

2019 Henry Fuller Task Team Meeting Agenda

Things we have been working on:

Timely completion of construction projects – what can we do to speed construction. Raised cap for approval of SA's at District level; worked out payment regime for asphalt; extended lane closures to 3 miles on limited access; air pressure testing for jack and bore reduced from 20 psi to 5 psi; payment for off-duty LE in work zones; limiting fuel factor adjustments –Buy America – adopting more aggressive stance on interpretation of rule; allowable lane closure durations and field adjustment.

New questions brought up during meeting:

1. How much sediment can be left in a pipe? Pipe may be cleaned out at beginning of project, 2.5 years later at end of project, may be minor silt
 - a. Action Item – Dan Hurtado and Rudy Powell to Draft joint Bulletin addressing maintenance participation in Construction Final Inspections
2. Some contractors have asked, should CMGC be considered for big, complex projects?

1. Alternative Contracting

- a. Design-Build Procurement and Risk Register
 - i. Nationally the risk has shifted toward the contractor. Some states meet with shortlisted DB firms to discuss RFP and risk and determine if changes need to be made, risk sharing. A couple of DB firms dropped out of Howard Frankland procurement due to risk. Consider implementation on larger projects - >\$400 or \$500 million. Could we invite contractors to risk management meetings we already have during RFP development?
 - ii. Design-Build Geotech
 - iii. Big Projects (Howard Frankland)
 - iv. Pete Kelley (Superior) – Mega projects, after short-list have 1 on 1's w/ Contractor to discuss risk *(all contractors or 1 on 1?)
 - v. Lampley – establish caps on risk deductibles
 - vi. Action Item – Discuss risk at ACTT
- b. Design-Build As-Built Requirements
 - i. DB has different requirements from DBB. Mark-ups for a change can be done on DBB, why not on DB? Perception is when it is contractor's fault, a revised plan submittal is required. When it is DOT's fault, redlines are acceptable.
 - ii. Action Item – Discuss consistency at ACTT
- c. Design-Build CSI Thresholds
 - i. After project is awarded, if DB firm identifies cost-saving "design refinements", they don't want this considered a CSI where cost-savings are shared. Should CSI be confined to things that violate the RFP or items promised in Technical Proposal?

- ii. Limit CSI's just to changes to RFP or Value-Added Features
 - iii. Consensus on "what is a CSI?"
 - iv. Streamline existing process, don't set a \$ or % threshold
 - v. Action Item –Streamlining existing process, continue discussion at ACTT
- d. Design-Build Utility Relocations
 - i. FDOT doesn't want to take over utility relocation but will facilitate meetings between contractor and utility. When relocation stalls on a project, elevate it to District Utility Engineer. Some contractors indicate relocation is easier on DB than DBB. Have gone to preconstruction meetings for DBB where relocation permits not even acquired yet.
 - ii. Pendulum swung too far to contractor risk
 - iii. UWHC – back-charge utility owner?
 - iv. Action Item - FDOT will perform ITS (fiber & power) locates once, record GIS data and build database
- e. TRC Members, Training, Scoring
 - i. FDOT has mandatory training for anyone that is to sit on TRC. For some major complex projects, there have been TRC members with <2 years' experience. 30 to 40% of FDOT staff have less than 5 years' experience.
 - ii. Large, complex projects
 - iii. Inexperienced TRC members
 - iv. Select, educate, train, TRC members
 - v. Non-FDOT staff TRC members?
 - vi. Standing TRC's?
 - vii. Action Item – FDOT to develop training for TRC members
- f. DB Written Declaration - Why is it needed? One more thing we have to do that if we enter into a contract, why do this part? Is this a D7 thing?
 - i. This was vetted at Alternative Contracting Task Team and adopted. Contractors consider it more of an insult than a burden.
 - ii. Action Item - Revisit at ACTT
- g. DB New rules about
 - i. Scoring not being provided to everyone on the LOIs
 - 1. All teams get their scores and comments
 - 2. Only shortlisted teams get their scores and comments posted on Website
 - 3. Question is, when do other teams get their scores and comments?
 - 4. Action item – FDOT to revise DB Checklist to clarify when non-SL teams get their scores and comments
 - ii. Our selection committee comments.
 - iii. Where are the new rules and why are districts doing things that aren't consistent?
 - 1. Discuss at ACTT
 - 2. ACTT Discussion item – sift through rejected ATC's for good ideas
 - 3. CMGC – JC Miseroy (Granite) has good experience (ATCC)
 - 4. Action Item – Discuss Progressive DB at ACTT

2. Dispute Avoidance and Resolution

- a. Partnering and Relationship Building
 - i. How do we get back to partnering on project by project basis? One contractor says they have a ½ day partnering meeting at beginning of each project. Another contractor suggested quarterly coordination meetings with contractor, CEI and appropriate DOT staff.
 - ii. FDOT continuing to preach breaking down “Us vs Them” mentality
- b. D5 Project Evaluation Process
 - i. use survey monkey to ask 5 or 6 questions of people on project to see how it’s going.
 - ii. Action Item – FDOT to develop statewide 360 Feedback process
- c. DRB Advisory Opinions
 - i. Some concern that once DRB gives opinion, they would not be inclined to change their position if it advanced to a formal hearing. Dan Hurtado suggested if an issue advances to a formal DRB hearing, it should be treated as if it is the first time the DRB is hearing it. Opinions should be verbal not written.
 - ii. Dan is OK with this. Need to work out details
 - iii. Action Item – FDOT to work with Industry to revise 3-Party Agreement and Spec’s
- d. Approval/Rejection of DRB Chairman
 - i. the two DRB members should be able to select chairman without the chairman being rejected.
- e. Timely Resolution of Claims – Contractor has time requirements but CEI does not
 - i. Dan H. hesitant to put time requirements on CEI. NOI’s are often vague because contractor doesn’t fully understand what is happening, just knows that something is not right.
 - ii. Allow CEI’s to make decision at project level will cut down on lengthy reviews
- f. Requiring CEI to defend Department decisions. When Contractor and CEI come to an agreement on the project and FDOT/District/Materials/Maintenance/Tallahassee decide to disagree with the arrangement, should the CEI then be responsible for preparing the FDOT’s case for the DRB?
 - i. CEI IS responsible for preparing FDOT’s case for DRB.
 - ii. If we enable CEI to make decisions at project level and we are not micro-managing, this should be an anomaly.

3. Design & Construction Coordination

- a. Since we are moving to only 3D modeling designs in January 2021, we need our contractors to all have automated machine guided equipment, etc. I think it would be prudent to understand how the industry is transitioning to meet these contract requirements.
 - i. Moving to only 3D designs in January 2021, we need all contractors to have automated machine guided equipment. Industry is moving to this.
- b. Why are what should be simple mill & fill projects being turned into the equivalent of building a space shuttle with a pocket knife? E8Q95/ Polk Parkway/ \$16M/ 7.5 miles/ 72,000 tons of mix. This project has 29 mainline typical sections, 29 different milling depths (3/4" – 8"), 7 ramp typical sections, 10 different asphalt mixes. Our paving crews are good in Florida, but let's give them a fighting chance to get jobs built without having to take mix up.
 - i. E8Q95/Polk Parkway is a pilot project and was done this way on purpose. It is reported that this has occurred on other projects. Suggested to send plans to State Pavement Engineer to review if number of typical sections is reasonable.
 - ii. Action Item – FDOT working to develop pilot projects for simplified plans. Working with Office of Design to reduce mainline milling depth transitions
- c. Locating DOT facilities (fiber, ITS, etc) within the Right of Way
 - i. our facilities are not on 811 system so FDOT should locate our own facilities. D6 will locate one time, then contractor has to relocate when markings are obliterated. For utilities on 811 system, contractor calls 811 when ticket expires and they come out and relocate utilities again at no charge to contractor. TP does not locate their utilities.
 - ii. Action Item - FDOT will perform ITS (fiber & power) locates once, record GIS data and build database
- d. The Turnpike has requested review and comment on its General Tolling Requirements (GTR). The encyclopedic volume of documents that comprise the GTR require thorough and thoughtful review that is best completed by a representative committee. FDOT and FTBA should recognize the gravity of this task and appropriately assign the correct individuals to perform the review.
 - i. GTR being sent out for review for first time by contractors at the request of the contractors.
 - ii. AP Compiling Industry comments
 - iii. Action Item- Page turn meeting to be held at Turkey Lake
- e. On Turnpike projects that anticipate utilizing ProjectSolve, Turnpike should provide contractors with an exact list of Shop Drawings that will be requested on the Project and verify that the list is pre-loaded into ProjectSolve prior to the NTP.
 - i. TP should provide contractors with list of shop drawings that will be requested on project and verify list is pre-loaded into ProjectSolve prior to NTP – this applies to ITS systems and GTR. No shop drawings can be loaded

into ProjectSolve until the list is pre-loaded. It is reported that this only occurs with TP.

- ii. Culture shift – Don't delay production for paperwork
- iii. Action Item – Scott Arnold to work with Industry and Turnpike on identifying and reconciling inconsistencies in shop drawing process

4. CEI Issues

- a. Negotiated Price vs Cost-Plus
- b. Limiting CEI costs to 10% on simple projects
- c. CEI Incentives
 - i. currently CEI cost based on time billed, so there is not an incentive to finish early. Proposal would allow CEI to keep operating margin based on contract time even if they finish early.
 - ii. CEI operating margin vs fixed fee / cost plus
 - iii. Liquidated savings?
 - iv. Option to extend to another contract if current job goes well?
 - v. Group projects, 1 CEI over several jobs / years
 - vi. IG report on LS CEI?

5. MOT/Safety

- a. Lane Closure Duration Flexibility
 - i. give CEI authority to allow contractor to close lanes early if traffic levels allow it.
 - ii. Action Item – Spec change to Section 102 out for review
- b. Temporary Attenuator Repair
 - i. If hit by unknown 3rd party, there is \$2000 deductible, then FDOT will reimburse 50% of cost. On a DBB project where attenuators are in place where plans show and they get hit by unknown 3rd party, why should contractor be responsible for 50% of cost?
 - ii. Going to invoice +20% for unknown 3rd party hits to temporary crash cushions
 - iii. Action Item – Spec change out for review
- c. Work Zone Speed Reductions
 - i. No physical barrier between traffic and workers
 - ii. When geometric conditions require it
 - 1. industry supports reducing speed limit when workers are present and raising back up when they are not. Contractor indicated putting down rumble strips at beginning of work zone to alert drivers is problem because work zone moves 2 or 3 miles every day.
 - 2. Olivia to poll other states
 - 3. Blanket lowering?
 - 4. Temp rumble strips?
 - 5. Action Item – FDOT polling other states, pursuing temporary rumble strips

6. Contract Administration

a. Substantial Completion

- i. All pay item work must be done and facility in final configuration and in use, 30 days to complete punch list items and paperwork. May need lane closures for things like correcting straight edge deficiencies. Conrad Campbell – substantial completion should mean all punch list done, no more delays to the public.
- ii. Punchlist vs Production
- iii. Substantial Completion = no impact to travelling public
- iv. CEI needs to go over Maintenance punch list prior to giving to Contractor – Eliminate N/A items

v. Action Item - Department to consider

b. Withholding Final Acceptance Due to Late Submittal Documents

- i. Some contractors have incurred LD's due to late documents
- ii. Based on feedback, does not seem like a widespread issue. Should be dealt with at Project Level. Could possibly be addressed via Substantial Completion.
- iii. Industry concern with multiple punch lists from the CEI, AM contractor and TMC delaying final acceptance.

iv. Action Item – Dan Hurtado and Rudy Powell drafting joint memo to address maintenance participation in Construction Final Acceptance process

c. Work Orders – Time Issue and Caveats

- i. Some districts are doing caveats in SA's, why not in work orders? CEI says 20 years ago they could negotiate a WO with a contractor and it was done. Now it goes to district and they don't agree with work proposed, so CEI has to go back and forth.
- ii. Use (time) caveats on Work Orders with complex issues
- iii. Action Item - FDOT will work to process Work orders quicker with less oversight from District office. Allow CEI to make decisions.

d. Early Completion Schedules at Time of Bid

- i. Contractor wants to submit early completion schedule and not be subject to LD's unless he goes past contract time (e.g., submits 900 day schedule for 1000 day contract, finishes at 950 and does not incur LD's). There is an advantage to submitting early completion schedule if A+B bidding.
- ii. FDOT looking to use more I/D contracts to encourage timely completion
- iii. Urban reconstruction policy
- iv. Action Item – Spec change regarding evaluation of delay claims out for review

7. Pay Item

- a. Class 5 Finish and Painting of MSE Wall & Noise Walls
 - i. Action Item – FDOT to revisit policy, evaluate costs and results
- b. The overuse of the Special Detour item must be curtailed. Furthermore, when a Special Detour item is utilized, the Department must provide contractors with the requisite information to make an accurate approximation/estimate of the work.
 - i. Department providing CY quantities from top of asphalt to existing ground
 - ii. Provide meaningful responses to Bid Q&A questions
- c. Is it possible to get maintenance-type items out of the construction contracts? Can we get an assignment of the maintenance contract in place already. Make these non-bid items. For Mowing, guardrail repair, permanent attenuator and guardrail end treatments, light poles, Mast lights, signs. Use what maintenance already has in place. Use maintenance's budget to pay the contractor for them to pay the maintenance contractor. No markup, just a pass through. Reduce the chasing of these dollars and creating tension on OBVIOUS issues on the job not caused by contractor (guardrail, permanent attenuators, mowing, trash pick-up). By assigning these contracts, you can make sure the insurance is in place too.

8. Workforce & Labor

- a. OJT - D5 Pilot and TxDOT Program
 - i. Pilot project funded by FDOT to hire inmates as they are released and train them for construction jobs.
 - ii. Action Item – Jennifer Smith heading up a team with involvement from EEO, Construction, FHWA and Industry to address OJT Streamlining
- b. Workforce Development: Our industry is struggling to find competent field folks. Should FL increase the Davis-Bacon rates? Productivity!! We need more productivity for lots of reasons. We continue to see jobs come out with very small work windows. To keep employees, we have to pay them 8-10 hours per day. Those costs should be pass through to the Department. You're overpaying for work. This is true for outside truckers too. They're billing contractors for minimum show-up hours. The plans need to stop focusing on not inconveniencing the public, but rather, getting the jobs built expeditiously.
 - i. There is \$2m in training funds set aside to train workers through M-Cores. Some contractors reaching out to prisons.

9. Issues Requiring External Coordination

- a. Establish a performance measure for cost savings of 5% of their work program (\$10 billion). The savings can be from, Procedural Changes, Design and Specification Changes, Value Engineering Change Proposal during design, and CSI during construction. Estimated savings - \$500 million
 - i. We value engineer projects before letting and have saved \$200 million in last 10 years (verify with Tim Lattner). Per Ananth, \$3 billion of \$10 billion work program goes to construction. How to get a larger percentage? What

processes like design, maintenance or ROW acquisition could be more efficient so that more money could be spent on construction? Limiting CEI costs to 10% on simple projects – currently spending 14% statewide. Reducing construction time would reduce CEI costs. Example given where contractor's QC tech and CEI were in same trench box all day taking densities. Why do we need to replicate all this work?

- ii. Letting deferrals
 - iii. Budget Shortfalls
 - iv. CEI%
 - v. Move to:
 - 1. Contractor certified jobs?
 - 2. CEI Only inspection? (No QC)
 - 3. Earthwork sampling
 - 4. Concrete sampling & testing
 - vi. Give CEI's flexibility to reduce QC inspection
 - vii. Federal vs Non-Federal Inspection rates
 - viii. Action Item – FDOT and Industry to work together on QC 2025
- b. Work Class Determination and Mobilization (Rule 14-22.008)
- i. Should mobilization cost be considered in determining work class? Would require a rule change. Per Courtney, we have had a couple projects where the ITS costs vs. roadway would have resulted in the ITS contractor being the prime. We were able to adjust roadway items so that roadway contractor was prime. May be a better way than attempting a rule change.
 - ii. Assign mobilization to prime?
 - iii. Would require Rule change
 - iv. Resolution – Don't open Rule, if there are issues, just elevate to CO
- c. Contractors need greater statutory protection from third party tort claims. The blanket indemnification that contractors are forced to provide FDOT is abused by both FDOT and attorneys alike. The current "Limits on Liability" statute (Fla. Stat. 337.195) needs to be revisited and tied to tangible criteria that contractors can meet and be certified by inspectors (such as the CPPR). Furthermore, particular circumstances must be discussed and evaluated, including instances when accidents occur and FDOT emergency services are dispatched to serve as first responders to a scene within a project's limits. What is the contractor's duty to assist? What is the contractor's duty/responsibility to take over the administration of emergency MOT services? And, if FDOT employees are injured during the course of their work duties in responding to an accident within a particular project's limits, which entity is required to insure/indemnify the FDOT employee? What if the FDOT emergency services are the "cause" of a subsequent accident due to improper MOT or negligence? What is the contractor's duty to indemnify in those instances?
- i. Industry has a bill proposed that if they are in accordance with the MOT plans and in conformance on the CPPR then they have limited liability.