

Capital Projects Advisory Review Board GC/CM Committee

Meeting Summary November 9, 2020 (Meeting #21)

1. **Chair Middleton called the meeting to order at 3:03 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), Olivia Yang (Higher Ed), Janice Zahn (Ports), Todd Mitchell (Construction Trades Labor), Lisa van der Lugt (OMWBE), Rebecca Keith (Cities), Traci Rogstad (Schools)
 - ii. Stakeholders in attendance, including by phone: Keith Michel (General Contractors), Mike Pellitteri (General Contractors), Aleanna Kondelis (Higher Ed), Matthew Hepner (IBEW), Nancy Deakins (DES), Andy Thompson (General Contractors), Andrew Powell (General Contractors), Jessica Murphy (Cities)
 - b. Chair Middleton provided background for this meeting noting OMWBE and Aleanna Kondelis provided the Business Equity/Diverse Business Inclusion Committee with proposed updates to RCW 39.10. In today's meeting the committee is tasked with reviewing the proposed changes as they relate to GCCM and to provide our feedback. Chair Datz will go through each change in an Excel document and record recommendations.
 - c. Chair Middleton reminded the group that there is a public Reauthorization Committee meeting on November 12, 2020 from 10 a.m. to 1 p.m. This group will provide comments to the Reauthorization Committee, and then CPARB will hold a special meeting on Nov. 19 and will either act then or in December.
3. **Business Equity/Diverse Business Inclusion Committee proposed changes.** Chair Datz provided the group with an Excel document outlining the proposed changes from Aleanna Kondelis and OMWBE, noting to the group the highlighted rows are what we will get through today. He also provided a Word document of RCW 39.10 with accepted changes in blue and proposed changes in red.
 - a. Item 1, RCW 39.10.210, Definitions
 - i. Chair Datz—This comment is not about making changes, but the need to use consistent language and define terms.
 - ii. Chair Middleton confirmed with Lisa van der Lugt that this comment doesn't require changes for reauthorization.
 - b. Item 2, RCW 39.10.210, Definitions
 - i. Chair Datz—The proposed comment is to use the language "inclusion plan" instead of "outreach plan".
 - ii. Aleanna Kondelis—This was brought up in the DBI Committee where someone suggested including a definition for inclusion plan, which is the language from HB 1295.
 - iii. Chair Datz—This is replacing all the instances of an outreach plan.
 - iv. Aleanna Kondelis—You could use the definition that is already in there, so we could reject putting in a definition until changes are made to the language.
 - v. Cities—HB 1295 uses this language, so you would have to replace the language with a defined term.
 - vi. Aleanna Kondelis—You could reject this definition in place of using the language.
 - vii. OMWBE—We need to keep the language around inclusion plans. This is an opportunity for us to push something forward, so we should consider it.
 - viii. OMWBE—Outreach is part of an inclusion plan.
 - ix. Higher Ed—This could include goals if an inclusion plan is broader.
 - x. Chair Datz—I suggest replacing outreach plan with inclusion plan, and that having both would be confusing. Olivia Yang agreed.
 - xi. Chair Datz summarized the comments—If a definition is used then consistency needs to be applied across the entire statute. We recommend focusing on the language in the statute over the definition at this time, and to consider expanding the definition to encompass an outreach plan, goals, etc.

[A] indicates an action item for follow up.

Prepared by Sidney Counts, 206.556.2017, scounts@maulfoster.com

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- c. Item 16, RCW 39.10.320, Design-build procedure—Project management and contracting requirements.
 - i. Chair Middleton—Is this addition coming from the language in Design-build?
 - ii. Aleanna Kondelis—Yes, this is asking the owner to include the requirement for the GCCM to submit plans for inclusion in their contracting documents.
 - iii. Chair Datz—Is this redundant? It's more appropriate in the evaluation criteria requirements.
 - iv. Higher Ed agrees—I want to keep it concise and explain further in best practices.
 - v. Aleanna Kondelis and Lisa van der Lugt believe it's fine to recommend accepting the language but keeping it in the evaluation criteria.
- d. Item 17, RCW 39.10.360, General contractor/construction manager procedure—Contract award process.
 - i. Chair Datz read the proposed changes regarding publications utilized in listings.
 - ii. Higher Ed—This is fine, a future change in the PRC could include how far the owner went to publicize in other newspapers beyond the minimum required. As we look at the PRC, that's something we could tweak, but we can leave this for now.
 - iii. Chair Middleton—We want to promote as much outreach and utilization as we can, but this feels wordy for a statute. I agree in concept, but this seems like a best practice. We could include in the best practices how to reach as many contractors as we can.
 - iv. OMWBE—I agree with Olivia. We're trying to make things easier, and it's not about pulling back, but in addition to what is being done.
 - v. Chair Middleton—I don't have a problem with the language, I'm wondering if best practices are a better approach for the second set of changes in subsection (2).
 - vi. Chair Datz—With this GCCM Committee we set out to be concise, so the statute should list exactly what you need to do and then expand upon it in the best practices. It's not changing the intent or requiring additional work.
 - vii. Higher Ed—You can put this in the legislation, or you can include it in the supplemental section as a best practice as well as a question in the PRC evaluation of an owner. When a PRC applicant is asked about their inclusion plan, they should mention their effort to include multiple publications.
 - viii. Cities—In our local Public Works study one of the suggestions was to have a centralized place to look for opportunities. Will this help minority businesses participate as primes, or is it to give them advance notice so they can look out for the subcontracting opportunities that will come later?
 - ix. OMWBE—Both. I believe more access is better. As our agency believes this is doable and addresses making it more equitable for people.
 - x. DES—I think we already have a question in the GCCM certification application for describing how we encourage inclusion in subcontracting.
 - xi. Cities—Originally in RCW 39.10.385 when we were talking about alternative subcontracting procurement, the stakeholders wanted to have it published in the legal newspaper.
 - xii. Chair Datz—I wouldn't lose sight of best practices. If you keep it in here or you don't, you still need to provide context and do so in the best practices.
 - xiii. Chair Datz summarized the recommendations that there are no issues with the language but recommend expanding in the best practices.
 - xiv. Higher Ed suggested a revision to the proposed language. Others believed it was too vague.
- e. Item 19, RCW 39.10.360, General contractor/construction manager procedure—Contract award process.
 - i. Chair Datz noted we skipped ahead to Item 19 while Aleanna Kondelis is away.
 - ii. Chair Datz—This language is from HB 1295, apart from what is in red, which is what we are adding here.
 - iii. Higher Ed—I like the addition because past performance alone could condemn you if you are trying to do better.

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- iv. Cities—Past performance was important to the Minority Business Advisory Council. I'm not opposed to the change, but I don't know how other stakeholders will feel. The proposed approach seems important, but we will likely need other stakeholder input.
- v. Higher Ed—I support “proposed approach” and we have had the ability to discuss it in this context, but I don't think we have discussed past performance.
- vi. OMWBE—I think both are important. We don't want to penalize anyone for past performance when they have an approach. Minority Business Advisory Council has looked at the changes and they didn't mention this.
- vii. Chair Datz—I see the difference between (3)(vi) and (3)(vii), but it's nuanced and might create more confusion than intended. We might want to see if we can move the proposed approach into (3)(vii).
- viii. General Contractors—I like the idea of changing “or” to “and” to show past performance and your proposed approach.
- ix. Chair Datz—I would add that we should change “may” in (3)(vii) and make it an inclusion plan for proposed approach. Others agree to change “may”.
- x. Olivia Yang—So on (3)(vii), it should say “a firm shall consider the firm's proposed approach to inclusion and outreach to include...”
- xi. OMWBE agrees.
- xii. Ports—There are different terms used in (vii) and we need to create consistency.
- xiii. DES—There are a lot of references to disadvantaged business enterprises and there is a lot of work to be done that we can't do within the week. I agree with the proposal to simplify that language in (3)(vii) if you make “may” “shall”.
- f. Item 20, RCW 39.10.380, General contractor/construction manager procedure—Subcontract bidding procedure.
 - i. Chair Middleton—These are the same comments from the last item.
- g. Item 21, RCW 39.10.380, General contractor/construction manager procedure—Subcontract bidding procedure.
 - i. Chair Datz—This is about bid packages and making sure they are properly developed.
 - ii. General Contractors—Consistency with industry practice is vague and people have different opinions on what is industry practice.
 - iii. Chair Datz—We talked about that in the GCCM Committee and I don't know if we got anywhere. You might have to then propose you can't bundle work together. I think that would be too far.
 - iv. General Contractors—I think this is best practices territory.
 - v. General Contractors—If you put it in best practices it has no weight to it.
 - vi. Cities—I was part of the smaller work group that got together on that and we spent quite a bit of time talking about it. I recall hearing it can change by job and it can change over time by industry. This statute is in place for ten years, so I agree with Keith. I don't know how we go back and try to put in something that fits every project every time for ten years.
 - vii. Chair Middleton—I think we as a committee decided on the language. Our committee made this recommendation so the committee should focus on the additional changes that are being proposed.
 - viii. General Contractors—Having a definition like that is clearly beneficial to inclusion. If you're talking about breaking down the work to the lowest common denominator so that the greatest number of people can bid on it. I think that's the words that need to be put into it. Firms will say they've been doing this for five years so that is the industry standard.
 - ix. General Contractors—The main improvement to this provision is for the obligation of the owner to approve the GCCM subcontracting plan. That's a significant move that I think relates to your historical experience. The purpose of today is trying to focus on the inclusion aspects in the red lines.
 - x. General Contractors—I think I am talking about the red lines.

[A] indicates an action item for follow up.

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- x. General Contractors—It's a balance. Is this language appropriate for every step of the process? That increased outreach encouragement is positive for the industry. If you take that context when a GCCM is developing a subcontracting plan, it's clear they have to include how this relates to their inclusion plan, as well as getting the job done on time and on budget, and the right way to develop bid packaging. It's the balance.
 - xii. Chair Middleton—I think we need to focus on what the committee did approve outside of what's on the table right now. There can be further discussions with reauthorization, but I don't think the GCCM Committee was able to reach consensus on the language around that term.
 - xiii. General Contractors—There is a problem and I feel alone on this.
 - xiv. DES—I hear Mike and maybe that's part of one of the goals of the GCCM Committee working on the best practices.
 - xv. Chair Datz—I hear Mike too and you make a good point. One of the things we learned with Design-build best practices is you dive into how it's done more and create a baseline across the industry which makes it easier to craft language in the future.
 - xvi. General Contractors—Will best practices continue to be reviewed and revised between now and the next Reauthorization Committee in ten years, or does it not get changed for ten years until the next Reauthorization Committee?
 - xvii. Cities—CPARB runs legislation a lot and because of the best practices we found we need to change the statutes, which was a precursor to HB 1295. We're learning with BE/DBI committee that the best practices will be informative as well.
 - xviii. Chair Datz—I didn't have any issues with the language added. The only comment I have is if we want to use diverse business entities.
 - xix. OMWBE—We need to make that consistent. Mike, should the issue with that language been caught sooner, or was that highlighted to today's discussion?
 - xx. General Contractors—I think it should have been caught sooner. I think I'd get different answers if I asked the group what industry standard is.
 - xxi. Chair Datz summarized the recommendations that there are no issues, but to consider revising DBE language for consistency.
- h. Item 18, RCW 39.10.360, General contractor/construction manager procedure—Contract award process.
- i. Chair Datz—What if there are no goals and is that moving in the wrong direction from the intent to focus on inclusion plans?
 - ii. Aleanna Kondelis—We have to grade them on past performance, so it's not about whether they have goals, but they should have a thoughtful plan and approach to each project they publish.
 - iii. Chair Datz—This is saying in your public facilitation that you have to advertise your goals in the publications.
 - iv. Higher Ed—What constitutes a goal?
 - v. Aleanna Kondelis—These are your basic goals and objectives, like performance or strategies.
 - vi. Higher Ed—Another way could be to talk about the agency's inclusion plan. In some parts of the state numeric goals are hard, and performance implies a result. Will they flunk even if they moved the needle a tiny bit? Including the agency's inclusion plan allows them to talk about the strategies they want to employ.
 - vii. Chair Datz—This is the paper that goes into the DJC. Do you want us to expand on what our program and plan is in the newspaper? This line is focused on the project.
 - viii. Aleanna Kondelis—Correct. You can summarize your approach to inclusion in a few bullets.
 - ix. Higher Ed—I understand the need to be succinct and not to be succinct. Is including a link to a website with more information a compromise? If an agency

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had a blurb about their inclusion plan that includes strategies as much as goals, could they link to their inclusion plan?

- x. Aleanna Kondelis—I would be fine with saying goals instead of plan to Olivia's point.
 - xi. DES—I think we should leave (2)(a) by itself and make goals or inclusion plan as a different letter not included in (a).
 - xii. Multiple agreed with Nancy
 - xiii. Cities—Can we make sure we are clear on goals because I think of percentages.
 - xiv. Aleanna Kondelis—So we recommend another letter, (d), and it is the owner's inclusion plan, which may include outreach, goals, or strategies.
 - xv. DES—And we should include “extent permitted by law”.
- i. Item 22, RCW 39.10.385, General contractor/construction manager procedure—Alternative subcontractor selection process.
- i. Chair Datz—My comment to this one is that the evaluation criteria already have this requirement in it. The inclusion plan is an evaluation criterion, so this is elevating one of the criteria required.
 - ii. Aleanna Kondelis—Right, this is intentional to emphasize.
 - iii. Chair Middleton—I wonder why we call this out specifically.
 - iv. Aleanna Kondelis—Putting it as a specific callout puts it front and center during a responsiveness check, for instance.
 - v. Chair Datz—It's already in here.
 - vi. Chair Middleton—Part of subsection (3).
 - vii. Aleanna Kondelis—It sounds like the recommendation is that this comment is redundant because it's already outlined in subsection (3).
 - viii. Chair Datz—Yes, it's in section (3)(e).
 - ix. Cities—To the extent allowed by law, how is this really playing out and is it moving the needle forward? That's a bigger question for another day.
 - x. Aleanna Kondelis—That's true. How do you make all the parties involved meaningfully and authentically push on every project?
 - xi. Cities—To the extent allowed by law is scary because you could not have it be your 100 percent criteria. Therefore, I'd like to make the plug for the best practices.
 - xii. DES—It is a bigger effort than what we're talking about now to move those public bodies with no goals to something. It will take a bigger and longer-term effort to involve those small cities in the conversation that don't have them. There are so many different approval levels that to even publish goals you might have to go to city council. We should think about the smaller entities more in best practices.
- j. Item 23, RCW 39.10.385, General contractor/construction manager procedure—Alternative subcontractor selection process.
- i. Chair Datz—These are the same comments.
- k. Item 24, RCW 39.10.385, General contractor/construction manager procedure—Alternative subcontractor selection process.
- i. Aleanna Kondelis—Include in the contract language is number 2. Number 3 is evaluation factors.
 - ii. Chair Middleton—This is back to the public solicitation but in .385?
 - iii. Aleanna Kondelis—Okay, so keep it in (3)(e) is the comment.
- l. Item 25, RCW 39.10.400, General contractor/construction manager procedure—Prebid determination of subcontractor eligibility.
- i. Chair Datz—Same comment here.
- m. Item 30, New Section—General contractor/construction manager—Heavy Civil Construction Projects.
- i. Aleanna Kondelis—Probably the same theme as we saw in the standard.
 - ii. Chair Middleton—Our recommendation with Heavy Civil was to move the language scattered in RCW 39.10 to one statute for consistency and clarity. We also agreed not to make any substantive changes at this point but to look at it in the future.

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- iii. Aleanna Kondelis—Are you considering that anything that applies to standard general GCCM procedures and contracting applies to Heavy Civil?
 - iv. Rebecca Keith—Yes, that's the first part.
 - v. Aleanna Kondelis—Okay, I missed that.
 - vi. Chair Datz—This is focused on what they have to do on top of the regular GCCM.
 - vii. Aleanna Kondelis—Okay, then the recommendation is that it lives in the general GCCM statute and flow down to Heavy Civil.
 - n. Item 31, New Section—General contractor/construction manager—Heavy Civil Construction Projects.
 - i. Aleanna Kondelis—This is the same comment as before.
- 4. Action Items and Next Steps**
- a. The next meeting is scheduled for Dec. 15 from 1-5 p.m.
 - b. Chair Datz will send this document to Chair Schacht and Chair van der Lugt of the BE/DBI Committee after this meeting.
 - c. The Reauthorization Committee will look at the feedback of this committee and produce feedback for CPARB on Nov. 19.
- 5. Meeting adjourned at 4:55 p.m.**