

GC/CM Committee

Meeting Summary September 4, 2019 (Meeting #3)

1. **Co-Chair Datz called the meeting to order at 9:05 a.m. A quorum was established.**
2. **Administrative**
 - a. Introductions
 - i. Committee members in attendance, including by phone: Co-Chair Scott Middleton (Specialty Contractors), Co-Chair 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), Becky Blankenship (Architects), Mike Pellitteri (General Contractors), Olivia Yang (Owners), Jerry Vanderwood (General Contractors), John Palewicz (Higher Ed), Rob Robinson (General Contractors), Keith Michel (General Contractors), Jordan Kiel (Architects), Brian Carter (Architects), Bryan Eppler (Specialty Contractors), John Cross (General Contractors)
 - b. Approval of August 1, 2019 meeting summary – **M/S/P** to approve meeting summary with the following clarifications and adjustments to the meeting notes:
 - i. Section 5.viii – Adjust language to say, “Ports – We often have other departments that weigh into our change order issue and there isn’t always alignment with those departments on best practices or the law. So, it may take longer to get them up to speed.”
 - ii. Section 7.i.4.c (last page) – Strike “Best practice” since this is a contractual mechanism and therefore requires a statutory change. Adjust language to “we are looking at both a statutory change and a best practice.”
 1. [LR] Address in the best practices and update the statute.
 - iii. Section 7.i.4.e (last page) – Adjust language to reflect that the committee is working together to adjust the language.
 - c. Committee Structure – The group discussed the committee structure and final deliverable. Several attendees had different suggestions for how we focus our time and efforts and what we will deliver to CPARB.
 - i. Overall, the committee and stakeholders in attendance agreed that the committee use their time to review each RCW section and discuss the big picture issues, which include:
 1. GCCM too prescriptive / Ease of administration
 2. Prompt payment (change orders)
 3. Earlier cost certainty / Timing / Transfer of risk
 4. Early sub-k involvement
 5. Sufficient owner involvement
 - ii. The group also noted an interest in tracking best practice ideas, including:
 1. Consistency across agencies
3. **GC/CM Procurement and Procedures**
 - a. Recap of previous meeting – At meeting #2, we had a great discussion and received many comments on what is working and what is not working with regard to GC/CM.
 - b. [LR] RCW 39.10.350 Contingency – The group continued the discussion from meeting #2 regarding contingency and how it should be managed. Attendees agreed that the contractor should manage a portion of the contingency to eliminate the requirement of a change order to access the contractors’ contingency. Chair Datz drafted revised language to address this issue and draft language was reviewed during the meeting. Many comments were shared and both Chairs will revise the proposed language and coordinate review with Shannon Gustine ahead of our next meeting. Comments shared include:
 - i. Contractors – Suggest clarifying two different contingencies and the purpose of each.

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- ii. Contractors – Suggest clarifying “sufficient budget”.
 - 1. Contractors – Consider dropping “sufficient” from the RCW.
- iii. Multiple – Is the purpose of (c) to clarify contingencies, to ensure budget for the project, or to confirm project funding is secured?
 - 1. Architects – I think we’re looking for budget, not funding, therefore suggest, “A project budget including reasonable owner contingencies.”
- iv. DES – I think we need to say the owner needs to carry a reasonable budget outside of the GCCM contract in addition to a reasonable contingency.
- v. General Contractors – Regarding reasonable contingency, do we need to clarify that amount?
 - 1. At the last meeting, we discussed that a risk contingency needs to be based on the project, perhaps it needs to be 10 percent (not five). If you include “not less than five percent” then the owner often only plans for five percent. We need to discuss how to encourage planning for and utilizing the accurate amount for contingency.
 - 2. It’s the owner’s responsibility to confirm their contingency and be able to defend it to the PRC.
- c. [LR] RCW 39.10.350 c 42 s 4 (f) – We should clarify the timeline and/or add “with clear timelines”.
- d. [LR] RCW 39.10.350 c 42 s 4 (g) – Many attendees agree that the desired intent of this RCW is that owners handle requests for equitable adjustment within a clear timeline. The challenge is what is that timeline and what is the recourse if that timeline isn’t met.
 - i. General Contractors – This section needs to clarify the consequences to the owner if they do not follow up in a timely manner. Suggest we include language that indicates if the owner does not respond to the request within a reasonable timeframe (define, suggest 30 days after receipt) that the request is approved and it moves to payment. Then, the owner is required to deny the request, which sends the issue through the claims process. There’s nothing in the statute that forces the owner to take action. The claims process is very prescriptive, so that may be the best option for recourse.
 - ii. General Contractors – Suggest we move this item to the parking lot. There is language that will satisfy everyone and we need to think about it holistically with the rest of this section.
 - iii. Ports – Agree, and when we look at this review along with section (f). We also should consider having definitions for claim and equitable adjustment.
 - iv. General Contractors – I think we all agree that “or claim” is not appropriate for this section since the next section pushes requests to the claim process.
 - v. Owners – Regarding payment, we could model it after Design-Build, which gives more flexibility to process requests and payment. Our goal here is to outline a method for the owner to process requests and payment on a timeline that is satisfactory for all.
 - vi. Ports – There are two ways to handle change orders (1) you can process it faster or (2) you can focus on prevention. Bidding at 90 percent literally means we will negotiate 10 percent of the contract from the get-go. The RCW also seems to suggest that we do this, which is not efficient. Can we identify the root causes of these issues and focus on addressing them?
- e. [LR] RCW 39.10.360 – Contract Award Process. The committee reviewed the comment spreadsheet related to the RCW.
 - i. (1) Regarding 39.10.360 (4) – Attendees shared many interpretations and generally suggested that whatever the RCW says, this section may require best practices to clarify assumptions and use of the RCW.

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1. General Contractors – We want to make it fair across the board, whatever method that is. We need information including the types of staff that the owner is requesting and their rates. This way, you can see the qualifications based on rates which is more fair. The challenge is that we haven't scoped out the project and if we provide staffing that early, it may need to change over the life of the project.
2. Ports – It's not just rate, owners also want to understand the duration of the project in addition to an understanding of the cost. Additionally, as we're thinking about changing the RCWs, we need to consider why we would need to change it. If we can identify the root intent here, we can then clarify the language. For example, is the purpose a mathematical calculation so we can assign points?
3. Specialty Contractors – This section needs to provide cost certainty. All GCCM projects I've worked on include a baseline, which gives you a basis for cost certainty.
4. General Contractors – This is best practice feedback. Why have a lump sum project?
5. Ports – If you have a heavy civil project, then the law allows you to negotiate. If you are a regular GCCM, then you can choose to compete for packages as long as you're not self-performing more than the allowed 30 percent. You have to bid and win. We have several different types of GCCM now, and are those different types served by this language?
6. General Contractors – By removing this section you're not precluding someone from pursuing this project. By removing this section, we may provide owners the flexibility to select a contractor based on their qualifications.
7. Higher Ed – The reason the fee and specified conditions are bid out are because we want to encourage competitive bidding. I think this section is clear as is. You can specify a lot or nothing, and I've seen different agencies pursue this differently. That takes a knowledgeable owner, which isn't consistent across the board. That's where this section falls short.
8. General Contractors – The earlier you provide staffing, the harder it is down the road.
9. General Contractors – The RCW is read as a qualifications-based requirement. If the owner wants it to be about the number, then let the percentage points be about the fee.
10. General Contractors – The goal here is we don't want to feel locked into this for the life of the project.
11. Higher Ed – I don't think the language of the law precludes any of the different methods we've discussed.
12. Ports – The way we read this is a requirement to get a fixed amount for all general contractors. If that is the way we are interpreting the RCW then we need clarity.
13. Specialty Contractors – The purpose of this is to ensure that the public interest is being served and the process is transparent.
14. Architects – What if we added a qualifier in front of the fixed amount to clarify "as appropriate"? This may further clarify that it's not a requirement.
15. Cities – If an owner makes the fixed fee optional, and a general contractor doesn't include it, then we'd have to require it later on.
16. General Contractors – I think you're in a better place to ask for rates. If you ask for a fixed amount, then you don't know what went into it. Then the best practice would suggest providing rates. The other best practice is

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- on the matrix to clarify what is quantifiable and what isn't, and therefore what should be a specified general condition.
17. Architects – We should ensure that the default is as simple as possible.
 18. Higher Ed – The GCCM is so prescriptive. We can't think of all the things that will be impacted by all of our wordsmithing. So, we should eliminate the prescriptiveness and partner the RCW with a descriptive best practice document. What if we just bid a fee?
 19. General Contractors – I think that's appropriate for some jobs but not all. If it's a simple job, then you could provide the additional staffing info and hourly rates. More often than not, those are smaller jobs. On bigger jobs, we need a simpler process that leaves more up to negotiation later as you understand more.
 20. Architects – I think we should provide options to remind people what their choices are that they can provide. We do need to clarify if we need more than one cost factor.
 21. DES – Perhaps we can add some language about renegotiating during the MACC.
 22. General Contractors – The owners put more scoring weight on the interview, not on the pricing.
 23. Specialty Contractors – One of the issues we've had is having clear definitions of the specified general conditions and what should be included, as this helps level the playing field.
 24. General Contractors – We could create a best practice to clarify the hours and duration of the project.
 25. General Contractors – We have the luxury of the historical knowledge in the room here, but we need to keep in mind that the people using these RCWs out in the world may not have that information, and we need to make sure it's clear for them.
 26. General Contractors – We should have an action item to think this through so we don't overlook any fallout.
 27. Specialty Contractors – The design-build RCW language says “and cost or price-related factors that may include operating costs.” If it's working for design-build, then why don't we mirror that and clarify if we need more than one cost factor?
 28. Architects – Owners want cost certainty.
 29. General Contractors – Suggest some flexible language for our owners such as “fee component may also include cost or price-related factors.” Or, tell us how you intend to put together price factors or how you will negotiate price factors. This would give the owner an understanding of the skills and understanding of the team in addition to the qualifications.
 30. Ports – As we talk about this, we need to think about what is actually required and what is nice to know. We need to focus on the criteria for PRC and make sure they align with what we're requiring by law.
 31. General Contractors – What I heard across the group is ...” if appropriate, cost or price-related factors that could include specific general conditions...”
 32. Cities – “appropriate” is difficult to interpret, suggest more clarity. I like the concept of having options for how we evaluate proposals.
- ii. The group generally agreed to consider a graduated requirement such that simpler projects could be required to provide the additional staffing info and hourly rates. Larger jobs would require a simpler process that leaves more up to negotiation later as the scope and project details are developed and confirmed.

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4. Wrap Up

- a. A few final comments were shared for the good of the order:
 - i. We should check in with a lawyer to confirm the things we're looking at are defensible.
 - ii. The group suggested additional meetings are scheduled to get through review of all the RCWs by the end of the year.

5. Follow-Up Items

- a. Nick/Scott to revise language regarding RCW 39.10.350 for Shannon Gustine to review
- b. Nick/Scott to draft/circulate language regarding RCW 39.10.360(4)
- c. Kate/Nick/Scott to draft/circulate 9/4/19 meeting summary
- d. Nick/Scott to draft/circulate agenda for next meeting and update "GCCM Feedback" matrix
- e. Scott to poll committee and schedule remaining 2019 meetings

6. Meeting Adjourned at 12:05 p.m.

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