comply with public records requirements and strive to provide as much information as possible on the CPARB website, the board simply does not have the resources to timely create data reports or provide information in all requested formats as a routine part of CPARB's charge.

Other state agencies with more resources are collecting data on public works, and this data is available to the public as well as individual agency public records. Notably, Labor and Industries (L & I) has an online reporting portal that collects information on all public works projects regarding subcontractor contract amounts, payroll reports, apprentice utilization, utilization of certified MWBEs, plus the contract type along with

other quantitative information. L & I has included in the portal systems for the public agencies and contractors to easily collect, manage, and monitor this data for their project. L & I is also making this data publicly available for any entity to review. And OMWBE recently completed a disparity study that provides substantial data regarding utilization of women and minority businesses.

As a result of these lessons learned, CPARB anticipates that its reauthorization bill will include amendments to the provisions of RCW 39.10.230 (5) that clarify CPARB is only responsible to collect data as needed to support CPARB's work. CPARB does not have the resources to act as a centralized reporting agency, nor do CPARB members and stakeholders typically have expertise in data collection.

V. Termination of RCW 39.10 would result in public owners being left with only one delivery method for almost all public projects and would lose the benefits of alternative procurement and the value provided by CPARB.

If alternative public works were to terminate, the public would lose the benefits provided by additional delivery methods (see benefits discussed under Section I). Public projects would be limited to a one size fits all approach for projects that would otherwise benefit from alternative approaches.

Public and private stakeholders support alternative public works delivery. Over the past year, in anticipation of reauthorization, CPARB's Reauthorization Committee and GC/CM Committee have held a combined total of 29 meetings with participation from dozens of stakeholders, including numerous representatives of designers, general contractors, labor, and specialty contractors. In those meetings, stakeholders have made proposals for improvements to the statute and have addressed areas of concern, but not once has a stakeholder advocated for elimination of CPARB or alternative public works processes.

Finally, as discussed extensively in Section I, CPARB is operating in an efficient and economical manner and in the public interest at minimal cost to the taxpayers. Termination of CPARB would eliminate one of the significant underpinnings of the success of RCW 39.10. CPARB brings together diverse stakeholders to address best practices, provides a forum for addressing concerns, and works to improve public projects in Washington. CPARB is successful at proposing consensus-based legislation and providing support structures such as education, reports and guidelines that improve outcomes for publicly funded capital projects.

Conclusion

The author hopes this summary assists JLARC in its review. Please contact Nancy Deakins of DES (nancy.deakins@des.wa.gov) and CPARB Chair Rebecca Keith (rebecca.keith@seattle.gov) if there is any additional information or assistance we can provide on behalf of the board.

Thank you for your consideration –

Rebecca Keith
CPARB Representative for WA Cities
CPARB Chair

Attachment 1

memo

Date: 14 June 2018
From: Walter Schacht, FAIA – Chair, CPARB
To: CPARB Data Collection Committee
Re: **Thoughts on Data Collection**

It appears that we are much closer to meeting the recommendations for data collection in the 2013 JLARC Reports than I had previously imagined. I believe that we are in good position to demonstrate that we have met our obligations as a board and be prepared for the 2020 Sunset Review and reauthorization process.

- I believe that we are already complying with JLARC's recommendations regarding refocusing our overall efforts on data collection.
- I believe that we have a modest amount of work to do to meet JLARC's recommendations regarding information on GCCM subcontract awards.
- I am concerned, however, the 2015 CPARB Data Collection Proposal contradicts JLARC's recommendations. The relationship between the proposal and the report should be clarified in writing before the proposal is implemented.

JLARC RECOMMENDATIONS FOR DATA COLLECTION

Two of the four recommendations make in the 2013 JLARC Report apply to CPARB's data collection process.

Recommendation 3

Public bodies using GCCM should obtain information on project subcontract awards and payments and provide a final project report on their GCCM subcontracting to CPARB.

Recommendation 4

CPARB should refocus its efforts and limited resources on collecting information that will more readily assist the Board in developing recommendations to improve public works delivery methods.

The report indicates that data collection is less effective than other tools that CPARB employs to inform and develop its recommendations on public works delivery methods. Information on GCCM subcontract awards is the only quantitative data collection required to fulfill JLARC's recommendations. The report does not indicate the need for other data to be collected. It could be interpreted as recommending against it.

JLARC indicates that the board's task forces and subcommittees are a model for providing timely, informed recommendations. They draw on the experience and expertise of public owners and the construction industry to develop recommendations for statutory and policy changes that enhance public works contracting. It indicates that CPARB's involvement in educational programs, such as the AGC Education Foundation's GCCM training program, are also of value. JLARC indicates that the board could assist project owners and contractors by soliciting and disseminating "lessons learned" information about completed projects. It states that although the information is not quantitative, it could promote greater understanding about the experience of using alternative procedures in Washington.

COMPLYING WITH JLARC'S RECOMMENDATIONS

Recommendation 3

Public owners are required to provide data on GCCM subcontracts to CPARB. Collecting the data could be done by distributing a preformatted spreadsheet or by an online survey. To confirm that public owners meet the requirement, compliance could be required as a prerequisite to submitting an application for project approval and/or agency certification. Data collection for this issue may sunset in 2021.

Recommendation 4

CPARB is already complying with JLARC's recommendations.

The development of CPARB's Design-Build Best Practices Guidelines is one example. The collaboration among public owners and the construction industry led to a document that enhances public works contracting. The guidelines provide a syllabus for an AGC Education Foundation design-build training program that is taught twice a year (or more, depending upon demand) and other educational sessions which have been conducted across the state. Annual events such as the WSU Design-Build Forum attract a statewide audience of public owners and industry professionals and might be considered to be part of this effort, especially if they are co-sponsored by CPARB. The current Design-Build Statute Review Committee is following through on the development of regulatory improvements that were identified as part of developing the guidelines.

The P3 Committee was another example. There is potential to identify other committees with a specific focus on evolving trends in alternative project delivery to inform the board's policy recommendations.

- For example, a committee could be organized to evaluate why public owners are moving away from GCCM and towards design-build as a preferred delivery method. The committee could recommend changes to the GCCM provisions of the statute that would increase its utilization.
- A "Lessons Learned Committee" could organize presentations about project successes and challenges that are made during regular board meetings or organize an annual CPARB Lessons Learned Symposium.

SUMMARIES

Summaries of the 2013 JLARC Report and the 2015 CPARB Data Collection Proposal follow.

RCW 39.10 – REGULATORY REQUIREMENTS FOR DATA COLLECTION

RCW 39.10.230

Board—Powers and duties.

The board has the following powers and duties:

- (5) Develop and administer questionnaires designed to provide quantitative and qualitative data on alternative public works contracting procedures on which evaluations are based.

RCW 39.10.460

Job order procedure—Required information to board.

Each year, a public body shall provide to the board the following information for each job order contract for the period July 1st through June 30th:

- (1) A list of work orders issued;
- (2) The cost of each work order;
- (3) A list of subcontractors hired under each work order;
- (4) If requested by the board, a copy of the intent to pay prevailing wage and the affidavit of wages paid for each work order subcontract; and
- (5) Any other information requested by the board.

2013 JLARC REPORT - EXCERPTS

REPORT SUMMARY

- This review also recommends that public bodies maintain information to demonstrate compliance with a key statutory requirement and that the Capital Projects Advisory Review Board (CPARB) provide guidance for that purpose. CPARB should also clarify reporting for job order contracts and rethink how to monitor and evaluate the use of alternative procedures.

CPARB Should Rethink Its Approach to Collecting Project Information

- CPARB's effort to collect project data for evaluating public works contracting has not produced an accurate and reliable database. Even if data problems are corrected, differences among project characteristics limit the comparability of any quantitative results based on this data. For these reasons, this sunset review does not use the CPARB data to evaluate project performance and relies instead on case studies of selected projects and follow up interviews.
- In addition to collecting project data, CPARB has used task forces, subcommittees, and other methods for obtaining information needed to fulfill its statutory responsibility to evaluate contracting procedures and recommend policies to the Legislature. These methods are more likely to provide timely, accurate, and reliable information needed to develop recommendations about public works contracting.

Recommendations

- The Legislature should reauthorize the alternative public works, Chapter 39.10 RCW.
- CPARB should revise job order contract reporting to clearly identify separate contracts with the same contractor during the annual July 1-June 30 reporting period.
- Public bodies using GCCM should obtain information on project subcontract awards and payments and provide a final project report on their GCCM subcontracting to CPARB.
- CPARB should refocus its efforts and limited resources on collecting information that will more readily assist the Board in developing recommendations to improve public works delivery methods.

PART THREE –

CPARB NEEDS TO RETHINK ITS APPROACH TO COLLECTING PROJECT INFORMATION

- The Capital Projects Advisory Review Board (CPARB) should rethink its approach to fulfilling its statutory duty to collect information for use in advising the Legislature on public works delivery methods. The Board collects project information in a variety of ways, including building a database of project information. However, the project database is not sufficiently accurate or reliable for evaluating project performance.

Project Database Is Not Accurate or Reliable

- JLARC reviewed the project database for use in assessing the performance of the various delivery methods. This review shows that the information in the CPARB database of major projects is not complete, contains inaccurate data, and is unlikely to provide a reliable basis for assessing and comparing project performance.
- Data Problems Create Potential for Inaccurate Results

- Corrected Data May Not Produce Meaningful Results

CPARB Has Options for Obtaining More Useful Information About Contracting Procedures

- Alternative procedures are no longer unusual in public works construction. Washington has over 20 years' experience using alternative procedures, which are also widely used in other states. The widespread use of alternative procedures indicates that the issue is no longer whether to allow the procedures, but rather when and how to best use them in the public interest.
- CPARB's experience using task forces and subcommittees to address issues of concern in public works contracting provides a model for strengthening its ability to provide timely, informed recommendations. As noted previously, the Board has initiated a variety of task forces and subcommittees to address issues of concern in public works contracting. These task forces draw on the experience and expertise of the construction industry and public owners to develop recommendations for statutory and policy changes that enhance public works contracting. In addition, CPARB has been active in educating public owners and contractors about the use and requirements of alternative procedures. Since 2007, CPARB has participated in annual workshops to educate contractors and public owners about GCCM contracting. CPARB participated in a 2012 workshop to assist public owners in developing criteria for determining bidder responsibility and eligibility.
- The Board could further assist project owners and contractors by soliciting "lessons learned" information about completed projects and disseminating that information to the various stakeholders. Although this information is not quantitative, it could promote greater understanding about the experience of using alternative procedures in Washington.
- Recognizing both the limitations of the existing project database and the role that CPARB plays, JLARC's fourth recommendation is that CPARB refocus its efforts and limited resources on collecting information that will more readily assist the Board in developing recommendations to improve public works delivery methods.

2015 CPARB DATA COLLECTION PROPOSAL

GOALS

1. Is the process fair and open to a broad range of business in Washington State?
2. Is there correlation between outreach plans and the level of participation of S/DB?
3. Do the project reports identify trends that would drive proposals for statutory changes? (modified for clarity)
4. Are there best practices or training needs that would improve outcomes in the utilization of alternative delivery methods? (modified for clarity)

DATA COLLECTION

1. Project Set Up

- Name of Public Body
- Name of Project
- Project Budget
- Does this project plan to use a Small Business/DBE outreach plan?
- Construction Period (m/year to m/year)

2. Design Build or GC/CM Selection

- Number and names of firms responding to RFQ
- Number and names of firms selected for interviews
- Names of firms selected to submit to RFP
- Name of awarded contract

3. Subcontractor Identification - GC/CM- Design Build

- Number and names of firms responding to subcontract bid requests
- Names of the selected firms.
- Information on project contractor and subcontractors submitted to Labor & Industries regarding intents and affidavits.

4. Post Project Team Report

- What were the best practices on this project?
- Are there any suggested modifications to Public Works Legislation (RCW 39.10) that would have helped the project be more successful?
- Did the project team discover there were areas/topics where additional training would have helped the project be more successful? What were those areas/topics?

Attachment 2

MEMORANDUM

TO: Rebecca Keith, Co-Chair, Capital Project Advisory Review Board - Cities
Assistant City Attorney, City of Seattle

FROM: Aleanna Kondelis, Co-Chair, CPARB Data Collection and Implementation Committee – volunteer
Director, Procurement & Sourcing, University of Washington | Facilities

Andy Thompson, Co-Chair, CPARB Data Collection and Implementation Committee
CPARB Member – General Contractor | Sr. Project Manager, Granite Construction

DATE: May 11, 2020

RE: Response to 2013 JLARC Report - Recommendation 3 (Alternative Public Works Sunset Review)

Background

CPARB passed a motion on **October 11, 2018** directing the Data Collection Implementation Committee to prepare the response to the **February 20, 2013** JLARC report. The Data Collection Implementation Committee met on **November 15, 2018** and discussed ways to obtain information on GC/CM project subcontract awards and payments to address Recommendation 3.

Recommendation 3 states : *Public bodies using GCCM should obtain information on project subcontract awards and payments and provide a final project report on their GCCM subcontracting to CPARB.*

CPARB directed the Data Collection Committee to focus efforts on JLARC Recommendation 3, and subsequently leveraged the Project Review Committee (PRC) to include an additional question (No. 6) for applicants:

6. GC/CM Self Performance *(complete only if requesting GC/CM re-certification)*

Responding to the 2013 Joint Legislative Audit and Review Committee (JLARC) Recommendations is a priority and focus of CPARB.

Please provide GC/CM project information on subcontract awards and payments, and if completed, a final project report. As prepared for each GC/CM project, please provide documentation supporting compliance with the limitations on the GC/CM self-performed work. This information may include, but is not limited to: a construction management and contracting plan, final subcontracting plan and/or a final TCC/MACC summary with subcontract awards, or similar.

In January 2019 the Data Collection Committee, with the support of CPARB and PRC, notified public bodies that during the **recertification** process project data will be collected around subcontract awards and GC/CM self-performance.

Since implementing the Recertification of Public Body application “Recommendation # 3 protocol”, the following information has been submitted and posted on the CPARB website:

Agency	GC/CM Projects
City of Seattle	7
Port of Seattle	5
Sound Transit	11
Dept. Of Enterprise Services	19
University of Washington	12
Washington State University	3
Totals	57

Subcontracting/GC/CM Self-Performance Information Received as of May 10, 2020:

Agency	Project	GC/CM	Total Construction Cost	Subcontract Total	Self-Performance
Lake Wash SD	Barton Elementary	BNBuilders	\$39M	\$27.4M	21%
	Ella Baker Element	Lydig	\$33M	\$13M (\$5.3M MC/CM) (\$4M EC/CM)	24%
WSU	Veterinary Med Research	Lydig	\$96M	\$46M	30%
Sound Transit	Capitol Hill Station	Turner	\$104.8M	\$52M	26.2%
	UW Station (U250)	Hoffman	\$141M	\$73.7M	26.2%
	University Link System (U830)	Stacy Witbeck	\$119M	\$79.7M	16.7%
DES	Bellevue College SH	Walsh	\$45M	\$26M	11%
	Pacific Tower Improve	Mortenson	\$6.5M	\$4.6M	22%
City of Seattle	Fire Station 14	Turner	\$9.5M	\$5.6M	27.6%
	First Hill Streetcar	Stacy Witbeck	\$74.9M	\$38.8M	29.48%
	Henderson North CSO	Hoffman	\$29.8	\$17.7M	22.9%
Port of Seattle	North Satellite Renovation	Hensel Phelps	\$482M	\$351M (\$48M MC/CM) (\$69M EC/CM)	0%

This exercise did produce documentation to address Recommendation # 3 and provides public agencies a central repository and a similar approach to provide GC/CM subcontracting and self-performance project information to CPARB. The Data Collection Committee recommends continuing to follow this process.