

**MEETING MINUTES**  
Quality in Construction  
September 11, 2013

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

**I. Outstanding items**

**A. OSA – Check with UT and TBR on what they are doing as far as evaluating completeness and validity of CM/GC information submitted in proposals.**

1. TBR – If any items are left out by the submitter then the proposal is evaluated “as is”. If a cost item in the cost proposal is left blank then TBR treats that as a “zero”.
2. STREAM – Peter stated that if an item is left blank on a proposal then they contact the submitter and ask if they meant to leave it blank, as long as it doesn't have a “material” affect.
3. TBR – Dick stated that the procurement agency has to be fair to all proposers.
4. STREAM – Peter stated that usually cost proposal items get clarifications. If the item is blank then they seek clarifications. STREAM stays flexible in whether the submittal is titled “non-responsive”. There are only three options: one is value, one is 0 dollars, and one is blank. STREAM only seeks clarification if it is a blank. They cannot fill it in; they must withdraw their proposal.
5. Dick Tracy said that you can treat it as non-responsive if it is left out.
6. Peter said that if they can “eat it”, they can “eat it”.
7. Alan Robertson said that state sought to use the language “it may be non-responsive” to account for waiveable informalities.
8. Bob Pitts said that all three procurement agencies need to treat the evaluations the same.
9. Ted Hayden stated that it is a process.
10. Alan Robertson said that the state needs to develop a “level playing field” regarding RFPs. Interviews are a way to receive further information from a proposer and to ask for any clarifications.
11. Johnny Stites said that contractors need to be allowed to provide construction scenarios that would offer solutions to the owner.
12. Tami Robison asked if he has examples of such.
13. Johnny Stites said that a place within the RFP should be provided that asks for creative solutions for cost effectiveness and associated risks. He said that should carry some weight with the state.
14. Tami Robison said that STREAM provided “open-ended” questions on the facilities management contract, and it was approved by the Comptroller.
15. Dick Tracy said that proposers cut the fee, or cut general conditions and jump past everyone else so all Johnny Stites is talking about gets lost.
16. Alan Robertson said RFP instructions for all SPAs will be reviewed for consistency and solutions will be presented to QIC. State Procurement Agencies have the flexibility to vary the criteria to be evaluated in their RFPs.
17. Dick Tracy said that it becomes a “cost driver”, and not quality driven, which was not what was intended. Good quality people won't propose due to the low fee. TBR places a value of 30% for the cost proposal.
18. Johnny Stites said the life cycle costs of buildings are 11% for an initial construction, 14% for financing, and 75% for maintenance.

19. Bob Pitts said that industry has a concern where proposers for alternate deliveries with a fee based component offer very low fee proposals with the intention of picking up the “lost fee” elsewhere within the project.

**B. OSA still needs help getting contact information on the advisor list.**

1. Contact information for the list of advisors has been provided and the list updated. This is now located on the OSA website for SPA use.

**C. Contractor Registration Site on the web**

1. This is being budgeted for within OSA’s budget. A draft of the registration site will be provided at a later date for review by the group.

**D. Qualifications of advisors**

1. Alan Robertson stated that a draft form has been developed for the SPAs to qualify their proposed evaluators requiring some level of knowledge in the design and construction field, as well as a conflict of interest statement. **This form will be finalized for issue to the SPAs.**

**E. Legislation and Policy**

1. Ted Hayden said that there is proposed legislation that will revise current legislation to allow a construction contract to be signed before the design phase is complete.

2. There was proposed legislation that would recognize preconstruction phase services as professional services. However, this proposal has been delayed and therefore the statute will not be amended next spring regarding professional services.

3. **Ted mentioned that SBC policy is being reviewed to revise current language that states that an evaluation is complete after SBC action.** This will be changed to reflect that evaluations will be complete at the end of the SPA evaluation period.

4. Ted stated that current state requirements on professional liability will be adjusted to be \$1 million minimum . This change will reflect current industry standards.

5. The SBC policy regarding contractor disqualification will be reviewed for proposed revisions.

6. Ted mentioned that the statute regarding prevailing wage law has been changed. Current law will go into effect in January 2014, and will abolish the current state prevailing wages as dictated by the Labor and Workforce division.

7. Bob Pitts said that the current prevailing wage law will be replaced to address both private and public.

8. **Alan said that the current prevailing wage language within the designer’s manual and within the current A201 will be changed to reflect this change.**

**F. General Conditions – A201**

1. **Dick Tracy with TBR stated that they have been taking comments from QIC’s review of the current A201 and making proposed changes. These changes will be reviewed with the group.** The intent will be one document that will be used by each of the SPAs. TBR is currently about ¾ of the way finished with their first draft.

2. **Ted Hayden said that this A201 will be used for both CM/GC and DBB, and the presentation of this will be made to the group later.**

**G. CM/GC Focus Group presentation (Presentation is located on OSA website)**

1. Page Inman stated that during one of their CM/GC projects they mimicked nearly the same criteria required of them as the CM/GC directly to their subs evaluations.

2. Ted Hayden said that the industry may want to move away from performing a public bid opening with their subs. The policy should provide that the process of sub evaluations be set by the construction manager/general contractor and approved by the SPA. Dick Tracy said that evaluating the entire team is ok, but then you are locked into that team. Due diligence is required to secure 3 proposals, but you do not have to receive three proposals.
3. Peter Heimbach said that the State of Tennessee will want the CM/GCs to have some flexibility with this issue.
4. Alan Robertson said that the state may need to address the language within the CM/GC regarding competition among GC subs.
5. Johnny Stites said that a GC may want to pick a sub because they have a good working relationship with them because they have a strong team. He would like to see this addressed within the evaluation criteria.
6. Dick Tracy asked why do the submittals from the industry range widely on preconstruction fees?
7. Allan Cox stated that this is due to the guy who submits a 30% cost proposal in order to “buy the job”.
8. Lynelle Jensen said that we need to define what constitutes preconstruction phase fees. A fee schedule should be provided with negotiations for additional preconstruction services outside of the basic services.
9. Dick Tracy said that preconstruction phase services are usually provided by approximately 3 employees. He is in favor of negotiating these fees. He said that precon services are auditable. You don’t need a schedule, you need to evaluate what you do as a part of the technical proposal, and what services you provide, not your price or cost. Deliverables should be a part of the negotiation. There should be collaborative discussion among general contractors, designers and subcontractors.
10. It was asked if it is collusion for CM/GCs to discuss generalities of fees with a governmental entity? Discussing generalities with a governmental entity about a holistic perspective is okay. Discussing generalities in private industry is a problem or discussing specific projects with the government is wrong.
11. Allan Cox said that he would like his group to present how preconstruction phase fees work at the next QIC meeting.
12. Peter Hiembach said the current CM/GC cost proposal is worth 30% in the overall scoring. There is no statute backing that up and maybe the policy can be changed to a 80/20 split.
13. ~~Brian Hay said that he has only noticed DBE request within TBR’s RFPs and this should be taken out.~~
14. Chris Remke stated that it is difficult for a contractor to hold together a proposed project team when there is a delay in getting an executed contract.
15. It was noted that the State will review the requirement of a minimum cost proposal value at 30% of the overall scoring. Will the Comptroller have a voice in this matter?
16. Dick Tracy said that example projects submitted should tie to prior projects, such as those prior similar projects listed, and they must be CM/GC projects. SBC policy requires unimportant information in the RFP evaluation. We don’t need it there.
17. Alan Robertson stated that policy will be reviewed for inclusion of important criteria.
18. Dick said that he tells evaluators that we are buying a service. I don’t see a value in those things in the technical section of the evaluations and we should focus on the service.
19. Peter said the two questions should be: Why is it in the best interest of the state to hire you and what is it going to cost? We can’t compare apples to oranges to peaches here. We

must compare apples to apples. The costs will differentiate between two good quality firms. Thus, changing the 30% to 20% will still leave room.

#### H. DB-1

1. Chris Remke said that his focus group has provided comments back to the state regarding their latest draft of the DB-1 agreement.
2. It was decided that the state will need to review all the comments and get back with his focus group to gain consensus.
3. Subrogation and insurance are items that are on the table for discussion.

## II. SMALL PROJECTS

1. The concept of small project procurement will be presented at a later date. Construction side is open for discussion as to their experience.

#### A. General discussion

1. Bob Pitts asked if the state has reviewed the consensus documents? He said that 39 industry groups have endorsed these documents.
2. The state said that these documents have not been considered at this time.
3. It was noted that Bill Young and Johnny Stites will provide a comparative analysis between the consensus documents and the AIA documents at one of the next QIC meetings.
4. It was noted that a construction lobbyist can affect change in legislation.
5. Dick Tracy said that most of what would be changed in the consensus documents would be based on the state statute.
6. Bob Pitts asked as the alternative delivery methods that the State uses increase in utilization, then do they become more subjective? He said that the industry wants the "playing field" to be simple, fair, and objective. He further said that there is currently too many issues that the State is wanting to change and the State needs to prioritize what they want to address.
7. Chris Remke said that the A201 is a critical document, and should be finished before other contracts, such as Design/Build is brought to the table.
8. Ted stated that the DB1 contract rollout cannot wait on A201 completion. Can we roll out DB-1 and take a look at it again when A201 is finished?

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**The next QIC meeting will be November 13, 2013 at 10:00 am at the offices of AGC.**

# Outstanding Items

Construction Manager/General Contractor (CM/GC) Focus Group

# Selection of Subs and Trades:

- CM/GC is the filter for screening subs, we are the most familiar with their performance, financial capability and status, ability to staff the project, current workload, etc.
- CM/GC is the one at risk, responsibility should be with the one most capable of managing this risk
- **Recommendation** – Continue to allow the CM/GC to prequalify subs for GMP bidding – must be prequalified to bid

# Preconstruction services prior to SBC funding approval:

- Consider using project management services consultant to provide pre-planning, programming and budgeting - no perceived conflict of interest
- Select from a pool of prequalified General Contractors – this could be perceived as giving this firm an edge if project becomes a reality and GC is allowed to pursue
- **Recommendation** – Use project management services consultant paid from current planning funds

# Preconstruction services after SBC funding approval:

- Preconstruction fees are very small percentage of total project cost
- Preconstruction services sets the tone for the success of the project
- Preconstruction fees currently being proposed do not correspond to the level of preconstruction services the project requires/deserves and that the clients are willing to pay

- Preconstruction Fee Schedule:

Project Value	\$10,000,000	\$20,000,000	\$50,000,000	\$100,000,000
Preconstruction Fee	\$50,000	\$70,000	\$125,000	\$300,000
Percent of Project Cost	0.50%	0.45%	0.35%	0.30%

Full Precon Services	\$50,000	\$90,000	\$175,000	\$300,000
Precon starting at DD	\$33,333	\$60,000	\$116,667	\$200,000
Precon starting at CD	\$16,667	\$30,000	\$58,333	\$100,000

- **Recommendation:** Establish the preconstruction fee based upon percentage of the project's cost and design phase at which the CM will become involved
- **Recommendation:** And/or State in the RFP the preconstruction fee amount that will be paid for the specific project and include it on the Cost Proposal form

# CM/GC Fees

- Not discussing today but want it on next agenda.
- Have spoken to counsel and its OK to talk about fees when a specific project is not being discussed and it is all hypothetical.
- Setting a CM/GC Fee Schedule or other approach would require new legislation that further removes concerns regarding any “bid rigging”.

# Comments on Streamlining the RFP/RFQ Process

Initial comments and thoughts:

## Section A – Mandatory Requirements

- Typical SPA RFQ's ask the same generic questions in Section A:
  - Letter from Insurance company
  - Form of Business
  - Mergers & acquisitions
  - Quick Ratio
  - Annual volume in last 5 years, what percentage CM/GC
  - Pending litigation
  - Bankruptcy in last 10 years
  - Conflict of interest
  - Convicted of felony

# Comments on Streamlining the RFP/RFQ Process

- **Recommendation:** State requests this information from potential CM/GC's once or twice a year and electronically file it in a location accessible to all SPA's for review as necessary during their evaluation process. CM/GC's would be responsible to provide updates if they occur between State requested updates.
- Items to keep in Section A
  - Letter of Transmittal
  - Provide a statement of the firms experience in providing CM/GC services. Proposer must have minimum five years' experience.
  - Contact Person

# Comments on Streamlining the RFP/RFQ Process

## Section B – Qualifications & Experience

- Be more specific to the project in the questions being asked such as:
  - List relevant experience with concrete frame construction
  - List relevant experience with specialized acoustic construction
  - List relevant experience with deep foundations in close proximity to existing structures that remain in operation
  - Ask questions directly related to the specific project

# Comments on Streamlining the RFP/RFQ Process

## Section C – Technical Approach

- See Discussion in CM's comments

# Comments from Designer

## General

1. Pre-proposal conferences should be mandatory for all potential bidders.
2. Pre-proposal conferences should be at user site, not in Nashville.
3. The entire RFP submittal should be condensed/streamlined as I think most of them are reviewed in one sitting which would take hours if given proper review.
4. Designer should be more involved in the process.
5. Why is the designer not privy to the General Conditions cost submitted by CM/GC? We only see A, B, and C technical sections.
6. There needs to be scoring guidelines for evaluators. I have seen final scores all over the page, so evaluators should be prepped. Selection of evaluators is another topic.

# Comments from Designer

## Specific

- Section A – Mandatory Requirements:
  - Should be formatted so that everyone's response is shortened and looks about the same.
  - Some of these are Yes/No questions which could require a box to be checked.
  - Some can be answered in 1 -2 sentences. The less paragraph type text for evaluators, the easier it will be to read and evaluate.
  - Attachments can always be referenced, if needed.

# Comments from Designer

## Specific

- Section B – Qualifications and Experience:
  - Subcategories – don't like them - too many for scoring. More should be grouped together.
  - B.2.c1 and 2 - *Amount of time team to spend in preconstruction and construction:*
    - This is a really important criteria for the designer. We want to see some continuity carried from precon to construction.
    - I don't recall this getting a high value in terms of scoring. (Current APSU RFP gives this 2 points).
    - I don't think evaluators know how to score this. What are they looking for?
  - B.3 - *Provide a statement of how the Proposer intends to address all major design disciplines:*
    - I have seen a variety of responses to this question from listing architects and engineers to MPE subs.
    - This needs to be clarified. I always get questions on this one.

# Comments from Designer

## Specific

- Section B (cont.) – Qualifications and Experience:
  - B.4.b - *A list of current projects on which your firm is committed:*
    - Contractors have a dilemma here – should they put down all of their work and not get the job because they are too busy or act like they aren't busy and hope the state interprets that positively.
    - I get calls on this too. Keep in mind, I can't answer any of them – they have to go thru TBR.
  - B.4.c – *A list of all current contracts with the State of Tennessee and all those completed within the previous five (5) year period: (Current APSU RFP does not ask this)*
    - Is a contractor penalized for not having ever done work with the state?
    - How does one get that first job, is this is scored high?

# Comments from Designer

## Specific

- Section C – Technical Approach
  - *C.2 – Provide a brief descriptive summary as to the Proposer's approach to the following items:*
    - A lot of categories: Value Analysis, Constructability, Cost Estimating, Scheduling, Reporting including three type reports, RFI's and four other reports, Quality Control
    - Current APSU RFP has put less questions under one number to allow better evaluation of the responses.

# Comments from CM/GC

## General Comments

1. Owner needs to establish better selection of the evaluators. They must have knowledge of commercial construction and the common sense to know “window dressing” from relevant information.
2. Pre-proposal meetings should be meaningful – not just read the RFP – have designer review design in detail, have the user group talk about what is important to them.
3. To accommodate #2 the Pre-proposal meetings should be mandatory and held at the using institution’s site.

# Comments from CM/GC

## Specific Comments

- Section B.1 – *Provide a brief, descriptive statement indicating the Proposer's credentials to deliver the services sought under this RFP:*
  - Need page limitations on the responses.
  - Something between 3-4 pages maximum seems reasonable.
- Section B.2 (d) – *Provide the total (100% - do not prorate) monthly direct personnel expense (raw salary x labor burden multiplier) for all key personnel proposed.*
  - Why is this information requested? Section B.2 (C) and the general conditions section quantifies the dollar value of the key personnel for the particular RFP project.

# Comments from CM/GC

## Specific Comments (cont.)

- Proposed Section B.4 (e) – New Section (worth 2-3 points, which would be allocated from eliminating section B.2 (d) – above: “List of relevant projects (with contact amounts) built in this geographic area (within 20 mile radius) within the last seven years.”
- C.1 – *Provide a brief, descriptive statement indicating the Proposer’s approach to delivering the services sought under the RFP for pre-construction phase and construction phase services for this Project.*
  - Needs page limitation on the responses
  - Something between 3-4 pages maximum seems reasonable