

MCA - MDT Highway Technical Meeting
October 20, 2021 – via Video Conference and in person at MCA Offices, Helena

JOINT MEETING – 2:00 PM

Participants:

MDT:

Kari Dvorak
Glenn Kautz
Joe Green
Paul Jagoda
Oak Metcalfe
Chris Riley (FHWA)
Kathleen Terrio
Matt Needham
Darin Reynolds
John MacMillan
Chris Trautmann
Matt Strizich
Patrick Lane
Dean Jones
Val Wilson
Megan Handl
Jake Goettle

Contractors:

Pat Bomgardner
Hal Fuglevand
David Smith
Russ Gaub
Kerry Grey
Brad Meyer
Solomon Redfern

MCA New Business

Prompt Test Results

- Bomgardner: Contractors are having problems getting prompt test results for concrete and plant mix. Results are coming in months later and are causing problems for contractors. It also appears to be a district-by-district problem. Can we get action from MDT?
- Joe Green: I have spoken to the EPM on the Century Co. issue. That EPM is going to take efforts to get more timely test results. We agree that the contractor needs to get results in a timely manner. There is a section on the pre-con meeting agenda. In my experience, a pre-pour or pre-pave meeting was usually very helpful to address this issue.
- Hal Fuglevand: The problem here is that deducts come back on the test results months later . . . and all the contractors have already been paid and it catches the contractor off guard. If we do not hear anything, we assume everything is fine and move forward with our business and accounting.
- Paul Jagoda: Those are problems. if there are problems, you should elevate that the DA level.

Department New Business

DBE Report (disparity survey)

- Megan Handl: MDT is hosting meetings to discuss the disparity report. We are also asking for information and data from contractors regarding which DBEs are being utilized. We ask that contractors respond to the survey. This information will be used to determine the DBE goals. There is also an option to participate in an in depth interview.
- David Smith: The “ready, willing and able” metric seems to be the issue we keep running into. Is there a threshold where a company on the list has to submit a bid in 3 years or be removed from the list --- or something similar?
- Handl: we do not take that into account. We do take availability into account in other ways.
- Bomgardner: contractor’s common problem is that the list does not actually contain all that many “ready willing and able” subcontractors.
- Smith: is there some sort of renewal process for DBEs to stay on the list? Do they have to have to be registered with the MT SOS?
- Handl: Yes -- they still need to complete an annual renewal to stay on the list. The only requirement is that the DBE register with the MT SOS before they perform work in MT. Registration with MT SOS is not a requirement to be on the DBE list.
- Val Wilson: How is the survey used to determine the DBE goals? Can the goal change in that 3 year term once set?
- Handl: we need to set a new goal next spring. According to the 9th Cir., we need to accomplish this survey. There are other factors besides the survey results. The goal can change if there is a significant change in the amount of work MDT will be letting out to bid.

- Smith: What is the timeline on the survey and goal establishment?
- Handl: We will continue through this fall and the goal will be established next spring. There will be opportunity for public comment before it is established. The goal will likely be established sometime after Oct. 1 2022.
- Jake Goettle: We have had conversations with FHWA about the DBE goals. We communicate with FHWA about what MCA is doing to accomplish the DBE goals.
- Smith: the answer is that we do not do much. I will reach out to other states to see what actions are being undertaken to accomplish the DBE goals.
- Goettle: I think MCA and MDT need to, and can, work a little harder on this together.
- Cale Fisher: all we can do is good faith efforts to find DBEs. I suppose we can put more info out to contractors to solicit DBEs. One of the reasons for not meeting the goal is not the size of the contract, but the type of work the DBE actually perform. The bulk of the companies on the DBE list are consulting companies. We do not look for consultants on a highway project – there is no need for one. There are very few boots on the ground companies on the DBE list. There are a few concrete companies and electrical companies, but there are very few.

DBE Goals

- [Discussion essentially blended into prior agenda item]

Customer Service Survey

- Jake Goettle: we do have a survey prepared to send to contractors. It is probably a 10 minute survey. My main question is when is the best time to send out the survey to get the largest response.
- David Smith: I think January would be best.
- Fuglevand: I would almost say send it right now.
- Smith: If the snow is flying, I would say that is a good time to send it. Please just let me know when it goes out and I will make sure it gets out to contractors.

Website/FTP Update

- Darin Reynolds: right now, Internet Explorer is the only browser that can use FTP websites. IE is going away and soon there won't be a browser available to view all of our bid information. You can currently use windows explorer. We plan on switching to html. This will be downloadable through a .zip file. How far do contractors go back and look for historical bid?
- Bomgardner: I would say we go back at least 7 years for historical bid info.

- Fuglevand: how much of a problem would it be to go back and make 10 or 15 years historical info available?
- Reynolds: I am not actually sure. I would prefer to have more historical data available.
- Fuglevand: I would prefer to have more available as opposed to less. How about the transition from a fax number to email for the plan holder's list.
- Reynolds: It is a high priority item for us. It is not active yet, but I hope it is usable soon. It has been quite awhile since that request was made. Is the current plan holders list working?
- Fuglevand: it was a struggle the first time due to logins and passwords. . . but it seems to be working fine.
- Reynolds: my priority is to get the website stable. Plan holders list is next. Also on the list is the Q&A forum we use internally. The way contractors submit questions may change just slightly from how it works now.
- Fuglevand: I like the Q&A system MDT is running – the current system works well.

Old Business

Federal Highways Wage Decision Update

- Kathy Terrio: We have been stalled out in getting an increase on these rates. There was recently a request to increase certain wage earners. That is before the heavy highway committee. MDT is going to schedule a meeting for the public and have a discussion about that proposal. We will include both union and non-union contractors. The US Dept. of Labor says the survey process is at least 3-5 years out. It seems like our best option is to continue with the petition.
- David Smith: Montana DLI is also pushing out some prevailing wage changes. Does federal highways work with MDLI regarding wage issues?
- Terrio: historically, the Feds were higher than the state. That has not been true recently. The heavy highway committee does look at the state DLI numbers.
- Smith: the truckdriver rate is of strong concern. That rate seems to have gone down recently. That does not really make sense.
- Terrio: I intend to share these issues with the heavy highway committee. We will send a meeting invite to the MCA so that we can hopefully have a good turnout.
- Goettle: It is really the MCA decision. We will take up whatever you guys want.
- Terrio: we only look and make sure it is something that can be administered by MDT. Then MDT submits it to US DOL.

- Fuglevand: some of the forms are a bit archaic. Some of the equipment referenced is not even made anymore. Is there an ability to clean that up?
- Terrio: honestly, those haven't been reviewed in quite a while. But that is something we can look at.
- Fuglevand: I would volunteer to work on that.
- Goettle: Who would be best to work on updating that document?
- Terrio: I would say the MCA.

Electronic Subcontracting

- Kathy Terrio: This has been introduced and I think it is working quite well. It decreases the amount of time it takes to get a subcontract approved. The electronic form is really helping MDT's pace of reviewing the submissions. The searchability feature is very helpful.

Partnering

- Jake Goettle: We have the 3rd summit coming in December.
- Smith: that is going to be at the Delta.
- Goettle: we did get funding for the partnering program from the legislature. David Smith is on that hiring committee. We hope we are about 45 days out from have the position hired.
- Smith: We have had a discussion about the awards. We will coordinate with you to measure the success of partnering.

MCA-MDT Environmental Task Force meeting

- Jake Goettle: We developed the aquatic resource manager. We have included this in the contracts. We needed a 3rd party review of the contractors' practices. I would like that group to come back together to go through the reports to see how it worked. We would like to continue through the short term so that we can avoid having this in perpetuity. Are there any comments on this issue?
- David Smith: One contractor did contact me with surprise. There is quite a bit of paperwork. The contractor was not really upset about the contract term, just surprised. His comment is that the project was not really anywhere near a bull trout fishery.
- Goettle: our goal is to show the feds that we are doing something, we can demonstrate progress, and then hopefully be done with this contractual provision.

Additional Items Discussed that Were not on the Agenda

Material Shortages, Prices, and Delays

- Bomgardner: we have experienced significant problems getting ahold of materials. Are we going to be seeing liquidated damages on these issues?
- Goettle: We are going to take that into consideration. Just make sure you document. We have granted extensions due to material shortages.
- Glenn Kautz: we have experienced material shortages all season. We are getting a trickle of material in and schedules are being impacted. Realistically, all the work may not get done because of the material shortage. The LDs are a concern.
- Goettle: if it is a force majeure issue, we will likely extend time. Please document it.
- Kautz: most managers have been understanding. We are trying to get product to the first orders in the door. We have a lot of force majeure notices.
- Oak Metcalfe: we are trying to work with the suppliers and with alternative products. Mostly in paint and markings. We have allowed alternative paints.
- Kautz: I feel like MDT has been flexible and working with us well on the alternatives for paint. The epoxy is starting to be the big problem.
- Metcalfe: We are open to working on the epoxies. Our main concern will be the final application. In my opinion, acrylics are also an option – I don't know if acrylics would work with your equipment – but we would be willing to be flexible.
- Kautz: the time crunch is really getting to be the problem now. I don't know if we can get everything out by the time winter comes.
- Metcalfe: in this situation, there is probably some leeway we can give regarding application of the paint. Right now it's 30 days to apply paint . . . if it comes down to it, we may be able to allow application at 14 days.
- Goettle: Again, with proper documentation, we are willing to suspend time even until next year. We need to make sure there is temporary marking, but we can probably delay permanent application until next year.

Source of Supply

- Oak Metcalfe: MDT has run into a problem the last couple years wherein we did not know where certain products were coming from. I am looking at updating the source of supply language. I want to target that language so that MDT gets what we need, and contractors aren't having to supply info we do not need. I will get this on the agenda for a future meeting.

Test Trailers

- Historically, these have been office type trailers. Someone has proposed that we may use refurbished 5th wheel trailers instead. The thought is that this may be easier for the contractor. We are looking for feedback. If it doesn't work for MCA, we can just disregard this suggestion.

Covid Vaccine Mandates

- Fuglevand: how are these federal mandates for federal contractors going to work out? Are the vaccine mandates going to impact MDT contracts? Are contractors that take MDT contracts going to need to require vaccines?
- Goettle: Our contracts are not federal. Its federal contractors with mandates . . . state contracts will not be impacted.