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

AGC Admin Team Notes – May 3, 2024

Announcements

- Introductions/Guests

  Attendees

  WSDOT
  - Chris Tams
  - Earl Key
  - Thomas Brasch
  - Shane Spahr
  - Will Smith
  - Amy Amos
  - Patricia Crane
  - Jackie Bayne

  AGC
  - John Salinas - Salinas Co.
  - Mike Hall - Tucci & Sons
  - Dan Kuney - Max J. Kuney
  - Reggie Wagmen - Atkinson
  - CJ Handforth - IMCO Construction
  - Mark Scoccolo - SPI Infrastructure
  - Jerry Braise - King County, APWA
  - Ken Hallquist - Walsh
  - Gary Martindale – FHWA
  - Arti O'Brian - AGS
  - Phil Wallace - KLTP
  - Derek Compton - Graham
  - Josh Taylor – One Alliance
  - Corey Christensen-KLB

New Business:

- Meeting Minutes Review

- DBE Program Updates

  Bidders list required with all jobs.
  - Jackie: Complete Federal revamp of DBE program. WSDOT requested extension until December, but not sure if it will be granted. Webinars are available. One of the items first item requiring bidder list information for all bidders from all Prime Contractors for all the subs that bid on the contract. Required at bid time, includes other information such as age of business. WSDOT will be looking to make sure information is complete.
  - Question: Do they anticipate having anything from their office?
    - Earl: We are going to try. We are going to see about getting exemptions or tweak to suit what is best for contractors here.
  - Comment: There will be second bidders and others trying to find a way to protest information gathered.

- Earl: we are trying to figure out a way to make it hard to mess up.
- Chris T.: This will be information for everyone who bids whether you chose them or not. We are hopefully postponing until December to roll out at same time we redo bid x and to build it into the new system.
- Comment: On one contract had 7 electrical contractors so it is going to be a lot of information.
- Jackie: It will be a matter of responsiveness – all bidders, name, address, DBE status, race and gender, NAICS code, age of firm, and gross receipts.
- Question: What about Local Agencies – meetings scheduled; it is going to be a huge problem on the Local side.
- Question: Gathering information, why does it have to be timely. Is there a purpose?
- Earl: Speculation only – may be because of the litigation around DBE program, they are collecting information to defend their self.
- Question: What about submitting a list of all the subs who bid on any of your contracts.
- Question: Isn't this information available already?
- Jackie: We may be able to do a prequal for subs, or something else. We are certainly open and looking for suggestions. UBI does not have all this information.
- Comment: This will be a major issue on the Local Program side.
- Jackie: We are wondering what level we have to monitor, and if it is complete can we accept it.
- Comment: Foresee issues with protesting and subcontractors refusing to provide all information required as proprietary.

Modifications Design / Build Requirements:

- Jackie and Chris: There will be some changes for design/build to the performance plans required on them. There will be some modifications to the open-ended performance plans.

Regular dealer (60%) vs distributor (40%)

- Jackie and Earl: There is a new item for distributors which is similar to Broker (not sure the difference exactly), it will be counted at 40%. WSDOT is looking at what they will be at the start of the contract. You have to be one or the other. It is going to impossible to track if switch back and forth, no way to monitor compliance. People can just be distributer; we have to figure out ways to write rules around.
- Question: is everyone is required to be listed as regular dealer or distributor like now?
- Jackie: It will be comparable.
- Comment: If do annually – would reduce workload.
- Jackie: Unfortunately, it is required on per job basis as well.

Withholding payments:

- Jackie and Earl: In-training they mentioned that permission will need to be acquired prior to withholding payment, but regulation doesn't say that, so we need more clarification on what the regulation means. We are not wanting to do this as it puts us into position of judging something we don't know. We expect to get an answer relatively soon on how prompt pay requirements are going to work.
- Question: What is withholding…if landscaper puts in plants and charges 100%, but doesn't get paid that way, so it is not really withholding.

Certification changes:

- Jackie and Earl: Lot of certification changes that will be implemented.
- Question: Is it going to affect current DBE requirements?
- Earl: right now, we think it is just new certifications.
- Comment – limited amount of DBE's and if a restriction limits or delays them that is a concern.
- John Salinas – raised net worth and raised NAICS code size standard. Presentation seen in PowerPoint appears they are trying to keep as many as possible by raising limits.

- DBE Reconsideration Hearings
  - Comment: Local programs is having a lot of reconsideration hearings – selecting projects – 5-day notification if bid breakdown is incorrect. Projects are not getting reviewed until out of their hands.
  - Earl: More hearings in last 6 months than last 6 years. 2-3 a week, trying to figure out what is root cause. Some of it, we are being too strict, rate of overturning at least a third. Will look into and tell this group, come up with reasons and see how group feels. Most rejections are on the local side.
  - Comment: Local Agencies are not looking at documents in the 5 days. Who is the one in charge. Is it up the contractor, they don't have time if they don't know until after it is over.
  - Comment: When send to WSDOT Local Programs they don't hear back for a week or two weeks. Local Agencies haven't been trained on what to look for. If it is an expectation, Local Agencies need to know what it is they should be looking for.
  - Comment: If time frame can be elongated, it would be good. Maybe should be 15 days after seen by WSDOT or something.
  - Comment: What was the five days for
  - Earl: It allows minor corrections.
  - Comment: what is a minor correction:
  - Earl: Minor things such as a math error.
  - Comment: WSDOT should look at the five days. It has to be communicated to the Contractor.
  - Earl will give update at next meeting on reconsideration hearings.
- Overhead Percentage on Escalation, HMA Compaction Bonuses, etc.
  - Mark Scoccolo: As a general contractor, the overhead has gone up quite a lot, has an overhead, cost higher insurance, higher costs, it would be good to have an administrative fee add in. Some bonuses go to PE and gets pushed out to

sub who expects all that money. How prime can recover bond, taxes, and other overhead. Administrative markup. State has been cool when proposed. On Walla Walla, for 4-million-dollar oil escalation, 1.5% bond insurance. 100% pass through can amount to a lot of money.
    - Comment: WSDOT has been cool, if paying a bonus, if prime is doing work. Is whatever it is. We need to have a pass through to sub different discussion.
    - Comment: Perhaps steel can it be exempted from bond requirements so don't have to up it. Risk would be zero because it would be excluded from the bond calculation.
    - Comment: Bonding and insurance charge you for overruns. If the contract underruns you get a refund, if it overruns you have to pay.
    - Comment: It is all based on gross receipts. All fees based on gross receipts, running through, there is a cost for running it through. Based on bond fees, if something is excluded from the bond
    - Comment: It can be multiple layers.
    - Comment: Approve subcontractors and sub-subcontractors should have a contractor markup and administration fee.
    - Chris Tams will need to feel this out. Noted in notes. Will revisit next time.
- Escalation of Bids in Comparison with Estimates
    - Chris T. – Shared document from 2017 to current covering all the Contracts over and under. For Bid Build the over and under about the same – pretty equal about 2% over. For Design-Build using the same data set, it is not as good a picture. About 23% over. Some substantial overs for recent data. 6 projects are currently with CPARB for evaluation. In process of reviewing overs and unders. Caveat, if more than 5% above, have to go back for approval.
    - Question: What is WSDOTs interpretation on the data?
    - Chris – We are doing a poor job, it does not reflect market conditions, lots of job so aversion to risk is less. The other thing, SOQ, only had one firm submit. Not the appetite for design build that there was at one time. Market has so much work, and projects are out for more and more seasons which are hard to price – if six years.
    - Comments for overs included:
        - Escalation on materials and labor is risk on design build.
        - Less opportunity for some, so many fish passages
        - Limited because tribal and other rules.
        - Longer time, and larger jobs.
        - Historical data, using state system, how much training they are getting, looking at quantities not location can skew priced.
        - Engineer Estimate needs to reflect that it is higher.
        - Skill of labor pool is also less, so it costs more.
    - Chris T.: Industry is aware, we wouldn't have as many of these jobs are bundled together if undesirable but required by the injunction. The document is updated Wednesday put one source of truth. Once Ad and award is done, send out to. Prices we've seen and how bids are coming in historically.
    - Question: Are we seeing this for nationwide?

        - Chris: this is just for us. We have not tracked against other agencies or nationwide.
            - Dan K. – Design Build – percent over budget, fish passage, just not enough engineering firms to make fish passage programs in bulk. Engineering firms are bottle neck. Prime contractors are not on list, but engineering firms are so they can't bid if they worked on. Perhaps do more in house for first 30 percent, so not as many are excluded.
- SB 6040- 2024 Final Bill – CPARB Committee
    - Chris T: At other meeting, they are discussing requiring agencies to pay twice a month, PLA requiring them to pay twice a month. Need to take to Jon Deffenbacher to see if we can make it work.
    - John Salinas - Spend a lot of time spit balling ideas. Lot of different things.
    - Earl – what is coming out of this will affect you in a big way so may want to attend or listen to the meeting.
- Other bills discussed:
    - Chris T. Shared table
    - 2134 – supplemental budget, project that must go to CPARB.
    - 5979 – Sick leave –already discussed.
    - 6040 – prompt payment – John Salinas and Earl worked on. It was pulled back but will come back.
    - 2266 – L&I will set rules that will need to be followed
        - Comment: no talking sense about practicality – how does it roll down to sub?
        - It flows down the sub. AGC is working with L&I.
    - 6192 – no real changes
    -
- ~~HB1050- Apprenticeship~~
    - ~~Not discussed~~

- 2024 Supplemental Budget Update
    - Chris T: Went over supplement budget. Next month or the month after we'll have allocated all the construction money for fish passage. Some of the jobs that are design build, will advance the design. Until we have more money.
    - Question: Will they change to bid build?
    - Chris T: Wouldn't say that, but maybe a few, but the intent is to move the design forward. They wouldn't be released until after June.
    - Question: It is a two-year budget, update, supplemental. What is going to occur in next year?
    - Chris T.: Some things will be understood after November. It is all speculation at this point. There is a couple of initiatives that could move commitments. Climate Commitment Act if repealed, the ferry system electrification will need to come from somewhere else. Not doing preservation. Almost nothing. Taking a year off will not do anything good for the roadways we have. Roger has messaged the legislature, we are underfunding about a billion dollars a year for preservation.

    - Comment: Local Agencies have the same problem. No money for preservation.
    - Chris T.: Still a lot of work, but lots of challenges. Infrastructure projects, all funding, passed through legislators, most is passed by legislators adding programs. Almost all the funding is tied to an improvement item somewhere. Connecting Washington was the only bill that had maintenance and preservation rather than line-item projects. Largest program we've ever had. Still huge program, but most of those projects are earmarked projects. A lot of large improvement projects are still moving forward.
    - Question: Are we looking at reducing gas tax revenue? How are we going to bridge.
    - Chris T: Mileage tax has been brought up, historic discussion. We do not have a good funding mechanism for accounting for electrical vehicles. Timeline that no gas vehicles will be sold after 2035, so will need to figure it out before then.
    - Chris T: went over how things are funded – Shared slide show on how things are funded, fish passage funding, preservation, and Emergent/Emergency work. For emergencies, they are funded is generally because something else gets delayed. If it is an event there is a way to tap into some funding, but there has to be an event not just failed preservation, so happens some of the time but not all the time.
    - Comment: Might also discuss How did we get here? Also includes how many people we have. We have same people but a much larger budget.
    - Comment: Industry wide. On Navy call – their staff is about 50% of what they need and growing.
    - Chris shared slide on statewide pavement conditions – due or past due about 1/3 asphalt, 2/3 chipseal, and ¼ concrete.
- 2024 AGC Partnership Distinguished Service Awards
    - Requested people submit applications for next years award. Phil stated that last year 4 awards were given out in the future the plan is to give out 1 or 2 a year.
- Build America Buy America- Manufactured Products Waiver
    - Chris: Writing is on the wall it will be going away. The good news – the waiver will still apply for 5% or 1 million dollars, but we will start having to look at it. 55% has to be made in America to count as manufactured. We'll have to figure out how to have manufactured certified.
- eTicketing Portal Specifications
    - Chris T: All paving jobs will have HaulHub ePortal. All HMA jobs, a few concrete jobs through haul hub. Feedback so far has been that the vendors have been able to get online. Not seeing a bunch of issues. Phase 1. – Get them in the portal, once in the portal, we are going to develop a way to transfer the process into unifier for payment so we can start making payment directly out of Unifier.
- Unifier Updates (Non-Conformance Business Process)
    - Chris T: New e-bidding pilot project should be out in December. Estimating software are being developed hand and hand. Redoing both of those. We

also, business process, things in unifier get rolled out twice a year as minor and major enhancements. A couple of minor enhancements, non-conformance business process help prepare punch list, way to document and manage through unifier. Force Account is being replaced as well within Unifier itself, with a couple pilot projects going on currently. The training has been good, most of the folks are up and running.
    - Comments - It is working well.
- 1-07.14 Responsibility for Damage
    - Chris: Responsibility to damage – basically anything done in it is sent to contractor insurance. Looked at SS – if damage in limit tender to insurance unless asked for release.
    - Comment: What encountering, project limits 7 or 13 miles. Someone gets accident in the corridor and has s nothing to do with work, not where working. Those claims are still tendered to the Contractor. These times situations keep happening. There is a large push from insurance companies and seeing it in insurance rates across the board.
    - Comment: it makes sense for negligence as a result of work, should fall to contractor. If no negligence or not part of work, there is language they want to adjust here.
    - Comment: Talk to insurance and have someone help discuss it.
    - Chris T.: If contractor is on top of it, can ask for release for work that is done.
    - Question: Design-build are you on the hook for that year when nothing is happening?
    - Chris T: Yes
    - Comment: Nothing is taking risk away from contractor in last 2.5 hrs.

- DBE Participation Plan
    - Still rewriting. Once it is completed, will rewrite spec to match plan. When we got into it, had to get source document fixed.
    - Opportunities to look at it. Get it sent out in the summer.
- Disparity Study
    - Earl - With Roger for his review, shouldn't be too much longer, a review should be going out in the next couple of weeks. It is close on if we will go to Mandatory goals or discuss if we don't go to mandatory goals what we could do to increase participation.
- Sick leave
    - Chris T.: will occur as part of union negotiations will become part of prevailing wage. Get system setup to receive that. 2026 Standard Specifications. Once it is prevailed, the extra percentage will go away. GSP will be issued once it prevails.
    - Comment – once it first came out. Too bad the unions didn't take that on.
- Other items:
- Comment: Please send email, will need to review DRB member application. Will get those set out. Comment: is partnership group taking that over?
- If Earl comes back with new information, teams and maybe record.

- Something that is – 45-minute session put on for ABC and watch. Get put on that list. Sit on the meeting. Really informative.
-

Old Business

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    - 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
    - June 7th, 2024

AGC Admin Team Notes – June 27, 2024

Announcements

- Introductions/Guests

Attendees

WSDOT

- Chris Tams
- Earl Key
- Thomas Brasch
- Shane Spahr
- Amy Amos
- Patricia Crane
- Jackie Bayne
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- CJ Handforth - IMCO Construction
- Mark Scoccolo - SCI Infrastructure
- Jerry Braise - King County, APWA
- Arti O'Brian – AGS
- Derek Compton – Graham
- Tim Hayner – Cascade Civil Construction
- Stuart Moore - Atkinson
- Corey Christensen - KLB
- Quinn Golden - Granite
- Aubry Collier – City of Lacey

New Business:

- CA Carey vs. City of Snoqualmie Case
  - Chris T.- Case is centered around notice and whether or not if a claim is filed if it is complete and meets the specifications. This case said the claim didn't meet the requirements listed in the standard specifications and was dismissed. Questions on how WSDOT prepares to behave in the future. Still discussion and working on guidance – WSDOT has a draft version on guidance for internal WSDOT. There is still ongoing discussions on if we are we going to clear the books. There is a few of those out there, whether we are going to dismiss them in entirety, or look at them. Few claims that DRB had been requested, and guidance from Attorney General that we didn't need to go to DRB as they didn't meet the requirements, and we need to follow the contract. They don't need to go back to the specifications. – Brought up document. Chris shared draft guidance. Chris will send out guidance once it is finalized. *Comment on once it gets to attorneys it is very strict adherence to the Contract, They have no mercy. No negotiation, no DRB, no mediation, rejected.*

Question asked: - how many have we rejected? Answer, we have not, but might create a situation where there are more. We all like to think we are good stewards. Some of them have been given notice to determine. We will probably rely on this case to dismiss a few outstanding issues. In this case, the estimate was not complete at the end. The Contract costs were not actually provided. WSDOT do have ones where people don't follow the notice specification that are there. WSDOT is publishing the timeline on dispute and claims, including crosswalks and time. We have agreed as a group this is the process to follow. If the timeline is missed by a day or two here or there, not holding that currently, but months is an issue. *Comments – in Snoqualmie it's not done right until it's twice. They'll kick it up to attorney. Contractors will need some clarity.* Chris showed flowchart of claims, and including the binding arbitration piece as well. Understanding flow chart will be key. *Comment that it Seemed that the court made a determination that did not allow with the flow chart. Hyper sensitivity to timelines.*

- Disparity Study
  - Earl K. - shared the disparity study. In the last disparity study WSDOT was one of lowest Disparity Rates for State Funds. Then we implemented changes and did the capacity building program. If WSDOT had a disparity rate over 80 no mandatory goals. We are over 80 percent so there will be no mandatory state goals other than the SBVE goals currently set. The progress WSDOT has made is unprecedented, WSDOT, DBE, and others moved the ratio by more than 50% without using race or gender.
  - African American are still under 68 percent. Tribal went down. White women are slightly high. Waiver for white woman in 2012 dropped 130 percentage point. The drop would be a lot worse if there was not a mandatory federal small business program. WSDOT is the only state with small business goals that can be used on projects. No DOT was allowed except WSDOT. Lots of small business goals still allowed white women. If WSDOT hadn't done that it would be under 80. We know that if we implement a waiver on other DBE groups it will do damage. It is long term to bring firms based on what seeing we are showing. No waiver Hispanic and Asian. We will not ask because we know of the issues it causes. Old goal, 19%, new goal 17.9% . African American participation went from 1% to 2%. We need better 100% more availability. 4% of population but 2% goal. Women, 50% but only 7.1%. Disparity study. *Comment: How the contractor does business in low bid. There are discriminatory process, the discrimination that has dollars. It restricts my availability to be low. If a specific DBE is 5% more, and the contractor uses him, they are not going to be Low bid. They will not get the work, period. So they still aren't used. What is being done, to help these African American contractors to be competitive. Underutilization is because they are not low bid.* Refresh capacity of program, 40% were African. More targeted outreach. Many of our firms. There are a lot of African Americans in trucking. Working on adding consortia to bid as one complete. Be a collective. Asian and Hispanic when it's time for you to build, staying in program, may want to look for black owned firms. Unbundling of trucking. *Comments: Complicated*

topic. No quick and easy fix. Most small trucking 3-6 trucks. But there is other areas, and scopes need to be expanded. Sub tier to lower contractor. Not as much area for a subcontract. Excavation, not in that sub tier, in the first tier. Look at percent, successful businesses. It is priced base. It's a number. Its dependability of that subcontractor and dollar amount. Low bid. – Earl completely understands. That as an African American contractor. No history lesson, could not get a loan, was not allowed to, not use. *Comment: The ultra effort required stresses owner and as a DBE owner, needs to be made simpler* . Earl discussed how knowing the goal can help make it. When the goal was One percent, we have hit the goal. Now that we know the goal is 2%, we can hit it. We just didn't know we needed to be up at the 2%. Stakes are high, it is not easy resources. One to two percent. *Comment: DBE minority woman worked hard. Would take offense. She exited to do bigger things. Blessed with resources and business knowledge. Briefed with woman. What we predicted would happen, happened. Concern was expressed about the Hispanic Owned being removed. Hispanic owned. This is going to have bias. WSDOT is struggling with funding, Fish Passage, only moving goal 1…basic economics will tell you that it will drive costs up. Less of the pool that they can pull from. Need to do FHWA ensure us that they are not going to do a waiver. If the waiver is in place, will that still contracts, will count. If there is a letter of intent, will that count…and what about design build.* As a owner, told them. Earl – goal would go down as well. 2+3.2+2.1+3.5+7.1 (Black, Hispanic, Asian, Native, White women) = 17.9% - Louiseville, could be nationwide ban. Positive, we raised by 50%, we are only 17% that is all race neutral. Even if DBE goes away, we will still have the SBE. We will be setting them goal SBE. WSDOT is currently doing rule making to set up to 5% SBE and Veteran. Ability to set up 20%. WSDOT believes the State program methodology with MSVBE that would pass muster. In order to be – you can't presume, each individual has to be demonstrate they are disadvantaged. Working on different certification scheme. For example if you need 100 points, once you get a 100 points you meet the program requirements regardless of race/gender. Social economists to vet that program. One state has done an essay to show, but that probably wont stand up a legal challenge. *Comment: It is most likely going away. Question: Have we considered incentivizing*? We are going the opposite way with the Design Build because of Federal Rule changes. Design Build changes – there will be no credit in the evaluation on design build, it will truly be an open ended performance plan. FHWA is evaluating. *Comment: There is Radio silence from FHWA. Indicating no big swings in number. Truly believe passionate position on it. Firms may have to adapt or die. You've boxed people into a community. Along with court challenge as a whole. If you get a nationwide injunction, how state, quadrupling it. It doesn't happen overnight. Louisville Ruling. You can't have affirmative action. You can't presumption of discrimination. So now you are going to DBE. In the next six to twelve months, chaos and may not matter.*

- DBE participation Plan items – Chris T.
  - Discussing if Proposal amount and commitment amount need to match. Currently WSDOT is looking at if it is with 10% grace. At least they don't

have to match perfectly. Not everyone will like it, but a little bit of flexibility. *Comments that it is disliked and still an issue. We needed to do something. Contractors have the flexibility of putting the money elsewhere. Clarified that this was only for the initial commitment.*

- LS Traffic control 75% of Proposal amount for initial commitment *Comments -lots of feedback and discussion. In general contractors are not happy. General contractor disagreement with lump sum TC already. The purpose of LS TC was to incentivize to do some of the work, at the same time. Extend under runs. GFE justify underrun. The Breakdown is the defining factor. See what rate was applied. Hourly, rates. 800 dollars. Justification, under running at least 5 percent lump sum account, would be good. See what is written in contract, and what it is done. Not over inflate, not going to say over, so hard, will revisit. So hard to do business. The traffic control is now being reduced. Next will be trucking. Is this going to keep cascading. Outside of traffic control, hard to find trades outside of goal. Lot of layers to disparity coal. Slippery slope. AGC group, this can be detrimental, but also not wanting sanctioning goals. FHWA agreed on the Force Account quite a while ago.*

- WSDOT/AGC Rental Agreement Update – Chris T.
  - Chris shared proposed change to remove the language about Service – rental trucks from the agreement. The intent is to be consistent with what is in the specs. – *Comment - Rental trucks are a monster issue and might need own task force. Not today, but has two paths, non dbe and then other pass dbe. All these lists, and they are wildly different. We need to find a way to make it trackable, and more workable, it holds up payments because of compliance issues. We are not getting paid. Don't use rentals on any force account work. Find way to better administer what we have it will have a long way to go into getting businesses. – After this meeting Chris will get together with Corey Christensen over the summer, and figure it out.*
- DBE Specification Update (Summer 2024) – Chris T.
  - Plan be redone, just finished sequestering ourselves to work on the participation plan. A large portion of the GSP is already done. It is will be sent for review when it is closer. It will be going to FHWA in a month. July. – will probably be the release because of the need to add the bidders list. The Participation Plan hasn't been approved yet. Some of the big ticket items in the Participation Plan – good news – aware utilization that is dollar amount, goal. Percent. Next piece, final percentage is the total dollar amount, additive change order. Percentage, inclusive of force account. (Force Account, bonuses, quality adjustments, fuel cost needs to be exempted from end of participation plan). Went over goal changes. Over unders and owner initiated changes we will have to the CFR, but process will be written down. If owner issue things. OECR has been granting them. It is not written, Owner initiated changes. Still have to give notice. Will be an item issued in the good cause.
- Insurance – Stuart M. – Insurance is getting very expensive. It has gone up over 10-20% year over year increase. A lot of General issues, social inflation, goes to litigation, goes to huge pay outs. Work zone issues have a huge exposure. Example in CA, a person pulled over, stepped out, got killed, $10mil.-$20mil

payout, when it had nothing to do with the work. Other item, employees can't sue their employer, but they can sue contractor for things out of their control. Indemnity insurance is incredible expensive. D/B also is paying for it in rates. There are better ways to pay less in own insurance. A small change to Section 1-07.4,would be to add the word "negligence" to the Contractor *Comments that Lawyers wont like it. Stuart agreed to send language and information to Chris, and Chris agreed to take it to the Attorney General. The joint and several liability in Washington is different than other states, in Washington you only have to be 0.5% at fault. This is falling on insurance, and there is a 30% plus insurance rate. Then by having subs need the insurance too, 1 million, not many subs can pay. There is not a lot of dbe firm scan do that, so forced to asking. We wont mandate it now, but it is coming. The insurance market is crazy. Small business amount is a lot of the money,it is crazy what they pay. The insurance costs as much as umbrella insurance because of big payouts. For DBE it is becoming a self selecting process. Contractors are require to carry amount of insurance. There is utilization, not requirements in own requirements. It is going to be a problem that is always raising its head.*

- *Arbitration limits may need looked in. Dollar amounts are arbitration, 250K and went to I405 protest. Move it up to $500K or 1 Million. It is currently 1 million at 1-09.13(1)A so will be left alone..*
- *Apprenticeship issues – Non-union issues getting apprentices for traffic control and needing GFE. Dismantle the apprenticeship council. State is 2 million, Local agencies , 1 million. The way the program exists currently on short projects, there is not time to get someone trained, so they push them over to the side to not get hurt, but they are not getting meaningful training. WSDOT has communication with L&I, but does not have a lot of pull.*
- Fall 2024 scheduled meetings:
  - Sept. 20.
  - Oct. 18
  - Dec. 6

Old Business

- DBE Program Updates
- DBE Reconsideration Hearings
- Overhead Percentage on Escalation, HMA Compaction Bonuses, etc.
- Escalation of Bids in Comparison with Estimates
- SB 6040- 2024 Final Bill
- HB1050- Apprenticeship
- 2024 Supplemental Budget Update
- 2024 AGC Partnership Distinguished Service Awards
- Build America Buy America- Manufactured Products Waiver
- eTicketing Portal Specifications
- Unifier Updates (Non-Conformance Business Process)
- 1-07.14 Responsibility for Damage
- DBE Participation Plan
- Disparity Study
- Sick Leave Percentage 2.5%?

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Other Topics (Time Permitting):

- Next Meeting
    - September 20th, 2024

Meeting Minutes: September 20, 2024

Time: 4:02 PM
Location: Fabulich Large Conference Room

Attendees:

- Chris Tams (WSDOT)
- Derrick Thompson (Graham Contracting)
- Mike Hall (Tucci and Sons)
- Mark Scoccolo (SCI Infrastructure)
- Corey Christensen (KLB Construction)
- Reggie Wageman (Atkinson Construction)
- Brice Cobean (Allied Electric - online)
- Quinn Golden (Granite Construction - online)
- John Salinas (Salinas Construction - online)
- Tim Hayner (Cascade Civil Construction/Kerr Contractors - online)
- Tom Brasch (WSDOT, Eastern Region)
- Patricia Crane (WSDOT, Specification Engineer)
- Will Smith (WSDOT, South Central)
- Shane Spahr (WSDOT, Mount Baker Area)
- Jackie (joined later)

Main Discussion Points:

1. **Safety Concerns on Construction Sites:**
    a. Recent incidents involving gunfire, theft, and vandalism have raised concerns about worker safety on WSDOT projects.
    b. Chris Tams presented data on recent incidents involving theft, gunfire, and vandalism on various project sites, including incidents involving the State Patrol.
    c. Focus on the importance of ensuring safety for both workers and contractors, especially with the increasing number of violent incidents.
2. **Incidents Overview:**
    a. Several incidents reported in 2024, including gunfire at the 405 job site and vandalism of heavy equipment.
    b. Specific example: Equipment vandalism led to major project delays, including theft of a water meter, which significantly impacted the project timeline.
3. **Discussion on Security Measures:**
    a. Multiple contractors shared their experiences with theft and vandalism on job sites.
    b. Suggestions included increasing the presence of monitored cameras, fencing, or live security personnel on-site to deter theft and violence.
    c. Discussions around the effectiveness of these methods were mixed, with some arguing that cameras act as deterrents but often fail to prevent actual thefts.

    d. Mobile camera systems with blue flashing lights (similar to those used in parking lots) were considered effective but costly at approximately $3,000/month.
4. **Randomness of Incidents and Worksite Protection:**
    a. Chris Tams acknowledged the randomness of incidents, especially on the 405, but emphasized the need for WSDOT to be more proactive.
    b. It was discussed whether more State Patrol presence would help prevent such incidents.
    c. Mike Hall raised the question of whether increasing security personnel or patrols would mitigate these incidents or if more fundamental changes to worksite policies are necessary.
5. **Night Work as a Safety Concern:**
    a. A significant point raised by contractors was the correlation between safety incidents and nighttime work.
    b. Several contractors suggested eliminating night shifts, citing that most incidents occur between 8 PM and 5 AM.
    c. Moving construction work to daytime hours was proposed as a way to improve safety for workers, though this would impact traffic and project timelines.
6. Apologies and Acknowledgement: The discussion opens with an apology from the state representatives for not having done enough outreach or vetting before moving forward with changes to the certification process. They acknowledge the contractors' frustrations about the lack of preparation and proper consultation.
7. **Concerns from Contractors**: The contractors express frustration over the impact of these changes, specifically regarding the capacity to meet contract requirements, particularly with veteran-owned and minority-owned businesses. They note that there is a shortage of such firms capable of performing certain specialized work, and these challenges make it difficult for general contractors to meet the conditions of the awards.
8. **High Contract Requirements**: The contractors mention a real-world example where a veteran-owned business provided a $560,000 quote with challenging terms, including a demand for $150,000 up front, no retainage, and a 30-day payment period. They argue that such terms are difficult to accommodate, particularly when these businesses fall under state oversight.
9. **Issues with Subcontractors**: There are additional complaints about the lack of sophistication among some subcontractors, who often submit lump sum proposals without proper breakdowns of bid items, further complicating the bidding process.
10. **State Analysis and High Goals**: The contractors question whether the state has done sufficient analysis to ensure that the high percentage goals for DBEs (up to 21%) are achievable, particularly in specialized areas like street lighting. They express skepticism that such high goals can be met, suggesting instead more achievable targets, like 10-12%, that would still promote growth without overwhelming contractors.
11. **OMWBE Certification Shift**: Jackie Bayne confirms that the certification process is moving from DES to OMWBE and outlines the changes, including small business and veteran-owned goals that could range up to 20%. There is clarification that this certification change went live as of July 1st.
12. **Kentucky Case Impact**: John Salinas brings up the **Louisville (Kentucky) case** related to the DBE program, asking for context. Bayne explains that the DBE program is being challenged in court, with a decision expected around November. If the program loses in

court, it could potentially halt the disadvantaged business enterprise program nationwide, affecting how small business programs and federal aid projects operate.

13. **State's Response to Legal Challenges**: Salinas references a previous statement from Earl suggesting that the state anticipates the DBE program might lose in court and is proactively increasing the participation limits to prepare for this outcome.

14. **Financial Statement Requirements for Contractors**:
- Different states have varying requirements for financial statements (reviewed vs. audited).
- Washington state typically requires reviewed statements, not audited, which are less costly.
- There's ambiguity in the legal code (RCW) about the need for reviewed statements.
- Smaller businesses often do not require audited statements, and the process can be difficult for CPAs to sign off on.

15. **Prequalification Process for Contractors**:
- Concerns about prequalification limits not accounting for inflation, leading to outdated cost estimates.
- Adjusting prequalification classifications for inflation was discussed, but it's unclear if the DOT can influence this.

16. **Prime Contractor Performance Reports (PCPR)**:
- Discussion on revising the criteria for PCPR to allow easier upward movement in ratings from "Standard" to "Superior."
- A small committee may be formed to work with WSDOT and AGC on improving scoring guidelines.

17. **Partnership Awards and Partnering Sessions**:
- Reminders about partnership awards due soon, and encouragement to submit project nominations.
- Concerns raised about the frequency and usefulness of partnership meetings on construction projects. Data may be gathered on how often partnering is used.

18. **DBE GSP (Disadvantaged Business Enterprise General Special Provisions) Update**:
- Key changes include the allowance of drop-shipment as a countable DBE activity, with 40% credit.
- Issues raised about administrative challenges in tracking DBE compliance, subcontract submission, and the role of the Office of Equal Civil Rights (OECR) in reviewing contracts.
- Bidder's List and Required Information: Contractors are required to submit a "bidders list" that includes details like DBE status, race, gender, and financial information of every subcontractor who submits a bid. This has raised questions, especially for larger, publicly-owned companies or corporations without a clear race/gender ownership structure. There's confusion over how to fill out such fields when these details do not apply.
- Timing of Submission: The group is discussing the challenges of submitting this information within the tight window allowed, with the form due as part of the bid submission. Some participants suggest extending the deadline for these forms to 48 hours after the bid deadline to allow more time to gather the necessary data.

- Concerns About Financial Disclosure: Many contractors are uncomfortable with disclosing financial information (even in ranges) about their subcontractors. There's an ongoing debate about whether this information should even be required.
- Form Modification: There's frustration about the rigidity of the form submission process. Participants suggest allowing forms to be submitted as an attached spreadsheet or manipulated for larger projects to ease the administrative burden.
- Federal Regulations: The discussion revolves around the inflexibility of the Code of Federal Regulations (CFR) and whether there is any room for leniency, especially regarding timelines and form structure. Participants hope to find a way to comply with federal requirements while easing the logistical challenges contractors face.

- There's a need to explore making **Form 270-020 modifiable** and potentially adapting it into an Excel format for easier data entry and integration with existing subcontractor databases.
- There was clarification on DBE-related **participation plan updates** in compliance with new federal regulations (CFR), with specific changes in supplier definitions and allowable percentage for mobilization costs.
- The **Commodity Code** descriptions will now take precedence over older business descriptions for tracking DBE work categories.
- Ongoing adjustments to forms and GSP (General Special Provisions) are required to match these updates.

- **Upcoming Events**:

  - A design-build summit is scheduled for December 18 at the Kitsap Conference Center.
  - Further updates on DBE participation plans will be forthcoming.

Decisions:

1. **Explore Contract Modifications:**
   - WSDOT will consider contract specification changes to address safety concerns, including possibly requiring more security measures such as fencing, monitored cameras, or State Patrol presence.
2. **Further Discussion on Eliminating Night Work:**
   - WSDOT will further discuss the feasibility of limiting night shifts to improve worker safety. The idea of reducing night work and limiting it to specific tasks (such as setting girders) was supported by several contractors.

Assigned Tasks:

1. **Chris Tams (WSDOT):**

    - Will review security data and discuss with WSDOT leadership potential contract modifications or policy changes to improve site security and reduce nighttime work.
    - Investigate the feasibility and cost of increasing monitored cameras and security personnel on work sites.
2. **All Contractors:**
    - Provide feedback on any additional safety or security measures that could be included in future contracts.
    - Share any further experiences with site vandalism or theft to help guide WSDOT's decision-making process.
3. **Financial Statement Clarification**:

- Investigate whether non-reviewed financial statements could suffice for prequalification under RCW.

4. **Prequalification Adjustment**:

- Explore the possibility of adjusting prequalification limits to account for inflation.

5. **PCPR Review**:

- Form a committee to suggest revisions to the contractor performance scoring system.
- Include Jenna Kemp to review the Prime Contractor Performance Manual.

6. **Partnering Session Data**:

- Gather data on how often partnering meetings are held and their impact on project success.

7. **DBE GSP and Compliance**:

- Distribute the updated DBE GSP PDF to interested parties.
- Continue working on a streamlined process for subcontract submission via Unifier.
- Clarify the approval process for DBE subcontracts and address concerns about delays.

8. **Outreach**:

- Send emails to gauge interest in participating in the committee and follow up by October.

Next Steps:
WSDOT will follow up on the proposed safety changes, and contractors will report back on

security concerns in future meetings. A more detailed discussion on night work policies is planned for the next meeting.

AGC Admin Team Meeting Notes – October 18th, 2024

Announcements

- Introductions/Guests

Attendees

- Chris Tams - WSDOT HQ CN
- Chuck Meade - WSDOT HQ CN
- Kyle McKeon - WSDOT Local Programs
- Quinn Golden - Granite
- Reggie Wagemen - Atkinson
- CJ Handforth - IMCO
- Dan Lee - One Alliance
- Mike Hall - Tucci
- Phil Wallace - Kiewit
- Arti O'Brian - AGS

TEAMS

- Dan Kuney - MJK
- Kenn Hallquist - Sundt
- John Salinas - Salinas Construction
- Mark Scoccolo - SCI Infrastructure
- Tim Hayner - Cascade Civil/Kerr Contractors
- Aubrey Collier - APWA
- Will Smith – WSDOT SCR
- Shane Spahr – WSDOT NWR
- Amy Amos – WSDOT OR
- Jackie Bayne – WSDOT OECR
- Gary Martindale - FHWA

New Business:

- Meeting Minutes Review
- 272-022 Word, Excel Version
    - BidX will accept an Excel version, but WSDOT wants to keep the for 2m uniform so there won't be any forms rejected because they were modified in Excel
- PCPR Subcommittee (Shane Spahr, Will Smith, Chris Tams, AGC?)
    - Mike Hall, Dan Kuney, CJ Handforth, and Tim Hayner want to be involved with this subcommittee
- Construction Manual Updates
    - Significant re-write of Chapter 1, specifically aggregating all the WSDOT Change Order guidance into one location in the CM Chapter 1
- 2026 Spec Book Changes (1-10, Chapter 2-4) Trish Crane
    - Will be removing chapter 1-10 out of division 1 and placing it as Chapter 2, will be consolidating Chapters 2 - 4

    - This is to remove any non-administrative specifications out of Division 1 as it should be just commercial terms, not work specific language
- SVBE to PWSVBE
    - Small Business Program and the Public Works Small Business Program - OECR is trying to unify the name and requirements so these two units can operate under the same requirements
    - Contractors would like to have conversation with OECR prior to moving forth with any changes to current practices
- SOP 914 On Site Materials Acceptance
    - Have been working with HQ Materials to modify SOP for sampling geotextiles to allow sampling at the manufacturer rather than on-site with appropriate lot/material documentation; will be incorporating these changes into the next update for the SOP
- Non-Conformance GSP and Construction Bulletin
    - Describes non-conforming work, requirements for reporting, remediation, and requirements for closing out non-conforming work
    - Will act as a digital punchlist
    - Can we, or have we, directly linked the deferrals in CCIS to a non-conformance report in Unifier?
- Subcontractor markup associated with pass down or redistribution to lower tier subs and proposing that markup be at 18%.
    - Contractors are asking for higher markup rate on subcontractor work, right now it is a graduated markup from 12% to 7%
    - At 15%, Primes still are not wholly compensated for their administrative work, specifically for smaller changes
        - Proposing 18% as it's between the 15% and 21%
- An update on upcoming WSDOT projects and if there is any movement on the transportation budget with additional money added for next year's construction season.
    - No additional information at this point in time
- What is WSDOT/FHWA/OMWBE's positions on what the Mid-America Milling Co. ruling affect will be here in Washington State. (Listening Session Nov 4th. Flyer attached)
    - Injunction prohibits the use of race and gender conscious goals for COA
    - This injunction doesn't affect WA state at this point in time, that will be determined at a later date
    - There is a listening session available for all to participate in where FHWA will be discussing
        - Chris Tams to e-mail out the invitation to the November 4th listening session
    - With the pending injunction in Kentucky, etc., is WSDOT considering not implementing the PWSVBE change?
        - Can't answer that at this point, Earl Key will have to be involved in these questions and isn't available today.

- Bidder Questionnaire 272-022 PDF Changes, bidder Questionnaire issues already experienced. Make it so the form is due 48 hours after bid opening to allow for columns to be filled out properly.
    - This is a process that has been implemented by WSDOT from requirement from USDOT
    - Was this process completed through a rule making process with time for comments, etc.? - Yes, USDOT followed the standard rule making process with a call for comments
        - The type of concerns that contractors are bringing up in this format were brought up during the comment period, USDOT did not necessarily modify their approach based on those comments; the specifications have been adopted and incorporated into WSDOT and WA Local Agency projects
    - Have had experiences where there are inconsistencies between owners on the requirements of filling the forms out, i.e. Local Agencies have been administering these forms less restrictively than WSDOT
    - There have been modifications to the form to make the form more applicable to all sub-contractor applications, race, gender, etc.
    - There is a fear from USDOT that allowing these forms turned in after bid (48 hours) that 4th, 5th, etc. bidders will not provide the bid documentation as they aren't in the running for the project; Contractors will still want to be responsive with their bids and will turn this information in regardless of their ranking in the low bids, Contractors are commenting that this should not be a concern from USDOT and owners
    - Are there other states that are having different interpretations of the CFR or administering it differently? - Not really, the bid information is required and required at the time of the bid submittal
    - The verification of Written Confirmation is allowed to be submitted after the bid submittal (within 5-7 days); however, the bidder information is different, it does not have an allowance to be submitted later than the bid submittal; those two submittals are independent
    - Can WSDOT allow this bidder information form to be submitted later than with the bids?
- Partnering Cost Data
    - Chris Tams has data for past/existing projects on what was spent and estimated for the partnering bid item; will distribute this to the group for their information
- New Items
    - Mike Hall
        - Issue with COA DBE subs; trucking sub couldn't accommodate Tucci's schedule; needed to replace this COA work but didn't submit for substitution? They couldn't use one trucker, but didn't want to terminate because they may be able to use them in the future; basically just wanted to add a subcontractor for the COA

- Would like to put this on the agenda, administration of DBE specification, for discussion next meeting, Mike will collect more data to discuss at the next meeting

Old Business

- Meeting Minutes Review
- Prime Contractor Performance Report – Dan Kuney
- Audited or Reviewed financials and Pre-quals – John Salinas
- Bidder Questionnaire 272-022- Granite
- DBE GSP updates
- AGC-WSDOT Partnership Award Reminder – October 4th Due Date
- DBE Participation Plan – Update
- Design Build Summit Kitsap Conference Center Dec 18th
- SVBE Goals 5% to 20%
- WSDOT Site Safety Presentations
- Additional Topics/Discussion

Other Topics (Time Permitting):

- Next Meeting
  - December 6th