



MEETING MINUTES

STATE OF MARYLAND - DEPARTMENT OF GENERAL SERVICES
 Office of Facilities Planning, Design and Construction
 301 West Preston Street, Suite 1400
 Baltimore, Maryland 21201

CHANGE ORDER WORKGROUP

MEETING NO. : 3
DATE: October 19, 2016
LOCATION: 11th Floor Olmstead Conference Room

MINUTES ISSUED:

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WORKGROUP SYNOPSIS:

Work Group Members (excluding units of the State):

House Bill 403, Chapter 581 of the 2016 Session of the Maryland General Assembly established a workgroup of stakeholders to develop recommendations that address issues related to State procurement for construction contracts including scope review process, termination for convenience, uniformity of change order practices & authority, prompt payment & interest, force account practice & policies, funding, contractor capacity and other issues the workgroup determines to be relevant & appropriate.

OLD BUSINESS:

MEETING No.1

General

Item No.	Action	Topic	Item
1.1		Regulations	Legislation requires State Unit Guidelines be issued by 12/31/16 and Board of Public Work Regulations by 1/1/17
1.2		BPW	RECOMMENDATION: Invite a representative from BPW to attend these workgroup meetings and send them notification of meeting minutes.
1.3			

Scope Review Process

Item No.	Action	Topic	Item
1.1		BIM	Should BIM be required for design? When owners are requiring BIM for design are contractors seeing less change orders and more coordinated designs?
1.2	Champe	Best Owners	Champe to reach out to his membership to request names of owners that are producing good design documents. These owners can then be queried to determine what they are doing different then the State, including requiring BIM, allowing different bid timeframes, placing additional requirements on their A/E's, allowing higher fees from A/E's, etc.
1.3		Plan Detail	- There is a lack of detail in some drawings, many are not 100% complete - Subcontractors shop drawings are sometimes used for contract docs? Does this cause a need for change orders? - How does a contractor come to a price when there are aspects left to the imagination? -How does the State improve the level of detail on Design documents?
1.4		Bid Process	A 2 tier bid for construction was suggested, where the 3 lowest qualified bidders would move to a 2 nd round with more detailed design discussion with the design team and owner, then bid again or value engineer. The suggestion was unfavorable to both State and Contractor representatives in the room for the increase in time required and the creating of gray area on bid assessments.
1.5		Scope Review	What scope of review is being done in other parts of the State that could be incorporated into the review process? - Constructive review of docs occurs before the project is sent out to bid, in some State Units this is outsourced to a different engineering firm then designed the project, for some it is performed in house -Review of plans prior to bid advertisement creates a conflict of interest for bids provided by vendors that saw the documents in advance -Suggestion included creating a blind review by vendors, where the vendors name is not released. Contractors and the State Units agreed this created greater conflicts - Contractors do not delve deep into the specs until closer to the bid date (approx. two weeks out)
1.6		Bid Timing	During the pre-bid meeting is there a way to allow more questions to clarify project docs? Would more questions come in if the pre-bid meeting was held closer or further from the bid date? RECOMMENDATION: The pre-bid should be held closer to the bid date, this will generate more questions as the contractors are more likely to have reviewed the documents, but it must still occur before the questions are due.

1.7		Question Timing	21 days minimum to advertise a bid- what is a better timeline? - should there be a delay in bid opening in order to correct issues that are obvious in the specs and drawing, and to issue addendums to clarify?
1.8		Bid Question Cut-Off	Contractors have questions after the question cutoff date, a request was made to extend the question cut-off dates. The State Units concurred that if a question is submitted after the cut-off date that is substantial, that it will be answered or the bid date will be extended, however there must be a question cut-off date. RECOMMENDATION: State Units will create language in Invitation to Bid Documents to indicate that questions can be submitted after the question cut-off date but will only be answered at the discretion of the State Unit issuing the ITB if they determine it to be in the best interest of the project.
1.9		Pre-Bid Meetings	State Units are interpreting if pre-bid meetings are required differently. Some units do not hold unless the project is of decent size and complication, some units hold conference calls and some units are mandated to hold in person meetings if there is an MBE goal. RECOMMENDATION: Pre-Bid meetings should be at the discretion of the project type, complicated projects, secure facilities or existing site/building complications should require pre-bid meetings in person. Other projects should not or allow conference call pre-bids RECOMMENDATION: Include in State Unit Guidelines on Change Orders a discussion of pre-bids and how that Unit of the State typically handles.
1.10		Pre-Construction Meetings	Sub-contractors are not always provided the same information as the prime contractors about how to complete change order forms and the timelines associated. Requiring sub-contractors to attend the pre-construction meeting was dismissed as not all of the subcontractors are on-board at this point, creating a 2 nd sub pre-construction meeting later in the project was also dismissed as to time intensive. RECOMMENDATION: Issue State Unit Change Order Guidelines on State Unit Websites where sub-contractors can access procedures and timelines for typical projects RECOMMENDATION: Primes should notify Subcontractors of pre-construction meetings and allow the Sub's to attend if they would like to, but not require sub-contractor attendance
1.11		Drawing Coordination	A/E's routinely indicate areas of trade work on different discipline drawings. For example, electrical work is shown on the electrical drawings, but there may be some shown on the landscape plans. The Electrical sub-contractor only reviews the electrical plans and misses the landscape work creating a scope gap and change order to the prime contractor. RECOMMENDATION: State Units create/issue Searchable PDFs (PDF plans from CADD or ensure they are searchable when scanned in). Issue these on eMaryland Marketplace with the bid documents. This allows primes and sub-contractors to search key words and find areas of work on other design discipline drawings quickly.
1.12		Re-Bids	When a project is re-bid and changes are made to the bid documents, contractors have a challenging time finding these changes. RECOMMENDATION: Make changes in re-bid situation more obvious but issuing a list or highlighting the changes in some fashion.

Termination for Convenience

Item No. Action Topic Item

1.1		No Comments	It was agreed there are no issues related to this topic and associated with Change Orders for Construction Projects

Uniformity of Change Order Practices & Authority

Item No. Action Topic Item

1.1		BPW Threshold	There is a variation in approval thresholds for State Units. The lowest threshold for Change Order approval is \$50,000 and above must go to the Board of Public Works. This adds time to process change orders and creates delays for payment for primes and sub-contractors. RECOMMENDATION: Increase the threshold for Changes Orders to the Board of Public Works to be equal for all State Units at \$1,000,000 (the current highest limit)
1.2		Processing Time	USM College Park procurement has been able to reduce <i>procurement's</i> change order processing time <i>to an average of 15 days</i> by implementing a new electronic project management system called, EBuilder software. http://www.e-builder.net/ RECOMMENDATION: USM Change order processing and software be used as a model for other State Units to expedite Change Order Processing.
1.3		Change Order Acknowledgement Timeframe	Contractors are required per COMAR to notify the State Unit within 20 days of a directive if there will be a change order associated with the directive. Discussion on the appropriate timeline for a State Unit response to this notification. RECOMMENDATION: State Units include in published guidelines the typical timeframes for all activities including responses to these notifications from Contractors.

MEETING No. 2

General

Item No. Action Topic Item

2.1		Bid Review	Discussion on the review of the low bid with the low bidder and subs to allow discovery of scope issues prior to the Notice to Proceed. If issues were discovered the project would require a re-bid or a rejection of the low bidder and move to the next bidder.
2.2		Change Order Acknowledgement Timeframe	Contractors are required, per COMAR, to notify the State Unit within 20 days of a directive if there will be a change order associated with the directive. Discussion on the appropriate timeline for a State Unit response to this notification. Recommendations for 30 days were discussed, however concern arose that the State may wait 30 days because they can. 15 Days also discussed. Suggestion that if no response was provided by the State to a price proposal that this be considered acceptance. State Units firmly disagreed that lack of response cannot equal acceptance. RECOMMENDATION: It is good communication practice to respond to requests timely, if responses are not being received seek answers up the chain of command
2.3		Alternatives	Alternatives can be included in any State Contract at the digression of the Unit of State Government. RECOMMENDATION: If Contractors believe additional alternates are required to allow for better pricing this should be questioned during the pre-bid question period.
2.4		Procurement Reform	Discussion on the various State Procurement Reform Activities. Including collection of Routine contractor documents required with bids. Current eMaryland Marketplace cannot handle the centralized collection. RECOMMENDATION: Concur with Procurement Reform Recommendations to centralize the collection and review of these documents

Prompt Payment & Interest

Item No. Action Topic Item

2.1		State Resources	Discussion on increasing State Resources to reduce processing times for changes orders. Agencies discussed how the internal bureaucratic process is the predominant cause of the long timelines, not the number of staff involved. Particularly the antiquated FMIS system (Maryland’s Financial Management Information System).
2.2		SHA CO Letter	The legislation allows SHA and MAA to provide a letter in lieu of a Change Order. How does this letter relate to billing for the Change Order and when does interest become applicable? How is this letter binding against federal funding?
2.3		Delegation of Authority	Discussion on providing transparent information on delegation of authority, specifically for various levels of change order approval so the contractor can be assured that the person approving the change order has authority to do so. State needs to distinguish between authority to negotiate and authority to approve. RECOMMENDATION: State Units publish delegations of authority for Change Orders within the change order guidelines or include in each contract.
2.4		State Contact Information	Discussion on transparency for whom to contact within State Units when project contacts are not responsive. Or when Prime Contractors are not responsive to Sub-contractors. RECOMMENDATION: State Units provide contact information in Change Order published guidelines. Include procurement officer for bond information on the Prime, include project hierarchy for payment disputes and State Unit responsive issues.
2.5		Prime Bonds	Discussion on the bond information for the prime. Suggested forcing Primes to provide this to the Sub’s in sub-contractor contracts, however the State would have to collect and review sub-contractor contracts in order to ensure. RECOMMENDATION: Provide directions in the State Unit Change Order Guidelines on how Subcontractors can contact the procurement officer to receive payment bond information on the prime if needed.
2.6		Prime Payments Public	Subcontractor would like to be able to see when the prime is paid and if that payment included their items of work. DC passed a law that requires an online system to allow subcontractor to see this information, but the details have not been worked out yet. San Antonio has a public system, but it’s not broken down well making it difficult to use. State Units currently receive calls from Subcontractors to confirm Prime payment and provide information to the Subcontractors. States current FMIS (Financial Management Information System), does not have the detailed invoice breakdowns, just the total amount paid to the prime. Information cannot be extracted from this system that would answer these questions. MBE’s should not encounter this issue as they are required to file monthly the amount they were paid and the Primes are required to file the amount they paid their MBE’s monthly with the State reviewing and reconciling. Suggested that the State charge vendors to use an electronic application that would show the payment breakdown of the prime. The State used to charge for eMaryland Marketplace, but this was made illegal as the State cannot charge vendors to do business with Maryland. State currently does not allow electronic invoices. BPW is proposing new regulations that would allow electronic invoices. These new regulations should be in the Maryland Register in a few weeks for public comment. RECOMMENDATION: State overhaul FMIS and allow capability for subcontractors to see the breakdown of payments to primes. Until this system overhaul, make contact information available through State Unit change order guidelines for whom a subcontractor can contact to get this information.

2.7		Interest	Newly proposed BPW regulations will require a separate invoice to be submitted for the late payment interest.
2.8		Change Order Contingency	Discussion on the State carrying a change order contingency on the contract as a line item to allow faster payment for change orders. SHA previously carried this line item but it was removed as a result of legislative audits. If the line item is carried it is also included in the MBE/DBE/WBE percentages for work that is unknown and uncontracted at bid time.

Force Account Practice & Policies

Item No. Action Topic Item

2.1		Funding Force Account	<p>Previously Force Account work did not require a change order to start. The change order was completed after the time & materials work was completed and verified. With the new law, a change order must be issued first stating the scope and that work is to proceed as force account. This change order could have \$0 since costs are unknown. Or it could have a 'Partial Payment'. If the initial CO has no funds, there are then no funds transferred to pay invoices associated with this work. A 2nd Change Order would need to be issued to transfer the funds to the project.</p> <p>Unilateral Change Orders could be issued instead of force account and the contractor would have to issue a claim later to resolve payment discrepancies. Unilateral Change Orders were/are not preferred by the contractors.</p> <p>RECOMMENDATION: Issue "Partial Payment" with Change Orders for Force Account to allow the contractor to start billing for work as work is completed. State in the change order that this is not the full amount for the work and negotiations are on-going.</p>
2.2		Tracking Force Account	<p>Force Account Change Orders may require 2 or more change orders to transfer the full funding to the project. Some of these additional change orders may just be issued within the State for the funding</p> <p>RECOMMENDATION: If a second change order is issued, provide it with the same Change Order Number then a letter to indicate the relationship between the change orders for PAAR reports and tracking. PAAR = Procurement Agency Activity Report, this is a report from State procurement agencies to the Board of Public Works (BPW) on procurements that do not go to BPW for approval.</p>
2.3		Delay Costs	<p>Force Account work could cause delays to the overall contract and the contractor could incur additional costs for these delays.</p> <p>RECOMMENDATION: Submit delay costs as a separate Proposed Change Order from the Force Account Change Order.</p>
2.4		Dollar Limit	Discussion on reasonable dollar amounts of the force account work.
2.5		Engineers Estimate	<p>When the State and the Contractor are negotiating a change order the delta amount needs to be beneficial for both the State entities and the contractor. Since the contractor is providing their cost breakdown, should the State provide their engineers estimate for the contractor to see?</p> <p>RECOMMENDATION: After the contractor has provided a price for change order work, if the State Unit does not agree based on their engineers estimate, the engineers estimate should be provided to the contractor as part of the price negotiations.</p>

NEW BUSINESS:

General

Item No.	Action	Topic	Item
3.1		Cross Jurisdictional Projects	When there are cross jurisdictional projects going on, the decision maker needs to be specified. For example, when local governments are doing projects with some State and some Federal Funds, decisions end up delayed for change orders due to determination of hierarchy.
3.2		Maryland Contractor Culture	In all 3 meetings the subject of current prime and subcontractor culture was discussed. There is an unwillingness from Sub's to contact the State and circumvent the Prime contractor. The belief is they could receive less work in the future from the Primes. The State has existing regulations/laws/policies that allow a sub to work with the State, but if Sub's are unwilling to take advantage of the current policies, new policies may have little to no effect on the existing culture.
3.3		CO Process	The State and Contractors would benefit from a refresher on the CO process for every job to ensure everyone understands the requirements. RECOMMENDATION: Change Order process should be discussed at pre-construction meetings
3.5	DGS	CO Law Effective Date	Does the new Change Order Law take effect for new contracts only after enacted date of 7/1/16, or does this effect all new change orders after this date. Current State construction contracts are written with clauses that all laws at the time the contract was signed are in effect. RECOMMENDATION: DGS will check with State Litigation to advise/clarify what contracts and change orders must apply the new law to practice. Checking with AG-Litigation Unit will ensure a uniform answer for all State Construction units.
3.6		Solicitation Document References	Invitation to Bid/Request for Proposal Documents for the federal government are standardized across divisions for the up front section that refers to other federal laws or guidelines. These references provide links to the actual documents or clear citations of these documents so they can be easily found. The documents are not attached as part of the solicitation. RECOMMENDATION: State should provide direct links/citations for referenced documents. This should be standard for all State Agencies.
3.7		Submittals	A good project example was provided for working with the State where the submittal process was clearly laid out at the Pre-construction meeting and the approval process was quick RECOMMENDATION: Discuss Submittal Process at the Pre-Construction Meeting, provide a clear chain of approval and clear timelines for approval.

Project Funding

Item No.	Action	Topic	Item
3.1		Contingency Funds – DGS, USM, DPSCS	For DGS, USM, DPSCS there are contingency funds for change orders, this amount is set aside in the initial budget, but the breakdown is not shown publically. It is a percentage of the total project estimate, however this % will vary once the bids come in and the project is awarded. If the contingency on an individual project is exhausted there is a Statewide Construction Contingency Fund that can be accessed with approval from DGS & DBM. This fund is re-upped on occasion during the capital budget process and also receives funds from projects with left over funding.
3.2		Contingency Funds - SHA	SHA does not have any issues with CO funding for their projects SHA needs line items (specific) in order to provide funding (there is no contingency amount) set with the contract. SHA can reach into future fiscal years to pull funding to cover change orders.
3.3			General Allowances or Contract line items for change orders were discussed. SHA formerly provided these items, but this was eliminated as a result of Legislative Audits. The line items were not deemed to have appropriate checks and balances.

Contractor Capacity

Item No. Action Topic Item

3.1		Notification of COs to Subs	Concern raised over how Subs can know what they will be paid for in a change order. The new legislation requires that primes provide copies of the change order to the subs so the sub will know. It was suggested that the State provide this documentation to Subs, however the State does not always know which subs will be making up the change order work, this is something the Prime knows.
3.2		Force Account & T&M	Contractors would rather have force account/unilateral with some funding in the CO to bill against then wait until all tickets are collected before billing can begin. Examples were provided of contractors waiting a year or more for payment on T&M/Force Account work. RECOMMENDATION: State utilize some ‘not to exceed’ language for force accounts or utilize a multi-part change order for force account/T&M change orders to allow parts of the change order to be paid as they are completed. Or utilize a Unilateral that allows for some payment and a claim later for the remainder of payment.
3.3		Procurement Processing	There is a perception that processing the paperwork to get CO payments through takes too long and that the State does not have enough personnel dedicated to this task. State Agencies concurred that it is not the number of staff, it is the process and the checks/balances for audit purposes that make the process take long.
3.4		State Staff Quality vs. Quantity	At some State Agencies there are contracted staff managing projects; Contractors perceive these staff have no incentive to manage efficiently and have less decisions making authority/make decisions slower. RECOMMENDATION: State investigate contractual PM’s look at authority levels, timelines and assessments of these contracts.
3.5		Procurement Staff	Procurement staff routinely refer contractors back to construction divisions within the State in lieu of exerting authority as a Procurement Officer. The Federal Government has a ‘Contract Officer’ that exerts authority and makes contract decisions on a job at a much faster pace. RECOMMENDATION: State look at the role of a Federal Contract Officer vs. a State Procurement Officer
3.6		Contractor Staffing	At the start of a project there are no change orders, as the job comes to an end the change orders have mounted and at times contractors attempt to include additional staff to process change orders in the cost of change orders. These costs are denied by the State.
3.7		Sub Notification	Subs pushed to be notified by the State of progress meetings. State takes no exception to Subs attending progress meetings, but requiring attendance at all meetings would create a burden on small sub’s when the project is not at a stage that requires that Sub. Requiring attendance would create the need to create a consequence if a Sub did not attend. RECOMMENDATION: Prime’s encourage Sub’s to attend progress meetings and Subs attend if available and if timing is relevant
3.8		Change Order Database	Discussion on how the State currently tracks Change Orders. SHA has a robust database system once the change order is entered into the system, they are currently working on ways to ensure CO’s are entered into the system faster. USM implemented an electronic tracking system once the change order hits procurement. DGS tracks manually by project until the Change Order is in the States Financial Management System.

Retention – State’s Retention Policies

Item No. Action Topic Item

3.1		Retainage on Completed Task	Discussion on retainage for completed work. Concerns from the State on what if the work is completed for one trade but another trade disrupts completed work, the retainages is being held on the Prime. The Prime could choose to release from certain subs. Additional concerns from the State on what leverage is available to get Contractor to complete punchlist work if there is now funding being withheld. SHA conducts a semi-final payment to bring down retainage. RECOMMENDATION: State continue current practice of releasing retainage or reducing retainage on a project by project basis. Primes bring up the issue at progress meetings and discuss reducing or releasing if it is impacting Subs. RECOMMENDATION: Subs put in their contract with the Prime to reduce their retainage when their work is complete.
3.2		SHA ADA Projects	Punchlist process for SHA ADA projects is very long, as there are limited inspectors available to inspect this work and it can be a full year after construction is complete before work is inspected and retainage is released. RECOMMENDATION- SHA provide more ADA inspectors to get through punch list and substantial completion review/walk through.
3.3		O&M	Operation & Maintenance (O&M) submittals at the end of a projects end up with long review times by the Architect/Engineering Firm. Delays in approval result in delays in final payment and retainage release. RECOMMENDATION: State incentive A/E’s to turn around O&M reviews faster.
3.4		CO Guidelines	RECOMMENDATION: Add to Using Agency Change Order Guidelines a section on Retainage and who to negotiate with on a project. Explain the intent of the retainage is to ensure punchlist items are completed at the end of a project.

The above reflects the author’s understanding of discussions held at this meeting. Any discrepancies in these minutes should be addressed to the author within seven (7) days. If no comments are received within seven (7) days, these minutes shall stand as written.

Respectfully submitted,

STATE OF MARYLAND – DEPARTMENT OF GENERAL SERVICES

Lauren Buckler

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