

GC/CM Committee

Meeting Summary April 20, 2020 (Meeting #15)

1. **Chair Middleton called the meeting to order at 9:02 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), Todd Mitchell (Construction Trades Labor), 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)
 - ii. Stakeholders in attendance: Andy Thompson (General Contractors), Mike Pelliteri (General Contractors), Keith Michel (General Contractors), Tom Peterson (General Contractors), Melissa Van Gorkom (Legislative Staff), Karen Mooseker (Schools), Jessica Murphy (Cities)
 - b. Note that this meeting was continued on April 21, 2020 from 9-11 a.m. The notes have been consolidated into one meeting summary and the following attendees joined the April 21 meeting.
 - i. Committee members in attendance: Nick Datz (Owners), Scott Middleton (Specialty Contractors), Rebecca Keith (Cities), John Palewicz (Private Industry), Santosh Kuruvilla (Engineers), Shannon Gustine (General Contractors), Olivia Yang (Higher Ed), Traci Rogstad (Schools), Janice Zahn (Ports), Sam Miller (Architects)
 - ii. Stakeholders in attendance: Andy Thompson (General Contractors), Mike Pelliteri (General Contractors), Keith Michel (General Contractors), Melissa Van Gorkom (Legislative Staff), Ed Kommers (MCAWW), Bill Dobyns (General Contractors), Howard Hillinger (Owner Rep), Andrew Powell (General Contractors)
 - c. Approval of Mar. 10 and Apr. 8, 2020 meeting summaries – M/S/P to approve meeting summaries.
 - d. Several handouts to aid this conversation were included in the calendar invite.
3. **GC/CM Procurement and Procedures**
 - a. The committee is reaching a final proposal package. Chair Middleton noted that the goal for today is to review the remaining statute language changes and vote for tentative approvals (TA). Once all proposals have been reviewed, the Charis 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.
 - b. Review Committee Timeline. The next Reauthorization Committee meeting is scheduled on May 1. This meeting is intended to be a joint meeting where we will share our proposed statutory changes to the Reauthorization Committee for consideration.
 - i. Cities---Clarified that the committee will focus on reviewing and compiling what is necessary to move forward. We should be realistic about what we can complete prior to May 1.
 - ii. Action items from previous meetings not yet completed. Rebecca Keith noted that there were a few action items captured in previous meeting minutes that were not completed. Rebecca offered that small group discussions on open action items should occur prior to the finalizing our package of proposals. The committee

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agreed and action item leads will schedule meetings and resolve remaining issues as soon as possible.

4. Review Legislative Proposals and Possible Action. Chair Middleton reviewed the proposals and items that require further committee discussion. The intent of the discussion today is to reach consensus and tentative approval on these proposals. Any proposals not resolved today will either include further action assigned to a committee member to take prior to the next committee meeting, or will be tabled for this session and not included in the final package of proposals for Reauthorization Committee consideration.

- a. Item #1 Define “risk contingency” (contractor’s contingency), “budget contingencies” (owner’s reserve) and “design development contingency”
 - i. General Contractors---A small group convened and developed draft language for each of the risk contingencies. The latest version that we are reviewing gets back to the original RCW with some minor modifications.
 - ii. Cities---The best practices manual is a better place to address all of the ways we can use risk contingency and manage risk. We agreed early on that there is some confusion about the “budget” versus “risk” contingency. I do not think it is right to mandate a design and risk contingency in statute.
 - iii. General Contractors---The intent is not to mandate a contingency, it is to allow the designation of one. We can modify the language to “...For the completion of design, if applicable.”
 - iv. Private Industry---I prefer our definition refers back to the uses that are defined in the construction contract.
 - v. General Contractors---In our business we have seen a push to include more into the design contingency.
 - vi. General disagreement on how to handle the design contingency; part of the group doesn’t want to define how to use contingencies because it may be over prescriptive; the other contingent sees this as a growing area of concern and should have a statute to clarify intent and use. Together the group agreed to address this in the best practices [BP].
 - vii. *M/S/P to approve revised “risk contingency” definition.*
- b. Item #7 Align evaluation factors for GCCM selection under RCW 39.10.360(3)(a) more closely with D-B procurement
 - i. Cities---In previous conversation we discussed the use of the word “negotiated”.
 - ii. Concurrence on the revised text for (3)(a)(ii)---“The past performance with negotiated or similarly complex projects”.
 - iii. *M/S/P to approve revised text.*
- c. MCAWW Proposal #1---General contractor/construction manager procedure—Alternative subcontractor selection process
 - i. Schools---The school district proposed changes to sync notification requirements between the proposal from MCAWW and the schools’ process. “Public hearing” was more onerous and conflicts with our process, and required an additional level of advertisement.
 - ii. MCAWW---Our goal is to make sure notices get to the right people but not provide an overly onerous process.
 - iii. Concurrence---There was not any pushback on publishing in the same newspaper that you are going to publish the proposals. The school districts raised another concern of which we can address as a new item so we can resolve the publication discussion (14 to 7 days).

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1. Approve everything except the highlighted text---(b) in or as near as possible to that part of the county where the public work will be constructed when required by local ordinance, bylaw, or policy.
- iv. M/S/P to approve revised text, without the yellow highlighted text which will require a follow up.
- v. Follow up---Chair Middleton to work with Traci Rogstad and other school representatives to identify a proposal for the remaining issues related to MCAWW Proposal #1.
- d. MCAWW Proposal #2---Interviews
 - i. MCAWW---Made many changes based on our previous conversations and took this proposal as far as we were willing based on the feedback we received.
 - ii. Cities---I think this is one of the items we were supposed to follow up on and we have not.
 - iii. Ports---To clarify, this is about interviews (exact same questions asked) and not proprietary meetings (ask a variety of questions based on need to know information).
 - iv. Cities---Yes, and it is about scoring interviews, too.
 - v. Owners---I have trouble agreeing to this based on the language because it is too restrictive as it is currently written.
 - vi. Motion, second to approve revised text 2a. **Several nays.**
- e. MCAWW Proposal #3---SGCs and fees
 - i. MCAWW---Clear definition of what is consider a specific general condition and what is a fee. Criteria to selecting the highest scoring firm.
 - ii. **Motion, no second.**
- f. MCAWW Proposal #4---Written final determinations.
 - i. MCAWW---We have also discussed this item at length and it focuses on having public owners take the time reply to comments received.
 - ii. **Motion, no second.**
- g. MCAWW Proposal #5---Bid bonds
 - i. MCAWW---We have discussed prior that we do not think bid bonds are appropriate for GCCM and are seeing bid bonds more frequently and some owners prefer to require this which is not beneficial for the GCs. The revision here says, "may not require a bid bond."
 - ii. General Contractors---A bid bond is usually for a small amount, so it provides a false sense of security because it does not actually provide security. Since there is no requirement to have a bid bond, suggest this is included as a best practice to not have a bid bond.
 - iii. Cities---It seems odd to include language around something that is not actually required.
 - iv. Motion, second to approve. **Several nays.**
- h. MCAWW Proposal #6---Cumulative scoring
 - i. MCAWW---Here we want to confirm what we believe the statute is intended to be which is the cumulative scoring of the proposal and interview. There was not much pushback in our previous conversations. For example, if a firm scores very high with their price proposal and scores high in their written proposal, those scores should be combined along with the final interview score to one cumulative score and to support a qualifications-based selection.
 - ii. **Motion, no second.**

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- i. MCAWW Proposal #7a---(TA) Requires PRC approval to use E/M CCM
 - i. This item has already received a TA and does not need further discussion at this time.
- j. MCAWW Proposal #8---Written response to comments and material changes are not made to the weights and criteria, and the public body shall respond to comments
 - i. Cities---This is one of the items with an action item that is remaining to be completed. Perhaps we can work through those action items and come back to vote on this proposal.
 - ii. **Motion, no second.**
 - iii. **Follow up---Committee to generally review all remaining action items to finalize recommendations.**
- k. MCAWW Proposal #9---Best interest of the public
 - i. MCAWW---This item focuses on identifying the factors that indicate whether the project is in the best interest of the public. We have not received any feedback or counters on this proposal.
 - ii. **Motion, no second.**
- l. MCAWW Proposal #10---Evaluation factors
 - i. MCAWW---We are seeing that proposers are required to provide information above and beyond what is necessary to evaluate proposals, so we are trying to limit the burden on the proposers. We have not received any feedback or counters on this proposal.
 - ii. General Contractors---I though we discussed having this section match the GCCM section.
 - iii. MCAWW---We looked at making adjustments so the two statutes match but there are enough distinctions between the two, and the time burden to complete this task made it unobtainable at this time.
 - iv. Cities---Did not we also discuss the issue with “and/or” and how someone might interpret that?
 - v. MCAWW---Yes, we can revise that.
 - vi. **Motion, no second.**
- m. MCAWW Proposal #11---Project descriptions
 - i. MCAWW---The purpose of this proposal is to get more information from the public owner or from the GCCM to the firms who are submitting proposals. We have revised our proposal based on the previous conversations we have had.
 - ii. **Motion, no second.**
- n. Item #9b---E/M CCM – open to trades other than M & E
 - i. General Contractors---We revised this one to allow the selection of other subcontractors.
 - ii. MCAWW---We do not support this proposal. We believe that the statutes are designed as intended and we prioritize working out the kinks of the current statutes before opening it up to other subcontractors.
 - 1. Others concur (General Contractors)
 - iii. General Contractors---I think this supports our overall goal to be inclusive and transparent.
 - iv. Cities---What I am hearing is the objection is not on evaluating other subcontract packages, the issue is whether there is going to be alternative selection resolving the concerns that have been brought forward by MCAWW as part of expanding

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- the use. There is no objection that expanding this to other subcontractors is a good thing.
- v. MCAWW---Agreed. Our focus is on working out the issues with the current statute, whether with best practices, or the statute language before opening it up to other subcontractors.
 - vi. Cities---What I'm hearing is that early involvement with mechanical and electrical subcontractors is critical for a project, but there are some issues in the selection process that need to be worked out before we can have the benefit of these other subcontractors on board early in the project.
 - vii. **Follow up---The group will continue to discuss this item at future GCCM meetings.**
- o. Item #18 – Subcontract bid packaging 39.10.380(1)
- i. Private Industry---Added revised language to address the issue when trades are combined into the same bid package. This setup makes it difficult for subcontractors to bid on packages and therefore our preference is that they are separated and able to be bid separately.
 - ii. General Contractors---I agree that this is important and should be in statute and not just in best practice.
 - iii. General Contractors---A general contractor/construction manager is prohibited from structuring subcontract packages where the bundling of trade packages includes work not customarily performed or supplied by the general contractor/construction manager that as a result excludes subcontractor participation.
 - iv. General disagreement on language and overall outcomes of this statute change, but there is consensus that language addresses inclusion and transparency goals of the committee.
 - v. **Follow up---Andy, John, Shannon, Mike, Rebecca, Keith, Bill Dobyns, Andrew Powell will revise language and provide proposal for the committee to review.**
- p. Item #12 – GCCM procurement of subcontractor – remove “two percent” language from RCW 39.10.380(6)(b) and/or replace with “five percent”
- i. Private Industry---Revised language to allow negotiations to occur with the lowest bidder under specified conditions including all responsive bids that exceed the bid package estimate, which means the bid packages estimate must have been published as part of the bid solicitation.
 - ii. General Contractors---Appreciate this revised language because it clarifies the intended post-bid process and removes the amounts that are included in the original language which are confusing. Also, publishing the bid package estimate is a secondary outcome of our conversation but is all-around good for parties involved.
 - iii. Ports---Confirming that for example we are talking about three individual, discreet bid packages, and in all of these if the proposals exceed the bid package estimate then we still have the option to negotiate? Correct. If one is high and one is low then we have the ability to revise estimates (shift funds from one to the other).
 - iv. Specialty Contractors---The percentage included is too restrictive and prescriptive. We need to protect the public dollar.
 - v. General Contractors---I also debated between five and ten percent, perhaps we consider a threshold instead of a percent. I think there is value in advertising the bid estimate and cleaning up the threshold.

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- vi. Cities---We also previously discussed replacing the available funds with the published estimate. It is a pretty big shift when you look at the original intent of the statute versus what it is in this revised version.
 - vii. Private Industry---I recommend we not include a percentage.
 - viii. Specialty Contractors---I recommend we include five percent.
 - ix. General interest in discussing this item more to better understand the terms and outcomes of the changes we are proposing.
 - x. **Follow up---Scott to convene a small group meeting to discuss further. Attendees to include Mike, Janice, and perhaps a few others.**
- q. Item #11 – Add language that would make negotiated support services an “allowance” to be reconciled at completion of project
- i. General Contractors---The intent here is to treat this budget category as an allowable that is subject to reconciliation at the conclusion of the work and to clarify who is at risk for the total cost of NSS through the duration of the project. When and if it is ever converted to lump sum – “unless converted to a lump sum, this process applies.”
 - ii. Private Industry---Historically, a portion of NSS can be converted to lump sum while the rest remains as NSS. We need to consider that portions can be converted to a lump sum.
 - iii. General Contractors---From a heavy civil perspective, this adjustment covers our needs for flexibility in NSS use.
 - iv. **M/S/P to approve revised language.**

5. General comments

- a. Many attendees expressed that the lack of collective approval of many of the MCAWW proposals was not due to disagreement with the proposals but instead due to lack of time to review and provide feedback on the proposals given COVID-19. The group agreed to continue discussing the proposals.
- b. Upcoming meetings
 - i. Subcommittee meeting on April 27, 2020, 9 a.m. to 12 p.m.
 - ii. GCCM Committee meeting on April 28, 2020, 10 a.m. to 1 p.m. to finalize proposals for Reauthorization Committee

6. Follow up items

- a. MCAWW Proposals (general comment)---Committee to review all remaining action items identified in previous meetings to finalize recommendations on MCAWW proposals.
- b. MCAWW Proposal #1---Chair Middleton to work with Traci Rogstad and other school representatives to identify a proposal for the remaining issues related to MCAWW Proposal #1.
- c. Item #9b – E/M CCM open to trades other than M & E---The group will continue to discuss this item at future GCCM meetings.
- d. Item #18 – Subcontract bid packaging 39.10.380(1)---Andy, John, Shannon, Mike, Rebecca, Keith, Bill Dobyns, Andrew Powell will revise language and provide proposal for the committee to review.
- e. Item #12 – GCCM procurement of subcontractor – remove “two percent” language from RCW 39.10.380(6)(b) and/or replace with “five percent”---Follow up---Scott to convene a small group meeting to discuss further. Attendees to include Mike, Janice, and perhaps a few others.

7. Meeting adjourned at 12:57 p.m. The continued meeting on April 21 adjourned at 11:14 a.m.

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