

GC/CM Committee

Meeting Summary January 28, 2020 (Meeting #10)

1. **Chair Middleton called the meeting to order at 10:00 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), Penny Koal (DES), Shannon Gustine (General Contractors), Rebecca Keith (Cities), Janice Zahn (Ports), Sam Miller (Architects)
 - ii. Stakeholders in attendance, including by phone: Andy Thompson (General Contractors), John Palewicz (Higher Ed), Keith Michel (General Contractors), Olivia Yang (Owners)
 - b. Approval of Dec 4, 2019 meeting summary – M/S/P to approve meeting summary. The committee approved the notes with the following edits:
 - i. None, previous draft meeting summary is approved.
3. **GC/CM Procurement and Procedures**
 - a. Review Committee Timeline
 - i. The meeting timeline moving forward, as discussed, is as follows:
 1. February 2020 (two meetings)
 - a. Feb. 11 at Sound Transit
 - b. Feb. 25 to cover E/M and GCCM
 2. Mar. 10 or 24 depending on progress, discuss 2020 Recommendations to Sunset Review Committee
4. **Review Statutory Action Items and Assignments.** Today the group will review the list of statutory (priority) action items and assignments and obtain concurrence or discuss adjustments. The team will review, discuss, and debate the first five action items and reconvene in February and March to finish reviewing, as noted in the meeting schedule.
 - a. No. 1 – Define “risk contingency” (contractor’s contingency) “budget contingencies” (owner’s reserve) and “design development contingency”
 - i. Updated language of these definitions was drafted.
 - ii. General Contractors—We want to create consistency in relation to best practices. There is concern of risk contingency being applied in ways not intended and it’s important we define that so it doesn’t cause conflict with the project team.
 - iii. Cities—I love the idea of definitions, but there is no point in putting a definition in a statute if it won’t be used there. Having it in the law protects the contractor, and risk contingency is already in there. The definition could be part of best practices.
 - iv. Owner—My concern was with the risk contingency. Need to be careful with what this is used for.
 - v. Owners—The statute would be changed to show owners contingency. There is a thin line between too much and not enough language which forces us to write more into RCWs.
 - vi. Multiple—These definitions should be placed in statutes, best practices, MACs, etc.
 - vii. Ports—Concerned with the completion of the project where unused funds go back to the owners. Urge folks not to put language in statutes that are really best practices.

[LR] indicates a comment about RCW guidance.

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

[AI] indicates an action item for follow up.

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- viii. Higher Ed—I'm a big proponent of putting detail in best practices as opposed to RCWs.
- ix. Chair Middleton—[AI] What if the subcommittee were to take another stab and focus more on the definition and where in 39.10 they should go.
- b. No. 2 – Consider moving “heavy civil construction project” language, currently scattered throughout RCW 39.10, into one statute.
 - i. Owner—I looked at combining heavy civil language in one spot. I took a stab at it, not needed for approval now. I like the idea of separating, maybe next meeting we can dive into this more.
 - ii. Specialty Contractors—Separating the language is intended to clarify due to heavy civil having additional requirements. Stakeholders may have concerns when we get to the legislature. This language doesn't change anything, it moves it around for clarification.
 - iii. Multiple—We need participation from people not in this room. Heavy civil contractors should be part of this conversation.
 - iv. Ports—Some people are unfamiliar with heavy civil; we should look at other public owners that deal with small dollar value and bring them to the table.
 - v. General Contractors—One goal was to increase participation; this might reduce participation with self-performed work. Better vocabulary could help.
 - vi. Chair Middleton—Let's start with the draft and focus on reorganizing language and not content. We should reach out to owners, showing we are making statutes clearer for heavy civil. See if there is any feedback. We must have all the right stakeholders.
 - vii. Chair Datz—[AI] If everyone can look over with language. Dave and John will reach out and have further discussion with stakeholders.
- c. No. 3 – Add language to promote timelier processing of equitable adjustments, change orders, and claims (“deemed denied”)
 - i. A drafted rework was completed.
 - ii. Ports—The intent of the language is to provide protection for the owners. “Change order” makes a lot of sense.
 - iii. Multiple—This is a really good step; public owners without a response jumping to claims process is a layer of burden. Many show concerns with leading to disputes over level of specificity. What if instead it's “accept/reject/dispute” at each spot?
 - iv. General Contractors—The number one thing we have trouble with is timely responses to change orders. One is for change order one is for payment. I don't want a huge reaction to something that isn't enforceable. I feel like we are reacting strongly to something that may not be an issue.
 - v. Multiple—Remove the word “specifically.”
 - vi. Chair Middleton—The group reached consensus on everything except the last sentence and adding accept/dispute/reject in 3 locations of the 39.10.350. Remove the word “specifically” in line 4. Motion to move forward tentatively with noted changes.
- d. No. 4 – Define/clarify scope of “Independent audits” in heavy civil construction projects, particularly with lump sum contracts; if changed, also consider changing RCW 39.10.385 audit

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- i. General Contractors—Leaving language opens allows for various interpretations. The language says it must be audited. I propose we use Alternative 3 and add the additional sentence provided in Alternative 2.
- ii. Owner—Contractors should stipulate what the contract should look like. It's on the owner to define what the audit provisions look like.
- iii. Ports—Believes more clarity is needed.
- iv. General Contractors—That additional sentence in Alternative 2 is important. If it doesn't say you can that makes it means you can't.
- v. Owners—Raised question if "must" should be changed to "may".
- vi. General Contractors—There is concern from heavy civil that an audit must be conducted without proper language over converting to lump sum. Because it says an audit "must" be done, that causes confusion and I know of folks in heavy that have these concerns.
- vii. Multiple—Leave Alternative 3 and add the new sentence from Alternative 2 as the last sentence. Instead of saying converted, say "established or negotiated". The committee will reconvene with new language confirmed and to specify what is being audited.
- e. No. 5 – Clarify Fee/SGCs/price-related factors, such as cost allocation and clarity at the issuance of the RFP
 - i. Due to time constraints, this action item was not covered.

5. Follow-up items

- a. Next meeting is scheduled for Feb. 11, 2020 at Sound Transit.
- b. The following action items were identified:
 - i. No. 1 – The subcommittee will take another stab and focus more on the definition and where in 39.10 they should go and share at the next meeting.
 - ii. No. 2 – Everyone to review the language. Dave and John will reach out and have further discussion with stakeholders.

6. Meeting adjourned at 1:00 p.m.

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