

November 8, 2006

1:-00 – 4:00 PM

WSDOT APPRENTICESHIP UTILIZATION ADVISORY COMMITTEE

MEETING MINUTES

Commission Board Room
WSDOT Transportation Building
310 Maple Park Ave
Olympia, WA 98504

Committee Members: Kevin Dayton (Chair), Bob Abbott, Bob Adams, Randy Loomans for Allan Darr, Dave Johnson, John Littel, Nick Tommer and Tom Zamzow.

Attendees: Meeting Observers: Van Collins, Duke Schaub, Rick Slunaker, and John Quigg.
WSDOT Staff: Jennifer Brown, Jenna Fettig, David Jones, Craig McDaniel and Ron Wohlfrom.
Absent: Butch Brooks.

Meeting Overview and Outcomes:

Action Items:

The committee compiled the following list of issues to work through:

1. Define/develop acceptable good faith clause.
 - a. The committee agreed that the draft specification shall be revised to lighten the plan contractors will submit after award. 1, 2, and 3 will be revised to eliminate the training agent language. 6 will be added to talk about company wide attainment.
 - b. The committee will be provided the updated specification within the next two to three weeks and will have 24 hours to return comments for consideration.
2. Define/develop disproportionately high ratio of materials to labor: criteria and guidance.
3. Define/develop criteria for excluding geographical areas.
4. Discuss coordination with federal training requirements.
5. Talk about Washington State Ferries apprenticeship utilization.
6. Touch base on report to Legislature.

Date Setting:

The Apprenticeship Utilization Advisory Committee set the following tentative meeting date:

- Friday, February 9th, 12:00 – 3:00 PM
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Meeting Minutes:

Welcome

Kevin Dayton welcomes the committee members on behalf of Doug MacDonald and thanks them for participating. He mentions that the size of the group has grown and asks committee members for their opinions about having other interested parties attend the meeting. The committee finds the observers

acceptable. Dave Johnson suggested that meeting observers should be allowed to comment after the committee has gone through the agenda. The committee agreed this is acceptable and proceeds with introductions.

Agenda Overview

Kevin tells the group that one of the key decisions to make today is whether we can finalize the apprenticeship specification in time to get it into the contract for the two remaining pilot projects. There were originally three projects, but one project was advertised before the committee had an opportunity to come to an agreement about the language of the specification, so the specification was not used. Kevin said that coming to an agreement about the specification is the one thing the committee needs to do today. Good faith is absolutely critical in the specification, and the committee will need to come to an agreement on the definition of good faith before the specification is used in a contract.

Actions taken since last meeting

Pilots

Two pilot projects have been selected. The specification team has been working on a draft specification for use in the pilot projects. They have also discussed the roles of the specification team and the committee in developing the specification. The draft specification has come back from the specification team and is 80% done. Industry feels comfortable with it. Today is the day for the committee to look at it.

WSDOT Outreach and Education

Jennifer Brown passes out the apprenticeship folio that WSDOT has developed. The folio was created for the Governor's Economic Workforce Summit and was distributed there, as well as at the Tribal State Transportation Conference and a number of career fairs. WSDOT is planning to do outreach with contractors over the next couple months and will provide more information later. Quarterly updates to interested parties are ongoing, and more information can be found on the apprenticeship web page at:

<http://www.wsdot.wa.gov/biz/construction/Apprenticeship.cfm>.

WSBCTC Outreach and Education

Dave Johnson provides media campaign materials to the group. A 30 second spot has aired during several Seahawks games and an 8 minute spot for educators and students about jobs available in the construction trades has been developed. If you are interested in viewing the spot, Dave Johnson can provide a copy. A print piece providing a historical perspective about the construction trades is under development. Dave Johnson can also provide information about the helmets to hardhats program.

- Dave Johnson suggested adding more trades to the WSDOT brochure and website (electricians, cement masons, and any trades that WSDOT would typically use) and changing truck drivers to teamsters.
- Randy Loomans suggested adding a link to the WSDOT Apprenticeship webpage to the LNI booklet about all state apprenticeship programs.
- Kevin offered WSDOT support and participation to the various construction trade organizations at job fairs and road shows.
- Rick Slunaker suggested more actively working with community colleges to generate interest from students.
- Randy suggested using Worksource to advertise WSDOT's Transportation Technician apprenticeship program.
- The presentation at the recent Tribal State Transportation Conference might be beneficial.
- Bob Adams suggested looking in non-traditional places to promote apprenticeship like areas with high percentages of groups that might be looking for jobs in the construction industry. Southeast King County is an example. The Hispanic community looks like a good source for future workers.
- Dave Johnson mentioned a group called Sound Alliance comprised of educators as well as religious organizations. The group is affiliated with the Industrial Areas Alliance on the east side of the state. WSBCTC has been getting into the churches, and that has been effective.
- Randy mentioned that recent statistics from the Brookings Institute show that the construction workforce needs 180,000 new workers each year, and that 90,000 workers retire from the trades each year.

Issue List

Kevin and the group outline committee "to-do's."

1. Develop a process and guidance to adjust the requirements (RCW 39.04.320, 2 states: Awarding agency directors may adjust the requirements of this section for a specific project for the following reasons:
 - a. Define: The demonstrated lack of availability of apprentices in specific geographical areas (RCW 39.04.320, 2a),
 - b. Define: A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation (RCW 39.04.320, 2b),
 - c. Define: Participating contractors have demonstrated a good faith effort to comply with the requirements of RCW 39.04.300 and 39.04.310 and this section (RCW 39.04.320, 2c), for use in the specification,
 - d. Define: Other criteria the awarding agency director deems appropriate, which are subject to review by the office of the governor (RCW 39.04.320, 2d).

3. Talk about combining apprenticeship requirements and federal training goals on federal projects.
4. Talk with Washington State Ferries about apprenticeship requirements.
5. Touch base on the report to the legislature.

Good Faith

The group jumped into a discussion about the definition of good faith. Kevin clarified for the group that he views RCW 39.40.320 2a, 2b, 2c and 2d not as being a part of one (to define good faith), but independently. He said that 2a, 2b, and 2d the demonstrated lack of apprentices, disproportionately high ratio of materials costs and any other criteria deemed appropriate by the awarding agency director are items that will surface prior to project advertisement, so the specification will not be included in the contract. 2c, the good faith effort, he views as a post execution item. A contractor can bid the contract, thinking that they can fulfill the apprenticeship requirement, but they may not. This is where good faith will come in. Good faith needs to be defined so that it can be demonstrated that it was followed.

- Dave Johnson said that good faith needs to be backed up with some kind of paper trail.
- Kevin mentioned certified letters
- Rick was concerned that WSDOT may have to regularly check to make sure the letters are valid.
- Dave Johnson suggested mirroring the process for the federal requirements.
- Kevin suggested that we not mirror the Federal process, as in addition to a letter indicating lack of availability, further documentation of effects in community based organizations is required. The Federal program is an affirmative action program and apprenticeship is a jobs program.
- Bob Abbott was concerned that a contractor working on a yearlong project could submit a letter saying no apprentices were available on the first week of the job and be off the hook for the duration of the project.
- Kevin said that WSDOT will ask contractors for a plan within 30 days of contract execution that will show how many hours will be worked by apprentices from the prime contractor's firm and subcontractors' firms. WSDOT will manage the plan by keeping track of how well the contractor is meeting the goals set out in the original plan.
- Dave Jones mentioned that the specification itself will list contacts for Labor and Industries.
- Bob Adams mentioned that it might also be appropriate to look at the company as a whole, on DOT jobs and non-DOT jobs. He added that there may be examples where they are training, but not on the site.
- John Littel mentioned that the contractor is a training agent for the next generation of the construction workforce and that they heard a lot of folks talking about how they didn't want to be training agents.

- Kevin said that the way he looks at this bill is that if you don't want to be a training agent, you have a slim chance of working on a state contract. He mentioned that it may decrease the number of bidders, which is already lower than it was historically.
- Dave Jones mentioned that there are contractors who are not training agents, but can subcontract. The spec does not say that the prime contractor must be a training agent.
- Tom Zamzow mentioned that there is concern over paving and guardrail work.
- Dave Johnson said that he was concerned that a paving project was chosen as a pilot, because that was one of the things discussed that was seen as an ongoing problem.
- Kevin said that the pilot projects are to test the specifications and process. He also mentioned that the other pilot project will utilize more trades.
- Nick Tommer was concerned that small contractors will be required to staff up because they will spend a lot of time changing and jockeying and shuffling workers around to meet the requirement.
- Dave Jones said that he doesn't want the contractors to be in an administrative burden so much so that they don't want to bid the job. He said the way GA takes care of it is simpler: the contractor understands that they must provide the number, if they don't, they must provide documentation of what they did to try to meet the goal. He said the notification letter is something that WSDOT could use.
- Bob Abbott agreed. He did not want to get into a situation where every week, the contractor is reporting and putting out a year long plan of what they are going to be doing. He liked the federal reporting form, but didn't want a way for the contractor to be off the hook for the duration of the project.
- Craig McDaniel said that the project managers need guidance for how the contractor can meet the guidelines. The guidance would be most likely a once-a-month item.
- Bob Abbott liked the once-a-month federal reporting form.
- Kevin said that if WSDOT used a similar approach and saw a form come in not meeting the requirement, it would be the cue to do something about it.
- Craig saw apprenticeship as a pre-construction meeting item.
- Dave Jones clarified that the draft specification requires monthly reporting, good faith documentation and an adjustment to the plan when apprentices are not available.
- Dave Johnson asked how often inspectors on site and if rather than a full blown plan, a gentle nudge from the inspector may be successful.
- Dave Jones said a plan will help inspectors know when there should be apprentices on site, so that WSDOT can be more proactive.
- Kevin said the plan could be revised or excluded

- Craig suggested that the reporting could trigger a response. If the contractor is reporting zero, WSDOT can ask for good faith documentation.
- John said that there is no consensus in the industry about what good faith is.
- Bob Adams asked about number five on the specification and past performance and company wide performance.
- Kevin asked the group if it would be just as easy to ask on previous contracts.
- Tom mentioned that there are other projects, an example being King County projects, which utilize apprentices.
- Dave Johnson was concerned that taking into account past performance would create an unlevelled playing field in the contracting community.
- Kevin reminded the group that the contractors would still have to do 1, 2, 3 and 4 on the specification before they would be providing information about past performance. It is not instead of, but in addition to.
- Bob Adams said that he heard the pavers would like to do it instead of the other items.
- John said that with the plan, you could use the apprentices on another project, instead of the paving project.
- Dave Johnson was concerned that creates an unlevelled playing field. He was also concerned that contractors would be using apprentices to perform low level tasks that do not give the apprentice any real-time on the job training. If the contractor could use past performance or off site work, the contractors would not be supplying the training and some contractors might have an advantage over others.
- Randy said that the good faith effort is for the specific contract, so the apprentice should be on site.
- Kevin mentioned that Butch Brooks had said his company has a lot of yard work that is preparatory for the project.
- Dave Johnson said you have to ask how that apprentice gets out of the yard or away from the crusher.
- Bob Abbott said there should be no argument about breaking up a paving crew when you are building a workforce; building a crew.
- Kevin gave a summary of where the committee is at in terms of making a decision about the good faith element. He said that the plan can be simplified and asked if 1, 2, 3, 4 and 5 can stand as written.
- Rick asked if the language on 3 and 4 was requiring every contractor to be a training agent.
- Dave Jones said the intent of the language is that a contractor goes to a program sponsor and see if anyone is available.
- Tom said that the premise is that they are signatory with a crew.
- Kevin mentioned that a prime contractor could accomplish the requirement through subcontractors, and he asked if one cannot provide the goal, do we ask them to become signatory with another craft?
- Duke mentioned that the grammar of 3 needs work.

- Nick asked what WSDOT would do if a contractor submitted a plan to meet all the requirements with operators and none were available, but a large number of laborers are available and the contractor knew this going in and submitted a plan to use operators knowing that they could demonstrate good faith.
- Kevin asked the group if they are going to ask a contractor to be a training agent for another craft, if there are no apprentices available in the craft they are a training agent for.
- Bob Abbott thought the plan should be more than just allowing the contractor to be signatory with laborers, and letting them off the hook if no laborers were available.
- Tom said that the real issue would be if a contractor, over and over, was off the hook because they planned to use apprentices in a craft where apprentices were not available.
- Bob Abbott thought that when WSDOT sees the contractor's plan, they will have a good idea of whether or not it will work.
- Kevin summarized the decisions of the committee. He said that the requirements of the plan will be softened to decrease the burden of managing the plan for both WSDOT and the contractor. 1, 2, and 3 will be revised to eliminate the training agent language. There will be a six added to talk about company wide attainment. This only applies if the contractor has missed the mark after doing 1, 2, 3, 4 and 5. This will cover the pilots. WSDOT will make the changes and they will go to the specifications committee. Apprenticeship Utilization Advisory Committee members will send a copy of the updated specification and will have 24 hours to return comments. Kevin mentioned that the process will continue. Some contractors may expose loopholes in the specification, but there is no way to close them before they happen. Getting the specification in the pilot projects will be useful. There is always an opportunity to revise the specification.

Geographic Areas to Exclude

To be discussed at the next meeting of the committee.

Disproportionately High Ratio of Materials to Labor

The committee will discuss this issue further at the next meeting. Until then, the committee has been urged to think about what disproportionately high material costs might be.

Federal Requirements

The committee briefly discussed coordinating the federal and state requirements. Kevin said that because WSDOT could potentially now have three definitions of good faith on one contract, it may be confusing to mix the definitions. The committee was concerned that putting more hours in fewer projects would limit opportunity. The group eventually agreed that the goals of the programs are

different. The group discussed this briefly, to be further discussed at the next meeting.

Other Criteria

Kevin asked for some criteria for evaluating emergency contracts and other criteria for allowing the awarding agency director to adjust the requirements of the apprenticeship bill. The group mentioned that while emergency contracts may not go to bid, and may not be the best places for apprentices, they sometimes end up being long term contracts. This issue will be discussed further at an upcoming meeting.

Upcoming Meeting Dates

The committee agreed on the following date for the next meeting:

Friday, February 9, 12 - 3 PM.