

MEMORANDUM

TO: CPARB Members

FROM: Vince Campanella on behalf of General Contractors

DATE: July 10, 2008

RE: GC Issue #2 – Pay Undisputed Claims Promptly

In advance of our formal presentation at the August CPARB meeting on this issue, we would like to introduce suggested language revisions for your advanced consideration. The following draft language relates to portions of RCW 39.04 to allow payment of undisputed portions of a claim or extra work:

RCW 39.04.275: Payment Pending Final Determination Of Total Cost Of Extra Work Or Changed Work:

Pending final determination of the total cost of Extra or Changed Work, a Contractor may include such amounts in its applications for payment and/or invoices. All amounts not in dispute shall be paid by the State or Municipality in accordance with RCW 39.76 et seq.

RCW 39.04.276: Definition of Changed or Extra Work:

Changed or Extra Work is defined as compensable work beyond the scope of the public contract between Contractor and State or Municipality.

RCW 39.04.277:

For that portion of the Extra or Changed Work that remains in dispute and unpaid, provided Contractor included such amounts in its invoices to the State or Municipality and such amounts were not paid but are later determined to be due Contractor, Contractor shall be entitled to interest and attorneys' fees on such amounts pursuant to RCW 39.76 et seq.

Finalization of this draft language can occur after agreement has been reached by the Board on this issue.



MEMO

To: Capital Projects Advisory Review Board
John Lynch, Chair
From: Dan Absher
Date: March 5, 2008
Re: Subcontractor Bid Packages/Collective Bargaining Agreements

I would like to add an item to the agenda for our next CPARB meeting. We need immediate action to stop what I see as an abuse of a new clause in RCW 39.10.

In RCW 39.10.380(1) it states, "in preparing subcontract bid packages, the general contractor/construction manager shall not be required to violate or waive terms of a collective bargaining agreement." The intent of this language is to stop public owners from forcing GCCM contractors to violate the terms of their collective bargaining agreements in its bid packages.

The Laborers Union has taken this language a step further and interpreted it to mean that subcontract bidders must comply with the collective bargaining agreements of the GCCM. This interpretation is in direct conflict with the intent of the language as negotiated among the stakeholders. As you know, subcontract bid packages are publicly bid and must comply with the public bidding laws of the state. It is a violation of public bid law to restrict a public bid to only union bidders.

By choosing to pursue this course of action, the unions are attempting to force contractors to violate public bidding laws. I propose that we immediately move to strike the language from the statute, and restore the status quo that existed prior to that language being added in 2007.

Sincerely,

Dan Absher



MEMO

To: CPARB Industry-wide Issue Committee
Nora Huey, Chairperson
From: Dan Absher
Date: October 3, 2006
Re: General Contractor/Subcontractor Issue #8

One of the issues that the Industry-wide Issues Committee will be addressing is General Contractor/Subcontractor issue #8, General Contractor Liability for Defaulting Subcontractors. Since I originally posed that issue, I thought I would explain it and provide an example of what I believe to be an unfair burden placed on general contractors.

There are many manifestations of a general contractor's liability for a defaulting subcontractor: schedule delays, poor performance, walking off the job, failure to pay its workers, failure to pay its suppliers, etc. While all may be worthy of discussion, I would like to focus on the general contractors' liability for a subcontractor's failure to make its union trust fund contributions, which I believe places a particularly unfair burden on general contractors.

Here is a recent example of how that liability has cost Absher Construction Company and other general contractors literally millions of dollars:

On Auburn High School, Absher hired a union steel contractor to perform steel erection. The labor was performed by union ironworkers. The project time for the steel erection was 13 months beginning in October of 2003 and ending in November of 2004. The total contract was for \$875,000. The steel contractor performed the work, submitted the proper paperwork including certified payrolls, and was paid a total of \$798,000 when the union notified Absher that they had a claim. The first notification was on December 16, 2004, a month after the steel erection work was completed. The union trust filed a retainage and bond claim on January 26th, 2005 for over **\$281,000** to cover unpaid contributions for February 2004 to November 2004. Absher made no further payments to the steel contractor after being notified of the claim.

The steel contractor was delinquent in its trust fund payments beginning in February 2004 and subsequently (in July 2004) entered into a payment plan with the union trust and signed a promissory note. At some point, the union steel contractor failed to follow the payment plan, which led to the December 16 notice and January lien filing. In May of 2006 the union trust filed a lawsuit in Federal Court to foreclose on the lien and bond claims. Attempts to settle the claim have not been successful.