

Construction Contract Administration Workgroup (CCAW)

Agenda – Minutes

November 16, 2023 – 8:30-11:00 AM

HF SOB S141 / Microsoft TEAMS

Attendees:

FHWA	WisDOT	Contractor
Josh Pachniak	Tyler Rongstad (co-chair)	Matt Grove (co-chair)
	Brandon Lamers	Debbie Schwerman
GUESTS	Chad Hayes	Jackie Spoor
Michael Hoelker	Kristin VanHout	Jake David
	Jed Peters	JR Ramthun

1. Minutes from August 17, 2023, meeting and 2023 CCAW Charter



20230817 CCAW
MINUTES_FINAL.pdf



CCAW Team
Charter 2023_updat

- Action items from August 17, 2023, CCAW meeting:
 - Safety – WisDOT (Develop Safety 1-Pger) & Industry (include session at '24 CE Conference)
 - Completed
 - Base Patching – Update Standard Spec 390 Base Patching
 - Completed
 - Jackie – Suggestion that a correlation between CY measured and ticket quantity be done. Industry to propose a project to complete this on in 2024.
 - Winter Shutdown – Update Standard Spec Winter Suspension for Completion Date
 - Completed
 - Partial Acceptance
 - On-Going
 - Brandon - CMM update anticipated in next round.
 - E-Ticketing – Continue to provide additional outreach to Industry and Department staff
 - On-Going
 - WAPA / APW – Presentations for e-ticketing occurring at Statewide meetings in the future. Message should be consistent at all conferences.
 - JR – Request that we ensure specification does not eliminate sources in the State.
 - Jackie – The biggest issue will be mobile plants and could also be an issue with mega projects.
 - Matt – Requests a meeting with James, Tyler, and I to discuss the presentation content for CE Conference
 - APW - Erik
 - JR – talk with ERIK for APW conference as well.
 - Debbie – Happy with communication with WAPA to-date
 - Consistent messaging.
 - Brandon – ~10 Pilot projects anticipated in 2024. WisDOTs intent is to use Haulhub. Haulhub is anticipated to be able to communicate with Contractor's software of choice.
 - Landscaping / 70% Rule – WTBA and WisDOT to develop a subcommittee
 - Subcommittee membership not yet defined.

- *Brandon/Tyler to talk with Matt to establish this subcommittee – focus on early 2024*
 - *Matt would like a policy agreement – Matt would like to fix the inconsistency on how 70% rule is calculated and enforced.*
 - *Brandon – WisDOT must work closely with the DNR on how to move forward with any changes or clarifications.*

2. Use of Existing Bid Items for Contract Change Orders – Work out of Contract Scope (Industry)

- JR – specification says can use 109.4.2 – contract bid price.
 - If contractor disagrees with using contract bid prices – project staff will often go right to force account.
 - Matt – no negotiation of pricing (109.4.3)
 - Breakdown in the ability to negotiate prices.
 - JR – forcing contract bid prices not OK for contract revisions.
 - Jackie – Plan error example – Quantities and (need to look at plan) plan did not include sidewalk on one side of road. Contractor requested additional pay (due to cold weather coverage); project team does not believe work is due additional pay.
 - Chad – From the department perspective price increase requests need to include sufficient justification. Many times, no justification included to warrant additional price increase.
 - Krissy – 109.4 discusses a process for price adjustments for contract revisions. Use bid prices > negotiated prices > force account.
 - Krissy – Suggests the topic be brought up at construction standards training or construction conferences.
 - Suggest adding examples.
 - Tyler suggested QA engineers discuss as well, Regionwide project manager meetings would also benefit from discussing this.
 - Matt – Not sure the specification needs to be updated. More of a mindset from project staff. Contractors need to have equitable and fair compensation for contract revisions.
 - Josh – If you read the CFR it suggests using contract items unless a “significant” change to the character of work.
 - Matt – Believes this has been building for a long time. We need consistency and need to be fair & equitable.
 - Chad – Mentioned that volatility in pricing has driven some of this recently.
 - i.e., material shortages and other inflationary issues
 - in past, never been an issue.
 - Matt – bring up at the CE Conference – during the contract admin process.

3. Post Pavement Placement Removals (Industry)

- 415.4.3 – recommend including inflation in 415.5.3
 - Crack repair spec – may be good discussion for damage to pavement.
 - Mimicked
 - Jackie asked for department to review and provide comment.
 - Brandon suggested reviewing at CTC. Believes more in their wheelhouse to address.
- Traffic – MUTCD
- Protection of work

- Brandon – This goes beyond just concrete.
- Matt – This team need to keep the conversation on-going.
 - Cost to the department may be increased.
 - Krissy – 104 and 105
- Tyler asked the question on what contractors have done in the past. Have they recouped insurance claims?
 - Jackie presented the issue.
 - Matt – asked JR to speak on what he has experienced. Can the contractor recoup these costs? If not, can the contractor just claim it on their insurance?
 - a. Must find the person who damaged the property in order to get recouped through an insurance claim.
 - b. Contractor deductible too high to account for “relatively” small claims
 - i. Jake – deductibles are quite high – ends up cheaper to fix and move on.
 - ii. The cost must be accounted for somewhere. Contractor takes on risk.
 - c. Matt contractor is not necessarily covered by 3rd party damage.
 - d. Jake – If all protection followed, why is the contractor responsible for damage?
- Brandon – This is a transfer of risk discussion.
- Brandon – how “should” damage by 3rd party be handled?
- If the department pays, do we go back on our insurance are 3rd party damage.
- Matt – look at 107.12.

4. Technical Teams Discussion (WisDOT)

- Brandon led off:
 - Need to get the right folks at the technical team meetings.
 - Department would like BPD staff, BTS, BOS as well as region folks.
 - Need more participation from folks who do the work.
 - Prioritize items from industry. Industry come to WisDOT with a priority.
- Michael - Improve meeting efficiency.
 - Suggests team members provide more about the topics prior to the meeting. This will allow team members to come prepared and ready to discuss items.
 - Suggests introducing a topic at one meeting and discussing in more detail at the next meeting.
- Krissy – BPD has representation on Tech Teams
- Matt – Agreed with the discussion about improving technical team meetings.
 - Agrees with Krissy, Bridge tech functions well.
- Jackie – CTC task force meetings had met ahead of time to set agenda. Task forces have been eliminated and Jackie would like to see those reinstated.
- Jackie – tech team facilitation has changed and meetings more update and less collaboration.
- Matt – Feels that there is less collaboration then there has been in the past.
 - Matt – when first started, everything was communicated to contractors / Department through the associations.
 - Now there are direct invites to contractors.
- Jake – GLS was collaborative but has changed in past several years.
 - Contractors should get paid for what work they do.

- Spec updates – need to make sure those updates are in the best interest of the work and taxpayer.
 - Team members need to listen – be open to conversation.
 - Debbie – Biggest struggle has been so many changes.
 - Changes are developed between WisDOT and FHWA and then only shared at last minute with industry.
 - Understand the AWP Materials specification reorganization timeline, but industry needs to be involved.
 - A lot of work to be done.
 - Debbie – The specification reorganization is not as straight forward as WisDOT may think.
 - The QMP program will be eliminated with the new spec (removed from spec)
 - Never the intent but need to understand the impacts.
 - Will have impacts to cost.
 - Jackie – Specification reorganization changes being made are NOT small.
5. Utility Bill – SB-270 (WisDOT)
- Timeline for spec updates
 - Discussion of documentation of delay process (ss104.2 & ss104.3)
 - Brandon will meet with OGC next week to (hopefully) finalize.
 - Brandon and Tyler will share language with Industry and FHWA.
 - FHWA will need to approve prior to implementation.
 - Will be updated with ASP-6...best case is likely January LETs.
6. Railroad Discussion (Industry)
- Growing concern from Industry on not obtaining the “right of entry” from the railroad prior to LET
 - Matt indicated that this was obtained by WisDOT in the past.
 - Matt – Should be addressed up front.
 - Matt – What has changed?
 - Matt – Past issues have been flagging, but “right of entry” is a new request.
 - Matt will share SPV.
 - Group will discuss at future meetings.
7. Buy America (FHWA and WisDOT)
- Josh - Updated guidance to better define construction materials.
 - CMM 228.5 updated: <https://wisconsindot.gov/rdwy/cmm/cm-02-28.pdf>
 - Buy America Provision: <https://wisconsindot.gov/hccidocs/contracting-info/buy-america-provision.pdf>
 - CFR: <https://www.federalregister.gov/documents/2023/08/23/2023-17724/guidance-for-grants-and-agreements>
 - DT4567: <https://wisconsindot.gov/Documents/formdocs/dt4567.docx>
8. Prime Contractor Assignment of Specialty Items in AWP (WisDOT)
- Request that form 1081 be completed entirely and is reviewed for accuracy.
 - Matt asked for a short write up.
 - Krissy – Suggested there may be a way to pre-identify what items are specialty.
 - Is there a way to designate in the schedule of items what are specialty items (in design)
 - Matt thought there would be, if the determination is correct.

- a. SPV items are not already identified.
 - b. Jake supported the idea of identifying the item on the schedule.
- Action: Tyler and Brandon to work with Krissy

9. WTBA-WisDOT CE-Conference Reminder – Wisconsin Dells, January 18th – 19th 2024

10. Jake – Has the dispute with Milwaukee been resolved?

- Brandon believes it has been. Hoffman was notified.

11. Private and DOT labs testing aggregates.

- Matt – still being discussed in Agg Tech
 - Data Collection Phase – freeze thaw test from recycled concrete.
 - Widespread results
 - Matt – big deal, big risk