

Participants:

Rae Bailey, City of Tacoma
Bill Davis, City of Bremerton *
Leslie Ernstrom, City of Vancouver
Gunnar Fridriksson, City of Bremerton
Bill Helbig, City of Auburn
Thuy Hong, City of Seattle
Gretchen Johnson (GJ), KBA, Inc.
Lori McFarland, Otak
Rick Mizner, City of Tacoma
Tamara Nack, Gray & Osborne, Inc.
Tina Nelson, Kitsap County
Leanne Norseth, City of Auburn
Diane Sheesley, Thurston County
Jackie Spears, Pierce County

Location:

City of Auburn, 25 W. Main Street

Attachments (see these notes for internet links to other documents discussed):

- Agenda for this March 12, 2009 meeting
- Final draft of Responsible Bidder GSPs
- RCW 39.04.350

A. Opening Business and Welcome

1. Tina Nelson welcomed the returning committee, and the new faces (see * above).
2. Meeting notes for November 13, 2008 were reviewed previously, and any comments incorporated, then were posted on the website.
3. January 8, 2009 meeting was non-standard – special joint meeting with Construction Management Committee, to plan the all-day workshop on Bidder Responsibility Criteria to be given at Spring Conference – brief notes will be posted on committee website.
4. Agenda for today was reviewed and approved (see Attachment 1).

B. Review of Progress on existing Action items since last meeting

1. Responsible Bidder APWA GSPs are at final draft stage, have been approved by GJ, TN, John Parnass, and ready to go to H&LP for approval/posting. (copy attached) Also attached is copy of RCW 39.04.350, for reverence – the RCW that “started it all”.

C. Report on & Review Actions by other organizations / committees

1. WSDOT/AGC Administration Team – report on recent meetings.
 - a. They want to try electronic bidding this year – this is “the next new thing”, Contractors very excited about it. Will not be mandatory. Contractors have to pay to join. Our Committee members comments:
 - i. Diane S reported that Dave Nichols tried asking for electronic bid proposal on a project, but all bidders chose paper bidding.
 - ii. ODOT uses electronic bidding, thru Bid Express.
 - b. Still discussion materials/fuel cost adjustments – contractors think the formulas being used to calculate the adjustment factors are antiquated.
2. H&LP updates / news – no news from Dave Mounts – he was unable to attend.

3. Discussion of pending legislation related to subcontractors, and coordination with utilities.
4. Reviewed 12/1/08 amendments and GSP changes to Div. 1
 - a. There is an amended GSP, to pay for Schedule Updates per each. The thought is that by paying for them, an owner might be more likely to actually get them.
 - b. There are new GSPs and requirements, if your project has ARRA funding – American Recovery and Reinvestment Act of 2009. See <http://wsdot.wa.gov/publications/fulltext/ProjectDev/GSPsPDF/07011GR1.pdf> We discussed briefly. FHWA/H&LP will provide the necessary forms for reporting. We also discussed a bit how the ARRA \$ will be distributed and administered.

D. New Items of Business

1. WSDOT has now added mention of pedestrian facilities to their traffic control specs – using our APWA GSP wording verbatim.
 - a. We no longer need these 3 GSPS: 1-07.23(1); 1-07.23(2); and 1-10.1(2). GJ to have these deleted.
 - b. Lively discussion on the topic of the new ADA accessibility rules during construction – the general feeling was that the rules force an agency to provide temporary access, even when there was no access in the first place. Contractors are very concerned about the ramifications of this “Reasonable Accommodations” issue.
 - c. Per Leslie E., the “rule” is: if a regular pedestrian can get thru the area, you have to provide for ADA. But if there is no pedestrian access at all, you do not have to provide ADA access. The FHWA has a memo saying they agree with the Access Board on this.
 - d. There is a new GSP 0723021.GR1, covering requiring the ADA access.
2. Bidder Responsibility
3. Draft GSP
4. Plan for APWA Spring Conference, Tacoma
 - a. Workshop – Bidder Responsibility Criteria tools for Contracts
 - b. Committee meeting – open to all,
5. Should we set up a Webinar on the APWA GSPs?
 - a. Cover purpose, requirements, content, download and use
 - b. Suggested by a participant in the Div. 1 Committee Open House at Fall Conference.

E. Topics for Future Meetings

F. Future meetings:

<u>Date and Time</u>	<u>Location</u>
April 8, 2009, 10:30 am	APWA Spring Conference, Tacoma Convention Center
May 14, 2009	City of Auburn
September 10, 2009	City of Auburn



**CONSTRUCTION STANDARDS
DIV 1 SUBCOMMITTEE**

A G E N D A

Thursday, March 12, 2009 - 10:00 AM - City of Auburn

- A. Introductions and “Housekeeping”
 - 1. Welcome – Introductions
 - 2. Review of this Agenda
- B. Review of Progress on existing Action items since last meeting
- C. Report on & Review Actions by other organizations / committees
 - 1. WSDOT/AGC Administration Team – report on recent meetings.
 - 2. H&LP updates / news
- D. New Items of Business
 - 1. WSDOT added mention of pedestrian facilities to their traffic control specs – using our APWA GSP wording verbatim – so we no longer need these 3 GSPs: 1-0-7.23(1); 1-07.23(2); and 1-10.1(2).
 - 2. Bidder Responsibility
 - 3. Draft GSP
 - 4. Plan for APWA Spring Conference, Tacoma
 - a. Workshop – Bidder Responsibility Criteria tools for Contracts
 - b. Committee meeting – open to all,
 - 5. Should we set up a Webinar on the APWA GSPs?
 - a. Cover purpose, requirements, content, download and use
 - b. Suggested by a participant in the Div. 1 Committee Open House at Fall Conference.
- E. Topics for Future Meetings
- F. Future meetings

<u>Date</u>	<u>Location</u>
April 8, 2009	APWA Spring Conference, Tacoma; 10:30 am
May 14, 2009	City of Auburn
September 10, 2009	City of Auburn

Proposed Responsible Bidder APWA GSPs

1-02.1 Qualifications of Bidder (October 1, 2005 March 16, 2009) Not approved for use on FHWA funded projects, approval has been requested. May be used on FHWA funded projects. If used, also use 1-02.13 and 1-05.13	REV
--	------------

1-02.1 Prequalification of Bidders

Delete this Section and replace it with the following:

1-02.1 Qualifications of Bidder

(March 16, 2009 APWA GSP)

Bidders must meet the minimum qualifications of RCW 39.04.350(1), as amended:

“Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

- (a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;
- (b) Have a current state unified business identifier number;
- (c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
- (d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).”

1-02.1(1) Supplemental Qualifications Criteria (March 16, 2009) Not approved for use on FHWA funded projects; approval has been requested.. Use if you included supplemental criteria in your Bid Documents. If used, also use 1-02.1, 1-02.13, 1-02.14 Option C , and 1-05.13.	NEW
---	------------

1-02.1(1) Supplemental Qualifications Criteria

(March 16, 2009 APWA GSP)

In addition, the Contracting Agency has established Contracting Agency-specific and/or project-specific supplemental criteria, in accordance with RCW 39.04.350(2), for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible. These criteria are contained in the Instructions for Bidders and/or the Special Provisions.

1-02.13	Irregular Proposals (March 16, 2009) Not approved for use on FHWA funded projects; approval has been requested. If used, also use 1-02.1 , 1-02.13 , 1-02.14, and 1-05.13	REV
----------------	---	------------

1-02.13 Irregular Proposals
(March 16, 2009 APWA GSP)

Revise item 1 to read:

1. A proposal will be considered irregular and will be rejected if:
 - a. The bidder is not prequalified when so required;
 - b. The authorized proposal form furnished by the Contracting Agency is not used or is altered;
 - c. The completed proposal form contains any unauthorized additions, -deletions, alternate bids, or conditions;
 - d. The bidder adds provisions reserving the right to reject or accept the award, or enter into the contract;
 - e. A price per unit cannot be determined from the bid proposal;
 - f. The proposal form is not properly executed;
 - g. The bidder fails to submit or properly complete a subcontractor list, if applicable, as required in Section 1 02.6;
 - h. The bidder fails to submit or properly complete a Disadvantaged, Minority or Women's Business Enterprise Certification, if applicable, as required in Section 1-02.6;
 - i. The bid proposal does not constitute a definite and unqualified offer to meet the material terms of the bid invitation; or
 - j. More than one proposal is submitted for the same project from a bidder under the same or different names.

1-02.14 Option A	Disqualification of Bidders (March 16, 2009) Not approved for use on FHWA funded projects; approval has been requested. Use Option A if you do not have Supplemental bidder responsibility criteria of any kind. If used, also use 1-02.1, 1-02.1(1) , and 1-02.13	REV
---------------------	--	------------

1-02.14 Disqualification of Bidders
(March 16, 2009 APWA GSP, Option A)

Delete this Section and replace it with the following:

A bidder will be deemed not responsible if the bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1), as amended.

As evidence that the bidder meets the bidder responsibility criteria above, the apparent two lowest bidders must submit to the Contracting Agency within 24 hours of the bid submittal deadline, documentation (sufficient in the sole judgment of the Contracting Agency) demonstrating compliance with all ~~applicable~~-responsibility criteria, ~~including all documentation specifically listed in the supplemental criteria~~. The Contracting Agency reserves the right to request such documentation from other bidders as well, and to request further documentation as needed to assess bidder responsibility.

If the Contracting Agency determines the bidder does not meet the bidder responsibility criteria above and is therefore not a responsible bidder, the Contracting Agency shall notify the bidder in writing, with the reasons for its determination. If the bidder disagrees with this determination, it may appeal the determination within 24 hours of receipt of the Contracting Agency's determination by presenting its appeal to the Contracting Agency. The Contracting Agency will consider the appeal before issuing its final determination. If the final determination affirms that the bidder is not responsible, the Contracting Agency will not execute a contract with any other bidder until at least two business days after the bidder determined to be not responsible has received the final determination.

1-02.14 Option B	Disqualification of Bidders (March 16, 2009) Not approved for use on FHWA funded projects; approval has been requested. Use Option B if you wish to also use these standard Supplemental bidder responsibility criteria (items 2 through 9 in the GSP) . If used, also use 1-02.1, 1-02.1(1), and 1-02.13	REV
---------------------	--	-----

1-02.14 Disqualification of Bidders
(March 16, 2009 APWA GSP, Option B)

Delete this Section and replace it with the following:

A bidder will be deemed not responsible if:

1. the bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1), as amended; or
2. evidence of collusion exists with any other bidder or potential bidder. Participants in collusion will be restricted from submitting further bids; ~~or~~
3. the bidder, in the opinion of the Contracting Agency, is not qualified for the work or to the full extent of the bid, or to the extent that the bid exceeds the authorized prequalification amount as may have been determined by a prequalification of the bidder; ~~or~~
4. an unsatisfactory performance record exists based on past or current Contracting Agency work or for work done for others, as judged from the standpoint of conduct of the work; workmanship; ~~or~~ progress; affirmative action; equal employment opportunity practices; termination for cause; or Disadvantaged Business Enterprise, Minority Business Enterprise, or Women's Business Enterprise utilization; ~~or~~
5. there is uncompleted work (Contracting Agency or otherwise) which might hinder or prevent the prompt completion of the work bid upon; ~~or~~
6. the bidder failed to settle bills for labor or materials on past or current contracts; ~~or~~
7. the bidder has failed to complete a written public contract or has been convicted of a crime arising from a previous public contract; ~~or~~
8. the bidder is unable, financially or otherwise, to perform the work; or
9. there are any other reasons deemed proper by the Contracting Agency.

As evidence that the bidder meets the bidder responsibility criteria above, the apparent two lowest bidders must submit to the Contracting Agency within 24 hours of the bid submittal deadline, documentation (sufficient in the sole judgment of the Contracting Agency) demonstrating compliance with all applicable responsibility criteria, including all documentation specifically listed in the supplemental criteria. The Contracting Agency reserves the right to request such documentation from other bidders as well, and to request further documentation as needed to assess bidder responsibility.

The basis for evaluation of bidder compliance with these supplemental criteria shall be any documents or facts obtained by Contracting Agency (whether from the bidder or third parties) which any reasonable owner would rely on for determining such compliance, including but not limited to: (i) financial, historical, or operational data from the bidder; (ii) information obtained directly by the Contracting Agency from owners for whom the bidder has worked, or other public agencies or private enterprises; and (iii) any additional information obtained by the Contracting Agency which is believed to be relevant to the matter.

If the Contracting Agency determines the bidder does not meet the bidder responsibility criteria above and is therefore not a responsible bidder, the Contracting Agency shall notify the bidder in writing, with the reasons for its determination. If the bidder disagrees with this determination, it may appeal the determination within 24 hours of receipt of the Contracting Agency's determination by presenting its appeal to the Contracting Agency. The Contracting Agency will consider the appeal before issuing its final determination. If the final determination affirms that the bidder is not responsible, the Contracting Agency will not execute a contract with any other bidder until at least two business days after the bidder determined to be not responsible has received the final determination.

1-02.14 Option C	Disqualification of Bidders (March 16, 2009) Not approved for use on FHWA funded projects; approval has been requested. Use Option C if you wish to also use these standard Supplemental bidder responsibility criteria (items 2 through 9 in the GSP) , and also have additional Agency-specific and/or Project-specific supplemental criteria. If used, also use 1-02.1, 1-02.1(1), and 1-02.13 (1 fill-in – insert either “Instructions to Bidders” or “Special Provisions”)	REV
---------------------	--	------------

1-02.14 Disqualification of Bidders
(March 16, 2009 APWA GSP, Option C)

Delete this Section and replace it with the following:

A bidder will be deemed not responsible if:

1. the bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1), as amended; or
2. evidence of collusion exists with any other bidder or potential bidder. Participants in collusion will be restricted from submitting further bids; ~~or~~
3. the bidder, in the opinion of the Contracting Agency, is not qualified for the work or to the full extent of the bid, or to the extent that the bid exceeds the authorized prequalification amount as may have been determined by a prequalification of the bidder; ~~or~~
4. an unsatisfactory performance record exists based on past or current Contracting Agency work or for work done for others, as judged from the standpoint of conduct of the work; workmanship; ~~or~~ progress; affirmative action; equal employment opportunity practices; termination for cause; or Disadvantaged Business Enterprise, Minority Business Enterprise, or Women’s Business Enterprise utilization; ~~or~~
5. there is uncompleted work (Contracting Agency or otherwise) which might hinder or prevent the prompt completion of the work bid upon; ~~or~~
6. the bidder failed to settle bills for labor or materials on past or current contracts; ~~or~~
7. the bidder has failed to complete a written public contract or has been convicted of a crime arising from a previous public contract; ~~or~~
8. the bidder is unable, financially or otherwise, to perform the work; or
9. there are any other reasons deemed proper by the Contracting Agency; or
10. the bidder fails to meet the Project-specific supplemental bidder responsibility criteria listed in the **§§1§§.**

As evidence that the bidder meets the bidder responsibility criteria above, the apparent two lowest bidders must submit to the Contracting Agency within 24 hours of the bid submittal deadline, documentation (sufficient in the sole judgment of the Contracting Agency) demonstrating compliance with all applicable responsibility criteria, including all documentation specifically listed in the supplemental criteria. The Contracting Agency reserves the right to request such documentation from other bidders as well, and to request further documentation as needed to assess bidder responsibility.

The basis for evaluation of bidder compliance with these supplemental criteria shall be any documents or facts obtained by Contracting Agency (whether from the bidder or third parties) which any reasonable owner would rely on for determining such compliance, including but not limited to: (i) financial, historical, or operational data from the bidder; (ii) information obtained directly by the Contracting Agency from owners for whom the bidder has worked, or other public agencies or private enterprises; and (iii) any additional information obtained by the Contracting Agency which is believed to be relevant to the matter.

If the Contracting Agency determines the bidder does not meet the bidder responsibility criteria above and is therefore not a responsible bidder, the Contracting Agency shall notify the bidder in writing, with the reasons for its determination. If the bidder disagrees with this determination, it may appeal the determination within 24 hours of receipt of the Contracting Agency’s determination by presenting its appeal to the Contracting Agency. The Contracting Agency will consider the appeal before issuing its final determination. If the final determination affirms that the bidder is not responsible, the Contracting Agency will not execute a contract with any other bidder until at least two business days after the bidder determined to be not responsible has received the final determination.

RCW 39.04.350

Bidder responsibility criteria — Supplemental criteria.

- (1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:
 - (a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;
 - (b) Have a current state unified business identifier number;
 - (c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
 - (d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
- (2) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.
 - (a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.
 - (b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.
 - (c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.
 - (d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.
- (3) The capital projects advisory review board created in *RCW 39.10.800 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site.

[2007 c 133 § 2.]

Notes:

***Reviser's note:** RCW 39.10.800 was recodified as RCW 39.10.220 pursuant to 2007 c 494 § 511, effective July 1, 2007.