

# Capital Projects Advisory Review Board

## GC/CM Committee

Meeting Summary April 28, 2021 (Meeting #25)

1. **Co-Chair Datz called the Zoom meeting to order at 1:04 p.m. A quorum was established.**
2. **Administrative**
  - a. Introductions
    - i. Committee members in attendance, including by phone: Nick Datz (Owners), Kyle Twohig proxy for Rebecca Keith (Cities), Penny Koal (DES), Santosh Kuruvilla (Engineers), Shannon Gustine (General Contractors), Scott Thomas proxy for Janice Zahn who joined late (Ports), Sam Miller (Architects), Olivia Yang (Higher Ed), John Palewicz (Private Industry)
    - ii. Stakeholders in attendance, including by phone: Shelly Henderson (Schools), Keith Michel (General Contractors), Tom Peterson (General Contractors), Andrew Powell (General Contractors), Andy Thompson (General Contractors), Mike Pelliteri (General Contractors).
  - b. Approval of March 31, 2021 meeting summary – M/S/P to approve meeting summary as is written.
  - c. Change with GCCM Co-chair role – Co-chair Middleton has stepped down from his role and will continue as a committee member. Co-chair Datz asked the group if anyone would like to step up as co-chair.
    - i. Shannon Gustine – I propose we continue with Co-chair Datz as Chair, and someone can support him when we get closer to the end. That way people can have a better idea of their workloads when it comes time for assembly.
    - ii. Santosh Kuruvilla – Are we giving CPARB a chance to comment on our recommendation?
    - iii. Co-chair Datz – Yes, we will provide a recommendation to CPRAB and they can decide to accept that recommendation or go in another direction.
3. **Discuss RCW 39.10.385 Best Practices (revised draft) – Co-chair Datz shared his screen to show the draft Alternative Selection Process Best Practices.**

### Section A – Uses

- a. Co-chair Datz – This first table is being developed and shows the pros and cons of using the Alternative Delivery Process from various points of view: Public Bodies, GCCM Prime Contractors, and Subcontractors.
  - i. General Contractors – I reached out to some of the owners on this call. We are tallying the responses and working on finalizing the table by the end of the week.
- b. Co-chair Datz – This next section covers appropriateness of the selection process for the project. Then we roll into if the scope is ideal, which explains there should be a benefit to the project and the public.
- c. Private Industry – I think the statement in subsection B is correct. We've heard before that it should be based more on qualifications than pricing.
  - i. Co-chair Datz – That's a good point. Later in the document we talk about the intent as being qualifications based. If price is a big component, then you might want to use a regular subcontractor selection.
  - ii. Cities – It's worth highlighting that is applicable to selecting the GCCM and Subcontractor.
  - iii. Co-chair Datz – I will make a note to make sure we use the same language later on in the document.
- d. Architects – Why is negotiated in quotes in section C? That seems to imply something.
  - i. Co-chair Datz – I don't know, I will remove it.

[A] indicates an action item to follow up.

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- e. General Contractors – On section E, is Scott’s note that this is the proposed language or that it needs to be reviewed? For the work in a Hard-Bid scenario, you are potentially at more risk. It’s only shifted with the right contract language. I’m worried people have a false sense of security and will not rely on their prime agreements. Since it is largely dependent on the contract language, we could strike this. It doesn’t have to do with the delivery, it has to do with the contract.
  - i. Co-chair Datz – Maybe that belongs in the negotiation section. That’s where you want to nail down the risk with the sub and contract. I’ll propose we move this and refine it.
  - ii. Private Industry – I don’t know how more risk is put on a sub in this method.
  - iii. General Contractors – It depends on the contract delivery.
  - iv. General Contractors – When you engage in Alternative Subcontracting in preconstruction, and they are involved in crafting those documents, there is a risk contingency generally included in the sub’s MACC. The intent of that statement is that compared to RCW 39.10.380 Lump-Sum Bid Package, the owner is empowered to utilize Alternative Subcontracting in a way to translate that risk differently through the delivery method. This section does need more refining to effectively communicate that.
  - v. Private Industry – I’ve never seen anything transfer more risk under this method.
  - vi. Co-chair Datz – It depends on the contract and what the agreed upon conditions. The risk is when the cost goes up, which is on the subcontractor.
  - vii. General Contractors – That’s true of Hard-Bid, too. The delivery method isn’t driving that, it’s the contract language.
  - viii. Private Industry – Do we say something like, “this delivery method allows better analysis and understanding of project risk?” At the end of the day an owner reading this will think they can do this to have less risk.
  - ix. Co-chair Datz – It’s worth mentioning that you are going to be negotiating differently and the contracts are going to establish a different profile of how the subcontractor deals with the risk of the work. We can probably talk about that in the negotiation section.
  - x. General Contractors – You can talk about the knowledge gained by both parties through the preconstruction period, and how that better equips the project team to allocate the risk through the negotiations of the MACC in a way that is beneficial to the project. It’s not saying you are inherently transferring risk. It’s saying you have the opportunity to work through this together, where on a Hard-Bid job you outline the rules and people either include more money for it or not.
  - xi. Architects – I like the idea of addressing the question of risk. There is a lot of ways to interpret it. It might be good to talk about the pros and cons of risk.
  - xii. Co-chair Datz – We will revise this section.
- f. Co-chair Datz – The next section is on goals, constraints, and tie-in with preconstruction services. Then we have other subcontracting options.
  - i. General Contractors – Put a flag on number 4 to tie this into the risk comments in subsection E of Ideal Scope.

### Section B – Initiating the Alternative Subcontractor Selection Process

- g. Co-chair Datz – This section is on timing. There is the idea that it should be done early so they can be brought into preconstruction, but there are plenty of reasons for bringing a subcontractor in early.

[AI] indicates an action item for follow up.

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- i. Cities – We may want to add PRC approval in the Timing section.
  - ii. Co-chair Datz – There is some language here about qualification. We probably need to expand on it.
  - iii. Cities – We should include that in Timing that way you don't go back to the PRC a second time.
- h. Co-chair Datz – Developing evaluation factors is next. This section is broken down into three sections. We want to follow the actual process someone would go through. The three sections are written criteria, written qualifications criteria, and cost proposal.
  - i. General Contractors – It could be more than cost.
  - ii. Co-chair Datz – That is true. We can just refer to it as final proposal throughout this section.
  - iii. Private Industry – There was also discussion around points being cumulative during the process rather than zeroing out before the cost proposal. I don't know if the new law addresses that or if we do further on. The second bullet in this section was opposed by the MCA.
  - iv. Co-chair Datz – I think we have more work to do on that section. The law states the selection process is two part. Some people use another step to include a second shortlist. You must at least have two steps.
  - v. General Contractors – MCA's viewpoint should be considered because they're the ones that use this and they don't think the three-step process is the right method.
  - vi. General Contractors – I spoke with Scott and he's not opposed to a three-step process. I think we all agreed the final proposal shouldn't be solely based on cost. I sent you (Co-chair Datz) the exact language we used in an email – I don't want to misrepresent what he said.
  - vii. General Contractors – I think we should leave this in to give Scott a chance to review.
  - viii. General Contractors – I thought we we're going to recommend a two-step process in the Best Practices. For the first bullet, we can say this method is strongly recommended as a mechanism to ensure a best value selection. The second bullet we will not recommend because it shifts final selection to Low-Bid.
  - ix. General Contractors – Do you think this bullet would influence a GCCM from proposing in an RFP? I think it would. They would decide whether they want to go with a Low-Bid environment.
  - x. General Contractors – Are you saying it could also reduce competition?
  - xi. General Contractors – I would hope an owner would tell you that early if that was their intent, because it would affect the pool of those who want to participate.
  - xii. Co-chair Datz – I like this. I will keep working on the language.
- i. Co-chair Datz – We tried to avoid repeating the statute language in the Notice of Intent section. Then we talk about the importance of the public hearing and how owners are engaged and involved in this process.
  - i. Private Industry – Could we say something about the GCCM driving the process, but the owner is responsible for the legality and quality of the process?
  - ii. Co-chair Datz – I will make a note to include something about that in an earlier section.
- j. Co-chair Datz – The Written Final Determination section talks about what should be included. There is a comment to address changing the valuation factors and weights after the final determination is issued.

[AI] indicates an action item for follow up.

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- i. General Contractors – The best practice here is not to change the valuation factors and weights that far along.
- ii. Co-chair Datz – I agree.
- iii. General Contractors – We should add language about the amount of effort it takes to put together an RFP. A lot of work gets thrown out if you change the rules later. I don't think everyone is aware of that.
- iv. General Contractors – We should say as a best practice the evaluation criteria and scoring should not be changed, instead of materially changed. That puts subjectivity in it.
- v. General Contractors – I thought the use of materially correlates with the updates to the RCW. There is a reference that you can't materially change the process, but you can issue an addendum.
- vi. General Contractors – This is specifically talking about scoring. Do you think there is an instance of issuing an addendum related to scoring?
- vii. General Contractors – Yes, the Best Practices are supposed to recognize what a material change inside the procurement process can do versus when you declare a full process prior to the public notice.
- viii. Architects – I agree with Shannon. I think it's clear this is a narrow focus on evaluation criteria and scoring, and I think keeping that fixed through the process is really important.
- ix. General Contractors – The best practice could be to not change the scoring, but you can enhance, supplement, or clarify your evaluation criteria as long as you are set in the same scoring structure.
- x. Co-chair Datz – I will continue to work on the language.
- k. Co-chair Datz – The Written Submittal Criteria section includes expanding experience beyond the narrow focus of GCCM subcontractor or prime experience. We included information on DBE and inclusion plans. Then we talk about interviews. We have listed ideas of interview criteria that we can propose. The Procurement section talks about the process and how you add up the scores and determine a final firm. We should include graphics to lay out that process clearly. We can even include a scoring graphic. We might want to expand on Evaluation Committee.
- l. General Contractors – Can you flag a note to refine Public Opening. I would support recommending a public opening. I'm reasonably confident that is not currently required.
- m. Co-chair Datz – Debriefings aren't required but I think they are a best practice.
- n. Janice – Back to the section about adding price factors to the cost. That is included in the new RCW 39.10. It also says the scoring must be made available at the public opening of the fee and cost proposals.
  - i. Co-chair Datz – I will add more language.
  - ii. Private Industry – In that case, we need to go back to the options of scoring.
  - iii. Co-chair Datz – We don't need either bullets then.
- o. General Contractors – In other parts of the country they end up having a member of the private industry not proposing be involved in the evaluation team as a learning opportunity.
  - i. Higher Ed – We did something like this at WSU. I find it valuable for a behind-the-curtain introduction; however, it's possible proprietary information becomes available to them during the interview. Some people mind and others don't.
  - ii. Ports – This was talked about for quite some time in the Design-Build Best Practices with Walter.

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- iii. Andy Thompson – [AI] I will work with Olivia on this some more and bring it back to the committee.
  - iv. Architects – Community colleges often have a member of the profession participate in the selection. I think it's informative and contributes a voice to the process. Are there trade confidentialities that wouldn't want to be shared?
  - v. General Contractors – Likely not more than what can be obtained through public record requests.
  - p. Ports – Did we discuss anything about naming committee roles in the evaluation committee?
    - i. Co-chair Datz – We have not and there is no consensus.
  - q. Ports – Can an owner's internal audit department conduct an independent audit?
    - i. Multiple mentioned they don't believe that would count as an independent audit.
    - ii. Co-chair Datz – We can include a note that an independent audit must be completed externally.
4. **Action Items and Next Steps**
- a. 5/26/2021 meeting topic – The next meeting will be on Subcontracting. [AI] Co-chair Datz will send out an updated version of the schedule.
  - b. Action Items – Two action items identified with [AI] are found within the text above.
5. **Meeting adjourned at 2:30 p.m.**