

**BE/DBI Committee**

Meeting Notes 11/15/2023

Page 1 of 5

**Committee Members:** (17 positions, 8 = Quorum)

	Lekha Fernandes, OMWBE, Chair	<b>X</b>	Santosh Kuruvilla, Exeltech, Co-Chair
<b>X</b>	Irene Reyes, Excel Supply Company, Co-Chair	<b>X</b>	Young Sang Song, Song Consulting
<b>X</b>	Jackie Bayne, WSDOT OEO		Cheryl Stewart, Inland Northwest AGC
<b>X</b>	Stephanie Caldwell, Absher Construction	<b>X</b>	Chip Tull, Hoffman Construction
	Shelly Henderson, Mukilteo School Dist.		Charles Wilson, DES
<b>X</b>	Aleanna Kondelis, Hill International		Linda Womack, MBDA
<b>X</b>	Keith Michel, Forma Construction	<b>X</b>	Olivia Yang, WA State University
	Brenda Nnambi, Sound Transit		Janice Zahn, Port of Seattle
<b>X</b>	Cathy Robinson, University of WA		

**Guests & Stakeholders:**

- |                                       |   |
|---------------------------------------|---|
| Talia Baker, DES                      | Kara Skinner, Integrity Surety            |
| Patricia Collins, MFA                 | Robin Storm, Andersen Construction        |
| Bobby Forch, Forch Consulting         | Maja Sutton-Huff WA State University      |
| Erin Frasier, WA Building Trades      | Jack Swanson                              |
| Edwina Martin-Arnold, City of Seattle | Abigail Vizcarra Perez, MetroParks Tacoma |
| Scott Middleton, MCAWW                |   |

**The meeting started at 1:34 p.m.**

**Welcome and Introductions**

Co-chair Kuruvilla welcomed the committee and said that Chair Fernandes was not able to attend. He said that he and Co-chair Reyes would chair the meeting.

Olivia Yang moved, seconded by Chip Tull, to approve the 11/15/23 agenda. The agenda was approved on a voice vote.

Young Sang Song moved, seconded by Cathy Robinson, to approve the minutes from the 10/18/2023 meeting. The meeting was approved on a voice vote.

**Discussion Highlights:**

**Prompt Pay Discussion**

Aleanna Kondelis reported on a meeting with Chair Fernandes to address Prompt Pay concerns, sharing insights with the committee. She presented federal Prompt Pay language through a PowerPoint presentation, offering a basis for creative considerations. The information closely aligned with MRSC's previous work, and Aleanna referred to federal regulations such as CFR 13.15 and FAR 13-4. Jackie Bayne from WSDOT highlighted differing federal rules, emphasizing WSDOT's 'pay when paid' approach, causing challenges for second and third-tier subcontractors. She mentioned WSDOT's interest in a model similar to the City of Seattle's, which prioritizes payment upon acceptance of work rather than when the prime contractor receives payment.

Aleanna acknowledged the nuanced discussions in previous meetings regarding varied payment approaches. She clarified that her presentation on federal Prompt Pay references aimed to demonstrate that the committee's discussed ideas align with federal practices, possibly setting a precedent for implementing similar payment practices in the state. Co-chair Kuruvilla inquired about the comparison between federal rules and other committee-discussed resources. Aleanna didn't provide a direct comparison, and Co-chair Kuruvilla emphasized the committee's goal of identifying Prompt Pay best practices by collecting ideas and reviewing the available body of work.

Aleanna highlighted the committee's discussions on payment tracking systems, such as the B2G Now presentation, and references to the Revised Code of Washington (RCW) guiding 39.04.250, the Prompt Pay Act. Emphasizing the exploration of precedents and identification of best practices before potential legislation, she noted the City of Seattle's confirmation of these practices, especially in alternative delivery scenarios.

Edwina Martin-Arnold commended the City of Seattle's practices, mentioning their aim to pay within 10 days of work completion for state contracts, applicable across various forms of contracting. Co-chair Kuruvilla inquired if these practices were primarily focused on construction, to which Edwina clarified that they applied to about 90 percent of contracts, spanning purchasing, supply, consulting, and construction. When asked for overarching points, Edwina emphasized the need for entities to be creative, stretch limits, and explore laws to expedite payments for businesses, also noting King County's commendable Prompt Pay practices.

Olivia expressed concern about the applicability of a blanket 90-day payment period and emphasized the need to consider prompt payment specifics for small and diverse businesses. She proposed incentivizing contractors to develop their own programs rather than imposing rigid requirements.

Scott Middleton added to the discussion, highlighting the challenge posed by the complexity of payment applications, involving extensive documentation and multiple tiers, which may complicate streamlining efforts under existing laws.

Young emphasized the committee's focus on cash flow and suggested targeting prime contractors rather than public agencies for prompt payment initiatives. He shared ideas, including separating minority business enterprise (MBE) and disadvantaged business enterprise (DBE) payments in owner pay applications, allowing primes to review them separately and potentially expediting MBE/DBE payments within 60–90 days.

Co-chair Reyes countered, stating the impracticality of owners cherry-picking payments due to the billing structure by general contractors (GCs). She favored owners adopting a shorter payment period, such as two weeks, to create a positive ripple effect and questioned potential barriers to owners making payments within this timeframe.

Aleanna resumed her presentation, outlining an outline for potential payment practices discussed with Chair Fernandes. She clarified that the outline focuses on summarizing good and better practices related to payments, with no legislative involvement. She proceeded to share her final slides.

Chip expressed some challenges with categorizing practices but acknowledged the effectiveness of Aleanna's list. Reflecting on Young and Co-chair Reyes's comments, Chip emphasized two key components: addressing non-compliance with Prompt Pay and elevating lower-tier entities to a 10-day payment standard. Chip suggested exploring ways to bring lower-tier entities to the same payment level as subs.

Co-chair Kuruvilla shared his experience with a Metro job in Los Angeles, where monthly invoices were submitted along with a draft invoice estimating the next month's costs. This proactive approach reduced processing time, allowing owners to review projected costs in advance. He noted that while the system worked well for baseline scope, it became more complex with change orders and might not be suitable as a best practice for changes.

Co-chair Reyes proposed organizing compiled comments in a spreadsheet for the next meeting, facilitating analysis from owner, general contractor (GC), and subcontractor perspectives to create a comprehensive summary. Co-chair Kuruvilla supported this suggestion.

Olivia shared insights on a process similar to Los Angeles, mentioning Washington State University's (WSU) pilot in Vancouver, which sets aside money and aligns with WSDOT practices. She recommended categorizing Aleanna's list into buckets, such as owner to prime, prime to sub, and sub to sub-sub. Olivia proposed that

instead of giving specific directives, the committee could prompt owners to submit their proposed Prompt Pay programs, akin to safety program submissions. She advocated examining laws beyond 39.10, identifying barriers for owners to pay primes, and addressing challenges such as upfront payments for small subcontractors, a practice feasible for private owners but not public owners."

### **RCWs Impacting Prompt Pay**

Co-chair Reyes proposed revisiting the RCW language that allows general contractors (GCs) 30 days to pay subcontractors, emphasizing the need to reconsider this provision. Aleanna clarified that the RCW's Prompt Pay requirement is 10 days. Co-chair Reyes, based on feedback from board members, underscored the importance of examining owner responsibilities and suggested a review of how owners should handle payments.

Co-chair Kuruvilla posted the following links in the chat:

[https://app.leg.wa.gov/rcw/default.aspx?cite=39.04.250#:~:text=\(1\)%20When%20payment%20is%20received,the%20subcontractor%2C%20to%20the%20extent](https://app.leg.wa.gov/rcw/default.aspx?cite=39.04.250#:~:text=(1)%20When%20payment%20is%20received,the%20subcontractor%2C%20to%20the%20extent)

<https://app.leg.wa.gov/rcw/default.aspx?cite=39.04.250>

Olivia and Maja Sutton-Huff detailed the payment process at WSU, highlighting the submission of a draft application for payment, its review by the project team, and the subsequent submission of the final application. WSU aims to make payments within 5–20 days, accounting for various factors. Olivia suggested exploring if GCs could facilitate more targeted payments instead of maintaining a 10-day interval between tiers.

Keith Michel shared insights into the payment timing variations, noting the impact of centralized accounting teams and specific check run dates. He emphasized the importance of capturing the billing period's expiration by the last day of the previous month, leading to variations in payment intervals. Keith expressed the need to address such variations and push for Prompt Pay practices or laws that hold bad actors accountable.

Olivia proposed a positive reinforcement approach, suggesting that instead of punishing bad actors, the committee could develop a program recognizing entities supporting diverse businesses more inclusively than through payment alone. She emphasized the importance of conveying to owners that delayed payments lead to increased costs for businesses, as they resort to loans. Olivia suggested exploring incentives or a points system to encourage prompt payments.

Cathy provided insights into the challenges faced by mid-sized cities with limited staffing resources. She detailed the multi-step process involved in invoice processing and payment issuance, highlighting the efforts to transition to electronic transfers. Despite these efforts, practical challenges persist, particularly for small firms that prefer checks. Co-chair Kuruvilla emphasized the need for the committee's best practices to accommodate the realities faced by smaller and mid-sized owners.

Keith emphasized the importance of aligning project team workflows with accounting processes and establishing internal deadlines to expedite the approval of final invoices. Using a real example, he illustrated how delays in invoice approval impacted downstream payments for subcontractors.

Co-chair Reyes stressed the need for awareness of cutoff dates and collaboration among all team members to ensure timely invoice submissions. She questioned who should monitor the entire Prompt Pay process from initiation to completion, emphasizing the interconnected nature of the various aspects involved.

Chip acknowledged Cathy's observations and highlighted the challenge of smaller owners handling two billings a month internally. He suggested that incentivizing practices could help but identified the fundamental issue of non-compliance. Chip proposed that tracking systems like B2G Now could offer visibility into payment timelines and that general contractors (GCs) could take the initiative to work with project teams and owners for faster

processing. He encouraged creativity in devising incentives and emphasized the unique position of GCs to influence the payment process.

Abigail Vizcarra Perez from MetroParks Tacoma questioned the 'pay when paid' situation in a reimbursable environment, emphasizing the opportunity for general contractors (GCs) to prioritize paying vulnerable subcontractors before submitting their pay applications. She suggested a shift in the system to favor subcontractors economically.

Cathy highlighted the challenge for mid-size and smaller city GCs, lacking the floating capital to pay subcontractors before receiving payment. Abigail acknowledged the bias favoring GCs in the current system and urged the committee to explore incentives and a reimbursable accountability structure to address payment timing issues. Young proposed including information about working with Minority Business Enterprises (MBE)/Disadvantaged Business Enterprises (DBE) in proposals, suggesting a point system for primes to innovate and support MBE/DBE initiatives.

Stephanie Caldwell proposed a separate meeting for primes on the committee to plan and gather recommendations based on their experiences. She emphasized the need for primes to collaborate and bring forward insights from a general contractor (GC) perspective, acknowledging the diverse experiences across agencies and primes.

Co-chair Kuruvilla suggested that primes share their findings with Chair Fernandes. Olivia recommended dividing the committee into groups during the next meeting for collaborative brainstorming.

Robin Storm supported the idea of primes and GCs convening to share experiences, highlighting the variability in owner practices. She identified the payout process and the cascading 10-day lag time as significant challenges, emphasizing the need for innovative solutions. Robin emphasized that the Prompt Pay issue is not with construction projects but rather the lag time in approvals and payouts, noting the unique dynamics of each project being run like a business.

Chip highlighted the practice of owners going through the payment process in preconstruction meetings to identify all stakeholders involved. He emphasized the importance of a collective mindset geared toward prompt payments. Co-chair Kuruvilla endorsed this approach, viewing it as a constructive way to address the issue.

Co-chair Reyes proposed the idea of GCs submitting a second billing as a cushion for subs instead of billing only at the beginning. This second billing could serve as a financial buffer for subs, especially when GCs may face cash flow challenges.

**Next Meeting:**

The committee developed the following agenda:

1:30 p.m. Welcome & Introductions

1:35 p.m. Approve Agenda & Minutes from 11/15/2023

1:40 p.m. Continue Prompt Pay discussion. Create and review matrix.

2:00 p.m. Breakout session for Prompt Pay. Groups: owners, GCs, and small businesses.

2:30 p.m. Breakout sections report back.

Olivia recommended that higher education representatives and other owners explore simplifying invoices for payment and other issues specific to higher education, particularly related to accelerating payments to sub-tiers. She proposed that preparing this groundwork in advance could enhance the efficiency of breakout sessions, especially in the context of alternative delivery projects.

**BE/DBI Committee**

Meeting Notes 11/15/2023

Page 5 of 5

Keith suggested an action item to familiarize themselves with the RCW, urging members to share relevant references via email or in the next meeting. Chip recommended conducting an internet search for RCW 39.10 to easily locate and identify relevant sections pertaining to payment.

Cathy sought clarification on whether Prompt Pay discussions apply universally or specifically to alternative delivery projects. Co-chair Kuruvilla clarified that the committee's focus on Prompt Pay is within the context of RCW 39.10, as it operates as a subgroup under CPARB.

**Action Items:**

1. Edwina Martin-Arnold will write about City of Seattle practices.
2. Higher Ed and other owners meet to look at simplifying invoices for payment.
3. Committee members will find the RCW and statutes that hinder Prompt Pay.

**Meeting adjourned at 3:00 p.m.**

**References\Resources:**