

August 28th, 2013

1:-30 – 3:45 PM

WSDOT APPRENTICESHIP UTILIZATION ADVISORY COMMITTEE

MEETING MINUTES

Capital Conference Room
WSDOT Transportation Building
310 Maple Park Ave
Olympia, WA 98504

Committee Members: Jeff Carpenter (Chair), Bob Abbott, Dave Myers, Bob Adams, Pamp Maiers, Terry Tilton, Dean Smith, Tom Zamzow

Absent: Josh Swanson

Attendees: WSDOT Staff: Jenna Fettig, , Ron Wohlfrom, Craig McDaniel, Jackie Bayne

Meeting Observers: Valerie Whitman, Lorraine Lucas, Shelly Williams, Julie Printz, Van Collins, Jared Ross, Erik Sachstein, Ryan Goodman, Peter Lahman, Charlie Quigg, Roy Bauerle, Chris McClain, Vince Oliver, Don McLeod.

Meeting Overview and Outcomes:

Action Items:

The following action items will be addressed prior the following meeting:

1. WSDOT to provide a look at apprentice hours and journeyman hours by occupation.
2. WSDOT to share Alaska DOT study on OJT and apprenticeship with committee members.
3. WSDOT will provide a look at utilization by Physical Completion Year and the amount of participation required.
4. WSDOT will provide a look at utilization by contract duration as well as the cost of the contract and the work item type.
5. WSDOT to poll the committee once again regarding the policy for providing good faith effort credit for apprentice graduations. WSDOT will also provide data on how many reported hours were performed by graduates.
6. WSDOT to emphasize to Project Engineers that asking for good faith upfront is not a waiver but an opportunity to educate the contractor and look for ways that they might actually meet the requirement in utilization.
7. WSDOT will send the committee information regarding the prequalification of contractors.
8. WSDOT will send the committee samples of the letters that we are sending to contractors.

1:30 WELCOME

Jeff thanked the group for attending, went over the agenda and committee members and observers introduced themselves.

1:45 PROGRAM UPDATE

Apprentice Hours by Occupation: Jeff went over the handout. Most of the hours to date have been worked by Laborers, Operators, Carpenters, Electricians, and Ironworkers. This reflects attainment as well as what occupations are most commonly used on projects. **WSDOT will provide a look at the total hours performed in each occupation and the percentage of apprentice hours achieved overall in each.**

Active and Completed Projects

Jeff went over the active and completed project reports. The asterisk on the completed project report means the requirement was met in good faith. When the contractor is short of the requirement and there is no acceptable good faith effort WSDOT sends the contractor a notice of non-compliance. WSDOT begins with a warning letter that cautions the contractor to better on the next project and provides resources to help them succeed. If they contractor has already received a warning and is non-compliant on a future project, WSDOT makes the company submit a plan demonstrating how they intend to achieve compliance with the requirement. A third violation will result in some kind of bidding restriction however WSDOT has not seen a third violation from the same contractor to date. To date, 19 contractors have received letters with four of them having a second violation. All four contractors submitted acceptable plans and are actively involved in improving their programs.

It was asked how often non-compliance is due to subcontractor non-compliance and the prime is attaining 15%. This is probably the case 50% of the time.

Bob Abbott asked if the report could include a total overall percentage of female and minority attainment. While the state law does not have an EEO aspect, it is in WSDOT's interest to demonstrate how well Apprentice Utilization works toward accomplishing the goals of the Federal OJT program. Bob Abbott brought up a study from Alaska DOT that determined that state apprenticeship programs provided better career opportunities than in house training programs that would be approved under the Federal OJT program. **WSDOT will share this study with committee members.**

Apprentice Utilization by Work Class

Jeff provided an overview of the handout. It seems to show that intricate work has higher apprentice utilization than straightforward work and that long term projects have better utilization than short term projects. These are the work classes that a contractor would need to be qualified to perform in order to bid on a project. Some contracts with multiple classes appear in more than one area. Some classes have just one contract, while others like asphalt paving have 73. Tom said what he would consider as a work class characterized by smaller crews with less labor intensive work seem to have a harder time meeting the requirement than work like bridges, buildings and earthwork. Slope stabilization and paving seem to stick out as areas where the requirement is not met as much. Bob mentioned that slope stabilization is an issue because it is an area where we see a lot of out of state contractors and Washington does not have a curriculum for it.

There may be other issues at play besides the type of work. Valerie suggested looking at utilization by the size of the requirement and the year of completion. **WSDOT will provide a look at utilization by Physical Completion Year and the amount of participation required.** Bob Adams asked if contract duration might also be a factor. **WSDOT will provide a look at utilization by contract duration as well as the cost of the contract and the type of work.**

Jeff asked the group for their feelings about lowering the requirement for certain projects and raising it on other projects. WSDOT seems to have types of projects that always exceed the requirement and types of projects that always fall below. Meeting or exceeding the requirement could be incentivized. Bob wondered if perhaps it may be the effort of the contractor, rather than a type of project. We need to consider if the contractor is having difficulty on one project or seems to be improving over time or seems to never be making an effort to improve.

Jeff mentioned that WSDOT's non-compliance letters are working on the outliers and those contractors that never improve. At the same time, he's also looking to make a program where the overall goal of 15% can be met programmatically. The committee cautioned that the overall goal of the program is to bring apprentices into the workforce and for them to graduate to journeylevel workers. If we see that out of state workers are coming to fill jobs that Washington State apprentices should have that is a problem we should be addressing. Terry mentioned slopescaling and concrete cutting as two areas to look at providing more training in. Dave asked how WSDOT would identify which projects would be reduced and which would be increased and if the committee would have a role in that. Just because there is bad performance today, does not mean we have to limit performance in the future. Jeff said he would like to get away from holding the contractor responsible for undergoing the effort to submit a substantial good faith effort package when we walk into the project knowing the requirement will not be met. Any decision would involve discussion of the committee.

Advance Schedule of Projects

Jeff went over the handout with the group and emphasized there is not much in the pipeline for upcoming projects. The further out you go, the less there is. High cost projects give us the best opportunities for apprentices and there are very few of those left. Most of the remaining work is small preservation projects where we see the lowest rates of utilization. Pamp explained how even through the cost of a paving project may be a few million dollars, a huge amount of that is the paving materials themselves and there is relatively little labor hours on the project when compared with other types of work in a similar cost category. Only hours performed on the project site count, so paving projects aren't reporting trucking hours or hours worked at the batch plant which limits their opportunities to the laborers and operators on the project site, or traffic control.

Bob Adams asked about the total drop in construction spending and exactly how much that will be each year. Jeff wasn't sure the exact amount but explained that AWW and 520 are the last two large programs moving forward and without them there would be a lot less spending. In the regions, there is already much less money to work with and fewer projects. Even the preservation program is underfunded.

Columbia River Crossing

As many members might be aware the project was cancelled when the Washington State Legislature did not pass a transportation funding package to provide funding and move the project forward. A large consultant and WSDOT workforce was lost. Oregon is trying to continue on their own and WSDOT has a small staff trying to close down the project and get documents into archives.

Member News

Bob Adams mentioned there is a joint legislative committee that is studying cost drivers and efficiencies. This group is taking a look at 10 items including sales tax, apprentice utilization and prevailing wage. WSDOT was asked about Apprentice Utilization and our feeling is that it is cost neutral and that prevailing wages are appropriately set. This study should wrap up in the next two months. Data that would be helpful would be what the actual labor cost is on a WSDOT project, however this is not data that WSDOT collects. Dave asked if apprentice utilization could be looked at as a positive cost driver however WSDOT would like to remain neutral in this argument. Dave mentioned that there is a misconception that lowering wages on a project lowers the cost of the project by the same amount or percent.

Bob Abbott announced that he is now the International Representative for the Laborers Union Northwest area and is hoping to get a replacement. Additionally, two female laborers working on WSDOT projects received honors.

Legislative Update

Ron Wohlfrom spoke to the group about legislation that WSF is proposing for the 2014 Legislative Session. This Legislation would increase the threshold on ferry vessel contracts from \$2m - \$5m so only contracts estimated at \$5m or above would be subject to the requirement. These projects in the \$2-5m range are short duration preservation projects which poses one challenge for success with the apprentice utilization requirement. In the current marine contracting climate, WSF is not getting adequate competition on some of these vessel maintenance projects. Only two shipyards can drydock ferry vessels at this time. Just one uses apprentices. When a vessel needs maintenance, Ron's group tries to get as much work done as possible during the opportunity.

WSF is reacting to a situation where there are just two potential bidders and one is not willing to participate if the contract has apprentice utilization. This leaves the other bidder knowing they will be the only bidder so they can bid non-competitively. There

are more than two bidders for some of the smaller size vessels, but for the large ships, just two shipyards have enough space. Committee members and meeting observers wondered why WSF would prequalify a bidder that has no interest in participating in training. Ron explained that the situation is unique because of the monopoly on shipyard work. When the law first took effect, WSF had 11 regular bidders. Now they have four. This isn't due to apprentice utilization but one large shipyard buying out their competition. The industry in Puget Sound is small and WSF needs special permission from the coastguard to take the boats out of Puget Sound, adding to the problem.

Crediting Apprentice Hours After Graduation

WSDOT received a letter from the WSATC that informed WSDOT of the council's concern with WSDOT's practice of allowing contractors to credit hours performed by recent graduates as apprentice hours. While WSDOT did not intend to change the policy surrounding registered apprenticeship or the definition of an apprentice, it was clear that WSDOT needed to change the policy slightly so that only "good faith effort" credit can be given and the recent graduate is not reported on the apprentice section of the form. This change was agreed to by the committee through e-mail in the early spring.

Results of Survey on Apprentice Graduations

After the May 2012 meeting, WSDOT sent a survey to committee members asking for their opinions on how to credit the apprentice hours toward a good faith effort. Respondents were asked if the policy should remain the same (hours may count toward good faith effort for one year or until the end of the project – whichever comes first) or change so that hours count toward a good faith effort for one year provided the apprentice remains continuously employed with the same contractor they graduated while working for.

The reason behind the proposed change is that many subcontractors complained that the current provides an advantage to large contracts on long duration projects. A subcontractor may receive a 90% complete apprentice from the union in the spring and that individual graduates prior to the end of the construction season. Meanwhile, they sub is working on 10 state projects and they'd like to keep the individual on but they may not meet their requirements without being able to count those hours toward the good faith effort. So far, graduates have accounted for about .03% of apprentice hours reported so the benefit is more to the apprentice than the contractor, however for some trades like electrical and paving if a contractor has a lot of work with WSDOT it could benefit them as well. Committee members discussed how WSDOT would verify continuous employment. It would be the contractor's job to demonstrate this as part of a good faith effort. **WSDOT agreed to poll the committee once more regarding this policy.** The results of the poll will carry.

New Reporting System

WSDOT is working on a new and improved system for the contractors to use to enter their apprentice utilization monthly reports. The system will also take the plan and good

faith effort documentation. It is more user friendly and should be faster. There are other benefits as well. The system is about 50% complete and should be ready for testing in the next few months. After testing is complete it will be rolled out.

Non-Compliance Issues

Discussed under Apprentice Utilization by Work Class topic.

Prime Contractor Performance Report

This is a key report for contractors to keep their prequalification and increase their prequalification. WSDOT is looking to modify the report to bring it in line with issues that important to us today. WSDOT is looking at the overall project requirements to make sure the form reflects environmental compliance and apprentice utilization. If we are seeing repeated issues it could directly affect prequalification. This is part of the process of dealing with non-compliance with apprentice utilization. The other part is the letters WSDOT has been sending out.

Bob Abbott brought up that one of the Laborers employers that is one of the biggest users of apprentices received a letter for non-compliance with the apprentice utilization requirement. Bob asked if the letters WSDOT sends reflect at all the number of successful projects or companywide attainment. WSDOT is currently sending the initial warning letter if the requirement is not met on one project, regardless of the number of successful projects. The first letter is more a warning and explains why the contractor was non-compliant on a project and points them toward resources so that they might succeed on the next project. The second letter requires the company to submit a plan to WSDOT for how they will ensure success with the requirement in the future.

It was asked if there might be some contractors that put more effort into demonstrating good faith than meeting the requirement through utilization. Jared Ross was concerned that WSDOT is giving contractors the impression that they don't need to meet the requirement. He said that he was at a preconstruction meeting where WSDOT staff told a contractor not to worry and to just get their good faith effort together. Why would a contractor be asked to submit a good faith effort upfront?

Craig McDaniel reminded the group that you do not wait until the end of the contract to begin compiling good faith effort documentation. The expectation at the preconstruction conference is to make the contractor aware that either they achieve the specified percentage of apprentice utilization or there is a good faith effort. If you think there is a chance at the beginning that you will need to demonstrate a good faith effort, it is good to have an conversation about why and the expectations of what will need to be done to achieve this – what meets the intent of the requirement and what doesn't. The group was concerned that a contractor could go into a contract expecting to fail. Pamp Maiers explained that there are issues like TERO that can cause this situation when you are working with a tribe that does not use a state-approved apprenticeship program.

In the beginning, WSDOT asked for good faith effort at completion of the contract. This led to a situation where WSDOT was getting a lot of good faith efforts that weren't actually acceptable and there was no time to correct or educate the contractor because the contract had already ended. The intention of asking upfront is to determine why the contractor thinks they will not meet the requirement and see if the reason meets the intent of the requirement or not. If not, we still have a chance to turn the project around. This is the intention of asking upfront and **WSDOT will make sure that project engineers understand this and that they understand that effort is still required after the contractor enters the contract thinking they might not meet the requirement.**

Subcontractor Compliance

The question is what to do when a prime contractor has a subcontractor that has committed to perform a certain amount of apprentice utilization and does not deliver on their promise. While the legislation only requires that the project as a whole achieve 15% and does not specify who or how it is achieved, right now it is the job of the prime contractor to manage how that is achieved and if it is not, they are on the hook for non-compliance. Right now, WSDOT allows the contractor to take into account the impact of DBE subcontractors that will not train as part of their good faith effort. Bob Abbott felt that until there is acceptance of the disparity study and a determination of how to move forward that we should not make any new decision about how to view hours performed by DBE subcontractors.

Valerie explained that with Federal programs there is a commitment that all the contractors participate however the prime and their subs are audited separately. The requirement is a project requirement like apprentice utilization, but ultimately each contractor is evaluated on their own unlike with the apprentice utilization requirement. Oregon had a rule that training only applies to subcontracts over a certain dollar amount. Bob asked if the legislation actually gives WSDOT the ability to do what Oregon is doing. He also asked if there would be any incentive for a subcontractor to become a training agent in that case. The program needs to provide an incentive for a subcontractor to become a training agent. In a lot of cases, there are actually a lot of labor hours involved in the work that has been subcontracted, it is labor intensive work and apprentices are losing a lot of opportunities. Valerie wondering if the DBE exception for a good faith effort might be adding to what makes people critical of the DBE program.

Terry wondered if an informational letter to subcontractors would help. Terry also felt that adjustments that WSDOT makes might be affecting the apprenticeship programs and how many people they bring on. These impacts should be considered. It was felt that a major issue is that there is no hammer to enforce compliance with. Committee members should put some thought into this and we can discuss it at a future meeting but they should note that WSDOT is not willing to look at request to sublet approvals as a way to enforce apprentice utilization.

Next Meeting

WSDOT will check in with committee members in the next six months to discuss meeting. Just after session is usually a good time. The decision to meet will be based on how many agenda items we receive and if there is nothing to talk about we will postpone meeting until a later date. Jeff brought up incentivizing compliance as a possible topic for a future date.

3:45 - Meeting Adjourned