

## GC/CM Committee

Meeting Summary April 28, 2020 (Meeting #16)

1. **Chair Middleton called the meeting to order at 10:08 a.m. A quorum was established.**
2. **Administrative**
  - a. Introductions
    - i. Committee members in attendance: Nick Datz (Owners), Scott Middleton (Specialty Contractors), Rebecca Keith (Cities), Penny Koal (DES), John Palewicz (Private Industry), Santosh Kuruvilla (Engineers), Shannon Gustine (General Contractors), Olivia Yang (Higher Ed), Traci Rogstad (Schools), Janice Zahn (Ports), Lisa van der Lugt (OMWBE), Sam Miller (Architects)
    - ii. Stakeholders in attendance: Andy Thompson (General Contractors), Mike Pelliteri (General Contractors), Keith Michel (General Contractors), Melissa Van Gorkom (Legislative Staff), Bill Dobyns (General Contractors), Howard Hillinger (Owner Rep), Andrew Powell (General Contractors), Dave Johnson (General Contractors)
  - b. Approval of Apr. 20, 2020 meeting summary with the following edits. – M/S/P to approve meeting summary.
    - i. Two meetings were combined into one summary since the second meeting was a continuation. Add reference at the top of the summary, April 20-21, 2020.
  - c. Several handouts to aid this conversation were included in the calendar invite.
3. **GC/CM Procurement and Procedures**
  - a. Chair Middleton noted that the goal for today is to review the four remaining items for discussion and vote for tentative approvals (TA). Once all proposals have been reviewed, the Chairs will compile the final proposals for final review by the committee. If anyone has an objection to the final proposals, they have been asked to provide comments in writing to the meeting Chairs.
4. **Review Legislative Proposals and Possible Action.** Chair Middleton reviewed the proposals and items that require further committee discussion.
  - a. Item #1 Define “budget contingency”
    - i. Specialty Contractors---During our meeting on April 20-21, 2020, the committee discussed and TA'd the “risk contingency” definition but did not address “budget contingency” and decided not to define “design development contingency” in the statute.
    - ii. General Contractors---A small group convened and developed draft language to define budget contingency.
    - iii. Specialty Contractors---This term is already in statute, so we are simply defining the term.
    - iv. Owners---I think this should be included as a best practice [BP].
    - v. Architects---When we originally discussed contingencies in this process, there was confusion about the use of contingency in the statute. I think it is appropriate to define in the statute and use the best practice document to further describe intended uses.
    - vi. Cities---I disagree, there are not three contingencies referenced in the statute currently.
    - vii. Specialty Contractors---True. Budget contingency is one that is included in the statute currently. Are there concerns about defining what is a budget contingency

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in the statute with the language presented today? And, we can use the best practices to describe how it can be used.

- viii. General Contractors---This was one of the items we discussed extensively early on. From those conversations, I understood that defining the terms in the statute was essential. If we do not include language in the statute, I think we are missing an opportunity. And, if we cannot agree to include the definitions in the statute, then including the definitions in the best practices document is a good back up.
- ix. Private Industry---I agree that we should include this proposed definition in the statute because it seems to come up often and requires clarification, and this definition would address that need.
- x. Cities---Part of my concern is that when we have included definitions in the past, they have evolved into a substantive provision. We should only define something if we have a statute provision. Budget contingency is included in RCW, which I could see clarifying the owner's contingency that is outside the MACC (Maximum Allowable Construction Costs), then there is another contingency that is within the MACC, which I could also see clarifying. But how people use those contingencies and what they cover is a substantive provision which is prescriptive and limiting and beyond the purpose of the RCW. A very minimal definition or clarification is needed. Design contingency was proposed but as we talked last week given the specifications or variations around design it is no longer needed.
- xi. Private Industry---What about if we simplify the reference further to "budget contingency is a contingency established by a public body outside of the total contract cost."
  - 1. Multiple agreed.
- xii. Cities---Ok, I understand there may be concerns from contractors and we may need to have further conversations on all of this because I think there is a reason some of the substantive provisions that were creeping into the definitions. However, I think that needs to be part of a longer discussion.
- xiii. OMWBE---Agree, we need to make a commitment to have those conversations.
- xiv. Architects---I am fine with the proposal but how certain are we that owners are going to look at the best practices and if they don't are we addressing the need of contingency clarification?
- xv. Cities---Construction risk contingency language is also included in the proposal, which addresses contingencies within the MACC.
- xvi. Owners---Contractor and owner risk contingencies are clarified with these adjustments. Design contingency was an interesting proposal that we've since determined is not necessary.
- xvii. General Contractors---The benefit of design contingency was to provide contingency for risk incurred while in design, which is still a challenge and especially so if this definition is not included.
- xviii. Cities---The GCCM has the ability to sign a MACC at 90 percent design. My understanding is there are some things that can happen between 90 and 100 percent design that could cause changes in design, which is risky for the contractor, but that is why the contractor is supposed to estimate the risk. This does not need to go into statute if it is addressed with the agreement to the MACC.
- xix. Private Industry---When an owner is negotiating with a GCCM you have a bid package estimate and a number of those are backed up by bids and estimates and are all based on 90 percent drawings. No one knows what could happen in that

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last phase of design. It does not need to be in the statute but it is a mechanism to allocate funds for that risk.

- xx. Cities---I think a robust discussion in the best practices document is more appropriate [BP].
- xxi. General Contractors---Last week we discussed this and effectively gave up on the design development contingency because it can be addressed many different ways and therefore is a better fit in best practices [BP]. I think the design development contingency warrants some discussion about preventing unsophisticated owners from using that contingency. Oftentimes the contingency is a set percentage and the contractor does not have ability to influence that percentage and then owners can require a contractor to use that contingency when it is not appropriate. This is the challenge we are attempting to address.
- xxii. Cities---This is a substantive issue, not a definition and should not be addressed in the statute.
- xxiii. General Contractors---One of the challenges we discussed early on is getting paid for change orders and we discussed possibly having this risk contingency for GCCMs to pay subcontractors more quickly.
- xxiv. Higher Ed---We have all acknowledged a need for a best practice discussion on this topic but because it is complicated (all change order expenses need owner approval prior to paying subcontractors) we have not yet agreed on how to address it. Suggest we continue to discuss this issue as we discuss best practices and perhaps in the future we can update our legislation. For now, we should decide as a group what, at a minimum, needs to be done today and table the rest of the conversation.
- xxv. Specialty Contractors---The question on the table now is do we want to define budget contingency in the statute (without getting into uses, which is a best practice)?
- xxvi. *M/S/P to approve the definition of "budget contingency" as drafted in the notes.*
- b. MCAWW proposal #9a General contractor/construction manager procedures---Alternative subcontractor selection process
  - i. Specialty Contractors---Based on feedback we have revised this proposal. We weren't able to accommodate all of the feedback we received but we made many changes including to expand 385 to all subcontractors, we addressed the concerns that the schools had about hearing notification, there were concerns about the bid bond language so we pulled that out, pulled out justified use from the public's best interest language, scaled back the interview criteria language, and revised the audit language. We also made revisions to the language to reduce the prescriptiveness.
  - ii. Private Industry---Minor edit to remove "or both," which we previously discussed removing. I think opening this up to all subcontractors is the right thing to do.
  - iii. Owners---I propose that we clarify what is required for the public notification.
  - iv. Specialty Contractors---We intend to clarify, not add or adjust requirements for public notification.
  - v. *M/S/P to approve MCAWW proposal #9a revision 2 with the changes discussed and documented and recognizing that we may wordsmith the language.*
- c. Item #12 General contractor/construction manager---Subcontract bidding procedure
  - i. Specialty Contractors---A group met yesterday and have developed a proposal for our consideration. We discussed a possible need to clarify what available funds

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- means and refers to, but we have tabled that for now. The primary adjustment is the change to the overbid percentage from two to ten to allow negotiation to take place rather than rebidding if all proposers come in over the available funds.
- ii. General Contractors---We focused on addressing three items including what is the appropriate estimate to reference, what is the appropriate amount to be over, and ensure the negotiations reduce costs. The proposed revision accomplishes those three points.
  - iii. Private Industry---We had a lot of discussion about whether this percentage is cumulative or individual bid packages. We decided that the best way is to look at individual bid packages and we think it is better to resolve an overbid package individually rather than wait for another bid package to come in and try to reconcile the overages.
  - iv. *M/S/P to approve item #12 new proposal with italicized text.*
- d. Item #18 General contractor/construction manager procedure---Subcontract bidding procedure, subcontract bid packaging
- i. General Contractors---The new proposal increases transparency and improve competition in the subcontractor bid packages. This revised proposal strikes a balance between maximizing competition by breaking scopes apart. We recognize that industry practice is a little bit subjective but provides opportunity for people to raise an objection.
  - ii. Private Industry---I like this new proposal because it allows this practice to evolve over time with the industry practice.
  - iii. General Contractors---This is a step in the right direction. I would like us to think about whether we tie this back to the other places in the statute that discuss how the GCCM can bid on packages.
  - iv. General Contractors---I also support this new proposal because it is an improvement and addresses a hot topic in the industry. Helps general contractors manage the subcontracting plan in a way that can be customized to project specific requirements.
  - v. Ports---I appreciate how this is worded because it gets at the essence of what we are trying to do without being too prescriptive in our language.
  - vi. General Contractors---It would be nice if we could close the door on future misuse when people have a good explanation to the owner for what they are doing, but the subcontractors are the ones that lose.
  - vii. General Contractors---I do not think we can legislate all bad practices out, but we can use the best practices document to elaborate challenges and intents of the statute.
  - viii. *M/S/P to approve the new proposal for item #18.*

## 5. Next steps

- a. The Chairs will take all of the TA'd items, compile the final items into one document, there will be a short opportunity for committee review before the Chairs present the findings to the Reauthorization Committee on Friday, May 1 from 12-4 p.m. The Reauthorization Committee meeting is open to the public and anyone can join. Then, the Chairs will share the approved findings to CPARB on May 14.
  - i. Chair Middleton will add a column to the summary document that briefly addresses the discussion had, the intent, and what is driving the proposed changes.
  - ii. This is the last meeting of this group unless additional work is identified from the Reauthorization or CPARB committee meetings.

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- b. Next, the committee will begin work on the best practices document. Before kicking off the best practices work, we will take a short break.
  - c. Many attendees expressed appreciation for the Chairs and their work in keeping this process moving efficiently, especially in light of COVID-19 and other challenges.
6. **Meeting adjourned at 11:56 a.m.**

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