

# AGC Admin Team Notes – January 26, 2024

## Announcements

- Introductions/Guests

## Attendees

### WSDOT

- Chris Tams
- Chuck Meade
- Earl Key
- Thomas Brasch
- Shane Spahr
- Will Smith
- Amy Amos
- Jeff Deal
- Kyle McKeon

### AGC

- John Salinas - Salinas Co.
- Mike Hall - Tucci & Sons
- Dan Kuney - Max J. Kuney
- Reggie Wagmen - Atkinson
- Corey Christensen - KLB
- CJ Handforth - IMCO Construction
- Jay Byrd - One Alliance
- Mark Scoccolo - SPI Infrastructure
- Jerry Braise - King County, APWA
- Ken Hallquist - Walsh
- Gary Martindale - FHWA

## **New Business:**

- Meeting Minutes Review
- SB 6040
  - Revision of the prompt pay law, pay when paid; "pay no later than 20 days after the work is accepted by the state or municipality, regardless of when the prime contractor receives payment for work performed" - intent here is that if the work is accepted (physical work accepted by prime), that starts the clock for payment to the subs. WSDOT wants to have this acceptance date be the payroll cutoff date; this is only applicable to DBE subs
  - Earl - met with senator Valdez (Bill Sponsor) - all agencies have a different definition of what acceptance is; Earl is going to meet with the sponsor to discuss clarification language; Earl would like this to apply to all contractors, not just enforceable DBE; Q for contractors: how do lower tier disputes get managed? Will a Contractor be biased toward a non-disadvantaged business because they won't have to follow the prompt pay requirements?

- Only thing that gets the paperwork in is payment, final acceptance for this payment criteria should be accepted paperwork; General discussion about not having the prime contractor bear the responsibility of a tier 2 v. tier 3 etc. dispute
- MS - major issue why we have prompt payment is so that Contractors don't have to have a large cash capital to float their cost if they don't get paid promptly - labor, fuel, O/H, etc.
- DK - this is basically a requirement for the Prime to finance subcontractors until they get paid; Why shouldn't this apply to all subs, not just DBEs? - because the Prime is going to have to finance ALL of the subcontractors, which they can't do; this would really take away some of the Prime's enforcement tool to withhold payment
- Earl - If 4th tier work is completed, they have to get paid by the 3rd tier within the 30 days, so the prime isn't involved in that issue
  - The new term of art would be when work is "completed" which would mean when invoices were submitted
- MS - there is no way that a Prime or sub is going to be able to pay a lower tier if the prime or sub hasn't been paid; it is the owners responsibility to finance the work
- DK - maybe they could allow a mobe to subs, that would get cash flow to them immediately; Primes/subs will have to figure out if the lower tier invoice is more than the bid item cost associated with the payment from the State
- EK - requesting from Contractors that if they have questions based on the City of Seattle specification and this bill that they ask Earl their questions in e-mail before their meeting today
- How does the City of Seattle enforce this? Seattle acceptance is when the work is completed, which they interpret as "invoiced"; City has said there are different enforcement avenues
- WSDOT in general is very good about paying Contract work within the 30 days, however, for disputed work and CO work, the timeline can be substantially longer
- Primes will lose their ability to really hold the subcontractors accountable because the subs can rely on being paid within 30 days of their work regardless
  - It will be really challenging to get subs out on the job to do punchlist work because they will have already been paid
- DBE Participation Plan
  - CT - WSDOT is going to update the participation plan; will revise the DBE specification to match the revamp of the Participation Plan, the PP will be the basis for WSDOT developing the new DBE specification language; this is why it is really important to get the Participation Plan right, because it will lock in our updates to the DBE specification; we don't have a long time to get comments back to FHWA, we are about three weeks in to the 90 day response timeframe

- Chris and Mike are going to ask for volunteers on this team to commit to reviewing the Participation Plan specifically for their party's responsibilities associated with the PP; HQ CN, Contractors, PEOs, etc.
- Build America Buy America
  - Recently issued Construction Bulletins describe the new modifications to the BABA requirements, specifically the new waiver language
  - Projects advertised after August 16th, prior to the December 20th adoption of this modification, will have the option of adopting this language into the contract via CO
  - WSDOT will accept the Contractor's certification of meeting this waiver, but the Contractor may be audited by FHWA to review the actual invoicing/math behind the certification
- eTicketing Portal Specifications
  - Specifications are updated to require HMA contracts to use this, and other ticketed items may adopt this if they want
  - This is specifically for WSDOT projects; not local programs projects
- Non-Discrimination Language
  - Any contracts executed after January 1st need to have the Non-discrimination language included (via CO or pre-bid) in the Contract
  - These will be no-cost CO's as this is a change in law
  
- Corey Christensen
  - Sick leave math works out to 2.5%, not 2%; Corey proposes that the F/A rates include 2.5% instead of 2%
  - KLB has tracked this math and they are basically harboring 2.5% of their labor costs in order for them to cover this cost
  - Where is WSDOT at with the Disparity Study? Thought it was supposed to be completed January 2024, what is the status?
- John Salinas
  - DBE programs being unconstitutional - YouTube has a really good video on this; minutes 8 - 22 are really good
    - This is fallout from the Harvard/UNC ruling about providing privilege to disadvantaged races
  - EquipmentWatch has been really frustrating to work with/in over the past year; is WSDOT going to go with a different vendor?
    - CT - we did look for alternative vendors, and none were as complete and met our needs as well as EquipmentWatch

## **Old Business**

- AGC Annual Meeting/2024 Emphasis Areas
- Question and Answer Deadline
- Fuel Cost Escalation on DB Contracts
- DBE goal administration – What changes are coming?
  - Contract bid item amount lower than committed DBE award amount for the same bid item
    - What adjustments does OECR anticipate making to the bid documents where this condition occurs?
  - DBE Utilization Certificate and Written Confirmation Document
    - What changes are being made to the information required for Description of Work? Will NAICS codes be required?
  - DBE Mobilization greater than 10% of the value of work
    - When evaluating a DBE Bid Item Breakdown, how is OECR's evaluation changing when mobilizations that are greater than 10% of DBE's total amount.

## **Other Topics (Time Permitting):**

- Next Meeting
  - March 8th, 2024