

GC/CM Committee

Meeting Summary November 14, 2019 (Meeting #8)

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: Nick Datz (Owners), Scott Middleton (Specialty Contractors), Todd Mitchell (Construction Trades Labor), Penny Koal (DES), Santosh Kuruvilla (Engineers), Shannon Gustine (General Contractors), Josh Kavulla (Higher Ed), Lisa van der Lugt (OMWBE), Tracy Rogstad (Schools), Sam Miller (Architects), Jessica Murphy proxy for Rebecca Keith (Cities)
 - ii. Stakeholders in attendance, including by phone: Andy Thompson (General Contractors), John Palewicz (Higher Ed), Andrew Powell (General Contractors), Jordan Kiel (Architects), Keith Michel (General Contractors), Mike Pelliteri (General Contractors), Barry Sherman (Specialty Contractors), Dan Seydel (OMWBE)
 - b. Approval of Nov. 7, 2019 meeting summary – M/S/P to approve meeting summary. The committee approved the notes with the following edits:
 - i. Administrative section, “Penny Koal (DES)”
 - ii. Section 3 b we discussed sections 39.10.390 through 39.10.410
 - iii. Section 4 instead of State Agency this should read “DES”
 - iv. Top of the second page instead of EMCCM it should read “ECCM”
 - v. Section 4(b)(viii) - would other trades be able to meet the \$3M threshold – something to think about.
 - vi. Section 5(d)(viii)(5) Schools comment should read “shouldn’t be using GCCM” instead of “should.”
3. **GC/CM Procurement and Procedures**
 - a. The Chairs will compile the final proposed legislative changes for committee and stakeholder review ahead of and during our next meeting on Dec. 4. We want to make sure our proposed changes do not conflict with each other or existing RCWs and align with our original goals (for goals, see meeting notes dated Sept. 4, 2019). The Chairs will also compile the best practice recommendations for further refinement. [AI] Chair Middleton will compile the legislative changes early next week so the committee can review before the Thanksgiving holiday.
 - i. Our process is to develop legislative proposals for submittal the Reauthorization Committee for review and approval. Chair Middleton clarified that this GCCM Committee is a subcommittee of the Reauthorization Committee, and while we don’t expect them to disagree with our recommendations, that is the process.
 1. The attendees agreed that our proposal should include context to the Reauthorization Committee, for example, if we have unanimous agreement or dissents on proposals, we should clarify what groups and why so the Reauthorization Committee can better understand the context of each proposal.
 2. The attendees noted that some of the legislative changes were not assigned to someone to develop the updated language and at the Dec. 4

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meeting the committee will review the proposals and assign action items, if necessary.

- b. The Chairs will consider providing an update about what to expect from the GCCM committee to the Reauthorization Committee and CPARB at their meetings in December.
 - c. 2020 committee schedule
 - i. Jan. 2020 (two meetings)
 - 1. First meeting in January – Deadline to have our proposals to the legislative committee. This will give the committee time to ensure there aren't any conflicts between proposals since they are all intertwined.
 - 2. Second meeting in January – Debate/action
 - ii. Feb. 2020 (two meetings)
 - 1. Debate/action
 - 2. Debate/action
 - iii. Mar. 2020 Recommendations to Sunset Review Committee
 - d. Today the group will finalize discussion on RCW 39.10.390, and then discuss RCW 39.10.400 through RCW 39.10.410.
4. **RCW 39.10.390 – Subcontract work.**
- a. Comment spreadsheet (12 noted under 39.10.380 but is a 39.10.390 issue) – Discuss the 50 percent self-performed aspect of heavy civil GCCM. The committee discussed a few issues: (1) 50 percent – which generally folks agreed is not currently an issue, (2) clarity on “self-perform” what it means and who is included (for example, a joint venture versus teaming partners), and (3) whether to remove heavy civil and have it become its own stand-alone section.
 - i. Higher Ed – One question that often comes up is what does the 50 percent self-perform mean? So, suggest we clarify the language.
 - 1. General Contractors – As these projects get bigger and there are joint ventures, it becomes a more complicated question.
 - 2. Cities – We enjoy the benefit that the GCCM can negotiate with their subcontractors regarding self-perform, which allows the pool of subcontractors to be broadened. There isn't data to tell us whether 50 percent is the right amount.
 - ii. The attendees discussed replacing “self-perform” with “customarily supplied or performed”.
 - 1. General Contractors – We also need to address the joint venture partners and who is “self-performing” the work.
 - 2. General Contractors – The vagueness and flexibility of the language benefits both the owner and the contractor, for example, with procuring elevators we couldn't find a sub to do that so we were able to self-perform that work under this flexibility.
 - 3. Cities – There is no confusion for who the self-perform refers to, it's the company and the person that signs the contract.
 - 4. General Contractors – This could be a best practice, then, because we would benefit from some clarity especially as projects become larger and more complex. It may not be an issue today but could be an issue four years from now. As we think about this, we need to look at teaming and joint ventures and whether that encourages subcontractors and competition or not.

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5. Cities – Agreed. As an owner I don't believe I'm limited in the current arrangement.
 6. OMWBE – This flexibility may also allow the owner to require DBE and WMBE inclusion goals, which is good and we should encourage.
 7. Higher Ed – I think we should look at a negotiated self-perform.
 8. Cities – As an owner, how do we incentivize cost-effectiveness and value. I would like the flexibility to negotiate more work but I'm not sure this encourages a shared goal of cost-effectiveness. What is the balance?
 - iii. Owners – We plan to review the heavy civil but haven't yet. We will invite others who have discussed this and shared concerns previously to join the conversation.
 1. Specialty Contractors – There may be a policy reason why heavy civil was included in the first place, so we need to figure out why it was included and if we can extract it without issue.
 - iv. [AI] The attendees noted that there is a separate committee that is looking at inclusion that we had previously discussed that we would ask them to look at identifying a percent of self-perform work for inclusion.
 - v. [BP] Best practices should address the right way that owners can put out GCCM packages so that they are able to be bid on by as many interested and qualified parties as possible.
 - b. Comment spreadsheet (2) – For a designated heavy civil project, what capabilities are required for the GCCM to propose as the GCCM?
 - i. The attendees discussed whether this was originally intended as an observation or something for review. [BP] The committee agreed not to change the qualifications and rather provide further detail in best practices.
- 5. RCW 39.10.400 – Prebid determination of subcontractor eligibility.**
- a. Comment spreadsheet (11, noted under comments for 39.10.380) – Responsible bidder criteria for subcontractors and allowing more capacity or flexibility on ensuring qualified subs (Pre-Qual)
 - i. [BP] The primary reason this was brought up was to encourage diversity and inclusion by using qualifications. The committee agreed that this comment only needs clarification in the best practices.
 - ii. General Contractors – Suggest we use caution in adding more requirements because the fallout is limiting the pool of qualified applicants.
 - iii. Cities – We should use the best practices to ensure clarity on the intent and how to use properly.
 - iv. OMWBE – The best practices will be important here so we can look at the pros and cons. If we had more clarify in the best practices, then we'll have less room to misinterpret the intention.
 - v. The committee agreed that while this process requires more work and time, some public agencies use it and it's not something that we should remove.
 - b. Comment spreadsheet (14, noted under comments for 39.10.380) – Need to address retainage release timing
 - i. Higher Ed – The delay is sometimes several years.
 - ii. General Contractors – Since the bonding bill passed, I don't think this will continue to be an issue.
 - iii. OMWBE – Small firms can't always obtain bonding. May be an opportunity for education as some attendees confirmed that it's not limited and small firms would be able to get bonding.

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6. RCW 39.10.410 – Subcontract agreements.

- a. Comments were not provided in advance but were discussed during the meeting.
- b. General Contractors – We would like to look into something to help subcontractors get paid on time when change orders are in process and often take a long time to resolve. This is an ongoing challenge and something that isn't currently enforceable.
 - i. Higher Ed – Public agencies need clear documentation to pay for work; but it's in the best interest of the public agency to pay subcontractors for work so they will continue to work for the public agency.
 - 1. "Provided all the paperwork is received and approved, the subcontractor shall be paid."
 - ii. General Contractors – We should have a process in which GCCMs can separate issues and submit change orders earlier for approval so the subcontractors aren't waiting on all work to be approved and paid for. This will help ensure timely payment. We also previously discussed contingency use and approval, which perhaps the GCCM could use contingency to pay the subcontractor.
 - iii. General Contractors – If it's not clearly defined in the contingency, the GCCM doesn't have any ability to use that contingency. And, if the owner and GCCM approve and pay for work that doesn't have the accurate paperwork, then the subcontractor will have to pay the money back to the state.
 - iv. The committee previously revised the and clarified the three buckets of contingency. The intent is to clarify the process in which the contractor can use their risk contingency, which as it's currently written, still requires owner approval. The committee agreed to discuss this process further in light of this discussion at the Dec. 4 meeting.
- c. General Contractors – Subcontractors are required to agree to GCCM contracts without negotiation.
 - i. The attendees discussed the process in which the GCCM submits their proposal to the owner, the owner should review and confirm everything that is included in the submittal and the subcontract agreements. Owners do not consistently review all documents, which is where issues come up.
 - ii. General Contractors – The subcontractors have time to review the bid package and ask questions when they submit their packages and prior to the final submittal.
 - iii. The attendees agreed that a general theme throughout this entire process has been that GCCM is not a reason for an owner to not pay attention. The owner needs to be engaged throughout all of the GCCM process.

7. Wrap up

- a. Chair Middleton will package up the legislative proposal changes for the attendees to review ahead of the December meeting. The team will also set the January schedule at the December meeting.

8. Follow-up items

- a. Chair Middleton will compile the legislative changes early next week so the committee can review before the Thanksgiving holiday.

9. Meeting adjourned at 12:00 p.m.

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