

ADMINISTRATION TEAM MINUTES

Date: February 16, 2007
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	✓	Joe Spink	✓
	Tim Hayner	✓	Ken Olson	✓	Dave Standahl	✓
	David Jones	✓	Roger Palfenier	✓	Greg Waugh	✓

Guest: Jan Keiser, PE, of DevCorp Commercial Funding, LLC attended the meeting as an interested observer. Jan is a PE and attorney, and she is with a company that is a new AGC member.

Linea Laird, WSDOT State Construction Engineer, visited in the final minutes of the meeting and met the Team members.

Opening Remarks: The Team began business with a round of self introductions.

Miscellaneous Business – Personnel Changes

Linea Laird is the new WSDOT State Construction Engineer. Linea is still obligated as the Project Manager at the Tacoma Narrows Bridge, and she will be transitioning into her new appointment over the next few months. Pasco Bakotich is the new WSDOT State Design Engineer. Pasco was Assistant Region Administrator for Project Development at Olympic Region. Kevin Dayton is now the Region Administrator for Olympic Region. Mike Horton is retiring from the Highways and Local Programs Office. Ken Smith has left the State Design Office for opportunities in the private sector. Scott Bernhard has left Kuney for a position with Graham, and is participating in an effort to start up a bridge division at Graham.

Future Agenda Item – DBE Good Faith Efforts

Greg proposed a new topic to discuss the Good Faith Efforts provided by the DBE Condition of Award Goal provisions, stating that there are plenty of issues to discuss now that goals are being set higher than in the past, and DBE availability is an issue. The Team already had a full agenda for today, and the discussion may benefit from the participation of the Ad & Award Office or the Office of Equal Opportunity. Therefore,

the Team agreed to combine this topic with a similar topic on the Round Tuit list, and to schedule it for some future agenda.

Old Business –Force Account Damage Waivers

This item is ongoing from the previous meeting. The Team needs to know whether FHWA participation is even possible for this cost before investing a lot of time in it. Although the cost may be low, past practice has been to withhold participation in the cost of items not used. More input is required from the FHWA Financial Manager, and this will be obtained prior to the next meeting.

Action Item: Cathy will obtain information on FHWA’s view of the proposal.

So what is the Department’s position on this? Is theft or vandalism of equipment used on force account work an insurance issue, or eligible for relief of responsibility for third party damage? The WSDOT position is that damage by vandalism and theft is different than damage by traffic, so this does not qualify for reimbursement. The risk of damage and theft occurring is not manageable by the Owner. This risk belongs to the Contractor. Surely, bids will reflect these costs and bidders will be more selective about bidding in high risk areas.

Thieves are becoming more creative in their efforts. A project recently experienced a loss by an individual using traffic control devices and erosion control materials as camouflage.

As a side note, there is legislation currently proposed that tightens the rules on scrap metal recycling.

Old Business – Standing Disputes Review Board (DRB)

The previous meeting ended with a few key questions remaining, including: can this be added to the standard specs, and at what time is it appropriate to employ the Board? The discussion, although circuitous, addressed the function of the Board, the timing of the DRB participation, and spec implementation.

The Team took a hard look at the function of the DRB. Do the Boards made the hard decisions, or do they split the baby? Are DRB panelists acting as mediators instead of helping to arrive at a third party determination based on the facts? The DRB association is in a little turmoil because their outcomes have come under criticism as being mediation instead of arbitration.

WSDOT defines the role of the DRB in the contract. According to that contract, DRB’s are not mediators. Whether WSDOT DRB members are Association members and how those members are prequalified was not known at the time of the discussion. WSDOT Consultant Services administers the on-call DRB roster.

From a Local Agency perspective, there is limited experience with DRB's to provide enough comfort to relinquish control of the issues. Many Locals do not have the resident expertise to evaluate some disputes. Although, informed staff recommendations are generally accepted by political decision makers, decisions are sometimes made by other entities (such as the fire department or police chief) and may be for reasons other than entitlement (such as budgetary constraints). This may be all the better reason for bringing in construction industry professionals that have relevant experience.

Oregon has so many claims that they employ an entire claims unit. Idaho's history with claims has resulted in them adding the CRB provision. WSDOT has a low incidence of claims, partially because there is another disputes resolution processes, and because entitlement is generally recognized when it exists. WSDOT Headquarters Construction participates whenever there is an issue brought before a Board. DRB provisions were added to a contract by change order recently. The bottom line is that the WSDOT DRB contract provisions work well for the Department and for Contractors. The existence of a DRB is sometimes enough to motivate resolution of issues, because neither party to the dispute wants to lose all control over the matter. It may affect how Contractors bid WSDOT work, knowing that a process is in place to resolve issues without litigation.

There can be problems with using a DRB too late in the process. A standing DRB that is brought into a dispute cold would not have the benefit of profound knowledge of the issues.

The WSDOT GSP for Disputes Review Boards is included in all jobs over \$10 million. So why not include a DRB in all projects, or reduce the dollar threshold and include them in more projects? A DRB is not needed on projects that function smoothly, so the costs of establishing them can be avoided in many cases. But we do want to make one available when the need arises. Contractors need a place to go when a proposal to add a DRB by change order is not mutually agreed upon. Providing a DRB as an option available to either party would be beneficial.

Approximately 425 local agencies use the WSDOT Standard Specifications and GSP's, but they don't always know how to administer them. They are sometimes revised incorrectly. However, a Division 1 specification cannot be changed without the participation of either the APWA Division 1 subcommittee or the WSDOT Highways and Local Programs Office.

Is the solution as easy as writing the DRB provisions into the Standard Specifications as an option available to either party? FHWA is agreeable to this. There may be some details to work out, such as how to pay for the Board, whether to make it optional or mandatory, and whether to prescribe its' use on jobs of certain sizes. How do you write a spec that allows one party rights to a process that requires consent of all parties, when the other party may not be willing? Could WSDOT Highways and Local Programs require it? Should it be added to Section 1-09.11(1) as a requirement precedent to a claim?

The Team arrived at the following conclusions, and assigned these Action Items:

Dave Mariman will draft an Amendment to Section 1-04.5 that allows either party to request a DRB by mutual agreement of both parties for the next meeting.

Tina Nelson will discuss this approach with the APWA Division 1 subcommittee.

This Team would benefit from new membership by a representative from the WSDOT Highways and Local Programs Office. This would require endorsement from the AGC/WSDOT Lead Team.

Additional discussions included recognition that the Standard Specifications do not provide a path to Alternate Disputes Resolution (ADR) except through a formal claim according to Section 1-09.11. Perhaps the DRB process should lead to ADR instead of litigation. A suggestion was made to increase the \$250,000 threshold in the ADR process to a higher amount.

Old Business – Utility Delays

Draft revisions to Section 1-07.17 were distributed for review and comment.

The reference to an adjustment according to Section 1-04.4, Changes was questioned. If utilities are not shown on the plans, why would this not be a Type 1 Differing Site Condition according to Section 1-04.7? Indeed, a differing site condition would exist, but the requirements of Section 1-04.7 include investigating and validating the condition. WSDOT already recognizes that this occurrence is a differing site condition, so there is no need to go through the processes defined in that section. The parties to the contract can go directly to the other remedies provided in the contract.

If the utilities that are not shown in the contract need to be protected, then the contractor would incur unanticipated costs. “Protection” should be included in addition to relocation as entitlement to a change order for utilities not shown.

If protection and relocation costs are compensable, then wouldn't this conflict with the first paragraph that states that all costs are the Contractors? Or does the first paragraph only apply to utilities shown in the plans? This can be clarified. Also, pre-bid site investigations according to Section 1-02.4 apply to utilities visible but not shown in the plans.

The subsection for utility work by the Contractor provides a mechanism for utility adjustments by the utility owner to ease or streamline the work. Will this be interpreted that resolving utility conflicts is for the Contractors convenience? It should not be interpreted as shifting the risk to the Contractor for constructability errors and defective specifications. This will be clarified.

What happens when no completion timeframes are specified for work by the utility owner? The reality is that obtaining a commitment for completion by the utility owner is sometimes impossible. What constitutes a reasonable delay when no completion commitment can be obtained? How is the completion commitment to be communicated to the Contractor? These concerns will need to be addressed.

ODOT requires a mandatory utility preconstruction meeting for coordination purposes. These occur after the contract is executed. A preconstruction meeting with the utility owners and their contractors should be required.

A General Special Provision, or possibly several, will be required to define the completion of utility work performed by others, to provide contact information, and to establish notification timelines when utility work by others depends on completion milestones by the Contractor. A draft GSP was distributed, but it does not adequately establish these requirements, and needs to be improved. A question of whether the GSP should supplement Section 1-07.17 Utilities or Section 1-05.14 Cooperation with Other Contractors remains to be answered.

With this much work to do, can it be done in time for the April amendments and GSP updates? There is some sense of urgency to these changes, since the specs are clearly incorrect and are being interpreted literally by others. The Team concluded that these changes are too important to wait, and that an imperfect amendment is better than what exists. These specifications will be enhanced as discussed and implemented. [editors note: see the finalized versions of these provisions, attached.]

Action Item: Dave Mariman will modify the proposed amendment and GSP to incorporate the suggestions of the Team.

Miscellaneous Business: With a few minutes remaining, the Team reviewed the Round Tuit list and prioritized some agenda items for future meetings.

Linea Laird visited the Team to meet and greet the members. A brief discussion about how this Team communicates their accomplishments to other stakeholders resulted in a suggestion to provide a link to these minutes on the AGC website.

The meeting adjourned at 12:00 noon.

Future Meetings

March 16, 2007

April 20, 2007

May 18, 2007

Subject Area	Sponsor
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Section 1-08.6 Suspension of Work	Dave Jones / David Mariman
Section 1-08.7 Maintenance During Suspension	Joe Spink
Review, Summarize Region Specials	Craig McDaniel

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. LS Traffic Control and Force Account
6. DBE Good Faith Efforts – inconsistent evaluation

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GSP Directions for Use

07172.FR1 Utilities And Similar Facilities

(April 2, 2007)

Use in projects where there are utilities within the R/W and those utilities will be adjusted, relocated or replaced by the utility owner or its contractor during the performance of the contract, or when the utility owner or its contractor will construct new utilities within the R/W during the performance of the contract.

(3 fill-ins) (\$\$1\$\$ is a description and location of the work the each utility owner or its contractor will complete, and the duration of that work or anticipated date of completion by each utility or its contractor. \$\$2\$\$ is the name of the utility company or companies, contact person, address, telephone number and e-mail address or other contact information as required to enable the Contractor to identify and contact each utility performing work during the life of the contract. \$\$3\$\$ is a description of any additional requirements that the contractor must perform in order to coordinate with the utility owner or its contractor, such as advance notifications to be provided to the utility for staged work.

(Use with 07171.FR1 if other utilities exist within the R/W that will not be adjusted, relocated or replaced by the utility owner.)

(April 2, 2007)
Utilities And Similar Facilities

Section 1-07.17 is supplemented with the following:

Locations and dimensions shown in the Plans for existing facilities are in accordance with available information obtained without uncovering, measuring, or other verification.

Public and private utilities, or their contractors, will furnish all work necessary to adjust, relocate, replace, or construct their facilities unless otherwise provided for in the Plans or these Special Provisions. Such adjustment, relocation, replacement, or construction will be done during the prosecution of the work for this project. It is anticipated that utility adjustment, relocation, replacement or construction within the project limits will be completed as follows:

\$\$1\$\$.

The Contractor shall attend a mandatory utility preconstruction meeting with the Engineer, all affected subcontractors, and all utility owners and their contractors prior to beginning onsite work.

The following addresses and telephone numbers of utility companies or their contractors that will be adjusting, relocating, replacing or constructing utilities within the project limits are supplied for the Contractor's use:

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1-07.17 Utilities and Similar Facilities

The Contractor shall protect all private and public utilities from damage resulting from the Work. Among others, these utilities include: telephone, telegraph, and power lines; pipelines, sewer and water lines; railroad tracks and equipment; and highway lighting and signing systems. All costs required to protect public and private utilities shall be at the Contractor's expense, except as provided otherwise in this section.

Chapter 19.122 of the Revised Code of Washington (RCW) relates to underground utilities. In accordance with this RCW, the Contractor shall call the One-Number Locator Service for field location of utilities. If no locator service is available for the area, notice shall be provided individually to those owners of utilities known to, or suspected of, having underground facilities within the area of the proposed excavation.

1-07.17(1) Utility Construction, Removal or Relocation by the Contractor

If the Work requires removing or relocating a utility, the contract will assign the task to the Contractor or the utility owner. When the task is assigned to the Contractor it shall be performed in accordance with the Plans and Special Provisions. New utility construction shall be performed according to the appropriate contract requirements.

To ease or streamline the Work for its own convenience, the Contractor may desire to ask utility owners to move, remove, or alter their equipment in ways other than those listed in the Plans or special provisions. The Contractor shall make the arrangements and pay all costs that arise from work performed by the utility owner at the Contractor's request. Two weeks prior to performing any such utility work, the Contractor shall submit plans and details to the Engineer for approval describing the scope and schedule of all work performed at the Contractor's request by the utility owner.

In some cases, the Plans or special provisions may not show all underground facilities. If the Work requires these to be moved or protected, the Engineer will assign the task to others or issue a written change order requiring the Contractor to do so as provided in Section 1-04.4.

1-07.17(2) Utility Construction, Removal or Relocation by Others

Any authorized agent of the Contracting Agency or utility owners may enter the highway right-of-way to repair, rearrange, alter, or connect their equipment. The Contractor shall cooperate with such efforts and shall avoid creating delays or hindrances to those doing the work. As needed, the Contractor shall arrange to coordinate work schedules.

If the contract provides notice that utilities will be adjusted, relocated, replaced, or constructed by others during the prosecution of the work, the Special Provisions will establish the utility owners anticipated completion. The Contractor shall carry out the Work in a way that will minimize interference and delay for all forces involved. Any costs incurred prior to the utility owners anticipated completion (or if no completion is specified, within a reasonable period of time) that results from the coordination and prosecution of the Work regarding utility adjustment, relocation, replacement, or construction shall be at the Contractor's expense as provided in Section 1-05.14.

When others delay the Work through late removal or relocation of any utility or similar facility, the Contractor shall adhere to the requirements of Section 1-04.5. The Contracting Agency will either suspend Work according to Section 1-08.6, or order the Contractor to coordinate the Work with the work of the utility owner in accordance with Section 1-04.4. When ordered to coordinate the Work with the work of the utility owner, the Contractor shall prosecute the Work in a way that will minimize interference and delay for all forces involved.

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GSP Directions for Use

07171.FR1 Utilities And Similar Facilities

(April 2, 2007)

Use in projects where there are utilities within the R/W that will not be adjusted, replaced or constructed by the utility owner or its contractor during the prosecution of the work.

(1 fill-in)

(May use with 07172.FR1 if utilities other than those described in this provision will be adjusted, replaced or constructed by the utility owner during the prosecution of the work.)

(April 2, 2007)
Utilities And Similar Facilities

Section 1-07.17 is supplemented with the following:

Locations and dimensions shown in the Plans for existing facilities are in accordance with available information obtained without uncovering, measuring, or other verification.

The following addresses and telephone numbers of utility companies known or suspected of having facilities within the project limits are supplied for the Contractor's convenience:

\$\$1\$\$