

ADMINISTRATION TEAM MINUTES

Date: May 16, 2008
Time: 9:00 am
Place: Tacoma AGC Building

<u>Attending:</u>	Mark Borton	✓	David Mariman	✓	Mark Rohde	—
	Jerry Brais	✓	Craig McDaniel	✓	Glenn Schneider	✓
	Forrest Dill	✓	Tina Nelson	✓	Mark Scoccolo	✓
	Paul Gonseth	—	Cathy Nicholas	✓	Dave Standahl	✓
	Mike Hall	✓	Ken Olson	—	Andy Thompson	✓
	Tim Hayner	✓	Roger Palfenier	✓	Greg Waugh	✓
	David Jones	✓				

Opening Comments:

There were no comments on the minutes of the previous meeting.

Opening comments included the following:

- New members Mike Hall (Tucci and Sons, Inc.) and Andy Thompson (Wilder Construction Company) attending. Mike was on the Admin Team during his days with Goodfellow Brothers. Andy is a long-timer with Wilder. Self introductions were made.
- Departing member Cathy Nicholas is attending her last meeting. Cathy has been on the Team since early 2000. Cathy is the new County Engineer for Blackhawk County, Iowa. Her replacement will join the Team when appointed by FHWA.
- The Team requested a status update on Payment for Type C Progress Schedules. At the last meeting, we discussed how to restructure payment for updates. The Team agreed, in concept, to rewrite the spec to measure updates per each, with a minimum bid per each. That revision remains unwritten at this time, but will be circulated for review when it is written.
- One member asked why the Fuel Cost Adjustment spec was not included in a recent project, and could the spec be added by change order. WSDOT Regions are allowed to decide whether to apply this spec or not. WSDOT will not add this spec to a contract that was executed without it, because the intent is to shift risk during the bidding process.

- The Team requested a status update on the revisions to weighing specs in Section 1-09.2. WSDOT is conducting a Region review of the proposed changes, and is not getting a lot of interest in the topic. These provisions are not seen as a significant problem within the Department. Also, many of the suggested improvements to the Standard Specs were accomplished by a GSP for weighing that was developed by this Team in 2001. Should we just adopt the GSP as the new Standard? The Team requested that the GSP be distributed for review.
- There are reports that Lump Sum traffic control is being misapplied. It should be applied only to simple jobs, but is ending up in more complex projects. What has changed?

WSDOT Headquarters used to control each application, but has since delegated approval to use LS to the Region Construction Managers because it was going well. Local Agencies have taken to specifying LS Traffic Control as a preferred option because it eliminates the risk of traffic control quantity overruns.

It was stated that applying this provision to a specific bridge project is a problem because it was long duration, required difficult transitions, and contained large quantities of force account. However, it was noted that when the LS specs were developed, bridge deck rehab projects were cited as an ideal application for LS because the setup was static for each stage. At least one Region is not using the LS provisions in projects with large quantities of force account work. WSDOT did change the guidance for using the LS provisions to prohibit them on jobs with multi-year plant establishment. Also, there is built in flexibility to include both LS and units, when needed.

This Team did discuss making payment for traffic control that supports force account work payable by force account, but nothing like that has been implemented.

The provisions were designed to provide an incentive for coordination of work activities. Owners know that shifting this risk also costs money. Are they getting good value for that money?

It was stated that the LS provisions used to work well, but haven't been applied correctly since being delegated. Contractors will continue to manage it, and continue to request their additional costs when staging changes, constructive changes and delays affect them.

Action Item: Craig will discuss application of Lump Sum traffic control at the Region Construction Engineer's meeting. Send your horror stories to Dave Mariman.

New Business – Penny Bids

Recently, WSDOT has experienced some headaches during the award phase caused by penny bids. The feedback of the Team is requested. Why does this happen and is it a problem?

Unbalanced bids cause concern for WSDOT Regions. They result in bid protests and involvement by the Attorney General. The Regions are asked to review the bids, and contractors are asked to justify their price. Sometimes all bids are rejected, but this is rare and not everybody understands why the Department doesn't always reject unbalanced bids. The specifications allow for rejection if the prices are unbalanced *to the detriment of the Agency*, and this can be difficult to evaluate.

How do Contractors view this? It was stated that penny bids are a result of inaccurate quantity estimates. The Contractor assumes more risk by doing this. The Owner can eliminate this by getting the quantities right.

Contradictions in specifications contribute to this condition. A recent example was cited. If the Owner wants borrow in all areas and roadway excavation is to be wasted, then write clear specifications. Artificially inflating estimated quantities in the proposal is a poor strategy because bidders check the quantities and are able to see through this.

Would "minimum bid" or "not to exceed" bid requirements help? Some agencies use minimum bid specs or require that certain items must be the same price. WSDOT used to specify minimum bids for Traffic Control, but no longer does, and sometimes sees penny bids for this work. The money is elsewhere. Not all agencies understand that bid prices are a composite price. Policy makers don't understand bidding.

So, penny bids are okay because the risk is on the contractor. If proposal quantities were accurate there would be less of this. Providing cross sections and design data to bidders will result in better bids. Earthwork drives this behavior more often than other work, like traffic control. If the Owner wants fewer penny bids, then they should get the quantities right.

Action Item: Craig will discuss this with Region Construction Managers.

New Business – Out Clauses

WSDOT asked the Contractor's perspective on the use of Local Agency "out clauses." These provisions are used to segregate the local work from the State work by providing separate bid items. They allow an entire group of work to be deleted at the bid price if the local agency doesn't like the price. Are they okay?

WSDOT used to want this work and was more agreeable to this approach, but this is less the case lately. The State has plenty of work, and is absorbing local agencies costs because contractors are not bidding overhead into items that are subject to deletion. The locals insist that they want the out clause, and there is an expectation that one will be provided. The contract is already equipped with a mechanism to delete work, but the

deletion may add cost and this is distasteful to locals. They want line item deletions at no cost rather than an entire group of work. How is this perceived?

Contractors responded that, line item deletions based on price amounts to bid shopping, and should be resisted. The work should be presented in separate bid items because it is different work, and deleted as a group instead of by item. WSDOT continues to resist line item deletions for local agencies, as it is an unfair bidding practice.

What if this results in a difference of who is low bidder? Deletions occur after the contract is executed, so this is not affecting awards. Could the local work be specified as a bid alternate, where the local agency is allowed to opt-out prior to award?

General Contractors generally price the bid items that can be deleted at or below cost. In other words, the Utility or other Third Party gets great deals and WSDOT absorbs the overhead and markup of those bid items. Not a good deal for WSDOT.

Action Item: WSDOT will take this into consideration.

New Business – Performance Bonds for Changed Work

WSDOT is seeking general information about how sureties respond to changed work. WSDOT contracts require consent of surety for time extensions exceeding 20% of the original contract time, or any change order when consent of surety is requested. Some agencies require surety consent of all change orders. When surety consent is requested, what do the surety companies do?

Contractors responded that most sureties charge them for the additional coverage at the end of the contract, but some do it as changes occur. If WSDOT did not follow the rules related to scope changes it would result in issues. Real problems occur when the change order includes changes in scope.

Miscellaneous Business – Apprenticeship

Some float in the schedule allowed time for discussion of Apprenticeship. Apprenticeship Utilization requirements will increase from 10% to 12% for all contracts estimated to cost \$3 million and more that are advertised after July 1. WSDOT experienced good utilization on the pilot projects. There is not a lot of data so far on recent projects. Reporting has been an issue, more with subcontractors reporting to the prime than the prime reporting to WSDOT. Please make sure that utilization reports keep coming in. Good faith efforts could contribute to a future adjustment in utilization requirements for specialty work by the Apprenticeship Committee.

WSDOT asked for input on how the program is working.

Contractors reported frustration that there is no incentive for subcontractors to contribute towards the utilization requirement. The repercussions only affect the prime contractor. Can Good Faith Efforts (GFE's) excuse a sub (or specialty sub) that does not contribute?

Yes, that is why the GFE's exist. Documenting that approved programs were contacted and apprentices are not available is one of the efforts that can offset low utilization.

Specialty work may be exempted in the future, but so far WSDOT has no experience where this needs to occur. It is not yet established which areas are too remote, or which specialty work cannot support apprentices. It is important that documentation that apprentices are not available in certain areas or trades is provided, so that it can get back to the Apprenticeship Committee and the program can be adjusted.

Approval of programs is a barrier that is restricting participation. An allowance for company approved programs would increase participation. A landscape labor program can be (has been) approved. It was asked, what is the State doing to increase apprentice availability?

Keep in mind that WSDOT did not invent the apprenticeship or DBE program, but must administer them.

It was reported that King County's pass/fail system is working well.

The meeting adjourned at 11:30 am. All members were invited to join Cathy Nicholas for lunch immediately after the meeting.

Future Meetings: Sept 14 (coincides with Lead Team meeting)
Oct. 17
Nov. 14

Team's "Round Tuit" List

1. Bid Item for On-site Overhead
2. Joint Training—Documentation
3. Payroll, Wage Administration procedures
4. Web-Based Construction Management
5. DBE Good Faith Efforts – inconsistent evaluation
6. AFAD flagger backup