

Capital Projects Advisory Review Board

GC/CM Committee

Meeting Summary October 27, 2021 (Meeting #27)

1. **Chair Datz called the Teams meeting to order at 1:05 p.m. A quorum was established.**
2. **Administrative**
 - a. Introductions
 - i. Committee members in attendance, including by phone: Nick Datz (Owners), Scott Middleton (Specialty Contractors), Penny Koal (DES), Mike Rice in for Santosh Kuruvilla (Engineers), Alexis Blue (Higher Ed), Shannon Gustine (General Contractors), Mark Nakagawara in for Rebecca Keith (Cities), Janice Zahn (Ports), Traci Rogstad (Schools), Sam Miller (Architects)
 - ii. Stakeholders in attendance, including by phone: Shelly Henderson (Schools), Keith Michel (General Contractors), Barry Sherman (Specialty Contractors)
 - b. Approval of April 28, 2021, meeting summary – M/S/P to approve meeting summary.
 - c. Remaining Best Practices chapter review schedule
 - i. The committee cancelled the November 2021 meeting, moved the December meeting to Dec. 8 and will resume the regular meeting schedule in January 2022.
3. **Review DRAFT Subcontracting Chapter**
 - a. Chair Datz – This chapter is focused on RCW 39.10.380.
 - i. Specialty Contractors – Previously we’ve discussed how bundling isn’t consistent with industry practice, and we’ve made legislative changes on that. We still have a core question of how to define industry or industry custom for purposes of bundling or separating packages. In our subcommittee discussions, we talked about the idea of using CSI division. The MCA doesn’t think it’s efficient or industry standard to start breaking mechanical packages into other things. The subcommittee developed factors to consider when making the decision to go outside of industry standards.
 - ii. General Contractors – There is an example drafted in the potential advantages section. We wanted to make sure recommendations stand the test of time.
 - iii. Architects – It seemed like giving questions and issues to think about was a good approach for the wide range of issues in play.
 - iv. Chair Datz – I agree, I don’t think we should be too specific on what packages go together, for example. We want to give owners and primes the tools to think about the best way to package. I think we can delete the first paragraph on industry standards and roll into advantages and disadvantages.
 - v. General Contractors – We can include this language above potential advantages. I think the first paragraph is a quote from the RCW:
 1. “Individual bid packages are to be prepared with trades separated in the manner consistent with industry practice to maximize participation and competition across all trades. Bundling of trades into one bid package not normally combined is not allowed without justification and specific approval by the public entity.”
 2. “Bundling” as noted above can provide different potential advantages and disadvantages to a public entity. Due to the complexity of combining multiple trades in one package and the potential for unintended consequences, it is highly recommended that proposed bid packages that bundle multiple scopes of work be analyzed and discussed with the GCCM prior to implementation. Advantages and disadvantages specific to the project compared against the project priorities and goals should be explored to determine the best path forward. Following are some considerations and potential areas for discussion.
 - b. Architects – I think best practices around how to create a fair and transparent self-perform bid situation would be good. The owner needs input, and for the GCCM to advise the owner

[AI] indicates an action item for follow up.

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on this is a bit of a conflict. Problems with notification were mentioned, along with issues with the bid opening not being in the GCCM office, and with possession of equipment giving a competitive advantage.

- i. Shannon Gustine – I can take a shot at drafting a bulleted list of things to consider.
 - ii. Architects – Do owners have any additional suggestions of things to think about?
 - iii. Owners – If the GCCM is pursuing the work, then the owner needs to treat it like a normal self-procurement that they would do. It needs to be fair and transparent, and done like any other procurement outside of this process.
 - iv. Cities – Without understanding the sequences and what your GCCM typically performs, you can be led down the wrong path.
 - v. Owners – Clearly understanding and communicating the expectations of your CM representative is important.
 - vi. DES – The owner must be actively engaged.
 - vii. Owners – Yes, they need to dig into what work goes into that package before it's even bid.
 - viii. Architects – Mike will likely have input on this; we might want to share this list with him.
 - ix. Chair Datz – Did we address Mike's comment?
 - x. General Contractors – Yes, but we didn't include an example of unacceptable bundling.
 - xi. General Contractors – I like what was said about communicating when certain inclusions in a bid package are performed. When we talk about helping owners evaluate a general contracting subcontracting plan, that should be one of the questions. I would suggest adding something about helping owners evaluate that.
 - xii. General Contractors – Does this section satisfy that?
 - xiii. General Contractors – Yes, I like the lens of talking about when it installs.
 - xiv. General Contractors – We can add an example of unacceptable bundling to the end of section a) under potential disadvantages and call it "atypical bundling."
- c. Chair Datz – The next comment is on providing a definition for self-performance.
- i. Higher Ed – It was hard for me to read the outline on my computer. The definition should be up on 3a.
 - ii. Chair Datz – Yes, some of these bullets are triggers to get conversations started. We may want to define self-performance, though.
 - iii. Higher Ed – I think we should also consider diverse small business participation, as far as self-performance goes.
 - iv. General Contractors – I think we can add something about small and DBE firms after the first bullet, under potential disadvantages.
 - v. Owners – Can we produce a definition for self-performance?
 - vi. General Contractors – That's a challenging one. The RCW does not include the word "self," it says, "customarily performed or supplied." I'm reluctant to include a definition. We are not reflecting on different delivery methods. I support that "customarily performed" means that we should be able to talk about the past two decades of GCCM work. Do owners agree with that?
 - vii. Owners – Given the changes to the legislation, I think "customarily performed or provided" covers what's been done in the past.
 - viii. Specialty Contractors – This topic has a lot of perspectives. There is an argument that the wording, "customarily self-performed" refers to the general contractor's employees, not to subcontractors performing the work. With the current language, you are looking at history.

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- ix. Owners – Moving forward, maybe we don't want to define it so clearly, and instead repeat what was done above by saying, "this is what is considered when determining what is customarily performed or provided." It gets back to the bundling question: is the owner being engaged, and do they understand and approve this? That elevates the importance of obtaining the owner's permission.
- x. General Contractors – I'm trying to avoid the problem of owners misinterpreting this provision to mean that tier subs are not allowed within a prime package, if their general intent is to bid for them, i.e., self-perform. I also think the tier subcontracting layer is critical to driving inclusion because of everyone's ability to control awards more easily.
- xi. General Contractors – The questions below speak to that, right? We are providing the questions to ask without defining self-performance. The questions below "self-performance of work by the GCCM" speak to that. Maybe we should say, "Self-performance under the RCW is defined as... but does not preclude sub tier contracting. Here are some questions you should consider."
- xii. Owners – I like that. I think we should frame the issue without opening it up too wide.
- xiii. General Contractors – We should add a bullet on consideration of compounding mark-ups.
- xiv. Higher Ed – I agree with what's been said and what is on the screen.
- xv. General Contractors – We can say that it does not preclude multi-tiered contracting, and here are all the things you should think about. Here is my summary for the bulleted items:

Items to consider in order to create a fair and transparent process when the GCCM plans to self-perform:

- The Owner should control and administrate the bidding and bid opening process. Maintain a public bid opening at a neutral location, not in the contractor's office.
- Notification and advertisement for the work must meet the legal requirements and have a broad reach to ensure competition.
- Clarifications and addenda are made available to all. The Owner should ensure that bid packages include information that the GCCM may have about the project that could create a competitive advantage.
- Ensure that maintenance items or groups of scopes of work that span a significant length of time are looked at very closely to ensure fair competition. For example, rough carpentry during the concrete phase should likely not be coupled with rough carpentry that is completed at the end of the project, during the finishes stage. This applies to coupling scopes of work that would require a bidder to have multiple mobilizations that the GCCM would not have when self-performing.
- Verify that items considered to be Negotiated Support Services (NSS) are not included in the bid packages, for example, scaffold or maintenance items that do not span the normal scope of the work being bid.
- Does the scope of work require equipment that the GCCM already has on site and is not explicitly available to the bidders?

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- Careful consideration should be made around the grouping of scopes, to ensure atypical bundling is not a part of the bid packaging.
- d. Higher Ed – This next comment is because the word “should” is too vague.
 - i. Chair Datz – If the prime can use existing staff from a different part of the MACC of this work, then they have a competitive advantage against other firms pursuing it. I think that was our intent.
 - ii. Higher Ed – I agree and should have removed that comment.
 - iii. General Contractors – I liked the comment, and I think the message we are trying to convey is that very often, it’s a requirement in the main contract. When the CM is self-performing a package, that should be managed by separate and distinct staff, which impacts cost and advantage. I would reference the main contract, as it often requires separate or distinct staff.
 - iv. Owners – Would it be worthwhile to encourage owners to put that in the sub package or to be clear that it’s part of the pricing they are including?
 - v. General Contractors –CMs do that.
 - vi. Ports – In the section of Best Practices where we advise on procurement, we should be clear that we want to avoid competitive advantage and create that separation.
 - vii. Owners – I recommend that we make it clear in the sub package that any staff required to manage that package must be included in the bid, separately from the GCCM. Is there a way we can emphasize that to the subcontracting community, so they don’t feel that there is some competitive advantage?
 - viii. Cities – The owners should be aware that they have contract terms that require independent management for self-performed work.
 - ix. General Contractors – It goes both ways. You can require a bunch of people that someone may not be used to providing, or you can go the opposite way and have people running that work that should be part of your stipulated general conditions. I think we need to think about it more because it goes both ways. We may need advantages and disadvantages.
 - x. Architects – I agree, and I think we should provide examples which could shed light on what issues people are and should be thinking about.
 - xi. Chair Datz – I’m going to punt this back to the sub-committee.
 - xii. [AI] Keith Michel – I can work on this.
- e. Higher Ed – This comment is about the tone. I would recommend more consistency.
 - i. Specialty Contractors – That’s a good point. I think when the committee put this together, we all had different writing styles, and there will be a big lift at the end of this to marry the sections for consistency and tone.
 - ii. Chair Datz – I will say this comment is resolved. We’ll focus on content and come back on those types of edits.
- f. Higher Ed – This comment is to potentially provide example cases of when pre-qual is used.
 - i. Owners – Has anyone used pre-qual for GCCM?
 - ii. Specialty Contractors – If it’s not used very often, do we want to put anything in here? If the Best Practices document is too big, people might not read it. I don’t know if this is used enough.
 - iii. Owners – I think we must add something as it’s part of the statute, even if it’s just a paragraph.
 - iv. General Contractors – This is one way you can increase diversity in contracting on GCCM. I hope that we move the industry to use this more often.

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- v. Chair Datz – This might be good to coordinate with the equity committee.
 - vi. General Contractors – Other than NSS in a low bid environment, this is the only way you can do it.
 - vii. Ports – We haven't done it at the port either. Our primes haven't recommended it. Why are people not doing it, and what does success look like for the owners that are doing it? Will this be perceived as picking winners and losers ahead of time?
 - viii. General Contractors – TPO has said no worrying about protests.
 - ix. Specialty Contractors – Part of the earlier discussion on this explored whether the additional layer of process, requiring published comments, a hearing, etc., puts you at additional risk. .
 - x. General Contractors – We should be thinking about whether we've been doing it right, if there are advantages or disadvantages that we haven't looked at, and how we can do better.
 - xi. [AI] Chair Datz – I like the idea of exploring this more, and I'm happy to work on this with some others.
 - xii. Architects – I agree; maybe we should get legal advice.
 - xiii. Specialty Contractors – There is more risk, but if one of our goals is more inclusion, this is still a tool we need to look at.
 - xiv. DES – You need to have good justification for using the pre-quals. We did this about twelve years ago and it worked well, but there were different laws then.
 - xv. Architects – This is a Best Practices manual which talks about the time-tested approaches; this is an innovative and new approach, so maybe we should note that.
 - xvi. Engineers – A lot of firms didn't get certified as a DBE because it wasn't worth it. Do they have to be certified? There could be situations where owners get prequalified but aren't certified.
 - xvii. General Contractors – I'm glad you mentioned that because I wasn't contemplating prequalifying actual disadvantaged firms. I don't think that follows the law right now. We could open it to any subcontractor and make their plan for outreach and disadvantage business contracting part of the prequalification.
 - xviii. [AI] Chair Datz – Sam, Shannon, Scott, and I will work on this offline.
4. **Action Items and Next Steps**
- a. The next GCCM meeting on Heavy-Civil will be rescheduled to early December. [AI] Chair Datz will verify that December 8 from 1-3 p.m. will work for everyone.
 - b. Chair Datz will send an updated schedule of meetings.
 - c. Remaining action items are found in context of the meeting notes above by searching [AI].
5. **Meeting adjourned at 2:24 p.m.**

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