

## GC/CM Committee

Meeting Summary December 4, 2019 (Meeting #9)

1. **Chair Middleton called the meeting to order at 1:10 p.m. A quorum was established.**
2. **Administrative**
  - a. Introductions
    - i. Committee members in attendance, including by phone: Nick Datz (Owners), Scott Middleton (Specialty Contractors), Todd Mitchell (Construction Trades Labor), Penny Koal (DES), Shannon Gustine (General Contractors), Josh Kavulla (Higher Ed), Rebecca Keith (Cities), Janice Zahn (Ports)
    - ii. Stakeholders in attendance, including by phone: Andy Thompson (General Contractors), John Palewicz (Higher Ed), Keith Michel (General Contractors), Mike Pelliteri (General Contractors), Dave Johnson (General Contractors)
  - b. Approval of Nov. 14, 2019 meeting summary – M/S/P to approve meeting summary. The committee approved the notes with the following edits:
    - i. Section 4 (a)(i)(1) – Amend the General Contractors comment. The point was about teaming structure and not necessarily joint ventures. How do you allow for teaming structures that also provide benefit to owners if there are sections of work that are not necessarily relevant for specific work?
3. **GC/CM Procurement and Procedures**
  - a. Review Committee Timeline
    - i. The Reauthorization Committee will set their meetings once we have ours set. Chair Datz will provide an update to CPARB at their meeting on Dec. 11.
    - ii. The meeting timeline moving forward, as discussed, is as follows:
      1. Jan. 2020 (two meetings)
        - a. First meeting in January – Deadline to have our proposals to the legislative committee. This will give the committee time to ensure there aren't any conflicts between proposals since they are all intertwined.
        - b. Second meeting in January – Debate/action
      2. Feb. 2020 (two meetings)
        - a. Debate/action
        - b. Debate/action
      3. Mar. 2020 Recommendations to Sunset Review Committee
4. **Review Statutory Action Items and Assignments.** Today the group will review the list of statutory (priority) action items and assignments and obtain concurrence or discuss adjustments. The team will also discuss the action items identified in the Excel Spreadsheet and ensure they are captured or tracked for future review. The updated list that Chair Middleton provided for the meeting today is the priority action items for the group to work on immediately. The team will work through these action items in December and review/discuss/debate in January and February, as noted in the meeting schedule.
  - a. No. 1 – Define “risk contingency” (contractor’s contingency) “budget contingencies” (owner’s reserve) and “design development contingency”
    - i. The legislative language is drafted, the best practice documentation needs to be more fully developed.
  - b. No. 2 – Considering moving “heavy civil construction project” language, currently scattered throughout RCW 39.10, into one statute

[LR] indicates a comment about RCW guidance.

[BP] indicates a comment to inform our best practices.

[AI] indicates an action item for follow up.

Prepared by Kate Elliott, 206.450.6726, [kelliott@maulfoster.com](mailto:kelliott@maulfoster.com)

- i. Multiple – Some folks had action items to touch base with others about the history of how heavy civil was developed originally and why it was integrated. This pre-work hasn't yet been completed and will influence how we move forward.
    - ii. General Contractors – Heavy civil should have its own section.
    - iii. DES – We want to make sure what we propose will make sense and not contradict prior efforts.
    - iv. [AI] Scott will reach out to Melissa and John; Nick will take to Linneth; Janice will talk to Bob.
  - c. No. 3 – Add language to promote timelier processing of equitable adjustments, change orders, and claims (“deemed denied”)
    - i. General Contractors – Language developed; [AI] Mike will reach out to Janice, Rebecca, Shannon, John for review and discussion.
  - d. No. 4 – Define/clarify scope of “Independent audits” in heavy civil construction projects, particularly with lump sum contracts; if changed, also consider changing RCW 39.10.385 audit
    - i. General Contractors – I believe this needs legislative clarification on purpose and intent, and how used (e.g. what are we auditing; GMP versus lump sum; only audit things that are cost reimbursable). We should also address the ability to convert to lump sum.
    - ii. [AI] Scott, Dave, and Nick will develop a proposal to address this item.
  - e. No. 5 – Clarify Fee/SGCs/price-related factors, such as cost allocation and clarity at the issuance of the RFP
    - i. General Contractors – This issue is about more than what goes where and clear definitions.
    - ii. Ports – Regarding SGCs, our intent is that it could be one or more price factors all the way up to a fixed specified general condition.
    - iii. General Contractors – This is also an item that is interpreted differently, so clarification on intent and use would be helpful. Which can be addressed by best practices [BP].
    - iv. [AI] Shannon, Nick, Scott will develop a proposal to address this item.
  - f. No. 6 – Align public solicitation/advertisement language with D-B procurement; any change may impact RCW 39.10.380, RCW 39.10.385, RCW 39.10.390, and RCW 39.10.400
    - i. General Contractors – If we modify language and requirements, then we should do so across all methods (e.g. E/M CCM).
    - ii. Ports – We should align the solicitation process or clarify that it is intended to be different (e.g. two-step process).
    - iii. General Contractors – We see the interview process as a critical component.
    - iv. [AI] Nick will develop a proposal to address this item.
  - g. No. 7 (7a) – Align evaluation factors for GCCM selection in RCW 39.10.360(3)(a) more closely with D-B procurement
    - i. [AI] Nick and Andy will develop a proposal to address this 7a-c.
  - h. No. 8 (7b) – E/M CCM changes – MCAWW proposals, open to more trades, more inclusion/diversity
    - i. Ports – This item contains three different topics within it and different requirements. The MCA has proposed language, and the trades and inclusion/diversity need proposed language.

[LR] indicates a comment about RCW guidance.

[BP] indicates a comment to inform our best practices.

[AI] indicates an action item for follow up.

Prepared by Kate Elliott, 206.450.6726, [kelliott@maulfoster.com](mailto:kelliott@maulfoster.com)

- ii. The committee will seek input from the Business Equity Committee on the inclusion/diversity suggested recommendations to remove overly restrictive barriers (e.g. “negotiated’ relevant projects”).
  - iii. [AI] Dave and Keith will develop a proposal to address the trades item for 7a-c.
  - iv. [AI] Rebecca will reach out to the Business Equity Committee for input on 7a-c.
- i. No. 9 (7c) – GCCM evaluation factors – remove “negotiated” language from RCW 39.10.360(3)(a)(ii)
  - i. General Contractors – The criteria for evaluation was intended to increase competition. Additionally, this action item is not limited to removing “negotiated” but needs to be looked at further.
  - ii. Cities – For this section, we’ll need to consider if this is a best practice or a legislative adjustment.
- j. No. 10 – GCCM evaluation factors – more inclusion/diversity
  - i. The committee will seek input from the Business Equity Committee on the inclusion/diversity suggested recommendations to remove overly restrictive barriers (e.g. “negotiated’ relevant projects”).
  - ii. [AI] Rebecca will reach out to the Business Equity Committee.
- k. No. 11 – Add language that would make negotiated support services an “allowance” to be reconciled at completion of project. Remove second sentence in RCW 39.10.370(4)?
  - i. General Contractors – I suggest we add a definition and provide clarity on allowances in the statute.
  - ii. Ports – What definitions are included in statute? What’s the criteria to require a definition included in the statute? Some definitions are included in our general conditions, but that’s not necessarily consistent across owners.
  - iii. General Contractors – We define what we need to have agreement and clarity on to use the RCWs. The contingency wasn’t a uniform reference, which is why it needed to be clarified.
  - iv. Ports – Why are we moving to become more granular with the statute (bowls of candy)? Why does it matter?
  - v. General Contractors – I suggest we establish a basis of understanding for NSS.
  - vi. General Contractors – My original question was who is at risk when the lump sum is used up. When NSS is exceeded, there is a lack of clarity of who is at risk when that amount is exceeded. Would there be a benefit to improve the definition? NSS is there to cover knowns and unknowns. If NSS was treated as an allowance, agreement on reasonable amount, then no risk included and dollars are freed up for scope of work.
  - vii. [AI] Keith will develop a proposal to address this item and include detail for best practices, as needed.
- l. No. 12 – GCCM procurement of subcontractor – remove “two percent” language from RCW 39.10.380(6)(b) and/or replace with “five percent”
  - i. The committee was in agreement that the dollar value is not relevant and the percentage should be increased to five percent.
- m. No. 13 – Ensuring fairness in bid opening when GCCM bids on subcontract work
  - i. The committee was in agreement that the bid opening should be public, but discussed that owners handle it differently.
  - ii. General Contractors – I don’t think the language needs to be adjusted, we just need a best practice to clarify intent.

[LR] indicates a comment about RCW guidance.

[BP] indicates a comment to inform our best practices.

[AI] indicates an action item for follow up.

Prepared by Kate Elliott, 206.450.6726, [kelliott@maulfoster.com](mailto:kelliott@maulfoster.com)

- iii. [AI] Mike and Andy will finalize the proposed language and include detail for best practices to help clarify use and intent, as needed.
- n. No. 14 – Add language clarifying what “customarily performed or supplied by” means in RCW 39.10.390(2)(a)
  - i. General Contractors – [provided recent example of a K-12 project that did not provide sufficient time to respond plus the bid package included practically all services, not all of which can be self-performed by the GC’s but is written as so.
  - ii. General Contractors – The combination of the items in the bid package limit the competition. Perhaps we should consider including language that limits bundling of services.
  - iii. General Contractors – We should use best practices [BP] to daylight the issue of bundling of services.
  - iv. Cities – The challenge for legislation is the objective measure.
  - v. General Contractors – Bid packages should be bundled to maximize the opportunities for subs.
  - vi. [AI] Mike and Dave will finalize the proposed language and include detail for best practices to help clarify use and intent, as needed.
- o. No. 15 – Add language addressing subcontractor rights in the processing of equitable adjustments, change orders, and claims. (see also, Item #3 above)
  - i. Covered in No. 3.
  - ii. [AI] Language developed; Mike will reach out to Janice, Rebecca, Shannon, John for review and discussion.
- p. No. 16 – Technical edits (non-substantive)
- q. Parking Lot (new line items from 12/4 meeting for future review/discussion)
  - i. No.17 – (New from 12/4 meeting) General Contractors – Do we want to make GCCM language more like heavy civil (e.g. negotiated 50 percent labor)? This is not shown on the list and is something that I believe we should look into.
    - 1. General Contractors – The ability to control scope of work, from an owner’s perspective you always have something you’re comparing to (bidding small pieces of work). Owners are not usually in a good place to negotiate.
    - 2. Ports – If we go this direction, we need to be clear about what benefits we’re getting because this could open an unintended pandoras box.
    - 3. General Contractors – I think expanding this would make this worse.
    - 4. Ports – Maybe this idea can be looked at along with No. 8.
    - 5. The group agreed to include this item in the parking lot of the Excel Spreadsheet document. The purpose of the parking lot is to hold items that folks from the committee or stakeholders can make proposals to the group, if so moved. If not, it may be addressed in the future at an unknown date.
- r. Items not included in the list
  - i. General Contractors – Ability to negotiate subcontracts.
  - ii. General Contractors – “When paid, if paid” subclauses in contracts when subcontractors are told by the GC that owners didn’t pay because it’s inside the MACC, so they won’t pay subcontractor. How can we use the risk contingency to keep the subcontractors paid and have an audit at some point for the owner? This may be covered in the “deemed denied” item. Mike has language to propose.

**5. Follow-up items**

- a. Schedule second meeting in December – Committee decided to reconvene in January.
- b. Schedule for 2020 – Committee agreed on having standing meetings twice per month.

[LR] indicates a comment about RCW guidance.

[BP] indicates a comment to inform our best practices.

[AI] indicates an action item for follow up.

Prepared by Kate Elliott, 206.450.6726, [kelliott@maulfoster.com](mailto:kelliott@maulfoster.com)

- i. Tuesdays 10 a.m. – 1 p.m. – Jan. 14, 28, Feb. 11, 25
  - c. Action items [AI] – The committee agreed that written proposals are due Jan. 7 so all can review ahead of our Jan. 14 meeting.
- 6. Meeting adjourned at 3:30 p.m.**

DRAFT

[LR] indicates a comment about RCW guidance.

[BP] indicates a comment to inform our best practices.

[AI] indicates an action item for follow up.

Prepared by Kate Elliott, 206.450.6726, [kelliott@maulfoster.com](mailto:kelliott@maulfoster.com)