

## GC/CM Committee

### Meeting Summary August 1, 2019 (Meeting #2)

1. **Chair Datz called the meeting to order at 9:15 a.m. A quorum was established.**
2. **Administrative**
  - a. Introductions
    - i. Committee members in attendance, including by phone: Scott Middleton (Specialty Contractors), Nick Datz (Sound Transit), Rebecca Keith (Cities), Todd Mitchell (Construction Trades Labor), Penny Koal (DES), Santosh Kuruvilla (Engineers), Shannon Gustine (General Contractors), Janice Zahn (Ports), Josh Kavulla (Higher Ed), Tracy Rogstad (Schools), Sam Miller (Architects)
    - ii. Stakeholders in attendance, including by phone: Andy Thompson (General Contractors), Becky Blankenship (Architects), Mike Pelliteri (General Contractors), Olivia Yang (Owners), Joe Kline (Owners), Jerry Vanderwood (General Contractors), John Palewicz (Higher Ed), Rob Robinson (General Contractors), Dave Johnson (General Contractors)
  - b. Welcomed Tracy Rogstad to the committee and Kate Elliott to assist with note taking.
  - c. Approval of July 1 meeting summary – M/S/P to approve meeting summary from 7/1 meeting.
  - d. Today's focus is gathering everyone's feedback on the relevant Revised Code of Washington state (RCWs) which will drive our future discussions.
3. **GC/CM Procurement and Procedures**
  - a. Recap of previous meeting – At meeting #1, we had a great discussion and received lots of comments on what is working and what is not working with regard to GC/CM. Following meeting #1, the General Contractors provided additional feedback, which we will review today. Chair Datz asked if anyone else has any feedback they want to share before jumping into reviewing the RCWs.
  - b. Several attendees offered feedback on how to arrange the comments including adding the following:
    - i. Add to matrix – E/M CCM discontinuity of team and issues with cost certainty.
    - ii. Clarify which of the three construction phases each concern falls under – procurement/selection, pre-construction, construction.
    - iii. Include the statute change, if warranted, and include the best practice guidance for implementing the statute should the statute change not be adjusted immediately.
  - c. Additional general comments shared are outlined below.
    - i. General Contractors (GC) – The current selection process is well outlined; however, the owner often selects the contractor on price and not on qualifications. Additionally, owners should be more transparent in their selection process and provide ample follow up after selection to help GC's understand what went into the selection decision. General Contractors – Changes to the RCW can be arduous. Trade partner qualifications on a hard bid job. A GC is getting numbers from everyone but they can choose based on qualifications or cost under GCCM. As the GC, you're required to take the low bid, which can be limiting.
    - ii. Higher Ed – There is a defined process outlined in the RCW, so we need to make sure we're following the rules with whatever we come up with.
    - iii. Ports – Design-build is less prescriptive. GCCM has AGC training but doesn't have a best practice guideline to direct owners to ask questions or guidance in their selection process. [LR] We don't want to make the RCW too prescriptive and

- should instead provide guidance on how to use the RCWs. We don't want GCCM to be more legislatively burdensome with higher risk and difficult to follow the rules.
- iv. Specialty Contractors – [LR] We want to discuss whether the adjustments we're discussing will go into the reauthorization bill or a best practice. We have the flexibility to develop a list of best practices or principles to guide the use of the RCW.

#### 4. Subcontracting Negotiations

- a. Attendees are split on the benefits and challenges with selecting trade partners early.
  - i. GC – I'd like GCCM to look at subcontractor procurement. It's important to be able to bring trade partners on early. RCW 39.10.385 is limited to E/M CCM. We're looking expanding that to other trade partners, which would allow GCs to bring trade partners on early. This is a tool we're working on developing. Additional attendees express an interest in better understanding how this tool will be developed and used.
  - ii. Ports – For contracting methods that have a negotiated component, we need to look at what is the component of the work being performed without competition and how can we make sure you're getting a fair price for our project.
  - iii. GC – We should discuss whether heavy civil should be able to negotiate up to 50 percent given the large projects that we have in this region.
  - iv. Ports – Depending on the size and the project the risk is different. Are there things we need to right-size based on the size and the risk of the projects?
  - v. Higher Ed – It's in the GC's best interest to vet subcontractors as part of a selection process and take that out of the public realm.
  - vi. GC – This would limit trade partners. We need to make sure we're looking at all sides and how what we're discussing or proposing isn't hurting someone over another.
  - vii. GC – I think this would provide a level playing field for the trades but does require the GCs to develop a bid package that supports trades.
- b. Attendees agree on the importance of providing a supportive environment for subcontractors.
  - i. Ports – As an owner, we need to make sure we have a fair process with requirements for diversity, but we're also tied to selecting the best price because these are often public dollars. For our purposes, we need as much competition as possible to ensure we have plenty of subcontractors to do all of the work.
  - ii. GC – There are so many administrative requirements that are put on all subcontractors. If subs have a choice between public or private (less bureaucratic), many are likely shifting to private because there are fewer administrative requirements.
  - iii. Cities – I understand that GCs and subs are going to the private sector because it's easier and it's for the same reason the Ports think are important. CPARB should look at other ways to bring along equity and diversity that don't push people to private business. We want to make sure that we are supporting the subcontractor pool. I'm not sure these issues should be addressed in the GCCM statute. Consider discussing in the diversity and inclusion committee.
  - iv. Specialty Contractors – How does this group feel about addressing the subcontracting issue through the reauthorization committee? Or should we address that here?
- c. Several attendees are in agreement that this committee should focus on identifying issues, statute changes, and best practices to provide guidance when statute changes don't or can't address the issue.

- i. GC – We need to identify best practices and identify what’s broken and needs a legislative fix to make it work. Then, if statutory changes aren’t addressed, we need a list of best practices to make it work until the statutory change is made.
- ii. GC – [LR] Changes we identify in 385 may be included in 410.
- iii. GC – ECCM and MCCM problems are impacting GCCM, so we need to throw it all in the room and hash it out.
- iv. Cities – Several attendees are also on the reauthorization committee. I think what’s helpful is our level of experience with GCCM. This group should address the reauthorization and subcontracting issues.
- v. Owners – Two things. First, one way to organize ourselves is to focus on trade contractor concerns or GCCM – here’s the bad things we don’t like – identify root cause – there are common themes of bad behavior – would a case study on MCCM and others unearth these root causes. And second, we need best practices and legislative changes because we can’t have everything and need options. We also need to identify consequences to enforce the best practices. Then we wouldn’t be so reliant on legislative changes.
- vi. Cities – There’s a difference between project approval and certification – certification encourages good behavior. We may want to think about further project approval. We should focus on what we can fix / best practice / statute changes.
- vii. All agreed on the following purpose of this committee:
  - 1. Clarify and lower the complexity of the statute. If the statute is too cumbersome, then it isn’t helpful and isn’t used.
  - 2. Goals for our discussion:
    - a. Transparency – Owners are responsible and need to be transparent in how they negotiate and prepare sub packages.
    - b. Improve the subcontracting element – Increase transparency, increase number of subs in the pool.
    - c. Balance the GCCM owning the contract and having say in who is doing certain elements of the work, rather than letting the market select the subs.

## 5. Change order approvals

- i. GC – The process of change order approvals is onerous. The GC doesn’t want to force more paperwork on the owner because they want to maintain their own relationships with the owner and not bring up additional issues such as subcontractor change orders. Owners keep tight reins on the contingency budget. The GCCM contingencies are being used as owner contingencies and not as GCCM.
- ii. Higher Ed – Maybe the contingency goes away or goes only to the GCCM so they can handle their own issues that don’t go through the owner.
- iii. GC – This could be a best practice but we need to understand that contingency is part of a GMP. The contractor should have control over the contingency, but we don’t. There isn’t a definition as to what falls into the contingency, there is a generally accepted assumption, but it’s not spelled out. Should there be a uniform definition of contingency and fee so there aren’t errors in the application of the tool. Clarity on how the contract can be used. Also, who allocates the dollars. The benefit being speed up the process, provide clarity, lessen burden on owners, encourage competition, encourage subcontractors.
- iv. Ports – There is value in having a definition from the owner’s perspective.
- v. Higher Ed – Keep the statute or best practice general and informative but not too specific to limit use.

- vi. GC – How do we clarify this with the legislature? Clarify the statute and provide a best practice to guide use.
- vii. GC – If contractors can use the contingency without restrictions (without change orders in place), that's enough to handle sub payment challenges. The other issue is getting change orders processed efficiently. As the contractor, we can't bank on anything we need to the paperwork complete and have our ducks in a row. If we allocated the funds but then the owner disagrees, then the GC is on the hook, which is risky for the contractor.
- viii. Ports – We have other departments that restrict our ability to approve change orders, so there isn't always alignment with those other departments on the best practice so interpretation of the law. We need clarity on the interpretation of the law. If we have a document to point to, then we'll all be better off. The goal is to make sure we're all able to use the law and guidance and contingency as intended. We should also define what 'audit' means.

**6. RCW 39.10.340 – General Contractor/Construction Manager Procedure – Uses.**

a. Discussion

- i. Ports – PRC standpoint. When owners come and ask for a project – because only one of these have to be met – this always gets checked as an okay. The only time we say no is when the owner doesn't have the experience to carry out the project. This statute is generous.
- ii. GC – There are new school projects where these six are checked, new schools – green field project, why do they need to be GCCM?
- iii. Higher Ed – Most of these projects at the PRC meet these six criteria.
- iv. GC – Should there be another venue other than PRC to certify? (Parking lot)
- v. Architect – Are there review of best practices that would be part of the application evaluation? Did you comply with best practices and if not, why? For project approval.
- vi. Ports – Auditing is a small component of the work. Suggest broadening the language to include protest, or proposers finding issues so we can have that conversation.
- vii. Architect – Perhaps the best practices document is the framework for how the application is completed and what is included.
- viii. GC – Is there a way for projects (owners, subs) to provide feedback (survey or other report) for the recertification process (since most people don't attend those hearings)?
- ix. GC – We're already collecting data to inform the recertification process.
- x. Specialty Contractors - 39.10.270 allows for certification to be revoked – has that ever happened?
  - 1. Multiple – No.
  - 2. Ports – There was a project approved for design build and there was a protest so we convened a panel to re-review the application.

b. Decision – Nothing needs to be changed with 39.10.340

**7. RCW 39.10.350 – General Contractor/Construction Manager Procedure – Project management and contracting requirements.**

i. Comment spreadsheet (from GCs)

1. (1) Consider added requirement

- a. Several attendees agreed that the owner must understand the overall risk of the project and plan accordingly, and the statute should clarify

allowable uses for the contingency. The best practices can define typical types of contingencies and percentages.

- b. [LR] Statute – Adequate funding for the scope of the project and a reasonable owner contingency (note there is a risk contingency outlined in the MACC). Clarify owner contingency and contractor contingency. Include “reasonable project budget including an owner contingency to be evaluated by the project which is separate from the risk contingency set up for use by the contractor”
- c. Best practice – Types of contingencies, recommended contingencies, and reasonable amount for the contingency.
- d. There should be two contingencies, you should evaluate your overall budget and ensure you have enough funding to cover the project and both the owner and contractor risk contingencies. And clarity on what the contingency ought to be.
  - i. There’s also a design development contingency – do we include that? This is cost for work that cannot be defined at the time of the bid.
  - ii. Much of the legislation already spells out some of these things so we’ll want to make sure what we’re proposing isn’t in direct conflict with other language in the statutes.
- e. Higher Ed – Having that 5 percent in law helps an owner to budget and also defend the contingency because it’s required by the law.
- f. RCW 39.10.350(1)(c) – the current statute discussed a minimum 5 percent contingency.
  - i. Owner – Removing the 5 percent allows the PRC to dig into why and value of identified contingency.
  - ii. Ports – We do ask about scope, schedule, and budget. We are digging into the contingency anyway. Just checking the box does not necessarily mean that the project is adequately funded. So, the more we stay away from prescribing the contingency amount. Owners that request alternative delivery, also know they need contingency.

2. (2) Clarify independent audit

- a. [LR] Many attendees agreed that this statute should be clearer so to avoid unintended consequences of a vague statute.
- b. Higher Ed – This is an example of the law being purposely vague and putting the onus on the owner to figure out and address. I like the audit; it protects the owner. Agree that the civil GCCM law needs to be clearer about auditing a lump sum. A lump sum shouldn’t be audited.
- c. GC – If you’re doing a negotiated lump sum, is it necessary to do an audit? The intent was probably to address GMP. The agreement for the lump sum is different – if the contractor ends up making money because we took on the additional risk of a lump sum, then we shouldn’t be responsible for returning the additional funds earned through that agreement, which is likely what an audit would require.
- d. Cities – Those who have this expertise on heavy civil should review RCW 39.10.370 – 7.a.III. Consider
- e. [LR] Pull the heavy civil provisions into one document and review them all together since there are multiple. Then decide if it should be

combined into one section or left in multiple sections. Invite the Eastern WA representatives to weigh in.

3. (2b)
  - a. Several attendees agreed that this is a best practice.
  - b. Ports – We’ve brought the auditor in early on so we can confirm what they will be looking for so we can make sure we make it easy for the auditors and the owners from the start.
4. (3)
  - a. Several attendees had different interpretations on whether the statute suggests if a claim goes unanswered it then goes away, versus that if the claim goes unanswered by the owner, then it goes into the claims process.
  - b. [LR] Recommended changes
    - i. Completely remove (ii) or add language to (ii) “the contractor has the option to move this dispute into the next step of the dispute resolution process”
    - ii. Remove “change order, or claim” and replace “sixty calendar days” with “thirty calendar days”.
      1. Or clarify “claim”
  - c. Best practice – The intent of this law under (ii) isn’t to say that the claim is gone but that it continues through the dispute resolution process. Granted, owners can handle that differently, but that was the original intent. Change orders should be regularly addressed and resolved within 30 days.
  - d. GC – The change order language and sequencing needs to be looked at. Some statues say 30 days, others say 60 days.
  - e. Ports – We should be working on adjusting the language to form partnerships.
  - f. Ports – This one needs more work and may require more owner attention to figure out how we want to address this.
  - g. GC – Perhaps it’s a best practice, not a statute.
  - h. Cities – Change orders are an issue, so agree that the owners need to think through this. The language was intended to protect the contractor and it’s clearly not, so needs further review.

#### **8. Follow-Up Items**

- a. Meeting Summary – Kate to prepare and Nick and Scott to circulate
- b. Meeting Schedule – Scott will send out meeting invites for the rest of 2019.

#### **9. Meeting adjourned at 12:05 p.m.**