

Construction Contract Administration Workgroup (CCAW)

Agenda - *MINUTES*

November 10, 2022 – 9:00-11:00 AM

HF SOB **S141** / Microsoft TEAMS

Attendees:

FHWA	WisDOT	Contractor
X Nicholas Perna (TEAMS)	X Brandon Lamers (co-chair)	X Matt Grove (co-chair)
	X Beth Cannestra	X Debbie Schwerman
	X Chad Hayes	X Kevin McMullen
GUESTS	X Kristin VanHout (TEAMS)	X Jake David (TEAMS)
	X Jed Peters (TEAMS)	X JR Ramthun (TEAMS)

1. Minutes from August 30, 2022 meeting and CCAW Charter



20220830 CCAW
MINUTES_FINAL.pdf



CCAW Team
Charter 2022_updat

- Meeting was kicked off by WisDOT (Brandon). Introductions by committee members at Hills Farms and members attending virtually (via TEAMS).
- The group reviewed the August CCAW Meeting Minutes
 - Kevin asked if there was an update to the Base Patching (SY vs CY) Discussion that was introduced at the August meeting.
 - Kevin, Matt and JR again expressed industry concerns at today's meeting. The following concerns were expressed:
 - Limited time necessary to excavate the patch, place concrete, and open to traffic
 - Kevin said there is not enough time (during a night lane closure) to add another operation (i.e. adding base)
 - The contractor tries to minimize the over excavation
 - WisDOT/Project Engineer need to be practical if there is additional concrete needed.
 - Industry has observed variability in the HMA (overlay) mix thickness
 - JR – a specification is needed and it needs to be realistic and have common sense
 - Kevin noted there is a full depth concrete repair conversation tomorrow (11/11) with BTS (Perry, Finnel, Hidde) at 8AM.

2. Retainage

- Update on potential form to track retainage
 - No new updates
 - **ACTION: WisDOT will evaluate internal options and bring back to future CCAW meeting.**
- Contractors continue to experience payment withholding without reason
 - JR - indicated that payment withholding (as a method of retainage) continues to happen across the state
 - JR indicated that industry has asked many times for reasoning or payment withholding

- Per JR, the project engineer response has been that it is NOT because of certs or material testing
 - Brandon asked the industry members for specific examples.
 - WisDOT-BPD (Brandon and Beth) have informed the PDS Chiefs and statewide design and construction staff that routine retainage is no longer permitted.
 - Brandon stated project examples are needed so that BPD can address issue(s).
 - JR, Kevin, Matt, and Jake all expressed that Industry is afraid of retaliation by project engineers.
 - Chad asked for example of "retaliation"
 - JR – driveway thickness examination
 - Jake - corroborated the challenge for direct information
 - Kevin – had a retainage issue conversation yesterday - significant CCOs [consultant managed project]
 - Concrete supply became an issue at the end of the project
 - Quantity overruns were significant on this project
 - Because it was over, discussion of withholding retainage due to the anticipation of applying LDs to the project
 - Eventually resolved by WisDOT PM
- **ACTION – Industry to ask members for direct project examples - funnel responses through Matt - then communicate to Brandon**
- JR – asked to bring up an additional topic: Timely payment related to CCOs
 - JR stated that timing for signing of CCOs continues to take longer and longer
 - Industry would like to see more application of paying based on the “90% Rule” [see *standard spec 109.6.3.1 (2)*]
 - Matt also noted that there could be effects contract time if time added to CCO
 - JR - we have the specification (109.6.3.1(2)), need to be able to use it
 - Krissy said she would share a CCO example with BPD to illustrate how NER creates a dollar item to address the 90% payment for approved but unexecuted CCOs
 - Brandon asked Krissy to share with BPD (eFinals / Construction Admin staff discussion)
 - **ACTION: Brandon – review 90% example from Krissy. Discuss with BPD Constriction Oversight – determine if additional training for PL staff is necessary**

3. Fuel Cost Adjustment

- Industry would like an update on the topic and reconsideration of expansion of FCA items
 - Matt asked to keep this topic on the agenda
 - Matt thanked the department for adjusting the threshold down to 30,000 yards (action item from the August meeting)
 - Matt indicated that prime contractors are now seeing quotes from truckers based on directly to fuel cost
 - Trucking is building quotes off a "estimated" cost of fuel
 - Matt believes risk to DOT that will result in higher costs
 - Matt expressed concern over looming diesel fuel shortages and rising costs
 - Matt stated that industry is open to expansion of more items into the fuel cost adjustment provision
 - Beth stated that there is nothing new for the department to report
 - Beth stated that the department has discussed with CMSC and asked for them to begin evaluating fuel usage rates for the Department

- Looking at fuel cost factors
- Work to update our guidance
- Kevin also asked to keep this topic on agenda and to consider other industries (i.e. concrete)
 - Also noted that quotes from truckers will impact concrete industry as well
 - Kevin stated that not all second-tier contractors understand there is a potential negative Fuel Cost adjustment (based on average fuel price and base price identified in the contract at the time of LET).
 - Focus for Kevin is the EDUCATION PIECE to both expansion of items and the impacts (positive and negative)
- **ACTION: Beth asked industry to put a group together that can provide info to Jill's proposal management group.**
- **ACTION: Matt asked for WisDOT to consider spec updates to be modeled after Minnesota's spec.**

4. Scheduling Restrictions

- Industry continues to experience project requirements that limit the construction season.
- Industry noted project completion dates set at October 15th or before. In some cases, the BidExpress Q&A responses have indicated dates were set to avoid cold weather paving.
- Matt stated that there are two parts to this conversation
 - Industry is not completely opposed to the completion of paving. Industry wants to extend the season, but within reason
 - Industry asked if there is an assumption that no work will be done after October 15th?
- Matt expressed that industry has a concern related to the bigger picture of the labor issue
 - Industry needs to find a way to keep labor working
- Kevin said industry needs people within the department to push for a cold weather protection item brought to the committee (concrete tech)
 - Kevin believes lack of cold weather inclusion (i.e. item) is costing the department money – contractors are blending bid prices
- Deb stated the spec says do everything you can to avoid cold weather paving (construction)
 - Krissy shared FDM (19-5) – guidance to designers when to use cold weather paving
 - Deb said that WisDOT needs to look at projects by program (i.e. - HMA) and not “by the project”
- Deb also stated that PWL test strip restrictions are becoming a really big issue as well.
- Kevin expressed concern over late season paving.
 - 25-years ago - could no longer use fly ash (after October 15th)
 - Industry wanted to leave fly ash in - cost productive to leave in
 - Kevin believes the discussion translates today to cold weather concreting (i.e. protection)
- Chad asked about if industry has brought this proposal back to BTS for discussion
 - Kevin yes, but tabled by BTS due to Hot Weather Paving discussions
- Matt stated in the big picture a longer season allows for delivery of a larger program
- **ACTION: WisDOT will continue to have further discussion of inclusion of cold weather paving (internal and discussions with industry)**
- **ACTION: Brandon to work with Matt on reconvening the project restriction work group**

5. Distressed Milling

- Industry has indicated distressed milling has had a negative impact on industry capacity. Milling machines are required to be onsite even when not in use.

- Deb and Matt stated that distressed milling Issue showing up more often
 - Personnel and equipment that "may or may not be used" is required to be onsite
 - Brandon asked if discussion has been brought to HMA tech team
 - Deb - not been allowed to bring these types of topics to the tech team meetings
- **ACTION: Brandon will work with Erik Lyngdal (BTS) to determine a better way to address items**

6. Curb and Gutter Repair (expectations following milling.

- Industry has stated milling adjacent to mill and curb (new and existing) can result in minor chips which are difficult to avoid.
 - Contractors have been told to repair at their cost
 - Industry is requesting a collaborative review of potential alternate construction techniques (or payment for repair work)
- Matt and Kevin stated that rehab work is being required at contractor cost
 - Per Matt and Kevin, remove and replace has been the request
- Kevin did state that he was recently presented an issue where he supported the department decision to remove and replace; however, those are typically minor instances
- Chad asked the industry committee members what is the industry standard:
 - What is minor chipping vs significant damage
 - More guidance on what to expect
- Jed acknowledged that NCR did have issues this season
 - Obvious contractor issue
 - One did well with almost no issue
 - Another made significant damage

7. Base Patching and Ride Requirements

- Contract requirements for project sequencing of work has created issues with ride equipment and expectations.
- Matt stated the issue is that projects have "rehab work" where "new construction" ride quality is the expectation. Industry does not believe this is not reasonable
- Kevin provided a project example with a ramp extension off 30-year pavement
 - Contractor was locked into the existing pavement and tying into that (ride quality)
 - Kevin stated that the IRI ride (off existing) was terrible
 - Kevin said a contractor cannot get good ride off that existing aged pavement
 - Kevin informed the CCAW group that he was told by BTS that the IRI Ride committee will be starting up again
- Deb said that this is also an issue for the HMA industry. The HMA paver is at the mercy of the base patch
 - If no profile mill included, then a huge risk to the contractor
 - Base patch and night work adds to the issue
- **ACTION: Brandon to follow-up with Erik Lyngdal about including appropriate BPD and PDS staff when reconvening the IRI Ride Group. Brandon will communicate back to CCAW at next meeting.**

8. Railroad (RR) Agreements and Awards

- Projects have been LET recently that do not have signed RR agreements in place
- Creates risk in the bidding process
- Matt said this is a big issue and understands the department frustration
 - Matt and JR asked why these awards are not getting done ahead of time
 - JR stressed the risk to industry - why even let if not complete?

- Beth stated that there are the conversations the department has at the time of Ad date
- Kevin stated a parallel issue regarding TYPE 1 Cement for Railroad projects
 - AREMA - standard engineering body for the railroads
 - Current version of their standards is "old" and the only allowance is Type 1 Concrete
 - PCA provided new information/specification to AREMA

9. OSHA Heat Standard

- Industry is still analyzing the implications of the OSHA Heat Standard Emphasis
- Matt wanted to add this to the agenda as a heads up to WisDOT
 - Industry would like this to be viewed as an excusable delay; however, Matt acknowledged industry has background work to do to better understand potential impacts to contractors and department project schedules.

10. Cold and Hot Weather protection

- Paving industries would like to present concerns and are looking for future discussion with the department
- Already covered above (See notes above)

11. Section 108.10.2 – Excusable, Non-Compensable Delay

- Discussion of the intent and interpretation of the specification
- Matt began by stating that Industry and WisDOT are not in agreement
 - Concern is related to what is an “Industry wide shortage”
 - Matt stated that Industry Wide Shortage was not included until 2017
 - Matt believes this spec being used against industry
 - CMM offers examples
- Beth stated that she previously forwarded FHWA guidance
- Matt asked if someone has control (speaking of cement).
- Matt stated that the higher pricing is being passed onto contractors
- Matt state that the extension of time seems so simple
 - He understands department concern that it can be taken advantage of
- Matt and Kevin – Cement is on Allocation. They wanted to know why that not meet an industry wide shortage
- Kevin said there are two sides to the issue
 - There are impacts to redi-mix producers. They were put into position of allocation because "everyone" was oversold.
 - Kevin said that suppliers and contractors could not go anywhere because everything was sold
- Kevin stated that the cement industry put every effort available to supply concrete pavers
- JR said the allocations impacted contractors. They were not provided what they were quoted
 - It isn't just one supplier; it is every supplier in the Midwest.
 - JR said that his company has had crews waiting days for cement
- Kevin asked what suppliers could do differently to get cement?
- Beth stated that WisDOT has heard that producers are producing cement; however, there is a transportation issue
 - JR asked Beth to define what she meant by transportation issue.
 - Beth said the delivery from "point A to point B"
 - Kevin stated that cement demand is so high that not enough cement is available to meet needs for all projects.

- JR stated that cement suppliers will not provide letter declaring an industry wide shortage.
 - JR and Kevin said that many contractors have asked for letters
- JR said he was concerned and believed the cement supply issues will be worse next year
- Matt said he has concerns for the sustainability of industry (cement and beyond) if his type of issue (material shortages) is not addressed
- Matt said he is concerned that AAHTO does not include contractors but acknowledged that there is some ARTPA involvement in AASHTO committees.
- Kevin asked how a contractor should prepare for 2023? The industry cannot do this again next year.
 - How could industry have foreseen this in 2022?
 - The only option is to NOT bid work
 - Issues like this lead to single bidder and higher prices
- JR said that cement companies are not going to get information
- Beth stated that the department understands the challenges that industry has; however, we have our contract and our specification and contract language.
 - Beth state that industry needs to push the true and needed solution at a national level
- **ACTION - Matt will elevate to ARTPA - work at a national level**

12. Contractor-Engineer (CE) Conference

- Draft Agenda – review and comment from CCAW committee
- Matt to share DRAFT agenda to Brandon and Brandon to attach to minutes **[See Attached]**

13. (Added topic by Kevin): Disconnect from approved product list and standard spec (101.2 (2))

- Kevin - as we shift to performance specs – should we be going away from APL
- JR – there needs to be consistency at the time of bidding
- **ACTION - Brandon to coordinate with Erik - APL dates and updates related to time of bidding**

CCAW Meeting
November 10, 2022

MEETING ATTACHEMENTS

2023 WTBA / WisDOT Contractor – Engineer Conference

Day 1: January 19 (1:00 – 5:00)

1:00 – 1:10 (10 minutes)

Welcome by Jeff Peterson (WTBA President) and Governor ?

1:10 - 2:00 (50 minutes)

Craig Thompson – WisDOT Secretary

Rebecca Burkel – Administrator, WisDOT Division of Transportation System Development

Jeff Gust – Director, WisDOT Bureau of State Highway Programs

2:00 - 2:30 (30 minutes)

FHWA Updates

2:30 - 3:20 (50 minutes)

ARTBA Update - Construction Materials and supply chain, Inflation, estimating etc

BREAK 3:20 – 3:40

3:40 – 4:10 (30 min)

Workforce Development Report

Or

Update from UW Civil (Gary W and Steve K)

4:10 – 5:00 (50 Min)

Workzone Safety (OSHA and WisDOT) - Chad Greenwood ? and WisDOT Traffic

Day 2: January 20 (8:00 – 12:00)

8:00 – 8:50 (50 Min)

Ethics Training - TBD - UW Platteville

8:50 – 9:40 (50 min)

Utility Efforts - WisDOT Utility Section efforts / STH 50 case study (Panel Discussion)

BREAK 9:40 – 9:55 - (15 min)

9:55 – 10:25 (30 min)

DBE Update

10:25 – 10:55 (30 min)

Materials and Pavements Update / HTCP ? - Eric Lyndall

10:55 – 11:25 (30 min)

Environmental Update – Bats, contaminated material provisions, transportation general permit

11:25 – 12:00 (35)

Contract Administration (Jill and Brandon?)

- Timely award of Projets
- Prompt Payment / retainage
- Material Availability and Cost Adjustment Clauses (fuel cost)
- Partial Acceptance and Winter Shutdown
- Change from sy to cy for base patching
- Buy America
- Quantities Worksheet (in development)
- Project scheduling
- Specification Changes