

## GC/CM Committee

### Meeting Summary October 22, 2019

1. Chair Middleton called the meeting to order at 1:10 p.m. A quorum was established.
2. Administrative
  - a. Introductions
    - i. Committee members in attendance, including by phone: Chairs Nick Datz (Sound Transit) and Scott Middleton (Specialty Contractors); Todd Mitchell (Construction Trades Labor); Penny Koal (DES); Santosh Kuruvilla (Engineers); Shannon Gustine (General Contractors); Janice Zahn (Ports); Sam Miller (Architects); Josh Kavulla (Higher Ed); Traci Rogstad (Schools).
    - ii. Stakeholders in attendance, including by phone: Howard Hillinger (Owner's Rep); Ed Kommers (Specialty Contractors); Andrew Powell (General Contractors); Keith Michel (General Contractors); Chad Lansford (Specialty Contractors); Sean Trew (Specialty Contractors); Joe Kline (Higher Ed); Barry Sherman (Specialty Contractors)
  - b. Approval of October 14, 2019 meeting summary – **M/S/P** w/ modifications offered by Chair Middleton: some of the proposed changes for RCW 39.10.385 may not be in alignment with one committee goal of making GC/CM less prescriptive and MCAWW's proposals will keep existing selection factors and add new ones for procurement as it replaced low bid procurement. Page 2 Item 5(2). In addition, clarification in the 10/14/19 summary that no actions have been taken relative to any of the sections reviewed to date. There has been a lot of discussion but there have been no formal actions. He raised these issues in 10/14 meeting and they should be reflected here.
3. **GC/CM Procurement and Procedures**
  - a. RCW 39.10.350 – “deemed denied” language is still under review. The Owners are to discuss and bring findings back to the group. Chair Datz to take the lead.
  - b. RCW 39.10.370
    - i. Potential “contingency” definitions are still under review for a smaller group to present in November.
    - ii. Involvement of subcontractors in the estimating process. Discussion moved to the RCW 39.10.385 section discussion in involving more trades.
    - iii. 90% completion for setting the MACC was reviewed from the last meeting. “Bidding” of the documents when the design is fixed or not fixed, what is 90%?
      1. Specialty Contractors believe that flexibility is in the current statute as long as you bid lump sum. **[BP]** Identify and provide examples of how this could be used to the benefit of the project.
      2. D/B trade-partners – Is this one of the options under the current statute? Specialty Contractors – as long as it is bid as lump sum, this is allowed.
      3. Architects – More cost certainty earlier would be achieved if owners knew they had the ability to contract some trade work as design-build.
      4. Higher Ed – Design-Assist is a potential way to address this.

5. GCs/Ports – Design-Assist is essentially what we are trying to accomplish in .385 by adding additional trades to those allowed to be procured under .385.
  6. Higher Ed – Try not to use the word design-build here, as it could cause confusion.
  7. Architects – Let’s play out an example. Exterior skin at the DD level to become involved and a bid package is developed with performance specifications. Trade-partner then provides a lump sum price, is this allowed? Specialty Contractor– Yes, because it is lump sum. **[BP]** This should be used as an example with the explicit evaluation on price only. There can be no judgement on factors other than price.
  8. GCs – **[BP]** Cost certainty is a middle ground between lump sum bid and design-build. Certainty is at bid opening. The ability within the current statute works appropriately to allow project teams to bid early work and support an expedited schedule.
- c. General Contractor - NSS discussion
- i. Because NSS is inside the MACC, it is therefore inadvertently the contractor’s risk. The suggestion is that this be an allowance because it is unquantifiable. This can be addressed as a **[BP]**, the statute does not require or preclude the use of an allowance. Keith – There is still a need to add the word allowance in order to provide some clarity to the concept of NSS. Keith to provide proposed language for this section in November.
  - ii. Sound Transit **[BP]** the concept of an allowance could be a best practice to help owners understand that this can be both lump sum and/or an allowance. The inclusion inside or outside the MACC is not the issue.
- d. Fee/Cost Allocation Matrix
- i. GCs – there should be a consistent definition in order to limit error and manipulation of the submissions
  - ii. Specialty Contractors – Historically, there has been an issue with agreeing on this structure.
  - iii. Group - At a minimum, as a **[BP]** there should be a suggestion with explanations on why things belong in different buckets. In addition to the allocations, the best practice should also address what gets applied to what.
  - iv. Higher Ed – Every Owner’s RFP should define and describe the buckets “consistent with best practices.”
    1. Specialty Contractors – A matrix is needed when the RFP goes out. From a legal perspective this is fine, from a code reviser perspective this would be problematic.
    2. Higher Ed – this is consistent with issues they ran into in the discussion of the design-build revisions to the RCW.
    3. Ports – We want everything to be per the best practices. We should be using the PRC application and discussion to drive this type of research into if an owner has reviewed the best practices and has an approach that is consistent with the intent.

- v. Higher Ed – The RCWs should indicate (.360) that, no later than the RFP, the allocation matrix should be issued to the responding teams.
  - vi. Action Item – Chair Middleton will take a pass at language of making the cost allocation/fee, etc. clear at the time of RFQ and bring it back in November.
- e. RCW 39.10.385
- i. Review of the MCAWW presentation that was made to the reauthorization committee September 9. Ed noted that Barry Sherman with NECA is also in general alignment on the proposals. The goal of the proposals is to focus on transparency and also on how the subcontractors are selected. There is no intent to dictate or influence how the GC is being selected, only the MCCM and ECCM. Also, a reminder that qualifications were intended to be a driver in the selection and not the lowest fee which is what is happening now. The proposals are designed to address transparency and fairness. A theme as a stakeholder in the group is to preserve what we have and add more for example we are not interested in getting rid of anything that is currently in the RCW's. **See attachment containing MCAWW's proposals.**
  - ii. MCA Proposal #1 – Public Hearing – The goal of this modification is to increase transparency to ensure that trade partners are able to see the advertisements for the public hearings and participate in the process. In addition, time is requested to evaluate the RFP prior to the hearing so a comprehensive review can be completed. There were no questions or comments on this item.
    - 1. Collective – This is a good proposed update. **Legislative Change. [BP]** Include a link to the RFP in the advertisement for the public hearing.
  - iii. MCA Proposal #2 – Interviews – Nuclear option is to get rid of interviews. They are not in the statute. MCAWW suggestion is that there should be none because they are too subjective. The original thought was that the interview process would provide the opportunity to perhaps select the people that look to bring the best value, whereas they have perhaps not had the most-flashy proposal. We are seeing that this is not happening, and the process is being used to downgrade someone that scored too high on the proposal unfairly.
  - iv. MCA Proposal #2a – Just make the interview process more transparent and a part of the process. The written record of the interview process and evaluation is critical to the transparency. This codifies what is already the CPARB principles.
    - 1. Schools – Huge proponent of the interview process.
    - 2. GCs – Consideration should be made that if the questions are preprinted, it provides a similar situation to the proposal where people can prepare for the questions as opposed to understanding of how someone would answer.
    - 3. Collective – The addition of the clarity on the process is a critical component and should be addressed. Need to circle up on language and could include core topics. **[BP]** Could include who needs to be there, what the client is looking for...

4. GCs and Schools – The concept of publishing the questions in advance is problematic because it takes away the legitimacy of the answers.
5. Ports – Question regarding listing the people that are on the panel could lead to preparation that digs into people’s preferences.
6. Higher Ed – Would core topics be better than core questions? GCs – Yes
- v. MCA Proposal #3 – SGCs and Fee – This is similar to the earlier discussion on the similar GCCM topic. No comments or discussion – should be parity in the GCCM and ECCM/MCCM.
- vi. MCA Proposal #4 – Written Final Determination – Looking to increase transparency in understanding how/why comments in the public hearing are not addressed. Weights are being changed after the fact during the process, and this undermines the intent of the public hearing. No discussion (limited time).
- vii. MCA Proposal #5 – Bid Bond – No objection or discussion except agreement that a bid bond does not make sense with E and MCCM.
- viii. MCA Proposal #6 – Cumulative Scoring – proposal codifies CPARB principle. We have seen the slate wiped clean prior to pricing making the final determination a cost competition which is not in the spirit of the use of this delivery method.
  1. Ports – What are you seeing in the RFP scoping between the technical and the price? Are you seeing a large weight on the price? Specialty Contractors - Not really. What we do see quite often is the slate clean prior to the pricing
  2. Higher Ed – If the owner said ahead of time they were going to have this approach would that help? Specialty contractors – No, that is not in the spirit of the delivery method. Should be cumulative “start to finish.”
  3. Collective – This is not in the spirit of the delivery method and should be addressed reinforced as a legislative change (clarity on language) or best practice
  4. Collective – Add “public” opening
- ix. MCA Proposal #7 – Want only public bodies that have been certified to be able to use .385 in addition to requiring the selection prior to design development.
- x. MCA Proposal #7a – This adds onto 7 and allows ECCM and MCCM for a specific project with approval from PRC.
- xi. MCA Proposal #7b – Limits school districts in particular to use E and MCCM only with approval from the PRC.
  1. GCs – Is not giving anything up is in conflict with the proposals that are limiting the use of .385? Going back to PRC would be problematic during the course of the process/project. Seems like it would be in everyone’s best interest to remain open.
  2. Specialty Contractors – Most of the problems we have are with the school projects and that is what prompted the proposal. The load on the PRC may also be impractical.
  3. Ports – Is there a concern with school districts that are certified?
    - a. Specialty Contractors – Yes.

4. Ports – This approach puts all of the K-12 owners in the same bucket.
5. Schools – Trying to understand if school districts are abusing the process.
6. Specialty Contractors – The later, it is being abused.
7. Architects – What form does the abuse take?
8. Specialty Contractors – They are fast and loose with the rules. The public body and the GC's are taking liberties and making things less transparent and not being fair.
9. Higher Ed – as a counter to 7b because your experience with school districts is bad because they are first time owners, should this be more broad?
10. Schools – Until we get into design development we did not know if we would be able to use ECCM because of the value of the work. That is problematic with the language proposed. This is more prescriptive which is a direction the public bodies are not willing to go.
11. Specialty contractors – Selection should be required to be early
12. Ports – Sometimes you need some flexibility later in the design because as the design has been progressed and you recognize there is value in bringing on the trade-partners.
13. Sound Transit – What is Design Development? You are drawing a line in the sand, what do you perceive as that line? Also is it the start of DD or the end of DD?
14. Higher Ed – You indicated that PRC members have indicated that additional review on the use of MCCM and ECCM would be an additional load that is a problem, please explain.
15. Specialty contractors – How do we administer this, what is the criteria? How are we supposed to judge who is in and who is out? Are the meetings often enough to keep the process moving.
16. Ports – Why wouldn't the approval for MCCM and ECCM be made with the project approval for GCCM to eliminate the burden and the issue of timing. From the GC's what is your take on this proposal and the GC's participation in the process.
17. GCs - The GC has earned the spot at the table, sometimes the rub can be made due to lack of clarity between the owner and the GC.
18. Specialty contractors – The use of MCCM and ECCM is a privilege and the owner needs to be involved. Part of this revision is to heighten awareness and have the public body be at the table. We have a lot of examples of how the system is being abused and best practices are not adhered to. **[BP]** Previously there was no consideration for the best practices because there were no case studies.
19. GCs – There is additional value in the MCCM and ECCM other than just changing the design. There could be value in phasing or other means and methods.

20. Owner's Rep – Some of the items identified can be included in a PRC committee evaluation and could also be identified for reporting moving forward. There are a number of ways this could be address without incorporation into the statute.
21. Architects – If people are abusing the process or the statute why is the approach not that that people choose not to work for the client and/or the GC.
22. Owner's Rep – If there was a question added to the PRC application, it would get a lot of management attention.
- xii. MCA Proposal #8 – Protests – Looking for additional transparency. No discussion (limited time)
- xiii. MCA Proposal #9 – Best Interest of the Public – No comments or questions or issues with the proposal.
- xiv. MCA Proposal #10 – Evaluation Factors – want to have information clear on what the GC is looking for in the evaluation of the firms. This will result in better proposals and responsiveness.
  1. Owner's Rep – Have you developed this into a model RFP.
  2. Specialty Contractors – Yes, we have and the GCCMs like their own and thus was not universally adopted.
  3. Ports – Wouldn't we want to mimic the requests/critical success factors the same as those that are proposed for the GCCM?
  4. Specialty contractors – Not sure we are looking for the same level of advocacy and transparency as the GCs might be looking for. So, we are watching but may want something different.
  5. Collective – For this committee, we should look at this and strive for the lists to be comparable.
- xv. MCA Proposal #11 – Project Descriptions – Looking for clarity on what the client is looking for.
  1. Ports – We should look at this for parity for the GCCM selection process. We can look at if this language is what we want in both locations or the other way around. In both locations we are looking for the same clarity.
  2. Specialty contractors – The descriptions are not clear and then proposals are trying to address what is written and miss a critical factor.
  3. Collective – For this committee we should look at this and strive for the lists to be comparable.
  4. GCs – Has there been discussion on the “public opening.” Seems like having the GCCM requirement be the same for the MCCM/ECCM.