

Capital Projects Advisory Review Board
Legislation Writing\Drafting Committee
Minutes 7/21/2022

Meeting Location: via Zoom

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Meeting ID: 949 0055 6396

Passcode: 955065

Members: (10 members, 1-2 alternates; 6 = quorum)

<input checked="" type="checkbox"/> Nancy Deakins, DES Owner-State	<input type="checkbox"/> Irene Reyes, Private Industry\DBEs
<input checked="" type="checkbox"/> Bill Dobyns, General Contractors	<input type="checkbox"/> Lisa van der Lugt, OMWBE (<i>effective Aug 1</i>)
<input checked="" type="checkbox"/> Andrew Greene, Perkins Coie	<input checked="" type="checkbox"/> Olivia Yang, Higher Education
<input type="checkbox"/> Erik Martin, Counties	<input type="checkbox"/> (<i>Vacant, Construction Trades Labor</i>)
<input checked="" type="checkbox"/> Scott Middleton, MCAWW	
<input checked="" type="checkbox"/> Mark Nakagawara, Cities	

Alternates:

<input checked="" type="checkbox"/> Rachel Murata, OMWBE (<i>alternate</i>)	<input checked="" type="checkbox"/> Maja Huff, Washington State University
<input type="checkbox"/> Penny Koal (<i>alternate</i>)	<input type="checkbox"/>

Guests:

<input type="checkbox"/> Melissa Van Gorkom	<input type="checkbox"/>
<input type="checkbox"/> Robynne Thaxton	<input checked="" type="checkbox"/> Kara Skinner
<input type="checkbox"/> Santosh Kuruvilla	<input checked="" type="checkbox"/> Jolene Skinner
<input type="checkbox"/> Erin Frasier	<input checked="" type="checkbox"/> Linda Lee Womack
<input type="checkbox"/>	<input type="checkbox"/>

Agenda

3:00 pm Members Gather
3:03 pm Approve past meeting minutes + today's agenda
3:08 pm Meeting topic: Prompter pay for subcontractors
4:00 pm Adjourn

Item 1: **Members gather**

- Call to Order
- Quorum confirmed

Action by: Committee

Status: Approved and complete

Item 2: Approve past meeting minutes + today's agenda

Action by: Committee
Status: Approved

Item 3: Meeting topic: Prompter pay for subcontractors

- Members discussed the issues around delayed prime-to-subcontractor payment.
 - Existing statutes dictate that primes must pay their subcontractors within 8 working days or 10 calendar days of being paid by the owner.
 - However, feedback summarized in the BE/DBI report is that late payment is a reason why small businesses choose not to perform public works.
 - Members shared how many issues of delayed payment result from the complicated process of getting change orders approved and paid. This is the reality of most projects, and it's complicated by the fact that each organization has their own system for processing change orders, and there are typically multiple layers of approval required for change orders.
 - Even without change orders, businesses must often float project costs for up to 45 days before they are paid for their work. This is much more difficult for a small business to manage than for a large general contractor.
 - While there is no law dictating that general contractors must submit their invoices to the project owner within a certain time, it's highly unusual for this piece to be delayed in public works.
 - Data from B2Gnow might illuminate other choke points that lead to late payment to subcontractors. It will be easy to see how many subcontractor invoices are submitted without having to be revised.
- Members discussed the risks of early payment.
 - It was shared that a public owner cannot pay for any work before it's completed, as this runs into the constitutional issue of gifting of state funds.
 - In contrast to the risk of paying early, the point was made that when it comes to mitigating risk, a prime must consider how much money they'll need in reserves to complete work that is planned for a subcontractor in the event the subcontractor becomes insolvent before completing the project. With rising labor and materials costs, the cost to complete the remaining work may be larger than the amount originally agreed upon with the subcontractor, so this is a significant concern.
- Joint checks were discussed as attractive to subcontractors but not a solution to this issue, as the date of the check remains the same.
- The practice of paying subs every two weeks (instead of monthly) was proposed as part of an inclusion plan (only to extend to diverse/small business). This might require holding money in reserves to essentially pay subcontractors before the prime is paid. This is permissible by law and dependent on the owner or prime being willing to shoulder that risk.
 - To take this point further, members discussed the idea of primes having permission from an owner (via contract line items) to hold money in reserves to pay subcontractors sooner, even if they themselves have not yet been paid by the owner for that work. This was proposed as being part of an inclusion plan (only to apply to diverse/small

businesses) and promoted as a best practice and/or legislated as a permission and not a requirement.

- Incentivizing primes to pay subcontractors faster than the required 10-day turnaround was also proposed.
- The BE/DBI report also provides some terms to consider (within the Project Contract Components section) that could be helpful for this group to start from. There are some points that could be put into statute to allow things to happen sooner, and there are others that could be pushed as best practice for owners and general contractors to follow. For instance, owners can request prompt payment as part of their inclusion plans.

Action by: Committee

Status: Complete, to be continued August 18 from 3-4pm

Item 4: Next Meeting Topic: Continued – Definition & certification of diverse/small business

Action by: Committee

Status: Approved

Item 5: Next steps and action items

- Linda Womack will gather some data from 3-4 minority/women small business subcontractors at City of Tacoma currently using B2Gnow to identify what other pain points (i.e., administrative errors) are causing late payments. She will have this data ready for the group to consider when they reconvene August 18th on today's topic of prompter payment.
- From July 7th meeting: When the group reconvenes at the next meeting (on August 4, from 3-4pm) on the topic of small business, members will use the data gathered by Jolene, Scott, and Irene to begin triangulating appropriate threshold levels for small businesses in the construction category, then in AE services.

Adjourn at 3:59 pm