

Industry-Wide Issues Planning Draft Meeting Notes
November 3, 2006, 12:00 – 2:00 p.m.
World Class Conference Room, Kilroy Building

Initial if

Present	Name	Organization	Phone	e-mail
<i>Attendees</i>				
DJ	Dave Johnson	WA St Bldg & Construction Trades Council	360-357-6778	DJIW86@aol.com
DA	Dan Absher	Absher Construction	253-845-9544	dra@abshernw.com
Absent	Butch Reifert	Design Industry	206-441-4151	breifert@mahlum.com
Absent	Jerry Schlatter	WSU		
Absent	Ed Kommers	Mechanical Contractors	206-612-7304	ekommers@comcast.net
JL	John Lynch	General Administration	360-902-7227	jlynch@ga.wa.gov
MM	Miriam Israel Moses	REBOUND, A Building Trades Organization	206-441-0455	MIMoses@rebound.org
ND	Nancy Deakins	General Administration	360-902-8161	deakink@dshs.wa.gov
Absent	Lyle Martin	Hoffman Construction	206-286-6697	Lyle-martin@Hoffmancorp.com
Absent	Juan Huey-Ray	OMWBE (for Carolyn Crowson)	360-704-1188	JHuey-Ray@OMWBE.WA.GOV
OY	Olivia Yang	UW	206-221-4224	oyang@u.washington.edu
Absent	Nora Huey	King County	206-684-2049	Nora.huey@metrokc.gov
JM	Julie Murray (formerly Sexton)	WA Assoc of Counties	360-753-1886	jmurray@wacounties.org
JA	John Ahlers	Short Cressman Burgess	206-682-3333	jahlers@scblaw.com
RS	Rick Slunaker	Associated General Contractors	360-352-5000	rslunaker@agcwa.com
Absent	Dan Vaught	School Districts Project Review Board	425-489-6447	dvaught@nsd.org
JZ	Janice Zahn	Port of Seattle	206-728-3798	Zahn.j@portseattle.org
<i>Other Attendees</i>				
SB	Stan Bowman	AIA/WA	360-943-6012	bowman@aiawa.org
GE	Ginger Eagle	WA Public Ports Assoc.	360-943-0760	geagle@washingtonports.org
TK	Thomas Kuffel	King County	206-296-9015	Thomas.kuffel@metrokc.gov
SL	Syd Locke for Searetha Kelly	GA	360-902-7941	kellysj@dshs.wa.gov
AP	Ashley Probart	Assoc of WA Cities	360-753-4137	ashleyp@awcnet.org
MT	Michael Transue	AGC	253-223-2508	Cmjtransue@comcast.net

Meeting Notes

Julie Murray chaired the meeting (substituting for Nora Huey) and called the meeting to order at 12:10 p.m.

Responsible Bidder Discussion

There was discussion about the ability of some smaller public bodies to secure responsible bidders. Julie Murray said that smaller counties don't have the resources to investigate whether or not a contractor is responsible.

Miriam Israel Moses said that all agencies are using RCW 43.19.1911 concerning their Small Works Roster.

John Ahlers said that bonding companies weed out unqualified contractors. Perhaps a registration or license should be required for Small Works, but bonding isn't always necessary.

Dave Johnson said that bonding is only one aspect to consider. Bonding companies should not determine who is responsible, statute should.

John Lynch said that GA requires bonding on projects over \$35,000. GA also has adopted some in-house Responsible Bidder criteria.

There was discussion of establishing some objective standards for defining a responsible bidder. Some of the standards discussed included: a contractor should have generally accepted business practices, no criminal record, a record of prompt and full payment to the workers, and a safety record that falls within a norm.

Mr. Ahlers expressed concern about requiring subjective standards. He also said that lots of requirements will be burdensome to business and costly to taxpayers.

Mr. Johnson said he just wanted some minimum standards and that standards are cost-effective to the taxpayers in the long-run.

Rick Slunaker said that public owners should have responsibility criteria, too. Also, a safety record of a contractor can be deceiving; one injury can throw a small contractor way off the average for a year.

Mr. Lynch said that GA worked with AGC to create responsible bidder criteria. Self-screening has happened with GA's criteria. Unqualified contractors can see what is expected and they self-screen. GA also allows an appeal if a contractor fails GA's criteria. Although GA's criteria have worked well, putting it in statute would be a problem.

Ms. Moses said that there are 3,300 awarding agencies in the state, most of them small. A small PUD would have trouble with GA's detailed criteria.

Mr. Absher said that there is a greater chance of abuse with smaller agencies and RCW 43.19 is far too subjective. Most of the problem comes from subcontractors; even when the bad subcontractors are shut down they sometimes open a new firm the next week.

Ms. Moses said that bonding companies are getting relevant and timelier information to address that issue and progress is being made.

Ms. Murray suggested a mix of some minimum objective standards plus in-house criteria that could be considered as a secondary consideration to establish responsible bidder criteria.

Mr. Ahlers said that it would be a good idea to put an appeal process into statute. He also questioned whether the lack of a criminal record is relevant if it had nothing to do with contracting. For example, if a contractor had a record for purchasing cigarettes from a reservation and reselling them, should that disqualify the contractor? Ms. Moses said perhaps not, but should the first job back be on a public project? Let the contractor prove responsibility in the private sector first.

Mr. Slunaker said that small agencies need education and you can't legislate to solve the problem.

Mr. Johnson said Nevada has legislated to address the problem, and it's been working. It makes a difference if it's in statute. Mr. Johnson added that our state presently does not have responsibility criteria in statute, nor does it require that agencies develop their own.

Mr. Slunaker and Mr. Ahlers emphasized keeping the subjective criteria minimal and clear.

Ms. Murray, Mr. Lynch, Mr. Johnson, and Mr. Ahlers will form a task force to work on specific language to be ready by the December 8th meeting. House Bill 2024 from last year, including the "reject all bids" language would make a good base document, but the section of that bill that directs L&I to adopt rules should be deleted.

Michael M. Johnson (MMJ) discussion.

Mr. Absher said that although MMJ hasn't been a big problem yet, there is still an opportunity for owners to take advantage. Mr. Slunaker said that it is a problem and that there is a court case pending right now.

Mr. Ahlers said MMJ is a fairness issue. Disputes need to be resolved on their merits not by paperwork and a gauntlet of notice requirements. HB 2024 does not go far enough. The burden should be on the owner, not the contractor.

Michael Mequet added that disputes need to be resolved in a timely manner.

Ashley Probart said that the MMJ decision has been around for 3-4 years and it hasn't changed contract procedures.

Mr. Ahlers noted that the UW has kept its prejudice standards but WSU eliminated theirs right after the MMJ ruling.

Tom Kuffel said that the MMJ case hasn't made a significant difference in the way King County operates. King County has an extended time frame for notice and there has been no windfall for owners in his opinion.

Mr. Ahlers said that if it doesn't make a difference one way or the other, why resist HB 2024?

Mr. Lynch said that GA has prejudice language similar to UW and it has been working well. GA doesn't want to go to arbitration. GA wants bidders and it competes with the cities, counties, etc. to get them.

Ginger Eagle said that the people she represents and others are concerned that notice requirements might be ignored if the AGC proposed legislation passes. She said she could not support that bill.

Mr. Absher said that since MMJ, owners have had a potential "nuclear weapon" that an owner's attorney would certainly advise the owner to use in a legal dispute. The fact that owners haven't used it yet is irrelevant; they have an unfair advantage and that needs to be corrected.

Mr. Slunaker said that at the very least, the old law needs to be restored to restore the confidence of the contractor community. The AGC bill is already a compromise and it should be accepted as a fair bill.

Mr. Ahlers said that the MMJ ruling means that there is no prejudice precedent in the state.

Ms. Murray said that MMJ didn't substantially change current law in her opinion. Since there is no agreement on current law within the subcommittee it is difficult to come to consensus on changing the law.

Mr. Ahlers said that the prejudice standard worked and we need to get back to that.

The next meeting was set for December 8th, 12:00-2:00 p.m. in the "Get on It" conference room in the Kilroy Building, SeaTac. The agenda will include responsible bidder issues, the Michael M. Johnson case and its impact, and bid limits legislation.

The meeting adjourned at 2:10 p.m.