

CPARB Reauthorization Committee Meeting Notes
November 18, 2019 1 p.m. – 4 p.m.
Columbia Center, Suite 2050, Seattle, Washington

In attendance:

Chair: Rebecca Keith (WA Cities)

Vice-Chair: Robynne Thaxton (Private Industry) - phone

Members: Loren Armstrong (WA Ports) -phone, Becky Blankenship (Architects) - phone, Neil Hartman (WA Building Trades) - phone, Janet Jansen (DES) - phone, Robin Heinrichs (School Districts) - phone, Scott Middleton (Specialty Contractors), Eric Nordstrom (Counties) – phone, Brenda Pellitteri (rep for Mike Pellitteri) (General Contractors), Tae Hee Han (rep for Linneth Riley-Hall) (Transit) - phone, Olivia Yang (Higher Ed)

Guests: Nancy Deakins (DES) – phone, Jesse Gilliam (City of Seattle), Jerry Vanderwood (AGC) – in attendance for first half, Fernando Pena (Gordian Group) - phone, Dan Seydel (Platinum Business Group) - phone, Andy Thompson – (General Contractors) in attendance for first half, Randy Horn (Gordian Group) – in attendance for second half

Meeting is called to order with a quorum present at 1:11 p.m.

Welcome and introductions.

Approve agenda.

Rebecca: Proposes to switch order of the agenda to discuss decision making process first, have break, and then review the JOC statute being informed by the decision making discussion.

VOTE: Robynne Thaxton moves to switch order of the agenda. Olivia Yang seconds.

All approve. No oppose.

Review and approve Nov. 4 minutes.

VOTE: Rebecca Keith move to approve the minutes. Olivia Yang seconds.

All approve. No oppose.

Decision making process.

Rebecca leads discussion of decision making, including the how the committee will handle recommendations from other committees, whether to vote on draft amendments

to the statute all at once or in sequence, whether to make decisions by consensus, and what happens if there is not a consensus.

[Note: notes were taken on a document that was on screen during meeting, but the document was inadvertently not saved to the device it was created on. Discussion is summarized below].

Several members noted that the committees are the subject matter experts and the RA Committee should accept the recommendations from those committees and not re-visit. However, there was also discussion about the RA Committee's over-all responsibility to take a single draft bill to CPARB that would be well-supported by stakeholders. And it was also recognized that some RA committee work, for example sunset provisions, may be dependent on outcomes of other committee's work, the GC/CM subcontracting provisions for example.

There was general agreement that the RA Committee should accept the committee recommendations regarding draft changes to the statute or should have very clear reasons if not accepting. Additionally, RA Committee must look at the recommendations in the context of the entire statute.

The question was asked what if a committee can't agree with or come to final decision on certain issues or proposals, or if a committee wants to defer an issue to the RA Committee as will be the case with some of the JOC provisions of RCW 39.10. RA Committee members generally agreed that it in such a case it makes sense for the committee to bring those issues to the RA Committee for resolution. Was further discussed what would happen if RA Committee did not reach consensus. Suggestion was made that it would make sense to take any issue like that to CPARB for further input.

Group agreed that the RA Committee should vote on proposals, but there was discussion on timing of vote and whether it is possible to accept proposals in sequence or whether it would be done at once. Scott M. noted that one challenge with voting piecemeal is that sometimes there are dependent or conditional matters. For example, committee members could agree on adding transit only if there was another adjustment to balance membership between public private. Scott M. proposed that the RA Committee could 'tentatively approve' changes, then wait until resolution of other issues to make final decision. Committee members liked this approach, and unanimously agreed to this approach by affirmative vote.

RCW 39.10.230 revisions.

Tae Hee: Describes JOC matrix. Matrix includes five items that JOC committee would like weigh-in from reauthorization committee.

Break at 2 p.m.

Reconvene 2:11 p.m.

Keeping in mind the RA Committee's agreed upon approach to the decision making process, Rebecca turned the floor over to Tae Hee H. and JOC Committee members to present its recommendations.

ALSO SEE DECISIONMAKING MATRIX ATTACHED AS EX. 1 FOR ADDITIONAL RA COMMITTEE NOTES

Item 1 Recommend no proposed change.
Item 2 Committee agrees with adding definition, discussed whether to modify Item 2 discussion No questions or concerns. Item 2 decision Recommendation to consider including bonding costs, overhead and profit in the definition and revisit.
Item 3 Recommendation from JOC to drop "negotiated definitive." Item 3 discussion No questions or concerns. Item 3 decision Committee vote to tentatively approve. All approve. No oppose.
Item 4 Recommendation to strike last two sentences. Item 4 discussion Rebecca: How do you capture everything pricing wise? Tae Hee: Adding unit price coefficient takes care of this. Rebecca: Where do you capture bonding costs? Tae Hee: Bonding is in the coefficient. Moving overhead, bonding and profit to be included in definition of coefficient will cover this. Item 4 decision Committee vote to tentatively approve if we modify the coefficient definition. All approve. No oppose.
Item 5 Recommendation for no change. Item 5 discussion None. Item 5 decision No change.

Item 6

This includes two proposed changes. Recommends replacing “proposal price” with “coefficient.” Recommends adding “ability to provide a payment and performance bond.” (dropping “job order contract”).

Item 6 discussion

Rebecca: Notes that original language is for “job order contract” (which varies from “work order” on the matrix.”)

Tae Hee: Notes that it is “ability to provide a payment and performance bond.” No specific item after that.

Robynne: Notes that this is referring to selection criteria.

All: General clarifying questions on bonding costs.

Olivia: Percent bond is the same no matter what (Robynne, Brenda agree).

All: Continued questions about bonding requirements within JOC specifically.

Questions: What are the factors that go into the percentage of the bond requirement? Based on contract price only or risk with contractor? Percentage of bond requirement is based on contractor.

Tae Hee: Notes that we get the payment performance bond after the award.

All: Discussion about the work order and coefficient.

Robynne: Possible solution: add language “in the amount set forth by the public entity.”

Item 6 decision

Replacing proposal price with coefficient: Vote to tentatively accept.

All approve. No oppose.

Add “ability to provide a payment and performance bond.”

Pause decision, JOC committee to research bond requirement as it relates to a coefficient. Ask JOC committee about the language “in the amount set forth by the public entity.”

Item 7

Committee suggests “other relevant information.”

Item 7 discussion

Robynne: Clarifies what is already in document.

Scott: Notes that this is surplus information.

Tae Hee: Feels fine about removing other relevant information.

Robynne: Bigger concern that deleting it will provide an indication that the group should not provide other relevant information.

Scott: Good point.

Item 7 decision

Vote to tentatively approve change.

All approve. No oppose.

Item 8

Committee suggests adding “including but not limited.”

Item 8 discussion

Tae Hee: Cannot recall why committee and Gordian group differed.

All: Discussion about how a unit price book works.

Rebecca: Does not see necessity of adding including but not limited. Agrees with Gordian use of “adjustments” rather than “Mark-ups”.

Tae Hee: Committee should look at sealed bid language – make sure this is used consistently across GCCM/JOC.

Item 8 decision

Rebecca will look into this further and also asks other lawyers to look at it.

Item 9

Comments – no action requested by JOC or Gordian.

Item 9 discussion

No further discussion.

Item 9 decision.

No action.

Item 10

JOC Committee recommendation not to include at this time. Further investigation needed regarding applicability of other laws and alternative public works statute as a whole.

Item 10 discussion

Olivia: Inconsistency in applying across public agencies.

Robynne: Needs to be addressed statewide rather than in different places. Some say the “assistance” must be substantial. Some say if it is minimal it is acceptable.

Federal government has both a conflict of interest statute and room for exceptions and say it is up to the contracting officer to make a determination. Exceptions are if the info is not material, if the info is disclosed, and if it does not provide them with a significant advantage.

Olivia: How did we leave the PRC discussion?

Rebecca: PRC discussion is not resolved. Andy may bring some proposals. Other people may bring different examples of conflict of interest policies.

Olivia: Should look across the board – JOC, PRC, DB, etc on this issue – this is a wholistic topic.

Item 10 decision

Robynne will bring in examples from the federal government and case law examples.

Olivia suggest we also look at instances of alleged violations.

Rebecca and Robynne will have a conversation to discuss how to structure a future meeting on this issue efficiently.

Item 11

Committee suggests not to include at this time. This change convolutes the intent of the prevailing wage section.

Item 11 discussion

Tae Hee: Notes that Gordian says that they have to have this to ensure contractors are paying prevailing wage. Could not move this conversation any more so brought to this committee.

Fernando: Offers to take back to Tom and get info for the committee.

Rebecca: Requires Intents and Affidavits. Isn't the contractor entering this and prevailing wage information?

Tae Hee: Correct, all is entered to L and I as of Jan. 1, 2020 must go into the contractor portal.

Rebecca: Hearing overall info that we don't need this for prevailing wage enforcement.

Item 11 decision Fernando will talk to Tom to get clarity on this ask.
Item 12 Committee suggests to strike provision referencing amendment of contracts prior to 2007, no longer relevant. Item 12 discussion None. Item 12 decision Vote to tentatively approve. All approve. No oppose.
Item 13 Committee suggests investigating the issues and revisiting this but did not recommend changing statute. Item 13 discussion Robynne: Concerns because not sure from a legal perspective what it means to certify and how it produces conflict of interest since you already have the job. Item 13 decision Gordian to review and determine whether to accept the committee's feedback that change isn't needed.

The Committee completed review of all recommendations by the JOC Committee. Next steps are noted under open items.

Rebecca notes that the JOC review took longer than scheduled, so some agenda items will be shortened for information only.

RCW 39.10.230 revisions

Rebecca: Several meetings ago we looked at RCW 39.10 and discussed changing language “powers and duties” to “authority”. It was recommended by B. Maruska that the committee seek input from the code reviser and AG because the phrase “powers and duties” is used consistently in statutes. Janet J. and Nancy D. at DES have been looking into this and will share information at future meeting.

CPARB membership proposal decision

Rebecca also received a proposal to add construction management representation on CPARB. Also received feedback from Sound Transit that the transit position should be appointed by State Transit Association – leaves this as an open issue for when Linneth is back because she can provide info about the group.

Update from other committees

Scott: GC/CM Committee got through all relevant sections of the GC/CM statute. Next meeting is Dec. 4. Will get excel spreadsheet out to the group that talks about various action items and responses. Has on track to get proposal to this group for January in time for all to be incorporated by March.

Rebecca: Notes the group is doing an amazing job of tracking all sorts of proposals. Would like this committee to consider setting a clear date for receiving proposals as well. Noting that the next RA Committee was intended for the GC/CM update, Rebecca asks how much time should be on the agenda.

Scott: recommends an hour at next meeting to discuss these issues.

Follow up items

- JOC committee and interested RA Committee members research bond requirement as it relates to the coefficient – will it make a difference to coefficient if the public owner does/does not specify in solicitation whether the bond is on work order basis or applicable to entire dollar value of prime contract.
- DES and Rebecca report on power and duties v. authorities
- Rebecca and committee lawyers will look into the sealed bid issue
- Conflict of interest – Robynne and Rebecca determine how to structure meeting on this issue
- Membership of CPARB – address at next meeting
- Sunset – facilitator? Continue to consider as we move forward and the whole package comes together.
- Next meeting is Dec. 2. Rebecca will send the agenda out and will send out materials sooner rather than later.

Meeting adjourned at 3:20pm.

Minutes prepared by Jesse Gilliam and Rebecca Keith.