

GC/CM Committee

Meeting Summary October 14, 2019 (Meeting #5)

1. **Chair Middleton called the meeting to order at 9:10 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), Andy Thompson alternate for Shannon Gustine (General Contractors), Janice Zahn (Ports), Sam Miller (Architects), Nancy Deakins alternate for Penny Koal (State Agency)
 - ii. Stakeholders in attendance, including by phone: Mike Pelliteri (General Contractors), Olivia Yang (Owners), Keith Michel (General Contractors), Tom Peterson (General Contractors)
 - b. Approval of September 4, 2019 meeting summary – M/S/P to approve meeting summary.
 - i. Keith Michel (General Contractors) was in attendance at the Sept. 4, 2019 meeting, though was not included in the attendance list in the notes.
3. **GC/CM Procurement and Procedures**
 - a. Coordination with Reauthorization Committee – Chair Middleton provided an update to the CPARB committee on Oct. 10, 2019. Scott shared with the CPARB committee that the GC/CM committee plans to share their updates to the Reauthorization Committee in March 2020. One question that from CPARB was whether this committee is tracking best practices to capture along with the legislative proposals. This committee is tracking both legislative proposals and best practices.
 - b. At the next meeting, Chair Middleton suggested the committee focus on EC/CM and MC/CM, and other subcontracts that are included in GC/CM.
 - i. [AI] Andy Thompson asked that the committee provide advance notice of the topics for the next meeting so everyone interested in this discussion is able to attend.
 - c. Recap of previous meeting – At meeting #4 we discussed **39.10.360** and captured language adjustments and best practices in the matrix that Chair Datz is maintaining and will continue to share with the committee members.
 - i. 39.10.360(1) Suggest deleting sentence starting “Public bodies should select general contractor/construction managers early in the life of public works projects...”
 1. General contractors – It’s better to have the GC/CM on board early but this is a best practice and we should capture in our best practices document.
 2. [BP] Many in the room agreed that this section is a best practice and should be removed from the statute.
 - ii. Many agreed that none of these adjustments aren’t pass/fail, they are focused on evaluation.
 - iii. The group discussed how the RCW should encourage a broader pool of applicants by allowing those without specific GC/CM experience (size, scope, cost) to apply.
 - iv. [LR] 39.10.360(3)(a) – Suggest we use design-build RCW language, if it encourages applicants to apply and remains transparent.
 1. Owners – Overall, the qualifications are the same.

[LR] indicates a comment about RCW guidance.

[BP] indicates a comment to inform our best practices.

[AI] indicates an action item to follow up on.

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2. General Contractors – In design-build you're hiring a design team and a contractor, with EC/CM and MC/CM you're hiring one team, so I'm not sure that the design-build language is directly applicable.
 3. General Contractors – [AI] Andy will take the action item to review the design-build evaluation language and craft the language for GC/CM.
 4. Parking lot – Once we have the language, we should talk about how to encourage new groups to participate. There should be a venue for education for both the proposal development and the interview process.
 5. Cities – Are there issues with the statute that will prohibit that discussion down the road about how to encourage people? Those are the conversations we should have now.
 - v. [LR] 39.10.160(3)(a)(ii) Suggest removing “negotiated” and leaving the language as “The firm’s past performance in complex projects:”
 1. Ports – We should align the language with design-build.
 2. Specialty Contractors – That is fine for this section but when we talk about EC/CM and MC/CM at our next meeting, that language has been adjusted based on past challenges, so we won't want to use the same language just to align it, there are specific issues that the language is adjusting.
 - vi. [BP] The best practices would provide guidance to the owner on how to evaluate those with and those without specific GC/CM experience.
4. **RCW 39.10.370 – Maximum allowable construction cost.** Chair Datz noted that he is capturing the proposed changes in the modified RCW language as we go along.
- a. Comment spreadsheet (1) – Negotiated support services (NSS is defined in 39.10.210) is usually treated as an allowance from the owner to the contractor and gives the flexibility to both the owner and contractor to quickly address needs and be able to use the NSS allowance to address. Owners handle NSS differently and if it were clearer, it may be more transparent. What NSS is used for and how it should be defined should be clarified in best practices.
 - i. Owners – [BP] This should be discussed in the best practices since different owners handle it differently for various reasons.
 - ii. Architects – One of our goals is earlier cost certainty, so how can we adjust the requirements around the MACC to be confirmed earlier than 90 percent of design.
 - iii. Owners – The timing of the MACC was updated in 2007 around the construction boom to protect the general contractors. If you got rid of the 90 percent CD, which would help with early cost certainty, we would need to discuss how to protect against the market.
 1. Perhaps a provision that allows the MACC to be renegotiated if it increases over some threshold.
 2. GC/CM is public bidding, and allows some bid packages to be negotiated early, so the issues of cost certainty should be bid earlier.
 3. The RCW could be amended to allow for the owner and general to negotiate an earlier time, or at least not limit the conversations to start at 90 percent.
 - iv. Architects – What is the significance of 90 percent design completion? We could have two buckets – what you can control, and what you can't.
 - v. Owners – We could allow for flexibility in the RCW and provide additional detail on best practices, that explains how the risk shifts as design is more complete and as the market changes, and also the intent for the use of NSS.

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- vi. Owners – We should evaluate the questions we ask in the PRC and ensure that they get at the root of the issue. For example, to ensure the owner and their representative understand how the 39.10.370 is intended to be used. If we give more flexibility, then it's treated less like a checklist.
- vii. Architects – Perhaps then the MACC should be established much earlier to demonstrate understanding.
- viii. General Contractors – Seems like a lot of projects land in GC/CM, even when they could be a hard bid, for example new K-12 schools on green fields.
 - 1. As long as they fit the requirements, they can be GC/CM.
 - 2. The value of a GC/CM on a green field project is budget, cost certainty, schedule advancement.
 - 3. [AI] We should ensure that schools and construction managers are represented in these meetings so we can better understand their challenges and opportunities.
- ix. These negotiations are happening earlier, but we can't call it a MACC until 90 percent. This should be described in the best practices.
 - 1. There's no limitation on what can be early, it just can't be signed until it's a full MACC.
 - 2. There are other factors that should trigger this discussion not just when the MACC is set.
- b. Comment spreadsheet (2)
 - i. Owners – If you bid before 90 CDs, you can assume that things will change with the permitting process, which causes a lot of administrative burden down the road for everyone involved both in documentation and then addressing the changes.
 - ii. All – [BP] Clarify this with a best practice.
- c. Comment spreadsheet (3-5) – These comments deal with the contingency and whether we should include a definition to clarify proper use and intent. Do we want to include definitions or flexibility?
 - i. Architects – In a previous meeting we discussed that we should use the best practices to clarify the different types of contingency and how it should be used.
 - ii. General Contractors – Each owner has their own understanding and use of contingencies, which makes it hard for the general contractors.
 - iii. Architects – Perhaps we should define the contingencies in the RCW but leave it at use and not amount or other specifics, then use the best practices to clarify intended use.
 - iv. Cities – We need clarification on the control of those contingencies. We also want clarity on the amount of the contingencies.
 - v. The groups agreed that the ultimate goal is to make this process easier and more transparent for everyone. Definitions, use, and general amount should be clarified.
 - vi. The group discussed various ideas about how overtime is charged – whether it's NSS or risk contingency and how different owners have different assumptions.
 - vii. The group identified the four contingencies to further clarify:
 - 1. Owner contingency
 - 2. Risk contingency – specified percentage by the contractor, and agreed upon when negotiating the MACC
 - 3. Means and methods contingency
 - 4. Design / estimating contingency

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- viii. Ports – I hesitate to be prescriptive of contingency here, but we should use the PRC and best practices to clarify and confirm understanding of the different contingencies.
- ix. [AI] Andy Thompson, Keith Michel, Sam Miller to take stab at language – [BP] Clarify this with a best practice (why and how it's used) and ensure discussed during the PRC process. This language could include the different types of allowances and other key details.
- x. Architects – [LR] We should clarify what is a risk contingency. We don't need to clarify every type of contingency but the general categories.
- d. Comment spreadsheet (6)
 - i. All – [BP] Clarify this with a best practice.
- e. 39.10.370(4) – Suggest terminating the second sentence in this section since it conflicts with our goals.
 - i. Without that sentence, are we limiting the owner's ability to include NSS in specified general conditions?
 - ii. Cities – Specified general conditions is not defined in 39.10.210. The group also redefined specified general conditions in an earlier meeting.
 - iii. Parking lot – Assign the action item to review and craft the language.
- f. 39.10.370(5) – Several attendees had different interpretations of what happens if a MACC cannot be reached. The language as written allows the owner to terminate the contract and move forward with the second place firm or terminate the contract and move forward with a different contracting method.

5. Wrap up

- a. At our next meeting we will wrap up 39.10.370 and plan to get through the EC/CM and MC/CM discussion.
 - i. Ports – Will we also talk about heavy civil when we talk about EC and MC? They have similar issues.
 - ii. Architects – Last meeting we talked about pulling out heavy civil entirely and addressing it on its own.
 - iii. Chair Datz to take the action item to track down and understand why heavy civil was included in GC/CM in the first place.
- b. We'll aim to address the language action items at our November 14 meeting, including the contingency definition.

6. Follow-up items

- a. In advance of the next meeting, Chair Middleton will advertise that the focus of the meeting will be on EC/CM and MC/CM, and other subcontracts that are included in GC/CM.
- b. 39.10.360(3)(a) Andy Thompson will review the design-build evaluation language and craft the language for GC/CM.
- c. 39.10.360(7) Chair Datz to track down and understand why heavy civil was included in GC/CM in the first place.
- d. Committee Chairs to ensure that schools and construction managers are represented in future meetings.
- e. Comment spreadsheet (3-5) Andy Thompson, Keith Michel, Sam Miller to take stab at language – [BP] Clarify this with a best practice (why and how it's used) and ensure discussed during the PRC process. This language could include the different types of allowances and other key details.
- f. 39.10.360(3)(a) Parking lot – Once we have the language, we should talk about how to encourage new applicants to the pool.

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- g. 39.10.370(4) Parking lot – Assign the action item to review and craft the language.
- 7. Meeting adjourned at 12:03 p.m.**

DRAFT

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