

GC/CM Committee

Meeting Summary March 10, 2020 (Meeting #13)

1. **Chair Middleton called the meeting to order at 8:41 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), Rebecca Keith (Cities), Todd Mitchell (Construction Trades Labor), Penny Koal (DES), John Palewicz (Private Industry), Santosh Kuruvilla (Engineers), Shannon Gustine (General Contractors), Olivia Yang (Higher Ed), Traci Rogstad (Schools), Sam Miller (Architects)
 - ii. Stakeholders in attendance, including by phone: Andy Thompson (General Contractors), Mike Pelliteri (General Contractors), Keith Michel (General Contractors), Bill Dobyms (General Contractors), Kelly Peterson (Specialty Contractors), Tom Peterson (General Contractors)
 - b. Approval of Feb. 25, 2020 meeting summary – M/S/P to approve meeting summary.
3. **GC/CM Procurement and Procedures**
 - a. Recap of tentatively approved (TA) proposals. Chair Middleton shared the items that have received TA from the committee, a list of these items was provided via PDF in the calendar invite. Chair Middleton shared these items with the Reauthorization Committee.
 - i. (1) 39.10.380 – More uniform language with Design Build.
 - ii. (4) 39.10.360 – Added language to increase transparency and flexibility and make language more uniform with Design Build language.
 - iii. (2) 39.10.360 – Uniform language
 - iv. (5) 39.10.350 – Requires the public body to define the scope of the audit in the contract. The intent is to include [BP] best practices to clarify process.
 - v. (1)(g) 39.10.350 – Provides a timeline and process to review and follow up on disputes and claims.
 - b. Review Committee Timeline. The next meeting will be held on Mar. 24, 2020 at MCAWW, 8:30 a.m. to 2:30 p.m. – This meeting was intended to be a joint meeting with the Reauthorization Committee where we will make our proposed statutory changes to the Reauthorization Committee for consideration. Given there is still committee work to do, we may need to keep our Mar. 24 meeting and delay the joint meeting until we are prepared.
4. **Review Legislative Proposals and Possible Action.** Chair Middleton reviewed the proposals and items that require further committee discussion to move forward to propose to the Reauthorization Committee. The intent of the discussion today is to reach consensus and tentative approval on these proposals. Any proposals not resolved today will include further action assigned to a committee member to take prior to the next committee meeting on Mar. 24.
 - a. Item #12 RCW 39.10.380 Subcontract bidding procedure---Eliminate the \$125,000 requirement, which is no longer relevant, but keep the percentage, which now needs to be determined. There are two issues to discuss, the first is the percent and the second is the requirement to publicly advertise.
 - i. General Contractors---RCW 39.10.380 currently states two percent, I suggest we increase that to 10 percent. Increasing the percentage makes the process more attractive to General Contractors and allows more flexibility to negotiate between the owner and the General Contractor. If the bid is more than 10 percent over, then the owner must accept the bid or completely rebid the project.

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- ii. Higher Ed---Rebidding takes a lot of time and delays the project, there's a lot of benefit to having the flexibility to negotiate.
 - iii. Private Industry---The ability to negotiate is better overall for a project using public dollars; the contractor knows where the savings can be, not the owner. Ideally, we should eliminate (6)(a), (b), and (c) and leave it up to the contractor to provide solutions.
 - iv. Owners---I think we should keep (6)(a) because it confirms the intent that all responsive bids exceed the available funds; (b) and (c) aren't necessary.
 - v. General Contractors---What does "available funds" indicate? Typically, owners have additional available funds beyond what is shared in the bid.
 - vi. Multiple---Replace "available funds" with "bid package estimate" (every GCCM will have an estimate of all of the bid packages that they have shared with the owner), and we can use [BP] best practices to clarify means, methods, and procedures.
 - vii. Owners---The "bid package estimate" refers to a number that is used to determine the pass/fail of a bid package.
 - viii. Cities---The general contractor has committed to a MACC with the owner, and then the general contractor can go bid out the sub packages.
 - ix. Architects---Going back to our committee goals, we want to be less prescriptive but more transparent. Perhaps we can say that the bid package cost "can be published" which gives the general contractor the option to advertise the number publicly or not.
 - x. Concurrence---All agree on the language noted in (6) but (a)-(c) need to be clarified.
 - xi. Next steps---Bill, Mike, Keith, John, Nick to develop a proposal and share with the group prior to March 24.
- b. Item #2a suggests moving all of the heavy civil language into one statute under 39.10. We may look at changing the language later on but this is just to compile all heavy civil language into one statute.
- i. Concurrence---M/S/P on #2a.
- c. Items #9c and 10. We had referred out a few items to the Business Equity Committee to help with decisions regarding equity language in the RCW. We heard the following from the committee:
- i. 39.10.360 (3)(b)---An agency ~~may~~ shall consider...
 - ii. 39.10.330---
 - 1. Cities---Put forth to the Reauthorization Committee for approval.
 - 2. Private Industry---We need to be careful not to blindly copy language because the low-bid environment has different requirements.
 - 3. General Contractors---I thought the committee was going to suggest that GCCM has a set-aside from the MACC, similar to NSS, to accommodate OMWBE.
 - 4. We need further clarification from the Business Equity Committee on the means to get there.
 - iii. Concurrence---M/S/P to refer #9c and 10 to the Reauthorization Committee for further action.
- d. Item #11 39.10.210 Negotiated Support Services---Adding "Negotiated Support Services shall be treated as a contractual allowance, subject to reconciliation with the contract at the conclusion of work.

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- i. General Contractors---The purpose of this clarification is to identify who is at risk for NSS. NSS can be impacted by many things so the proposal adds clarity that NSS, if not a lump sum, is an allowance that is reconciled at the end of the work. This provides early cost certainty so you know if the total at the end of the project is over the NSS then the General Contractor is at risk, if under, then the General Contractor has a benefit.
 - ii. General Contractors---If adopted NSS may still be included in the Specified General Conditions (no change to 39.10.370(4)). NSS is negotiated after the Specified General Conditions are negotiated.
 - iii. Concurrence---M/S/P to treat NSS as a contractual allowance unless otherwise converted into a lump sum, with the language to follow.
 - iv. Next steps---Keith to revise proposed language and share with the group prior to March 24.
- e. Item #9b RCW 39.10.385 E&MCCM expansion to all subcontractors and not just mechanical and electrical pending the contract exceeds \$3M.
- i. General Contractors---Broadening this RCW would check several of our goals around inclusion and transparency.
 - ii. Higher Ed---This sounds like something the owners would support. What are the concerns?
 - iii. Owners---Opening this up to other firms is a good thing and will improve the final product.
 - iv. General Contractors---My concern as a subcontractor is that this allows the general contractor to pick the contractor they want to work with. Until the issues with E/MCCM are resolved, we shouldn't expand to all subcontractors. We should see how the other changes we are proposing work and discuss this item at a future date.
 - v. General Contractors---If we can't agree, then let's plan to monitor five or ten projects over a specified timeframe, so we can see how this plays out for future evaluation.
 - vi. Owners---This issue is also present on low-bid projects. Alternative procurement allows a more transparent selection of subcontractors.
 - vii. Architects---I am in support of this proposal. One of our goals is to make GCCM a more viable option for owners and a key piece of that goal is this recommendation. Perhaps we can consider other ways to mitigate the concerns.
 - viii. Specialty Contractors---The \$3M threshold removes some of our subs from the market; if we removed the \$3M threshold, that would cause negative impacts to our low-bid market.
 - ix. General Contractors---This is how the environment is moving, if you open that pool up by removing the \$3M, that helps eliminate the issues by increasing the pool of eligible subcontractors.
 - x. General Contractors---It's a large investment to be able to play in this preconstruction market and would require major changes on the subcontractors who are not already working in that environment. These contractors can't take on this level of risk and uncertainty.
 - xi. Higher Ed---Given that this is the way of the future it's a good idea for these subcontractors to take the necessary steps to get on board. We've mentored businesses to help with this transition, so that's an option to help lessen the burden.
 - xii. Next steps---Revisit this item after during the next meeting.

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- f. MCAWW Proposal #2a 39.10.385(3) Interviews---Based on the feedback from our last meeting, Chair Middleton and MCAWW staff revised proposal #2a to include interviews as part of the selection process and part of the proposal score, and clarify that the owner should provide core interview questions to the interviewees.
 - i. General Contractors---We had previously suggested that the process be amended to include an RFQ to help eliminate non-successful bidders prior to the written proposal and interview phase.
 - ii. Higher Ed---For example, on an alternative selection process where 14 proposers submit, the scoring eliminated several and the remaining five proceed with their cumulative score to submit a fee and participate in an interview, for one final score for each proposer.
 - iii. Specialty Contractors---Every time you cull the group of participants, you have to have a protest period, which would delay the overall process. This whole process is set up in such a way where the company that has the highest score but then comes in with the highest fee may still lose the project, and we want to make sure the most qualified firm has a chance to win which can be done through cumulative scoring.
 - iv. Next steps---Bill, John, Janice, Rebecca (loop in Janice), Tom P, Dave to revise proposal and share with the group prior to March 24. Chair Middleton will provide clarity on the challenges MCAWW is addressing with this proposal including cumulative scoring and the two-step (not three-step) process.
- g. MCAWW Proposal #7a---The intent of this revised version is to reinforce the notion that for the pre-construction process to be successful it needs (1) the critical subcontractors around the table early and (2) responsible and engaged owners. This proposal outlines changes to the RCW and changes to the PRC bylaws and applications to ensure the success of the project by updating and further clarifying the PRC requirements.
 - i. Higher Ed---This revised approach ensures the owner can articulate their plan and not just allow the owner to rely on a consultant to lead the process.
 - ii. Concurrence---M/S/P proposal #7a.
- h. MCAWW Proposal #4---This proposal regarding written final determination intends to narrowly define the scope with which the written final determination addresses.
 - i. Cities---I think this is overly prescriptive. If we're using the PRC process, then I agree that an owner should provide a rationale for their decision. My concern is spelling out the requirements in statute because their process can vary.
 - ii. General Contractors---..."final determination and reasons why." Which is less prescriptive.
 - iii. Cities---..."issue a written final determination that gives reason."
 - iv. Specialty Contractors---The last sentence regarding no changes to the weights and criteria came about because there was previous dissent about how the previous language was intended and allowed for changes in weights and criteria after the final determination, which is why we've proposed adding explicit language into the statute.
 - v. Owners---In Design Build, you have to provide relative weights and criteria for the RFP, which the intent is to lock you in to provide clarity to proposers, but also slight flexibility since the community feedback is critical in ensuring that your documents are clear.
 - vi. Higher Ed---I think we need to temper this response so it addresses all of our needs without being too prescriptive.

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- vii. Specialty Contractors---Often times the response we receive is “Noted. No change to RFP.” Which doesn’t resolve the issues that we’re being clear.
- viii. Cities---The process outlined here requires administrative overhead but doesn’t resolve disagreement on the comment and response.
- ix. Specialty Contractors---Because this is a public process, we believe the public deserves a response.
- x. Owners---Sometimes it’s a disagreement in interpretation.
- xi. DES---This may be better suited as a best practice.
- xii. Specialty Contractors---We may not find common ground on this one.
- xiii. Next steps---Rebecca to revise the proposal language and share with the group prior to March 24.

5. Follow-up items

- a. The next meeting time has been extended on Mar. 24, 2020 at MCAWW to 8:30 a.m. to 2:30 p.m. Meeting topics include:
 - i. Contingency definitions
 - ii. Additional MCAWW proposals and counter proposals
 - iii. Expanding 385 to other trades
- b. Action Items
 - i. Chairs---Compile all M/ECCM proposals into a Word document, notate proposals with tentative agreements.
 - ii. Item #12---Bill, Mike, Keith, John, Nick to develop a proposal and share with the group prior to March 24.
 - iii. Item #11---Keith to revise proposal and share with the group prior to March 24.
 - xiv. Item #2a---Bill, John, Janice, Rebecca (loop in Janice), Tom P, Dave to revise proposal and share with the group prior to March 24. Chair Middleton will provide clarity on the challenges the MCAWW is addressing with this proposal.
 - xv. MCAWW Proposal #4---Rebecca to revise proposal and share with the group prior to March 24.

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

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