

1. **Co-Chair Middleton called the Zoom meeting to order at 1:03 p.m. A quorum was established.**
2. **Administrative**
  - a. **Introductions**
    - i. Committee members in attendance, including by phone: Scott Middleton (Specialty Contractors), Nick Datz (Owners), Rebecca Keith (Cities), Todd Mitchell (Construction Trades Labor), Penny Koal (DES), Santosh Kuruvilla (Engineers), Shannon Gustine (General Contractors), Johnathan Ohta in for Janice Zahn (Ports), Sam Miller (Architects), Olivia Yang (Higher Ed), Traci Rogstad (Schools), John Palewicz (Private Industry)
    - ii. Stakeholders in attendance, including by phone: Shelly Henderson (Schools), Keith Michel (General Contractors), Rad Milosavljevic (Ports), Tom Peterson (General Contractors), Andrew Greene (Construction Law)
  - b. Approval of January 27, 2021 meeting summary – M/S/P to approve meeting summary with the following change:
    - i. Under section 5, letter k, strike “such as the GC is less empowered to address site conditions.”
  - c. Update on Reauthorization Bill SB 5032 – Co-Chair Middleton explained the bill was passed unanimously by the Senate, which then moved to the House Capital Budget Committee where Representative Santos held the bill to make tweaks that include language for inclusion. We expect RCW 39.10 will be reauthorized and we can keep moving with alternative public contracting after June 30.
    - i. Rebecca Keith mentioned there could be changes to the language around subcontractor packages. This group will likely want to consider that in developing the Best Practices.
3. **Review Subcommittee Assignments/Schedule**
  - a. Co-Chair Datz reviewed the subcommittee assignments and schedule, noting that changes to the schedule reflects a delay due to COVID-19, reauthorization, and the committee's other duties. A draft of the Alternative Subcontractor Selection section was sent today. We are focusing on this section this month and will close it out next month. Then we will start discussing the Subcontracting section which we will close out in May. This resulted in the schedule shifting back a couple months.
  - b. Co-Chair Middleton – CPARB has not given us a firm deadline yet, but the goal is to get a draft to CPARB early enough to receive feedback.
  - c. General Contractors – We should have as much feedback on these sections as we can get, so I think we only need to get 95% of the way there and then turn it over to CPARB. We should try to keep the focus on Alternative Delivery and GCCM Best Practices, not construction and public works.
4. **Discuss RCW 39.10.385 Best Practices – Alternative Subcontractor Selection Process.** Co-Chair Middleton asked the group what their preferred process was to go through this section, agreeing on doing a high-level overview and then working through each subsection.
  - a. **Discussion**
    - i. General Contractors – We should avoid reiterating language that is in the RCW. I also suggest we reference the cost proponent throughout as cost factor instead of spelling out the specified general conditions, etc. That gives us less opportunity to have conflicting language. There are also a few references to lump sum but no reference to converting the lump sum. It only describes operating under a mask with an audit. We also don't talk about prequalification when discussing a Low-Bid type scenario. If we talk about getting a Low-Bid, we also need to mention you can prequalify and then get a Low-Bid.

- ii. Owners – Are you suggesting we reference the statute language instead of copying it in?
- iii. General Contractors – I think it's personal preference and a way to make it an easier read.
- iv. Private Industry – We want to use Best Practices to clarify what is not clear in the law, and reference people to the law when it is clear.
- v. Higher Ed – I vote for simple, brief, and original information.
- vi. Cities – I think we should follow the order of the statute. Evaluating the appropriateness of use could be moved up earlier in the process.
- vii. Co-Chair Middleton – If we reference a statute that says this and points them in that direction if they want to look into it themselves, is that a happy medium? We are trying to treat this as more of a manual for people that don't use GCCM as much as others.
- viii. General Contractors – I think you are right, and we can reference the statute but shouldn't include that language directly unless we put direct quotes around it.
- ix. Co-Chair Middleton – That makes sense in case the statute changes. On the cost component theme, I think we change it to price factor in GCCM. We intentionally did not make that change in RCW 39.10.385, which is why we are still listing it out as specified general condition and theme.

**b. Section I – Uses**

- i. General Contractors – Can we compare Design-Build with Low-Bid and Alternative in a graphic?
- ii. Co-Chair Middleton – You can either use Low-Bid or use the Alternative Selection process.
- iii. General Contractors referencing subsection I.A.i.2. – We later state you can get PRC approval separately.
- iv. Co-Chair Middleton revised the language to include, "This is handled via initial PRC project application for GC/CM approval **or at a later date.**"
- v. Private Industry – I would suggest revising subsection I.A.ii. to, "100 percent of **subcontractor** work shall be "publicly bid" **with the exception of heavy civil GCCM.**"
- vi. General Contractors and Private Industry – We should include lump sum with prequalification to the last sentence in subsection I.A.ii. We can also find ways to promote DBE here.
- vii. General Contractors – Provisions to subsections I.A.2.b.i-ii. is about helping an Owner in GCCM make the decision to Alternative subcontract or not. This is where we could include lump sum and the pros and cons of that.
- viii. Private Industry – We can add I.A.2.b.iii. stating that you can either agree to pay on time and expense, or on a lump sum.
- ix. General Contractors – You could include the pros and cons of that because this is where you really want someone to know what they're getting into with an audit or lack of transparency.
- x. General Contractors – I'm not following I.A.2.d. when it says the subcontractor is at risk. With a Low-Bid they are 100 percent at risk.
- xi. General Contractors – From my perspective, the risk is shifted to the subcontractor in a different manner than the lump sum arena. In lump sum, the CM has more of the risk in document controls and quality during preconstruction.
- xii. Architects – In addition to 3.a.i. there should be a subsection 4 to include something about risk. If you have a subcontractor in a MCCM/ECCM role engaging in the documentation, then they would have some buy in on what's included. From a Best Practices standpoint, I would like to see some ownership of risk in the design product by the subcontractor.
- xiii. Private Industry – What do you mean by risk? The only risk is doing the work in the agreed upon amount.

- xiv. Architects – If a contractor agrees on a certain design and makes a recommendation, then something fails, it seems harder for the contractor to blame the designer.
  - xv. Private Industry – I agree, but maybe there is a different way to say that. You want to realize the same advantages you get with the GCCM.
  - xvi. General Contractors – I agree with both of you. I think it depends on how the contract is written, and I wouldn't want the Public owner to have a false sense of security.
  - xvii. Architects – Sometimes you bring on a subcontractor to Alternative Delivery and they treat it like a Low-Bid contract once they get started. What could we put in the Best Practices manual that would help people include language in the contract preventing that?
  - xviii. General Contractors – I think it's providing that language in the prime contract. Rather than shifting risk, we need to talk about managing risk.
- c. **Section II – Initiating the Alternative Subcontractor Selection Process**
- i. Co-Chair Middleton explained they should use the language in the statute that refers to the owner as the public body.
  - ii. Co-Chair Middleton suggested graphics for section B that helps display the ideal time to maximize the preconstruction impact. [A] Sam Miller offered to help find graphics for subsection A.
  - iii. One of the changes made in Reauthorization was requiring publication of the Notice of Intent to use the RCW 39.10.385 process in the same publication as the call for proposals. I wanted to get input from OMWBE to include the Notice of Intent in other publications.
  - iv. Co-Chair Middleton referencing the last sentence in section D.ii. – We have always suggested a matrix for what should go in the SGC or fee bucket for the purpose of evaluation.
  - v. General Contractors – This would be the same matrix as the one for GCCM, right?
  - vi. Co-Chair Middleton – Right, this would flow down.
  - vii. General Contractors – I agree this a place to start. You also need to make sure it matches your plan to execute Alternative subcontracting.
  - viii. Co-Chair Middleton referencing subsection D.iv. – In the last subgroup meeting we talked about pointing out that we have notice requirements for K-12, but there might be other notice requirements specific to a public body's situation.
  - ix. Schools – Let me get with Shelly and Olivia to spend some time on how to explain this more.
    - i. General Contractors – My suggestion on this was to point out that every public body may have their own public notice requirements. This is a hint to look for those other requirements, and to check within their own agency to follow those guidelines.
    - ii. Specialty Contractors on subsections E. through G. – I wanted to emphasize this section. We don't think the statute allows material modifications to the weights and criteria once the final determination has been issued. What is everyone's thoughts on the last sentence: "While addenda may be issued to address non-material changes to evaluation criteria and weights assigned to the criteria, material changes are not permitted after the written final determination is issued."
  - x. General Contractors – I think there will be debate on whether it's a material change or not. Everyone might have the same intent, but we are trying to avoid being absolute in a Best Practices guideline.
  - xi. Co-Chair Middleton – I will reword that, and we'll keep talking about it.
- d. **Section III – Developing Evaluation Criteria**
- i. Co-Chair Middleton referenced the text under Section III, noting a comment to move this section up so the owner or GCCM considers this before they get to far into the selection process.

- ii. Private Industry referenced the required criteria listed in subsection A – Is this where we repeat the RCW?
- iii. Co-Chair Middleton – Yes, this could be a spot where we refer to the statute or highlight specific ones. Referencing it gives us flexibility in the event the statute changes.
- iv. General Contractors – I agree we should reference them as the bare minimum and be concise by not repeating. We can add examples in the appendix.
- v. Specialty Contractors on subsection B – We think the selection process is two part. This paragraph suggests there could be a three-step process. We don't think having two shortlists is consistent with RCW 39.10.385. Doing it that way can also put too much emphasis on the interview or the cost proposal. What do others think about that?
- vi. General Contractors – I don't think it puts an emphasis anywhere. It all comes down to the points and how they are defined.
- vii. Specialty Contractors – I'm uneasy suggesting you can do a three-phased approach when the language of the statute doesn't permit that.
- viii. General Contractors – The statute doesn't include interviews either. There are multiple ways you can get to a selection and these are three things you can use.
- ix. Specialty Contractors – You're right, but the statute does outline it as having one shortlist.
- x. Private Industry – What I'm hearing you say is that the interview scoring should be part of the overall scoring?
- xi. Specialty Contractors – It's cumulative.
- xii. General Contractor – I don't think it matters how many steps. If it's scored cumulatively, it all depends on how it is scored. We have been in positions where we went through several steps to get the scoring and found out we wasted our time because we couldn't make up the point deficit prior to the last step. If it is impossible to win the contract, then it's wasted time to go through the rest of the process.
- xiii. Private Industry – I'm not saying owners should bring firms to the final round if they mathematically can't win the work, but it isn't in the law, so that becomes a Best Practice. We can mention not to bring forth firms that can't win into the next selection process.
- xiv. General Contractors – I'm giving an example of why there should be multiple steps in the selection process. I don't know if we need to define how many steps there are, maybe we just need to talk about the different components.
- xv. Private Industry – I'm reading the current RCW that says that the GCCM and the public body will select the firm submitting the highest scored final proposal using the evaluation factors and relative weight of factors identified in the solicitation of proposals. I'm hearing Specialty Contractors say that you are okay if the interview scores are included with the written scores to come up with the finalist.
- xvi. Specialty Contractors – I am, and there are some procurements that haven't been that way. For the most part, step one is written qualification, interviews, and shortlists. Those that are shortlisted are invited to submit the final proposal in which all scores are weighted cumulatively to select the final firm. We think the new statutory language makes it clearer that those all must be added together, but that's how we interpret the current statute.
- xvii. Higher Ed – I thought the key was cumulative scoring and not the number of steps.
- xviii. Specialty Contractors – Yes, we wanted the interview included in the first step, which we didn't reach agreement on. We also wanted to have cumulative scoring in case you didn't have a high proposal, but you did extremely well in the interviews, then maybe you still get the job.
- xix. General Contractors – I agree cumulative is the right way, I'm providing an example of why you might want to shortlist. If fifteen people submit, then you're

suggesting we have fifteen interviews, which is a lot of work for the trade partners and the public body.

- xx. General Contractors – The law states a minimum of two steps for Alternative Sub Procurement, more are allowed if you work it into the process appropriately (i.e., the interview).
- xxi. Specialty Contractors – We think the interviews are part of that first step under the statute.
- xxii. General Contractors – Whichever step they are in they are allowed if you weave them in right.
- xxiii. Specialty Contractors – Correct.
- xxiv. General Contractors – Under that scenario, you would have a shortlist after the written, and the interview and price would be part of the second step.
- xxv. Specialty Contractors – I think that might be challenging, because I don't know how the interview fits in with the final proposal which includes the SGC and fee.
- xxvi. General Contractors – My perspective is that you wouldn't assign interviews to the first or second step. You would do what most owners do and have a three-step process in their procurement. A minimum of two steps is required by the law, but you can do more if it's done appropriately.
- xxvii. Owners – I would agree more with General Contractors. If you are eliminated, you don't want to waste anyone's time by bringing them along. Being clear about how we do it up front is important and changing how we do it part way through may get us into trouble as public owners.
- xxviii. Higher Ed – There's a band aid solution that the Best Practice should say in the price portion, there should only be three firms. Is there something we should say about the number in the pool? That might be another way to address the issue of wasting people's time.
- xxix. Private Industry – I'm hearing Specialty Contractors say they feel best if the scoring doesn't drop off so that the final proposal is only based on cost. Scoring should be included in the evaluation. Higher Ed and General Contractors are saying not to bring firms forward that are mathematically eliminated during the process. I think we can make those statements as Best Practices.
- xxx. Higher Ed – Then you could be silent on the number of steps. Does that open the question of when you tell people?
- xxxi. Private Industry – You don't tell people the score. The GCCM law has the language "most qualified". If you are way behind in points, you are less qualified. I'm always hesitant on saying a maximum number of firms because maybe you have two great firms and the third is far behind.
- xxxii. General Contractors – That's a good point. A responsible owner or CM should manage the process differently with respect to who moves to the next round of the procurement process. If you get six proposals, it's probably smart not to move everyone forward as most qualified, but if you get two proposals it's hard to eliminate one even if they are highly out of balance. The number of participants should very much be talked about in the Best Practices guideline so that there is clarity on what is appropriate and fair.
- xxxiii. Specialty Contractors – [AI] The points are well taken, and I need to take that feedback and work with the subgroup to try to find something that works.

**5. Action Items and Next Steps**

- a. 4/28/2021 meeting topic – The committee will finalize RCW 39.10.385, and then move on to RCW 39.10.380 Subcontracting.
- b. Action Items – Two action items are identified with [AI] are found within the text above to provide additional context.

**6. Meeting adjourned at 2:59 p.m.**