

GC/CM Committee

Meeting Notes 3/29/2023 (#37)

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1. Chair Datz called the Teams meeting to order at 1:03 p.m. A quorum was established.

2. Administrative

a. Introductions

- i. Committee members in attendance: Nick Datz (Owners), Shannon Gustine (General Contractors), Mark Nakagawara (Cities), Sherrie Montgomery, in for Alexis Blue (Higher Ed), Penny Koal (DES), Santosh Kuruvilla (Engineers), Sam Miller (Architects), Traci Rogstad (K-12 Schools), Angela Peterson, in for Janice Zahn (Ports)
- ii. Stakeholders in attendance: Sharon Harvey (OMWBE), Shelly Henderson (K-12 Schools), Keith Michel (General Contractors), Michelle Rhodes (Engineers)

b. The committee approved the January 25, 2023 meeting minutes with the following correction:

- Update Howard Hillinger and Mitch Romero in the attendance section as representing Owners, instead of Construction Trades Labor.

3. Review the combined manual

a. Review updated Chapter – Total Contract Cost

- 1) [General Contractors] thanked the subcommittee for their work and stepped through the chapter at a high level, noting main topics and intents.
- 2) Chair Datz: Starting with the definitions, does anyone have any notes?
- 3) Higher Ed: I think there is a typo under Buyout Contingency – it should say “if packages are *under* budget,” not “*over* budget.”
- 4) General Contractors: Agreed. It’s also probably worth mentioning that some of these contingencies can exist in a negotiation, but the point here is to articulate what they mean when setting up a contract.
- 5) General Contractors: It feels like we could add a bullet on line item allowances and address very clearly how people should treat those. E.g., how to deal with overruns. I’ve written out some comments and can send them to Chair Datz after. [AI]
- 6) Architects: In paragraph 2 it mentions a risk contingency, but then it’s not addressed in the contingency section.
- 7) Chair Datz: It’s further down.
- 8) General Contractors: Let’s move it up so it’s with all the others.
- 9) Architects: It seems like we might want to define cost of work, since we are using that acronym.
- 10) Higher Ed: Is there a list of acronyms in this publication?
- 11) Chair Datz: Not right now. The way we’ve been doing it to define it when we first use it, but let’s flag that for the final document in terms of ease of use.
- 12) Engineers: If you look at specified general terms and conditions, we should address the rising cost and difficulty of staffing, because that’s a big issue.
- 13) Chair Datz: I think with the change we made to not require bidding for staffing, it’s partly addressed, but it may come up later.
- 14) General Contractors: I agree we should set up a best practice. I believe we also established that it’s not best practice to do lump sum. There are strategies we might recommend.
- 15) Engineers: I agree we should be more transparent and put some of the ideas we’ve discussed in there.
- 16) General Contractors: It might also be something to include in the chapter on Procurement.
- 17) Chair Datz: Agreed, we’re set up for a robust conversation on that chapter. But I agree we should explain here how staffing contributes to specified general terms and conditions.
- 18) General Contractors: Yes, and I don’t think we should recommend that you bid for staffing.
- 19) Chair Datz: Okay, let’s pin that and address it once we get to that section.
- 20) General Contractors: I think we should provide a guide of what’s appropriate for Negotiated Support Services (NSS). Throughout, we include notes on what might be NSS,

- but we should talk about why things go in what buckets. I think we should do that where we start talking about the matrix. How contracts sometimes treat NSS as line items can be problematic, so we need to step through how to appropriately define and treat NSS.
- 21) Chair Datz: I agree, and it's complex given the varying methods of payment as well as managing over/under runs.
 - 22) General Contractors: I agree, we should expand into that as well.
 - 23) General Contractors: These are all great points, and there is a sentence further down that explains that unless you convert NSS to lump sum, the owner is at risk for over/under runs.
 - 24) General Contractors: I think we should spell it out exactly the way you did. I'm hesitant to use words like allowance that get treated different ways on different contracts.
 - 25) General Contractors: I think we have an opportunity here to provide suggestions on a best practice for an approval process—at least nodding to the fact that you can create a process for all of these risk contingencies which can cost a great deal of time and money. We might want to have a section with different ideas on how risk contingencies can be administrated, because different agencies have different capacities and processes.
 - 26) Chair Datz: Yes, did we talk about that a little in the Construction Services chapter?
 - 27) General Contractors: We did, but that's a good flag, and it fundamentally shouldn't be treated like an owner change. The statute does require the owner provides approval for those things, which won't be unreasonably withheld.
 - 28) Chair Datz: Yes, I know we talked extensively on letting go of some of the owner control to allow work to proceed in timely fashion.
 - 29) General Contractors: I think expanding on the change in risk position related to adjusting the percentage of the contractor risk contingency is a good idea. Working through it like a negotiation rather than a change seems like a better practice.
 - 30) General Contractors: I agree that if you are making that change, you need to be able to create a new contingency that appropriately addresses the risk.
 - 31) Chair Datz: Alright, moving along to our first graphic for the manual. I still need to put together the list of graphics that we need.
 - 32) General Contractors: I would like to remove the word "bid" from below "specified general conditions." I think we're all in agreement that we need to talk through how best to do it.
 - 33) Ports: Maybe for consistency we could just note "bid/negotiated."
 - 34) General Contractors: You make a good point—you could bid rates; that's a way to keep it from being completely open while still flexible.
 - 35) Ports: We do address that some in our section on Procurement. Maybe for the graphic, we just delete how Total Contract Cost (TCC) is established.
 - 36) General Contractors: On percent fee, as a client in this area, we're not certain whether bonds are included in the fee. It would be great to establish a best practice for what is included in the fee, since in practice you can end up grossing up to something unexpected. If we're going to advocate that the fee is applied only to the MACC, then we need to be specific that bonds and insurance need to be a separate line item outside of the fee. The way the math is currently set up is not intuitive. The way I would do it is to have it be a straight percent on TCC. You still get the benefit of using it as an evaluation factor, since not everyone's bond factor is the same, but it's super transparent and there isn't weird math to figure out. You can also do it as cost reimbursable. The one downside is that some contractors have different rates.
 - 37) Chair Datz: Agreed that we would want to lay out how to calculate the fee. I also want to flag that we're trying to avoid regurgitating the RCW, so when we go back through and clean this up, we'll be thinking about where we can reference rather than repeat the RCW.
 - 38) General Contractors: I would recommend that because different clients have different tax situations depending on city, we could recommend we remove this and keep it at a set

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- rate that's applied to a contract. It's not competitive and nobody is paying different rates, so it's just a straight fee.
- 39) General Contractors: To [Engineer's] comment on staffing, in precontract when you don't know a lot of details, you basically need to write down either a monthly percentage or a fixed amount. I would say that is not a best practice.
- 40) Chair Datz: We've agreed that it's very challenging to figure that out. I think we could come up with a best practice as a committee. We've considered staffing costs for office staff required for the high-level administration of a contract. We give people some flexibility in the supplemental staffing area, but I think we can expand and find a better practice for that.
- 41) General Contractors: I agree, and I think positions should be a leveler (being very clear on what titles mean), so if there is minimal involvement, it should say that. If it's optional and you're just providing a rate, you should say that. You should define year-over-year increases, whether you're providing an average on rates, etc. Your best bet as an owner is to pick a year, since you don't always know when staffing is happening, so you at least have the rates and you're not going into a negotiation without any idea of what those rates might be.
- 42) Chair Datz: Do contractors have a problem putting down rates?
- 43) General Contractors: I don't think so, since they're not really a fee, it's just a shot at what a particular position might be paid. I suspect that people use billable rates, vs. actuals, but that again is something you should have a common understanding of when you're evaluating. There are a lot of different ways to put together a compensation package, and what's considered base wage for one contractor may be deferred for another. You are going to have trouble capturing everything, so that's where the client is getting the benefit of some competition, transparency, and knowledge of rates right out of the gate.
- 44) Chair Datz: I agree, and I always have trouble getting actual rates for staff from construction firms, since they're not always familiar with what's required of us under federal guidelines.
- 45) General Contractors: You need something that's reasonable, with an acknowledgement that it's not going to be exactly right.
- 46) Chair Datz: I like being clear on what the positions are and what administration you need on the project for comparing different bids. How do others feel about that approach?
- 47) Engineers: My experience is mostly limited to the sea wall, and I saw both sides struggling with it. This was a topic that took most of the time to settle. More transparency would have allowed both sides to settle the issue much more quickly. If we don't want to get into the granularity, we need to at least emphasize that more transparency is key to this process.
- 48) General Contractors: Apples to apples comparisons are key. We need to be clear on what kinds of information are required.
- 49) General Contractors: I would also say that listing a lot of positions needs to be done with some parameters around years of experience and what they will actually be doing on the project. That will set you up to negotiate the SGC later on.
- 50) General Contractors: I would also say that added complexity doesn't always work in your favor. If there is transparency about staffing parameters, leaving everything negotiable later doesn't always lead to a smoother process.
- 51) General Contractors: I agree, and if you have a very simple project, maybe you want to require a lump sum. Part of the point of GC/CM is that projects are more complicated, and the more complicated the job is, the harder it is to go lump sum.
- 52) General Contractors: The concept of a monthly "not to exceed" fee can also be a little interesting, depending on how long those jobs are, because months can be drastically different. Anything tied to what you know about the job during procurement is never as accurate as what you know at the end of the preconstruction phase.

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- 53) General Contractors: I think you're spot on. What you're talking about from the monthly perspective isn't an issue with fixed staff, but it's not always fixed. That's where the matrix is important, because how you staff a job can change a lot of things.
- 54) General Contractors: There should maybe be a reference to self-performed work as well. The concept of overlap or double dipping can be an issue when managing the subcontractor bidding phase of GC/CM.
- 55) General Contractors: It feels like we might need separate best practices depending on the complexity of the project.
- 56) General Contractors: I think grounding everybody in the reminder that the terms of the contract should be aligned with the RCW is important. The contracts can make the process more onerous when there's not alignment between what various entities are doing.
- 57) General Contractors: I feel that to leave it open and say every agency does things differently would be a disservice. We as a committee should establish a best practice.
- 58) Chair Datz: I'm wondering if we really should capture more of this conversation in the Procurement section. I like the idea of breaking it out into two separate best practices for whether you know or don't know a lot of details up front. I agree this is already very complex, and adding more levels of complexity could make it more confusing. I think maybe we focus this section on understanding what SGCs are, what's typically included, then Procurement is basically about establishing it. [General Contractors], do you think we could talk about this more in depth during one of the Procurement chapter meetings?
- 59) General Contractors: I'd be happy to have a meeting.
- 60) Ports: Do you mind leaving these notes for me? I can copy them over.
- 61) Chair Datz: Yes, I'll upload this document to the OneDrive so you can have access.
- 62) General Contractors: Just a note that I tend to have the RCWs open during these meetings, and there is no definition of SGC. This is more a generally used term in our industry.
- 63) General Contractors: I remember we left it vague in the statute and agreed to address it in the best practices. For the cost allocation matrix, I think we should include an example, including a comments/notes column to note why an evaluation is the way it is, so people can use it to determine their own valuation.
- 64) Chair Datz: I agree that's a good idea. Is this another one that would be better served in the Procurement section?
- 65) General Contractors: I agree.
- 66) Ports: Maybe leave a section here and refer to the Procurement section for more information.
- 67) General Contractors: I think in this chapter, we identify the best practice to evaluate and identify anything that might not belong in the matrix, to push people to evaluate whether everything is in the right categories, based on how the negotiation is going.
- 68) General Contractors: Are you saying to evaluate whether things should be moved around?
- 69) General Contractors: Ahead of going out to subcontractor bids or negotiating the MACC, GC/CM has generally been brought on board with an existing cost responsibility matrix. Negotiating the TCC is the limited opportunity to speak up on recategorizing things. So, it may be a time to add to or change what's in there, if everyone can agree.
- 70) General Contractors: That makes sense.
- 71) DES: You also confirm that you have all your costs covered.
- 72) General Contractors: Under Owner Contingency, we should be explicit that this is not included in the TCC.
- 73) Architects: I thought we had another section on contingencies. Maybe the point here is that it's not a part of TCC, then we refer to the contingencies section.
- 74) Chair Datz: We talked about it in one of the earliest sections.

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- 75) General Contractors: Under Negotiations, I think we want to clarify that Timing refers to establishing TCC, not just the MACC.
- 76) General Contractors: I agree; I think this section is getting at subcontractor negotiation, but we can replace MACC with TCC.
- 77) Engineers: On the early bid packages, most of the statute is written for vertical construction. On horizontal projects, it's an easy item; does it lend itself to becoming a best practice for early bid packages?
- 78) Ports: I think this is more about establishing subcontractor costs than determining early work.
- 79) Chair Datz: Under multiple MACCs, "mini-MACCs" is an understood industry term. Is there a better term to use?
- 80) General Contractors: I personally hate that term, because it doesn't exist in the statute. We could compare it to how the RCW reads about early bid packages. This is fundamentally an authorization to proceed with early work.
- 81) Chair Datz: Yes, and it's got all the buckets associated with that work, so it's got the fee, the GC cost, etc.
- 82) DES: And you need to have the funding.
- 83) General Contractors: So, it's not actually a MACC, it's TCC.
- 84) Chair Datz: Yes, it's basically establishing the contract and then using a change order to add to it.
- 85) Ports: We use the term "early work" at the port.
- 86) General Contractors: One thing when we say, "early work," sometimes it can be construed as "ready work," which is different. I think it's important we reconcile the "mini-MACC" when we finalize the TCC. When you're doing this, there are often changes that need to occur to reconcile with the final TCC, e.g., once the design for a project is finalized. You would need a distinct and defined scope of work if you are planning to utilize the mini-MACC.
- 87) Chair Datz: I agree, we don't have to dive too deep into granular details, but we should flag some of the areas that can decrease your premiums, such as schedule savings, bond savings, etc. and things to keep an eye on when using this.
- 88) Ports: I think we should also discuss how to use early work for long-lead items.
- 89) Chair Datz: I like the idea of using "early work" instead of "mini-MACC."
- 90) General Contractors: I agree, I think you just need to define it exactly how we've discussed and all the things to consider when using it.
- 91) Chair Datz: How about the off-ramp if MACC negotiations are unsuccessful? Does anyone have experience with that? We've gone design-bid-build when we couldn't go with the MACC.
- 92) General Contractors: I think that works. Or you can go back to your number two bid and/or terminate the process.
- 93) Chair Datz: It sounds like none of us have enough experience with this situation to determine a best practice.
- 94) General Contractors: Provisions exist in the law if negotiations are unsuccessful. The best practice may be to not threaten the off-ramp during negotiations but to know there are off-ramps available if negotiations are unsuccessful.

4. Action Items and Next Steps:

- a. Chair Datz will work with Angela Peterson to see if there is enough content ready for the chapter on Procurement to meet later this month or later in May.
- b. Angela Peterson and Shannon Gustine will meet to update the sections on Procurement and Total Contract Cost.

5. Meeting adjourned at 2:36 p.m.