

Construction Contract Administration Workgroup (CCAW)

MINUTES - FINAL

March 28, 2024 – 8:30-12:00 AM

Microsoft TEAMS ONLY

Attendees:

FHWA	WisDOT	Contractor
Nick Perna	BPD Construction Chief - **VACANT** (co-chair)	Matt Grove (co-chair)
	Brandon Lamers	Debbie Scherman
GUESTS	Chad Hayes	Jackie Speer Leslie Ashauer
Michael Hoelker	Kristin VanHout	Jake David
	Jed Peters	JR Ramthun

1. Minutes from November 16, 2023, meeting and 2024 CCAW Charter

- Link to Minutes: <https://wisdot.box.com/s/o7ou9ks7dyaujtgsqyiotxggkk5zcoy>
- Link to 2024 (DRAFT) Charter: <https://wisdot.box.com/s/x4b4f2xrsu2xuab4ec3bmd2hmkukw5r3>
- Action items from November 16, 2023, CCAW meeting:
 - Utility Bill – SB-270 – Update standard specifications once legislation passes.
 - Completed
 - 2023 Wisconsin Act 46 signed on 12/6/23
 - Standard Specification updated with January 2024 ASP-6)
 - On-going (training materials and CMM Updates) – Agenda topic today
 - Railroad – Continue discussions at a future meeting.
 - Agenda topic today
 - Prime Contractor Assignment of Specialty Items – WisDOT (Tyler and Krissy were going to investigate options to identify in design)
 - On-going
 - Matt – this may be associated with the 30% rule for the Prime.
 - Group did not believe this to be a current issue.
 - Brandon will follow up with Tyler and Krissy. If there is more to discuss we will bring back in the future. If not, consider the topic closed.
 - Aggregate Testing (add on topic in November)
 - Agenda Topic today

2. Utility Relocation Delay Claims (WisDOT) – WisDOT Update

- BPD continues to coordinate with Office of General Counsel (OGC)
- Training is anticipated in April (WisDOT-Contractor-Utility)
- CMM guidance is expected in April (pending legal review by OGC and DOJ)
- AWP updates are anticipated in April.
 - Utility Conflict Report updates – to be used for issue tracking.
- Pantry Updates are anticipated in April.
 - Notification Letter Templates
 - Document Checklist

- Matt – anticipate there will be disagreements and conflicts from on both industry and department.
 - Brandon provided a summary of the training (recorded PowerPoint) that will be required for department construction staff and available for contractors and utility companies to view via the HCCI website.
 - Matt – there is some concern that utility addenda are being done late in the process.
 - Matt – think we are heading in the right direction.
 - Controlling item vs impact to operations
 - Decisions need to be made quickly.
 - Delay or altered work.
 - Matt asked about chain of command.
 - Jed – it's already in or Precon agenda: Region PL → PM → Supervisor → Chief
 - Project teams will be better in the long run to work through the process.
 - Consistency is key as we work through these changes.
 - Jake – WEMA is working on documentation for contractor on what is required
 - Addresses delay and altered work
 - Associated costs
 - Documentation
 - Contractor should not assume – provided a detailed summary
 - Leslie – would be nice to have a system
 - Noted there is inconsistency between regions – make sure the bureau is communicated with
 - Want to avoid different decisions between the regions
 - Brandon and Jed agreed and want to keep it normal
 - Leslie – believes the bureau is removed
 - Chad – has to start at the region level
 - Bureau cannot speak for project
 - Bureau needs to ensure the policy is being followed
 - a. Project team makes the decision based on the project specifics
 - Matt – settle at the lowest level possible
 - Problem is that the individuals at the lower level need to understand what they can and cannot resolve
3. Standard Specification – 2025 Part 1 Changes (WisDOT) – WisDOT Update
- Brandon – provided proposed Part 1 updates for 2025 Standard Spec (only 3-updates to Part 1)
 - **108.9.4.1** Winter Suspension for Completion Date Contracts – Updated via November 2023 ASP-6
 - **108.10.2.1** Excusable, Non-Compensable Delays – Updated via January 2024 ASP-6
 - **108.10.3** Excusable, Compensable Delays – Updated via January 2024 ASP-6

4. Construction and Materials Manual (CMM) – 2024 Spring Updates (WisDOT)

- Partial Acceptance

SECTION 250 Project Acceptance

250.1 Partial Acceptance

Standard spec 105.11 allows the engineer to relieve the contractor, upon request, of responsibility for maintenance of completed sections of the project by granting partial acceptance. Partial acceptance places the responsibility for maintenance of the accepted section upon the owner of the road. Partial acceptance should be granted for sections satisfactorily completed that can be safely opened to traffic. Stage changes and opening of closed lanes and shoulders should be considered when evaluating whether to grant partial acceptance, as the opening of a closed section of roadway may be required to continue the work necessary to complete the remainder of the contract. An entry from the project engineer in the project diary, including what date it was granted and the items partially accepted, should be documented in AASHTOWare Project (AWP). The project engineer shall notify the contractor, in writing, within 5 business days from the request for partial acceptance. Notification should include whether the request has been granted or reasoning for not granting partial acceptance.

Partial acceptance should not be granted for individual bid items, with the exception of topsoil and erosion control items. More guidance on topsoil acceptance is provided in CMM 640. However, partial acceptance should not be denied solely on the failure to complete all bid items, as the plan and other contract documents may dictate temporary configurations on areas of acceptably completed work.

- Matt – ok with proposed changes
- JR – ok with the proposed changes

- Contract Change Order (CCO) Thresholds

TABLE 242-1 Change Order Types, Approval Levels, and Order of Approval

Change Order Type	Description	Approval Levels / Order
ADMIN	<u>Administrative change order</u> Administrative items, time extensions, or contract modifications (contract language changes only)	1 - Project engineer (all) 2 - Project manager (all) 3 - Supervisor (contract time extension) 4 - Chief (contract time extension) * Additional approval levels can be added including contractor and FHWA.
STANDARD	<u>Standard change order</u> Approval levels are based on the sum of the absolute value(s) of the estimated cost change(s) in the contract. If FHWA approval is required, the project engineer will add them as an approval group and they will be the final approval group for the change order.	1 - Project engineer (all) 2 - Contractor (all) 3 - Project manager (up to \$49,999) 4 - Supervisor (\$50,000 - \$99,999) 5 - Chief (\$100,000 +) 6 - FHWA (optional - add when required)
MAJORS	<u>Majors change order</u> Approval levels are based on the sum of the absolute value(s) of the estimated cost change(s) in the contract. If FHWA approval is required, the project engineer will add them as an approval group and they will be the final approval group for the change order.	1 - Project engineer (all) 2 - Contractor (all) 3 - Project manager (up to \$99,999) 4 - Supervisor (\$100,000 - \$499,999) 5 - Chief (\$500,000 +) 6 - FHWA (optional - add when required)
PbM	<u>Performance Based Maintenance (PbM) change order</u> Approval levels are based on the sum of the absolute value(s) of the estimated cost change(s) in the contract.	1 - County (all) 2 - Project engineer (up to \$10,000) 3 - Supervisor (\$10,000 to \$49,999) 4 - Chief (\$50,000 +)

- Brandon – provided reasoning behind updates proposed in green above – primarily statewide consistency within the department.
- Matt – NP/NC should not move forward without notification to the contractor.
- JR – asked if there is a timeline that can get added for CCO approvals (all levels)
 - JR – referenced the 90% Spec.
 - ACTION: Brandon will talk internally with David Castleberg to determine if timelines can be added to CCO approvals.

5. E-Ticketing Update (Industry) – WisDOT Update

- Posted on the WisDOT HCCI Site: HCCI > Bid Letting > 2024 Advertisement Schedule > {MONTH}
- HCCI 2024 Bid Letting by Date link: <https://wisconsindot.gov/Pages/doing-business/contractors/hcci/bid-let-2024.aspx>
- Matt – happy with where we are at with the pilot projects and the work types included in the pilots.
 - Matt – Need an exemption process.
 - Brandon – Understood, we should be able to identify what the project issues are and work through them. However, don't want to have same recurring issue presented for exemption after LET. If concerns, prefer larger issues are addressed during advertisement.
 - Brandon – there is value in this technology, and we want to move forward with it. In order to make progress we need to learn from the pilot projects. We are in the pilot and information gathering phase this year. In 2025 we will expand to more projects and hopefully more materials. In 2026 we would like to expand to "full implementation for select items" (using information learned in the pilot phases)
- Matt – what about recycled materials? No tickets are generated, the quantity is captured by volume and a conversion factor is used to determine tonnages.
 - Brandon – the department understands there is value in utilizing recycle materials. The intent is not to limit that.
- JR – For Recycle materials, some contractors use loader scales.
 - Goal (for industry) would be to use e-ticketing with loader scale at some point in the future.
 - Brandon – contractors that have innovative ideas to communicate with project teams. Can we work together to figure out how to use loader scales to use e-ticketing. Hopeful industry and department can work together to find those solutions and improve the specification.

6. Proposed (2025 Spec Updates) for Beam Guard Installation (Industry)

- Potential Conflict between ss614 and ss104.6.1.2.4
 - Matt – The current language in 104.6.1.2.4 (2) makes it very challenging to schedule projects with beam guard replacement, specifically the 5-calendar days or noon on Friday

104.6.1.2.4 Hazard Protection on Roads Open to All Traffic

- (1) On roads open to all traffic; remove construction debris, stored materials, and equipment not in use; or if the engineer allows, delineate and shield with concrete barrier for the following:
 - Posted speeds 45 mph or less: within 8 feet of the travelled way.
 - Posted speeds from 45 mph to 55 mph inclusive: within 10 feet of the travelled way.
 - Posted speeds above 55 mph: within 15 feet of the travelled way.
- (2) On roads open to all traffic; use temporary traffic control drums to delineate bridge abutments, concrete barrier blunt ends, sign bridge foundations, drainage structures, and slopes exposed by removing permanent protective measures. Eliminate the need for delineation within 5 calendar days or before noon on the Friday after removing permanent roadside safety devices.

- Jed – acknowledged the language in 104.6.1.2.4 (2) is impactful to cost and schedule
 - Jed – there are other options designers can use (i.e. project specific special provision language in the traffic or prosecution and progress) to limit how long a section of a project remains open and unprotected.

- JR – suggested looking back at when the 2" drop off was eliminated in this section, when did it change and why?
 - JR – suggested that WisDOT look at 305.3.3.3 (2) – See spec Language below:

305.3.3.3 Shoulders Adjacent to Asphaltic Pavement or Surfacing

- (1) If the roadway is closed to through traffic during construction, construct the aggregate shoulders before opening the road.
- (2) If the roadway remains open to through traffic during construction and a greater than 2-inch drop-off occurs within 3 feet or less from the edge of the traveled way, eliminate the drop-off within 48 hours after completing that days paving. Unless the special provisions specify otherwise, provide aggregate shoulder material compacted to a temporary 3:1 or flatter cross slope from the surface of the pavement edge.
- (3) Provide and maintain signing and other traffic protection and control devices, as specified in 643, until completing shoulder construction to the required cross-section and flush with the asphaltic pavement or surfacing.

- **ACTION: BPD to look at 104.6.1.2.3 and 104.6.2.4 and 305.3.3.3 and discuss intent of 104.6.2.4 (2) with BTO. Suggestion by members of CCAW to make 104.6.2.4 consistent with 305.3.3.3. Discuss at next CCAW meeting.**

7. Railroads – RR Approvals and Flagging (Industry)

- Matt – working with ARTPA nationally to try and get changes
 - Matt highlighted some of the most recent issues
 - Demo Plans – new consultant – asking for new/different submittals than in the past
 - There is concern about the level of expertise of the Railroad Consultants asking for these changes
 - Potential Safety issue with RR Consultant directing operations that are not part of contractor original means and methods
 - RR consultant has not available as needed by Contractor or Department
 - Last issue (NW Region-Contractor-UP) has been resolved, but should not have been has challenging
 - New Flagging Issues
 - a. This new certified list of flaggers – contractor to hire them is an issue
 - b. What is the liability of that individual.
 - c. What happens if they don't show up
 - d. Past practice was not good, but functional
 - e. WisDOT to investigate who does this.
 - f. Matt to let Brandon know if written language is needed
- Brandon – provided updates on what WisDOT will try to do:
 - *Short Term:*
 - *Obtain the list of certified flaggers from each of the railroad companies. Post the list of certified flaggers in the project special provisions.*
 - *Share correspondence between WisDOT and FHWA that confirms Railroad Flaggers as a service (thus not requiring Prime Contractors to list railroad flaggers as a subcontractor)*

- *WisDOT will coordinate with railroad companies during the design phase and agree upon the process for railroad coordination during construction, including identifying the expected review time. This information will be included in the project special provisions.*
- *Long Term:*
 - *The department will develop a statewide list of concerns with the railroad companies. Share concerns at the next Community of Interest meeting on March 19, 2024.*
 - *The department will continue to share detailed concerns with FHWA (HQ Preconstruction and Railroad Coordination Section – Chris Bruns).*

8. Land Use and Local Ordinances (Industry)

- Brandon – use of interstate R/W
- Brandon – borrow and waste are covered by Wis. Statute 85.193
- Jake – City of Milwaukee tried to evoke police powers
 - Concern that others have been
 - Recommendation WEMA association to hire an attorney to look at new legislation
- Matt – 85.193 had been pretty powerful and useful
 - Many locals thought it was beneficial
 - Matt – individuals should not be able to make decisions individually
 - Matt – may need to look at legislation for plants (i.e. commercial sites)
 - Most of times work through
 - At this time, what to understand the law
- Matt – contractor assumes use of R/W
 - Some Select Sites are being denied by ECIP
 - Trees
 - Political Pressures
 - Should be in writing on why denied
- Brandon referenced 107.9 Contractor's Use of the Highway Right-of-Way
 - The department has sole authority to grant the contractor permission to occupy and use the right-of-way. All activity within the right-of-way is subject to the engineer's approval
- Matt – some instances there are personality conflicts and/or reviews/decisions that have not been cooperative
- Matt – issues with temporary plan set-up in commercial sites
 - Can this be discussed early on (design)
- Jake – WEMA attorney is working on proposed changes to legislation.
 - Matt – WTBA would like to be involved
 - Brandon asked to involve WisDOT
- Jake – local municipality delayed project due to 100 year storm water runoff
 - After WisDOT and DNR approval
 - Matt – not across the board issue – some personality conflict issues
- Brandon – we can identify locations not to use
- Matt – who makes the determination
- Jake – does WisDOT talk with locals
 - Jed – no – talking points will be lost
 - Jed – ultimately the local politicians and regulatory agencies have the largest impact

9. Aggregate Testing – testing of recycled material (Industry)

- Jake – time range is pretty wide for when tests can be performed
 - DOT may take longer time to test
 - Private labs are testing more quickly
- Jake – cannot haul recycle from one project to another without a test
- JR – if come of DOT job A and to DOT job b it should be allowed
- Brandon – there is high level concern from the department regarding materials coming from “other projects” (non-DOT). We do not know what the initial quality and material make up was on those non-DTO projects.
- Chad – spec is once salvaged materials leave the project we can no longer use as we cannot track the materials
 - JR – agreed:
 - It’s difficult to track if a contractor takes salvaged material offsite and stockpiles it. May have other private jobs going to that stockpile as well.
 - If taking directly from one to another
- JR – indicated tests have been taken to compare with WisDOT
 - It was discussed that one of the biggest issues is between chest freezers vs standard chamber freezers.
 - Leslie – stated there have been issues with both
 - JR – mentioned that staff need to be aware of freezer settings
 - The “42%” has been and will continue to discuss
 - Industry is working with DOT
- Chad – the recycle of base aggregate is also being discussed at aggregate tech committee
 - JR – discussion at agg tech related to intent vs how written
 - JR – stated the biggest push should be to recycle as much material as we can, within spec
- Aggregate Testing of Recycled Material will be addressed in Agg Tech
 - Brandon – bring to CCAW if contract administration discussions are needed

10. Additional Topics (All)

- Leslie – dispute for material credit disputes
 - Were told to follow 104.3
 - Can the department identify another process for NP/NC disputes
 - Leslie – believes there is a blur between what is classified as a NP and a NC
 - a. The CMM handles them differently
 - Brandon – we should identify a process / timeline
 - Matt – has been an issue in the past and NP/NC is a big issue in general to contractors and suppliers

11. Next Meeting – (tentative) **Tuesday August 20, 2024 @ 8:30am** – In-Person