

CPARB Reauthorization Committee Meeting Notes

November 4, 2019 1pm – 4pm

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, Santosh Kuruvilla (Engineers) - phone, Scott Middleton (Specialty Contractors), Mike Pellitteri (General Contractors), Linneth Riley-Hall (Transit) - phone

Guest: Walter Schacht (architects, CPARB), Aleanna Kondelis (UW, JOC Committee) - phone, Dan Seydel (Entrepreneurial Institute of WA) - phone, Vikki Stocker (CCM) - phone, Jenny Lo (City of Seattle), Tae Hee Han (Sound Transit, JOC Committee) – phone, Deborah Delzell– phone, Melissa Van Gorkom – phone, Quinn Dolan (Centennial Contractors, JOC Committee)– phone

Meeting is called to order with a quorum present at 1:08

Welcome and introductions.

Approve agenda.

Review and approve September 23 minutes.

VOTE: Janet Jansen move to approve the minutes. Scott Middleton seconds.

All approve. No oppose.

Confirm Reauthorization Committee approach.

Rebecca reviews the approach to addressing issues that this committee decided on at first several meetings. The committee would identify issues that parties raise during the reauthorization review process and will sort these issues into what needs to be addressed in legislation and what is better left to best practices and policies.

JOC Committee Update.

Rebecca asks JOC Committee members and Robynne Thaxton to provide an update from meeting with the Gordian group and what proposals are brought back to the Reauthorization group for inclusion in the reauthorization bill. Rebecca brings up on the screen the spread sheet from the JOC committee that was distributed prior to the meeting and that shows Gordian's suggestions and comments and the City's suggestions and comments.

Quinn recaps JOC Committee meeting with the Gordian group on October 22, 2019. He remarks on the Item #2 on the matrix: Gordian group comments on the word coefficient. The JOC committee spent 20 minutes discussing, but did not agree with Gordian definition and was unsuccessful with negotiation.

Robynne: Part of the problem was the generic use of term bid

Scott: Are we trying to define coefficient?

Rebecca: Yes, in some areas the word mark-up is used instead of coefficient.

Robynne: There is no definition in the 39.10.400 series

Rebecca pulls up RCW 39.10.430 on the screen

Robynne: Points out 39.10.430(4)

Tae Hee: Remarks there has never been a definition for the word coefficient.

Aleanna: The Committee recommends that we go through the statute for term “Bid” and is it used consistently in the statute.

Linneth: Looks for clarification if Gordian group already defined.

Tae Hee: Agrees with recommendation to go back and see if the word “bid” is used consistently

Rebecca: Clarifies that committee agrees to add a definition for coefficient, but the committee suggestion is the revision shown in column 2. Tae Hee confirms.

Walter: Asks to remove the comma after the word “Mean” in the column 2 committee proposal.

Tae Hee: Presents Item #8 on the matrix.

Rebecca: Asks the committee are there differences between proposals vs sealed bids?

Tae Hee: They are same. Final proposal includes coefficient.

Quinn: Phase 1 of proposal includes past performance. Coefficient is presented after Phase 1.

Walter: The statute for proposals of the submittal in 39.10.430(3)(f) is inconsistent. Take out “qualification and.” Another inconsistency is related to bids. JOC requires sealed bids. Design build has no requirement for open bid. GCCM is open public bid.

Linneth and Tae Hee both echo consistency in RCW with what the committees are using for GCCM.

Tae Hee: JOC is looking for guidance from the Reauthorization Committee.

Neil: Consider consistency and use “may” and “shall” in the statute.

Linneth: What about flexibility? “May” is better than “shall.”

Rebecca: Ask Aleanna, Quinn, and Tae Hee for Item #8 clarification with the two-color highlights.

Tae Hee: Blue is Gordian’s changes. Yellow is agreed language.

Rebecca: The Reauthorization Committee needs to see the final changes to the statute instead of looking at the matrix. Proposes that JOC provide that format for the next meeting.

Linneth: Clarification #8 middle column, the word “shall” means they have to submit. Doesn’t know what “not limited to” when you have the word “shall.”

Scott: There shall be a seal bid?

Walter: Should the format of JOC recommendations follow code revisors format to reflect deletions and insertions?

Rebecca: Disagrees for now, just use redline.

Linneth and Tae Hee: Okay with redline for now.

Robynne leads the discussion on items #10 and #13. Starts with item #10 about conflict of interest. She notes concern about inconsistency in conflict of interest provisions in Gordian proposal and concern that something from a CA statute transferred into one section of JOC statute could lead to inconsistency with other laws and sections. She transitions to item #13 and request for certification of work orders. Certification has a different definition in WA.

Rebecca: Conflict of interest discussion after the break.

2:22pm break.

2:32pm reconvene.

Continued discussion of conflict of interest. Rebecca asks whether Gordian said if an entity develops the RDP it cannot submit a work order. Quinn clarifies the intent of Gordian's language is that the entity helping with RFP can't bid on prime proposal.

Rebecca: What is the implication of adding this here for other alternative works?

Walter: Asks if we talking about conflict of interest under state law or as defined by public agencies? Organizational conflict of interest doesn't address this. This falls more in line with unfair competitive advantages. There is no express prohibition and there are rules such as federal FAR that address this.

Loren: Not all competitive advantages are unfair.

Becky concurs with Walter.

Robin: Nothing to add. Curious how to engage a consultant to develop ideas if the consultant would be ineligible later on.

Linneth: Currently, no additional thoughts. Asks if this a deal breaker for the Gordian group.

Quinn: This is a hot topic.

Linneth: Include it in the JOC best practices?

Quinn: Should this be addressed at the local level and not at the legislative level?

Rebecca: Heard in opinions, preferable at local level.

Mike: Trying to channel Andy and what he would say if he were at this meeting, he would say it should be at the legislative level. Since JOC Committee doesn't know how to resolve, the Reauthorization Committee should take up this question. If there are other public owners who does have conflict of interest policies, look if there are conflict provisions.

Scott: Hear this from the public owners.

Walter talked through competitive advantages and the difference from conflict of interest. Conflict of interest is relation connection, example family on the bid panel. Accurate use of terms are important.

Rebecca: Recaps, are we fixing a problem that currently doesn't exist.

Quinn: If we change the RCW, it would open up a can of worms.

Linneth: Is there a particular situation trying to resolve?

Quinn: Gordian is concerned, says it has seen this conflict of interest happen outside of WA. In preparation for coming in WA.

Mike: Has had experience with participations prior to solicitations preclude from bidding.

Rebecca: Agenda items for November 18th meeting:

- JOC order contract committee – Tae Hee and Quinn to provide redline with the changes Gordian and JOC Committee agree upon. Ask Gordian to participate where their concerns lie.
- This committee still needs to work on Item #10; possibly Items # 11 and #13 – these would not be in the redline.

Loren: Why are Gordian comments causing so many concerns? Why is one entity getting so much attention?

Rebecca: Gordian said in front of legislature they disagree. Need to address in committee. Part of the reason 1295 went through was because CPARB committed to work on this.

Update from other committees:

Dan: Business diversity committee

- Suggestion brought up from previous meeting into the matrix
- Small business provision

Scott: GCCM committee

- Working though the applicable statutes
- At last meeting on October 14th MCA presented MCCM proposals
- Committee is continuing subcontracting issues
- Robust discussion of some topics
- Committee also looking at:
 - o Defining different contingencies
 - o Timely processing of change orders and claims
 - o Claims definition
 - o Audits
 - o December 2nd will have an update for Reauthorization Committee
 - o Dec 11th Nick will be attending CPARB

Goal is for March recommendations. Rebecca thanks Scott, Mike, and people on phone. Also, for consideration draft proposals from Dan for small business. Rebecca notes that the Equity/Diverse Business Committee is reviewing provision in GCCM, design build, and JOC committee to make consistent in applicable sections of RCW 39.10. She will follow up with Walter to ask that committee to address Dan's recommendation.

Rebecca goes through additional November 18 meeting agenda:

Rebecca – updated JOC statute review. Look at the other changes we have carried forward

- CPARB membership. Two proposals.
- Power and duties section.
- JOC statute changes.
- How do we make our decisions? Capture moment of time or wait for a final draft in March/May
- Set 2020 meeting topics. Will send out Doodle Poll for every 2 weeks meetings.

Meeting adjourned at 3:20pm.

Minutes prepared by Jenny Lo and Rebecca Keith.