

MEETING MINUTES
Quality in Construction
November 13, 2013

Preparer's note: Items highlighted in yellow indicate possible action items.

I. OPENING DISCUSSION

- A. Alan Robertson stated that a task force needs to be set up by the 3 state SPAs to review RFP language consistency and value in criteria.
- B. Peter Heimbach said he has had conversations with SBC staff regarding lowering the threshold percentage for cost proposals. They are not in favor of doing so. Peter said that staff regard construction as a commodity. The current standard is 70/30, and if the second best evaluated proposer is fifteen points lower than the best evaluated, for instance by a score of 70 to 55, the second best evaluated needs to have half the costs of the best evaluated to tie.
- C. Alan Robertson stated that discussions on the issue of threshold percentages for cost proposals needs to occur between Peter, Ted, and Alan along with Comptroller staff.
- D. Don Miller said that this is the reason that this group, QIC, was formed, to develop quality in construction procurement, by considering qualifications and quality in procurement rather than simply lowest price.
- E. Johnny Stites said that treating construction services as a commodity is wrong.
- F. Dick Tracy said that you should evaluate CM/GC services provided. Cost proposal numbers are "all over the board".
- G. Peter said that GCs shuffle their numbers around to make them look good. They are "gaming" the system, such as by lowering the preconstruction fee and including it elsewhere.
- H. Ed Baldwin said that the SPAs should establish the project needs for the owner. What do you desire on the deliverables? What does the owner expect to see?
- I. Allan Cox said the owner should list the level of GC staff expected on the project.
- J. Alan Robertson stated that the state does not want to list the staff needed on a project. We should rely on the expertise of the GC in dictating this level of staffing.
- K. Allan Cox asked whether the state should develop a basis of GC staff involvement, and then negotiate that staffing level later?

II. LEGISLATIVE AND POLICY UPDATE FROM OSA

- A. Ted Hayden said that the DB1 contract is currently under review by the Comptroller and is likely going to be approved at the Executive Sub Committee meeting in December.
- B. Ted discussed a statutory amendment OSA has drafted and will be shepherding through the general assembly next spring. It is an amendment to T.C.A. §4-15-102(b)(1), and provides an exception to the requirement that no contract for construction be awarded until design is approved by the SBC, for whenever an ADM is utilized that allows a construction contract to be awarded prior to design completion.

- C. Ted noted that SBC policy 7.07 has been amended to provide that RFP/Q evaluations are now considered “complete” when the “notice of intent to award” is issued, as opposed to when the SBC approves the intent to award. This will allow an ample protest period to occur before the SBC meeting occurs.
- D. Ted discussed some further SBC and/or OSA policy revisions that have been drafted by OSA and sent to SBC Staff, for future consideration and discussion:
 - 1. SBC Policy 5.01, covering changes to the language governing the withdrawal of bids without forfeiture of bid security. The changes slightly extend the deadlines for such requests and delegate the decision from OSA to the State Procurement Agency. Ted mentioned that far down the road, OSA would like to discuss with SBC Staff the possibility of amending 5.01 to set forth some language allowing the correction of bids under very limited circumstances.
 - 2. SBC Policy 6.09, covering changes to language clarifying that subcontractor replacement requests must be made before the award of a project.
 - 3. OSA Delivery Methods Policy, covering changes to the CM/GC RFP Process section, removing the preconstruction services fee from the evaluated Cost Proposals, and adding significant language setting forth procedures for CM/GC’s to utilize to competitively procure trade prices.
- E. Peter Heimbach said that there is a proposed new protest policy which will require a bond.
- F. Don Freeman asked if a GC can lose their bond?
- G. Ted Hayden said “yes”, the bond can be lost, if certain criteria are met.
- H. Bill Young referenced the Prompt Pay Act, which was instituted back in 1991. He said that the banking industry approached the legislators and removed themselves from this requirement. He mentioned that out of town contractors that were building for developers, were left holding the construction costs when the developers went out of business.
- I. Ted mentioned that the State is reviewing the possibility of performing electronic bidding on projects.
- J. Stan Hardaway said that he would not recommend using Metro Nashville’s electronic bidding system.
- K. Alan Robertson said the State would probably perform a pilot application of electronic bidding.
- L. Dick Tracy offered that probably half of the contractors who do state work could not do electronic bidding.
- M. John Wimberly said electronic bidding is “not a big deal” and that the conversation needs to be started now.

III. A201 GENERAL CONDITIONS – UPDATE

- A. Dick Tracy presented an update on their review of the A201 General Conditions for Construction.
- B. Dick stated that Carl Manka, Jerry Preston, and George Criss are currently reviewing these conditions.

C. All comments offered from STREAM and QIC have been reviewed by this group. Keith King, with TBR, has drafted language to reflect the changes in wage rates.

D. Jerry Preston will likely be ready to do a presentation to QIC in January 2014 on this proposed revision to the A201.

IV. CM/GC FOCUS GROUP (See CM/GC Focus Group Meeting Notes Dated Nov. 13, 2013)

A. Don Freeman said GC's need to know some level of duration that precon services will be needed, and how much planning will be required. He believes that most GCs can come up with the level of man hours that will be required to perform this. Don thinks the more the State can normalize these requirements within the RFP, the better.

B. Don Freeman stated that GCs will trust that they will get a reasonable multiplier on top of their costs.

C. Allan Cox discussed and explained the Focus Group's three recommendations for modifying the determination of the Preconstruction Services Fee contained in its meeting notes attached hereto.

D. Dick Tracy said TBR primarily reviews the GCs services offered, and not necessarily the cost. TBR relies on the GC to determine the number of hours that they will need to put into the effort.

E. Dick said that he likes Option 3 presented by the CM/GC focus group, which states "eliminate preconstruction services fee from the required cost proposal and negotiate after award".

F. Don Freeman agreed that preconstruction services fees should be eliminated from the evaluation.

G. Johnny Stites said that risks with negotiating should be identified.

H. Peter Heimbach said there needs to be a basis developed for the preconstruction fee and then negotiate from there.

I. Larry Hart stated that there are three main items to be covered with preconstruction phase services, and they are: constructability reviews, estimating, and value analysis.

J. Alan Robertson said that the state needs to begin having internal discussions and meetings regarding how we will treat preconstruction fees.

V. WRAP UP

A. It was agreed that Johnny Stites and Bill Young will do a presentation to the group on Consensus Docs at the December 11 meeting.

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**The December 11 meeting has been cancelled.
The next QIC meeting will be January 8, 2014 at 10:00am at AGC.**