

GC/CM Committee

Meeting Summary September 25, 2019 (Meeting #4)

1. **Chair Middleton called the meeting to order at 1:07 p.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), Penny Koal (DES), Santosh Kuruvilla (Engineers), Shannon Gustine (General Contractors), Janice Zahn (Ports), Josh Kavulla (Higher Ed), Sam Miller (Architects)
 - ii. Stakeholders in attendance, including by phone: Andy Thompson (General Contractors), Mike Pelliteri (General Contractors), Olivia Yang (Owners), Jordan Kiel (Architects), Brett Hill (Lawyer)
 - b. Approval of September 4, 2019 meeting summary – M/S/P to approve meeting summary.
3. **GC/CM Procurement and Procedures**
 - a. Recap of previous meeting – At meeting #3, we had a great discussion about the purpose of this committee and outlined several goals that we will keep in mind as we review the RCW's directing the GC/CM process.
 - i. Discussion
 1. Architects – What does “increased sub participation” mean?
 - a. Increasing the number of subcontractors in the GC/CM process.
 2. Architects – Suggest the goal reads “earlier and more frequent subcontractor involvement”.
 - b. Proposed GC/CM Committee Schedule through April 2020 – Originally when the reauthorization committee convened, we thought we'd have legislative amendment proposals by November 2019. That timeline has been relaxed and we have been granted more time to work through the issues. The proposed timeline and meeting schedule were included in the meeting materials attached to the calendar invite.
 - i. The new schedule shows:
 1. Coordination with Reauthorization Committee will continue throughout this process but we will formally provide updates to the RA committee at their Dec. 2, 2019 meeting.
 2. Legislative proposals shared by March 2020.
 - ii. All present agreed that this updated timeline is reasonable.
 - iii. Discussion
 1. Architects – The updated schedule shows us working on the best practices starting in April. If we come across improvements to our recommendations is there time and/or process to update our recommendations? And, are we basing our best practices on the proposed changes? What if the legislative changes aren't adopted?
 2. Cities/RA Committee – Once we get the proposals from the various committees, we'll review them holistically and ensure these recommendations sync up with the overall purpose of the CPARB. We'll also look at stakeholder consensus support so the legislature can know that what we're proposing is broadly supported. The scheduled update to the RA committee in December will be a good time to check the temperature and address issues.

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

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

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3. General Contractors – The best practices are intended to complement the legislative changes. Even if the legislative changes aren't adopted, then the best practices should still be relevant.
 4. Specialty Contractors – [AI] Regarding legislative proposals, are we looking for a unanimous or a majority decision by this group?
 5. Ports – Shouldn't we align our decision-making process with the other committees?
 - a. Yes, but they don't have a decision yet, so if we have opinions or suggestions, we should share them.
 - b. We should have this in place by December.
 6. Cities – We want this committee to look at legislative changes and put forward suggestions that will make our processes better, which is why we've agreed to extend the timeline for this committee.
- c. Continue review/discussion of RCW 39.10.360 and 39.10.370, included below. Chair Datz noted that he is capturing the proposed changes in the modified RCW language as we go along.
 - d. Adjustments to 39.10.350 (g) during our last discussion we decided to remove section (ii) and remove "deemed denied" and adjust the review time from 60 to 30 days.
 - i. General Contractors – At the last meeting we discussed different ways to address the concerns about owners providing a timely action on requests for equitable adjustment. How is that reflected in the updated language? We are trying to fix the problem that currently there aren't any repercussions if the owner doesn't respond to the request. Additionally, we need to define the difference between the request for equitable adjustment (which can't be paid until a change order is executed) and a change order.
 - ii. General Contractors – Each contract is different so we can't assume across the board that the same language is used. We removed "deemed denied" so if an owner doesn't respond, you can still proceed with a claim.
 - iii. General Contractors – I don't think the adjusted language is making the RCW clearer. If we change the language to read that the request is deemed accepted, then it puts the responsibility on the owner to figure this out and move it forward before it's automatically accepted.
 - iv. Owner – There are many reasons why the request may not have been processed, it's not necessarily the owner not responding. We can look at adjusting the contingencies to ensure that subs get paid in a timely manner.
 - v. Architects – Can we instead include language such that the owner will respond. Therefore, they must respond but it doesn't dictate either deemed or denied.
 - vi. General Contractors – We need to define "request for equitable adjustment" versus "claim" versus "change order". And then we need to find something that is fair and reasonable to keep the process moving so it doesn't stop and get denied automatically.
 - vii. General Contractors – We had discussed language to kick the request to the claim process, rather than "deemed denied".
 - viii. General Contractors – I think this will require more thought on all of our parts. Let's put this in the parking lot for today and discuss at a future meeting when we have some ideas to kick around.
 - ix. Cities – How is this process different from other construction delivery methods?
 1. This is more of a GC/CM-specific challenge because of the structure of the team and communication with the owner.

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- x. Interim decision – [AI] The public owners will meet before our Dec. 4, 2019 meeting to discuss options and share them at the next meeting.
4. **RCW 39.10.360 – Contract Award Process.** The committee reviewed the comment spreadsheet related to the RCW starting with section (1c). Note that these comments were reorganized by the RCW.
- a. Comment spreadsheet (1c-d) – We will use the cost allocation matrix.
 - i. All present agreed.
 - b. Comment spreadsheet (2) [BP] Bonds and insurance are calculated as a percent of the cost of work and they should be evaluated as such and included in the fee. They should be fixed in the contract and addressed early in contracting. This addresses several of our stated goals of this committee. This is a best practice to help educate people where bonds and insurance belong.
 - c. 39.10.360 (1) Suggest deleting sentence starting “Public bodies should select general contractor/construction manager early in the life of public works projects...”
 - i. General contractors – [BP] 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.
 - ii. Ports – The language suggests it is a best practice. Should this language be firmer about when a GC/CM should be brought on board? The timing of bringing on the GC/CM onto a project is project-dependent, and the owner should be responsible for explaining the timing of bringing the GC/CM on board. This may be a question for the proposers to comment on.
 - iii. [BP] Many in the room agreed that this section is a best practice and should be removed from the statute.
 - d. 39.10.360 (2) There is no advertisement clause for solicitation in this section starting “Contracts for the services of a general contractor/construction manager...” Should a clause be added to be consistent with design-build?
 - i. Ports – Municipalities would still need to go in front of the PRC for project vetting and part of that is advertisement, so it would be better to clarify the requirement and make it consistent.
 - ii. Owner – [BP] This may be a better best practice to clarify expectations.
 - iii. [AI] Many in the room agreed that we should use the design-build language and include a clause that requires advertisement for solicitation, but not all were in agreement and decided to continue discussion on this topic at a later meeting.
 - e. 39.10.360 (3)(a)(ii) “The firm’s past performance in negotiated and complex projects,” should we delete this since it may limit the potential pool?
 - i. General Contractors – If you haven’t done it, how are you able to prove it? Suggest we delete.
 - ii. Architect – Should this focus more on the firm’s ability to complete the project?
 - iii. Ports – Suggest this is included in best practices and instead use the design-build language in this section.
 - iv. Cities – We want to encourage new contractors to the pool so suggest we have clarity in the best practices document.
 - v. Owner – Should the state decide what needs to be provided or should we leave it up to the owner to decide what’s necessary for the project (which will happen anyway, even if the statute doesn’t explicitly require past performance)?
 - vi. [LR] [BP] Many in the room agreed to delete this requirement and provide further detail instead in the best practices document.

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- f. 39.10.360 (4) – [BP] Attendees shared many interpretations and, again, generally agreed that this section may require best practices to clarify assumptions and use of the RCW, in addition to the [LR] legislative language proposals included below.
- i. General Contractors – [LR] Could we instead adjust the language here to read “...maximum allowable construction costs or one or more price-related factors...identified in the request for proposal.” to keep this language more general and use the [BP] best practices document to clarify what that means. Then we can provide examples to help elaborate.
 - ii. Ports – Agreed, as owner we need to keep our own cost allocation matrix general and leave the examples and specificity to the [BP] best practices document.
 - iii. General Contractors – We should clearly define “specified general conditions” and how they are used if used for evaluation.
 - iv. General Contractors – [LR] We could add in “All price factors used for evaluation purposes must be clearly delineated in the solicitation.” To clarify, the statute would put the requirement on the owner to clarify what they want to see in the proposal, rather than providing a generic list of options. Then, the [BP] best practice document would provide examples to further clarify.
 - v. Lawyer – This does open up an opportunity for the contractor to protest the selection if the price factors used for evaluation purposes aren’t clearly defined.
 - vi. General Contractors – We don’t want to encourage protests, and through these changes we’re intending to make it clearer by providing the rules and evaluation criteria clearly up front at the start of the process.
 - vii. Architects – Why do we need to provide more than the fee for evaluation? Why do we need “one or more price-related factors?”
 - viii. General Contractors – Owners want to create an even playing field but also understand what goes into the fee. At the last meeting we discussed including rates for staff.
 - ix. Ports – Public owners want to ensure that there is some competition to encourage the best price.
 - x. Owners – The additional statement gives us the flexibility to clarify what we need.
 - xi. Owners – The purpose of this section is to allow the use of more than one, but you only need to provide one.
 - xii. Owners – With our adjustments, you are required to provide two price factors, of which one is fee.
 - xiii. Cities – How do other states handle this?
 - xiv. General Contractors – Fees including bonds and insurance is typical, but the other requirements vary.
 - xv. Cities – What other price factors are there beside rates for staff? (It’s usually rates for staff.) What would it look like if we just required the fee and the other options were elective as directed by the owner? (Allows owners the option to lock in rates for staff.)
- g. 39.10.360 (4) Is difficult to understand and could be easier to follow if it was reworked. [AI]Chair Datz has several recommendations for this section to clarify and will take a first stab at updating it for future committee review.
- h. 39.10.360 (6) Includes the only passing reference to the multiple types of work established under this contract. How can we expand and include items like adding early trades?
- i. Architects – Isn’t this just a best practice? A good RFP leaves it open to the GC to make their case of the best preconstruction.

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- ii. General Contractors – We should require preconstruction and the language here does not indicate a requirement.
 - iii. Ports – Do we believe that preconstruction is a benefit that is “required”?
 - iv. General Contractors – This may be more of a value statement, if it is a requirement we should clarify.
 - v. Architects – If preconstruction is a requirement then the contractor needs to be on board before the design is complete, which goes back to the conversation that we need to clarify when the GC/CM needs to be brought on board.
 - vi. General Contractors – I don’t take issue with the simplicity of this section; I think it works.
 - vii. Architects – Would PRC ever allow a GC/CM to be brought on board after design is complete?
 - viii. Owners – If you want cost certainty and you’re looking at project management techniques and you’re using target value design. If that was the best practice for owners who want cost certainty, then you have a budget, go to PRC and get GC/CM.
 - ix. Architects – You can’t legislate preconstruction but you can make it part of your best value statement.
 - x. Decision – This section is working fine as is (no change), [BP] focus on explaining further in best practices.
- i. 39.10.360 (all) Part of our job is to review the statute in terms of clarity in language. I suggest we look at 39.10.360 as a whole and revise language where we can to make it clearer.
- i. General Contractors – Different owners use different terms to mean the same thing, but if we adjust the language it may be more unclear for them. We should make sure that the rules are all defined at the start of the process, because that helps with transparency.
 - ii. [AI] Chair Datz to review all three sections and revise to provide clarity on language (see 39.10.360 (all)). Additionally, review the sections and arrange in the order that the activities happen in real life for clarify purposes, and revise heavy civil references and clarify throughout all sections. Chair Datz will also follow up with other committee members for support.

5. Wrap Up

- a. A few final comments were shared for the good of the order:
 - i. RCW 39.04.010 Definitions – Do these apply to 39.10.360? If not, these might be helpful for our discussion.
 - 1. General Contractors – No, they only apply to that section.
 - 2. Cities – I think more protections are required for design-bid-build because the contractor is required to build the design that is put forth. With GC/CM, there is more flexibility to negotiate.
 - 3. General Contractors – As a subcontractor, there isn’t that flexibility.
 - ii. Should there be a definition for preconstruction?
 - 1. We will continue to discuss this at future meetings.

6. Follow-Up Items

- a. 39.10.350(1)(g) The public owners (Janice, Rebecca in consultation with Mike) will meet before our next meeting to discuss options regarding 39.10.350 “deemed denied” and discuss with GC’s as necessary to find a resolution to share at the Dec. 4, 2019 meeting.
- b. 39.10.360 (2) Chair Datz to pull in the design-build language and include clause language that requires advertisement for solicitation. This will be discussed at a future committee meeting.

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- c. 39.10.360 (4) Chair Datz has several recommendations for this section to clarify and will take a first stab at updating it.
- d. 39.10.360 (all) Chair Datz to review all three sections and revise to provide clarity on language (see 39.10.360 (all)). Additionally, review the sections and arrange in the order that the activities happen in real life for clarify purposes, and revise heavy civil references and clarify throughout all sections. Chair Datz will also follow up with other committee members for support.
- e. Chair Middleton will review existing state statutes for ideas on how to address different GC/CM statutes.
- f. Chair Datz will look into definitions and clarify for pre-construction and others.
- g. Tracking for December 2019 meeting, the group will determine the decision-making process and whether a unanimous or a majority decision is needed.

7. Meeting Adjourned at 4:05 p.m.

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