

GC/CM Committee

Meeting Summary February 11, 2020 (Meeting #11)

1. **Chair Datz 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), Penny Koal (DES), Keith Michel as a proxy for Shannon Gustine (General Contractors), Rebecca Keith (Cities), Janice Zahn (Ports), Ed Kommers as a proxy for Scott Middleton (Specialty Contractors), Santosh Kuruvilla (Engineers), Olivia Yang as a proxy for Josh Kavulla (Higher Ed)
 - ii. Stakeholders in attendance, including by phone: John Palewicz (Gen Public), Dave Johnson (General Contractors), John Cross (General Contractor)
 - b. Approval of Jan. 28, 2019 meeting summary – M/S/P to approve meeting summary. The committee approved the notes with the following edits:
 - i. Section 4(a)(iii) strike sentence: “Having it in the law protects the contractor, and risk contingency is already in there.”
 - ii. Section 4(a)(vii) add context: “Concerned with the requirement of unused funds being released only at the completion of the project where unused funds go back to the owners.”
3. **GC/CM Procurement and Procedures**
 - a. Review Committee Timeline
 - i. The meeting timeline moving forward, as discussed, is as follows:
 1. Upcoming meetings
 - a. Feb. 25, 2020 at MCAWW, 10 a.m. to 1 p.m.
 - b. Mar. 10, 2020 at MCAWW, 10 a.m. to 1 p.m.
 - c. Mar 24, 2020 at MCAWW, 10 a.m. to 1 p.m.
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.
 - a. No. 1 – Define “risk contingency” (contractor’s contingency) “budget contingencies” (owner’s reserve) and “design development contingency”
 - i. Chair Middleton—[AI] No additional progress was made and discussion of this item is postponed to the next meeting on Feb. 25.
 - b. 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
 - i. Cities—Struggling with “may” versus “must”. There are concerns with eliminating the right to require an audit, but discussion to include in the contracts.
 - ii. Specialty Contractors—Flexibility of the audit is left to the public body, and we thought it was inherent that the public body discloses. The audit was placed as a balance to this negotiated project. It’s important to maintain the flexibility, and there should be a disclosure.
 - iii. Ports—What is the expectation from a state legislative standpoint?
 - iv. Higher Ed—Should we focus more on the notice? They should know what they’re getting into for their decision making. The level of effort in a lump sum versus Guaranteed Maximum Price (GMP) is very different.

[LR] indicates a comment about RCW guidance.

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- v. General Contractors—The language starts with negotiated-type elements. My impression is that it's related to those GMP type elements.
 - vi. General Contractors—I assume auditing is to ensure the contractor is paying the right fee.
 - vii. Cities—I'm concerned about people telling public owners that you don't get to audit this or that.
 - viii. Ports—I think we should include "cost negotiated". We want to audit what is negotiated versus lump sum pieces where no negotiations have been established.
 - ix. Owners—I like that language but I don't know if it's achieving what you want because the entire contract is negotiated.
 - x. Specialty Contractors—In the past there was a situation where the public body didn't disclose what they were going to audit, and the contractor never asked. So, there were different conclusions and establishing this ahead of time mitigates that. I'm also concerned about the word "cost" and its meaning depending on the context and whose cost. "Negotiated" is also a broad term.
 - xi. Cities—I'm wondering if we should leave the language as it is and include the notice requirements.
 - xii. General Contractors—I agree with Specialty Contractors, and that some of these become part of a best practice.
 - xiii. Multiple—Agree with the clarification in a best practice. It's the right to audit not the duty. Auditors don't know what to audit so they'll look for something to audit. The scope of the audit needs to be defined upfront.
 - xiv. Specialty Contractors—We should have put a period after "conducted" in RCW 39.10.350. Strike, "to confirm the proper accrual of costs as outlined in the contract" for what's proposed in red.
 - xv. Chairman Datz—Is there a motion to approve? For the record, we decided to do tentative approvals to not conflict with ourselves.
 - xvi. Unanimous approval for proposed language has been established.
 - xvii. Questions on 4b. Multiple are okay with leaving it alone.
- c. No. 5 – Clarify Fee/SGCs/price-related factors, such as cost allocation and clarity at the issuance of the RFP
- i. General Contractors—This could hinder the flexibility in the pre-construction stages.
 - ii. Ports—We want to retain the ability to receive the SGCs.
 - iii. Owners—On option 2, you can always ask for more. So, we could choose this and include best practice guidance for the others.
 - iv. Multiple—Like the idea of going to a fee to level the playing field. Best practices say you can also do something, and if you do, you can go about it this way.
 - v. Owners—Is the second price factor required or optional?
 - vi. General Contractors—Why don't we say you have to allow the fee but encourage to look for other price related factors?
 - vii. Cities—Include "which must include sealed bids for the percent fee on the owner-estimated maximum allowable construction cost, and which may include"
 - viii. Multiple—Strike the sentence starting with "All price related factors...". End the sentence to say, "The public body shall establish a time and place for the opening of sealed bids."
 - ix. Chairman Datz—Agreement on language of option 3?
 - x. Movement granted, second, and unanimous tentative approval for option 3.

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- d. No. 6 – Align public solicitation/advertisement language with D-B procurement; any change may impact RCW 39.10.380, RCW 39.10.385, RCW 39.10.390, and RCW 39.10.400
 - i. Owners—This section is for the GCCM. I suggest deleting this section.
 - ii. Specialty Contractors—We proposed for E/M that they are both advertised in the same place.
 - iii. Ports—Do we have overriding expectations of where ads are published?
 - iv. Specialty Contractors—If there are different requirements in different sections, they can read those there.
 - v. Multiple—Section (2) is not specific about the requirements.
 - vi. Specialty Contractors—What problem are we trying to fix?
 - vii. Higher Ed—It brings the question of consistency.
 - viii. Owners—It won't prevent an owner to advertise any further.
 - ix. Specialty Contractors—Most public bodies want as many proposals as possible, and I don't know if the consistency is as important in this particular case.
 - x. Higher Ed—I withdraw my previous comment.
 - xi. Ports—We found that bringing in a GCCM was beneficial well beyond the schematic design.
 - xii. Multiple—Taking it out section (1) seems a bit dangerous, what about "...at a time in the project where the GCCM's participation provides value...". We can come back to this at the next meeting.
 - xiii. Chairman Datz—Do we want to vote on adding the advertisement language to the GCCM? Motion to change from 360 (2). Motioned, second, and all in favor.
 - xiv. Multiple— In 39.10.380 (1), wherever you advertise the main project, all others need to go in the same place.
 - xv. Ports—It isn't for public owners to decide on their subs. It's for subs to look for opportunities.
 - xvi. Multiple—In support of inclusion.
 - xvii. Specialty Contractors—This may create confusion. You can't advertise in two different places. If GCCM and subcontract work is advertised in the local paper, you better advertise the hearing in the same place. I just want to avoid confusion.
 - xviii. Owners—How do you identify it's in a pronounced publication? Based on the number of subscriptions?
 - xix. Ports—Can we say that all subcontract work must be advertised in the same places as the GCCM and hearings?
 - xx. Higher Ed—Propose "and" instead of "or" and use the GCCM language. Use the language from the GCCM and remove the local aspect.
 - xxi. Owners—It should say you can't advertise in a different area to manipulate interested parties. Advertisements should be in the same newspaper.
 - xxii. Cities—My only concern was tracking the Specialty Contractors concern.
 - xxiii. Specialty Contractors—It adds words to a statute that isn't a problem. Advertising to a wide range of people isn't a problem.
 - xxiv. Multiple—Making it consistent and not allowing variance would be better. "At least that" is important here.
 - xxv. Chairman Datz—Are we ready to vote? Motioned, second, and all in favor of adding the updated edits.
 - xxvi. Chairman Datz—39.10.385 discussion will occur during our Feb. 25 meeting.
 - xxvii. Multiple—On 390 (c) I don't think we need to add this in. No edits to 390.
 - xxviii. Multiple—No changes presented to 400.

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- e. No. 7 (7a) – Align evaluation factors for GCCM selection in RCW 39.10.360(3)(a) more closely with D-B procurement
 - i. Owners—The purpose was to focus on the qualifications needed for a GCCM.
 - ii. General Contractors—(6) and (7) could be two different groups of people, is that intentional?
 - iii. Nick—It’s intentional because the state doesn’t certify small businesses for this.
 - iv. General Contractors—(6) is less applicable.
 - v. Ports—It doesn’t specify that you have a certified pool. I think (7) is the more productive thing to do.
 - vi. Owners—Does this help how we get more firms certified?
 - vii. Higher Ed—It’s more about sustaining small businesses.
 - viii. Owners—Agreed. Should we move this to another committee?
 - ix. Cities—There might be an expectation that we align the two.
 - x. General Contractors—We were trying to make this more open to people without GCCM experience. I think this is the point of what we were trying to identify.
 - xi. Specialty Contractors—I don’t buy in that a non-experienced contractor can go into a GCCM interview competently, and is a public body required to negotiate with someone that has no experience? We didn’t mean that any hard-bid contractor could be a GCCM contractor without any experience
 - xii. General Contractors—This could be clarified through best practices.
 - xiii. Multiple—Demonstrate competency, so changing the line item of past performance to demonstrate competency.
 - xiv. Ports—(2) is really about past performance, but (1) and (3) get tweaked to focus on forward-looking.
 - xv. Higher Ed—As owners we want more choices and increased and improved competition.
 - xvi. Cities—This is a key issue with transparency and making people able to compete. How do you address the concerns for people that say they can’t break in?
 - xvii. Ports—I like “similarly complex” projects. More about similarity in the project less about the contracting relationship. I’m reluctant to remove anything about past performance. And interpretation could go into best practice.
 - xviii. General Contractors—RFPs and owners are already addressing these issues.
 - xix. Cities—I want to get back to negotiating based on the Specialty Contractors’ comments.
 - xx. Ports—I’m thinking we need to go back and think about this since we are out of time.

5. Follow-up items

- a. Next meeting is scheduled for Feb. 25, 2020 at MCAWW from 10 a.m. to 1 p.m.
- b. The following action items were identified:
 - i. The subcommittee assigned to Subject No. 1 to prepare draft language for review at the next meeting.

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

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