

CPARB Reauthorization Committee Report to CPARB

For Meeting September 10th, 2020

Committee's recommendations for RCW 39.10 Reauthorization Bill

After the Reauthorization Committee report to CPARB in May, the Reauthorization Committee continued to meet to resolve several open issues relating to the following: (i) Gordian proposed changes to the JOC statute, (ii) concerns raised by architects regarding exemption of pre-engineered metal buildings from PRC review, (iii) future statute expiration and applicability of sunset provision requiring JLARC review in the future, (iv) small business proposals, and (v) a pilot program proposed by WSU.

The Reauthorization Committee unanimously approved proposed changes to RCW 39.10 to be included in the reauthorization bill. These changes are reflected in the form of red-line edits to RCW 39.10 that are submitted to CPARB for review with this report. A summary highlighting significant changes is provided below.

These proposed statute changes reflect the work of the GCCM Committee, the JOC Committee, the Reauthorization Committee, and extensive stakeholder discussion and compromise. The proposed changes to RCW 39.10 are presented to CPARB as a package.

The next steps are:

September 10th CPARB meeting: CPARB review and discussion of the proposed changes to RCW 39.10 for inclusion in reauthorization legislation.

September: CPARB members to do stakeholder outreach and vetting. Requested date for any additional feedback to be submitted to RA Committee Chair no later than September 30th.

October 8th meeting: CPARB to vote on proposed reauthorization legislation.

Following CPARB approval, DES will work with code reviser to put the proposed legislation into form of draft bill. CPARB Chair, Vice-chair, and Past Chair work with lobbyists and bill sponsors to prepare for legislative session and introduction.

December 9th CPARB meeting: CPARB to receive update on legislative plan and ways for CPARB stakeholders to support.

Next page for summary of recommended changes.

Summary of Recommended Changes to RCW 39.10¹:

Definitions (RCW 39.10.210)

- Adds definition of “coefficient” applicable to JOC statute.
- Adds definitions for “budget contingencies” and “risk contingency” both terms used in RCW 39.10 that sometimes cause confusion. Intent is to clarify that the risk contingency is included in the MACC, but budget contingencies are not.

Changes to CPARB Membership and Duties (RCW 39.10.230)

- Recognizing billions of dollars in horizontal transit and heavy civil projects are completed through alternative delivery, the legislation adds a transit representative to the CPARB Board.
- Adds encouraging competition and recommending best practices to CPARB’s powers and duties.
- Recognizing CPARB’s finite resources for data collection and administering questionnaires, the legislation clarifies that CPARB has the authority to collect project information to support CPARB’s work without imposing specific questionnaire or information collecting responsibilities. See also change under JOC provisions.
- Removes inapplicable life cycle cost report reference.

PRC Duties (RCW 39.10.250)

Adds new provision to PRC duties to include review and approval of use of alternative subcontractor selection for public bodies that are not certified to use GC/CM. PRC review and approval may be concurrent with review and approval of project.

Design Build Changes

- Recognizing that there is not a clear industry definition for pre-engineered metal buildings and that use of pre-engineered structures is evolving, RA committee recommends requiring PRC approval for use by non-certified public bodies.
- Authorizes WSU to utilize design-build for demonstration projects with a total project cost under two million dollars to develop best practices in encouraging small business participation and in managing capital projects under two million. Authority includes specific reporting requirements.

GC/CM Changes

- Changes requirements for GC/CM contracts to reduce public owner’s response time to requests for change orders and equitable adjustments from 60 day to 30 days.

¹ Please see statute red line provided with report for the definitive changes.

- Changes requirements for GC/CM contracts to amend language that says a contractor request is deemed denied if a public body does not respond. New language provides that if a public owner has not responded to a request in writing that a contractor shall not be deemed to have waived the claims process. Intent is to allow contractors to receive a response before being required to pursue the claims process.
- Change to provide flexibility regarding the timing for GC/CM procurement –deletes reference to schematic design and replaces with time when GC/CM involvement provides value.
- Amendments to the GC/CM selection criteria intended to increase opportunities for teams and contractors to compete for projects. Changes focus on experience of key personnel and experience relevant to the actual project rather than general GC/CM experience.
- Adds language to parallel the design build statute regarding evaluation of utilization of certified MWBE firms, to the extent allowed by law.
- Expressly authorizes flexibility to price negotiated support provisions as a lump sum or to treat as an allowance.
- Aligns advertising requirements for subcontractors with those for GC/CMs. Clarifies subcontractor bid packages to be bundled according to industry practice.
- Changes conditions allowing GC/CM to negotiate with low bidder to reduce cost through change to work if subcontract packages exceed published estimate.
- For certified owners and owners approved by PRC on a project basis, expands the GC/CM alternative subcontractor process under .385 to any subcontractor with a subcontract package estimated to cost \$3 M or more while making provisions to address specialty subcontractor concerns about competition and transparency in the selection process.
- Requires description of audit procedures in contract documents.
- Moves heavy civil GC/CM provisions to one section for user ease and clarity.

Job Order Contracting

- Minor technical corrections addressing solicitation requirements regarding coefficient
- Removes the requirement for CPARB to collect questionnaires and makes public bodies responsible for obtaining the information that would have been collected by CPARB under RCW 39.10.460.

Statute Termination (a/k/a/ 'sunset')

- Reauthorizes RCW 39.10 through July 1, 2031.
- Retains the requirement for JLARC sunset review before next reauthorization.