

Capital Projects Advisory Review Board

BE/DBI Committee

Meeting Notes March 20, 2024

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Location: via Teams

Meeting ID: 286 966 538 619 **Passcode:** 528oxQ

Committee Members: (19 members, 10 = Quorum)

x Lekha Fernandes, OMWBE, Chair	x Santosh Kuruvilla, Exeltech, Co-Chair
Irene Reyes, Excel Supply Company, Co-Chair	x Cathy Robinson, University of WA
Frank Boykin, MBDA	x John Salinas II, Specialty Contractors
Jackie Bayne, WSDOT CEO	x Young Sang Song, Song Consulting
x Stephanie Caldwell, Absher Construction	Cheryl Stewart, Inland Northwest AGC
x Bobby Forch, CPARB DBE Representative	x Chip Tull, Hoffman Construction
x Shelly Henderson, Mukilteo School Dist.	x Charles Wilson, DES
x Aleanna Kondelis, Hill International	x Olivia Yang, WA State University
x Keith Michel, Forma Construction	x Janice Zahn, Port of Seattle
x Brenda Nnambi, Sound Transit	

Guests and Stakeholders:

Monica Acevedo-Soto	x Patrick McQueen, PCL Construction
x Jennifer Brower	x Edwina Martin-Arnold
Michelle Fa'amoe	x Monique Martinez, DES
x Bill Frare, DES	x Rachael Pease, BNBuilders, Vendor Diversity Director
x Erin Frasier, WA State Building & Construction Trades Council	x Kara Skinner, Integrity Surety
x Maja Sutton Huff, WSU, Higher education	Robin Strom, Anderson Construction
x Tennille Johnson, OMWBE	x Ethan Swenson, OMWBE
Denia Lanza-Campos	x Jerry Vanderwood, AGC
x Jessica Letteney, MFA	x Carrie Whitton, Forma Construction
x Cindy Magruder, UW	

The meeting started at 1:34 pm.

Welcome and Introductions

Chair Lekha Fernandes initiated the meeting and proposed adjusting the agenda to allocate more time for discussing Senate Bill (SB) 6040.

She emphasized that the committee's responsibility is to provide recommendations on SB 6040, with a deadline of November 1 or earlier as mandated by the legislators. Chair Fernandes suggested aiming to finalize recommendations by the Capital Project Advisory Review Board (CPARB) meeting on October 10.

Janice Zahn advocated for finalizing the language by September to allow the committee sufficient time in October to polish the recommendations and compile all necessary documentation, such as a cover letter and a list of best practices. This comprehensive package would then be prepared for submission to the legislature for the 2025 legislative session.

Chair Fernandes reiterated that the committee must vote on the final recommendation package by October 10.

Minutes by Jessica Letteney, MFA, edited by Monique Martinez or Talia Baker

Approve Agenda and Minutes from 2/21/2024

Chair Fernandes proposed allocating more than 15 minutes to recap the CPARB special meeting held on 3/18/2024.

Co-Chair Santosh Kuruvilla made a motion to approve the agenda with the proposed time changes, which was seconded by Cathy Robinson. The agenda was unanimously approved with the adjusted time allocations.

Monique Martinez informed the committee that she had combined the meeting minutes from the last four meetings and sent them to all committee members but clarified that only the minutes from the 2/21/2024 meeting needed approval.

Co-Chair Santosh Kuruvilla then moved to approve the meeting minutes from the 2/21/2024 meeting, with Chip Tull seconding the motion. The minutes were approved by a voice vote, with Chair Fernandes abstaining as she was not present at the 2/21/2024 meeting.

Recap of CPARB Special Meeting 3/18/2024

Chair Fernandes highlighted that a special meeting was held on Monday, 3/18/2024, to address requests from the legislature concerning SB 6040, which pertains to options for prompt payment for small and small diverse businesses. She emphasized that the meeting was extensive, with legislators making recommendations and engaging key stakeholders, but indicating a need for more thorough analysis of the language. The responsibility for this in-depth analysis was delegated to CPARB, and the committee would draft recommendations for a board vote and subsequent submission to the legislators.

The timeline for this task is tight, with a deadline of November 1, 2024, for having recommendations and language finalized. CPARB must vote on all related matters during its October 10 meeting, necessitating completion of the proposed draft language before the September CPARB meeting. Janice suggested that the draft be ready for the September CPARB meeting, with the final recommendations and report voted on in October. To facilitate this, the draft should be submitted before the first Thursday in September for all members to review.

Chair Fernandes introduced Ethan Swenson, an IT project manager with OMWBE, who would assist the committee in executing and delivering all work products in a timely manner. She emphasized the importance of stakeholder engagement and proposed creating a RACI matrix to designate responsibilities within the group. Identifying key stakeholders and engaging them early on is crucial, along with establishing a project schedule with monthly check-ins to monitor progress and resource needs.

Prompt pay is a complex topic, requiring a subgroup to define the issues and develop a problem statement. Chip Tull suggested that the problem statement outlined in SB 6040 could serve as the question the committee needs to answer, clarifying the committee's focus. Chair Fernandes agreed, emphasizing the need to articulate the scope fully, including identifying best practices, addressing barriers under current legislation, and proposing legislative changes.

Keith Michel suggested that the legislature tasked CPARB with presenting findings, recommendations, and identifying observations, barriers, and challenges related to prompt pay. Chair Fernandes acknowledged that this scope could be extensive and encouraged further discussion among members.

Janice Zahn emphasized that the committee had previously identified prompt and prompter pay as an issue, which prompted the legislature to draft the language as a striker in SB 6040 and send it back to CPARB for review. She stressed that there is specific language outlining the focus areas within the bill, and the committee

had been discussing the issue extensively before. Janice encouraged the committee to build on the work already done and strive for consensus to move forward effectively.

Bill Frare raised concerns about compliance with the terms of the current bill, which mandates payment terms of 30/10/10/10. Despite these terms, subcontractors often face delays in receiving payments beyond 100 or 120 days. He advocated for a clear definition of the standard and urged the committee to understand the compliance element under current law, highlighting the importance of ensuring payers adhere to the law.

Co-Chair Santosh Kuruvilla reminded members of the committee's past responses to legislative bills related to prompt pay, emphasizing the need for consistent messaging, and building upon previous efforts.

Olivia Yang proposed focusing initially on projects covered by RCW 39.10 to address prompt pay issues, particularly for vulnerable small businesses. She suggested that concentrating efforts on this subset of projects could help identify underlying problems causing delays in payments to contractors and facilitate finding solutions.

Aleanna Kondelis recommended utilizing data from a previous presentation by DES and Charles Wilson on tracing and tracking payments to subcontractors, suggesting that objective data analysis could provide insights into payment trends and identify areas for improvement.

Bobby Forch emphasized the importance of consistency in payment practices among owners, noting discrepancies in adherence to payment guidelines across different entities. He highlighted the need for owners to pay prime contractors promptly, as this would facilitate timely payments down the chain.

Young Sang Song offered to provide insights from a user's perspective on payment reporting systems, highlighting inconsistencies and challenges in using the current system effectively. He emphasized the complexity of the system, and the difficulties users face in correctly processing payments.

Chair Fernandes summarized the discussion on prompt pay, outlining key points and next steps:

- **Incorporating Ideas and Conversations:** The committee should integrate previous discussions and ideas on prompt pay into its current deliberations.
- **Identifying Barriers in Current Law:** Analyze the existing letter of the law regarding prompt pay and pinpoint barriers and challenges in its implementation. This includes examining the 10-day and 30-day payment clauses, identifying inconsistencies, and proposing recommendations for improvement.
- **Focusing on Accountability and Consistency:** Emphasize accountability and consistency in the payment process. The committee needs to determine who requires prompt payment and ensure that their voices are heard. Solutions should be tailored to meet the needs of these business owners, enabling them to survive and thrive.

Chair Fernandes highlighted the importance of crafting solutions that address the specific needs of businesses reliant on prompt payments and emphasized the committee's role in advocating for their interests.

Chair Fernandes initiated the process of drafting a problem statement to serve as the scope for the committee's work. Olivia Yang and Chip Tull volunteered to craft the statement, which would help keep the committee focused on its objectives. The problem statement would address issues of prompt pay at various levels and divide the work into manageable tasks. The aim is to identify barriers in the current law, provide recommendations for improvement, and focus on accountability and consistency in payment processes.

The discussion highlighted the need to prioritize the committee's efforts, particularly in addressing vulnerabilities faced by small and disadvantaged businesses. John Salinas II emphasized the importance of defining terms and mechanisms for prompt payment, especially for disadvantaged business-certified firms. Co-Chair Kuruvilla suggested incorporating accountability measures into the legislation, such as auditing by relevant agencies.

Aleanna Kondelis noted the absence of specific references to RCW 39.10 in the bill, suggesting a need to explore broader prompt pay practices within public works. Chair Fernandes agreed, emphasizing the flexibility within RCW 39.10 that the committee could leverage.

The committee agreed to form a group to define the scope and objective of their work, with Chip Tull, Olivia Yang, Bill Frare, Keith Michel, and Maja Sutton Huff volunteering for the task. This group would also establish additional workgroups to address specific aspects of the prompt pay issue. The goal is to have the scope, objectives, and workgroup structure defined by the next meeting, ensuring clarity and consistency in the committee's approach. Members were encouraged to consider their areas of expertise and contributions to the conversation for the next meeting.

Olivia volunteered to coordinate a meeting for the subgroup tasked with defining the scope and objectives of the committee's work. She will reach out to Laurie to schedule the meeting and may try to recruit more volunteers for the subgroup. Chair Fernandes was designated as an optional participant in case additional support is needed.

Chair Fernandes emphasized the importance of engaging stakeholders beyond the committee members in the prompt pay initiative. Volunteers were sought to identify and reach out to stakeholders, gather contact information, and invite them to participate in committee meetings. Aleanna volunteered to contact MRSC and request an email blast to its members, while Jerry Vanderwood volunteered to recruit members from AGC for the workgroups.

A group of volunteers, including Aleanna Kondelis, Stephanie Caldwell, Brenda Nnambi, Cathy Robinson, and Rachael Pease, will work on defining stakeholders and developing an outreach plan. Aleanna will lead this effort and schedule a meeting to outline the plan by the next meeting in April. Chair Fernandes requested to be included in the meetings as an optional participant if additional support is needed.

The committee also discussed the need for a schedule outlining the timeline for achieving the committee's goals, with a draft due by September. Aleanna Kondelis and Co-Chair Santosh Kuruvilla volunteered to assist Ethan with creating the schedule, which will include milestones and goals leading up to the September deadline.

Chair Fernandes reminded all members who had not volunteered for specific tasks or workgroups of their homework between the current and next meeting, which includes:

- Reviewing SB 6040 to ensure understanding of the proposed legislation.
- Identifying areas of interest and expertise and considering how to participate starting in April.

Olivia mentioned that she might reach out to members with questions to better understand their viewpoints.

Co-Chair Kuruvilla raised the question of whether the monthly meeting cadence is sufficient for achieving the group's goals.

Chair Fernandes responded that monthly meetings are appropriate if project teams can work together between meetings. The monthly meetings would then serve as spaces for voting on tasks and moving goals forward.

Active engagement and participation in workgroups between meetings are crucial for success. Members will also share stakeholder engagement efforts, responses, and barriers at the May check-in meeting. Depending on progress, a more regular meeting cadence might be considered.

By April, the committee aims to vote on the project scope, workgroup assignments, a list of key stakeholders, engagement strategies, and a finalized project schedule. The meeting will also include a detailed discussion of workgroup tasks and objectives.

Chair Fernandes checked in with various members to ensure the plan made sense. Maja expressed her anticipation for the work.

Chair Fernandes mentioned the need for data from Charles Wilson on prompt pay and highlighted the importance of engaging with stakeholders like Erin Frasier from the Washington State Building & Construction Trades Council.

The agenda for the next meeting includes the following items:

- Vote on the clearly defined problem statement and workgroups.
- Assign people to workgroups and ensure they understand the objectives.
- Vote on a final project schedule with the aim of submitting proposed draft information to the legislature by September.
- Discuss the list of stakeholders and ensure all committee members understand the engagement plan.

Best Practices Discussion

Chair Fernandes opened the discussion on best practices.

Co-Chair Kuruvilla requested the display of the meeting minutes from the 2/21/24 meeting and mentioned the concept of orientation raised by Aleanna, which was discussed by the group.

Olivia pointed out the presence of three additional documents besides the meeting minutes: the working outline from the beginning of the current set of meetings, Olivia's list of current best practices, and Aleanna's contribution. She suggested consolidating these pieces to identify the current best practices and any gaps.

Aleanna mentioned that the minutes from the 2/21/2024 meeting document the discussion where the group reviewed each best practice.

Olivia added that she had sent an email to the co-chairs after the 2/21/2024 meeting, similar to Aleanna's contribution, and suggested creating an outline incorporating all these contributions. She emphasized the importance of discussing nuances around invoicing for base and change work, as well as force accounts, which impact payment timelines.

Chair Fernandes agreed to combine all contributions into one outline and appreciated Olivia's offer to draft it.

Co-Chair Kuruvilla acknowledged the importance of owner readiness and supporting diverse small businesses mentioned in Olivia's email.

Olivia clarified that her email was about CPARB committee connections.

Monique reminded the group to ensure compliance with the Open Public Meetings Act in their communications.

Chair Fernandes emphasized the need for compliance and requested that committee members review the compiled document when Olivia sends it out. She will send a questionnaire to solicit feedback on missing elements.

Chair Fernandes encouraged using reaction buttons for feedback and noted that Olivia's compilation will be the first draft of the best practices document. Co-Chair Kuruvilla mentioned Maja's language from the old report that could be included. Cindy offered support from University of Washington staff to Olivia if needed.

Chair Fernandes reviewed upcoming tasks:

- Review the draft best practices document from Olivia, provide input on missing items, and continue to develop it.
- Vote during the April meeting on project scope, size, and schedule.

She encouraged everyone to actively participate so that their stakeholders are represented. If someone does not choose a group to participate in, Chair Fernandes will ask them which group they want to participate in.

Janice requested that emails to other voting members of the committee include Rachael Pease.

Chair Fernandes conducted a verbal round-robin check-in with all remaining attendees to get feedback on progress to date and plans going forward. During the round-robin, Kara Skinner noted that she wanted to be helpful and can be a resource for any matters related to surety and bonding. Brenda noted that Sound Transit is engaged in an internal prompt payment initiative so she will take information from this group to share with Sound Transit. Charles Wilson noted that the discussion today is a continuation of a recent discussion in Tacoma, and he is encouraged that the group is moving forward. Janice thanked Jerry for recommending that CPARB take on this work because SB 6040 was moving in a different direction in the legislature. One of her commitments is to reach out to Senator Valdez who authored the bill initially. She plans to keep him in the loop so he is aware and can get ready for November 1. He is very interested in advancing this work and the committee wants to support that as much as possible.

Chair Fernandes thanked the committee for staying on track and noted that the April 11, 2024, meeting will be a busy one, and asked that everyone have that meeting on their calendar.

The meeting adjourned at 2:51 pm.

Next Meeting Agenda

1. Welcome & Introductions
2. Review & Approve Agenda and Minutes from 3/20/2024
3. Vote on the clearly defined problem statement and workgroups
4. Assign people into workgroups and ensure that they understand the objectives of the workgroups
5. Vote on a final project schedule with the goal of having all of the proposed draft information submitted to the legislature by September
6. Discuss the list of stakeholders and ensure that all members of the committee understand what engagement looks like
7. Adjourn

Action Items:

1. DES will provide a link to the language for SB 6040.

2. Olivia Yang, Chip Tull, Bill Frare, Keith Michel, and Maja Sutton Huff will take notes and craft a problem statement for the committee, along with drafting a list of workgroups to address individual issues.
3. Olivia will arrange a meeting for the group and include Chair Fernandes as optional for support.
4. Aleanna Kondelis, Stephanie Caldwell, Brenda Nnambi, Cathy Robinson, and Rachael Pease will define stakeholders, develop an outreach plan, and compile a list with contact information.
5. Aleanna will organize a meeting before the April 11 meeting.
6. Aleanna will contact MRSC for an email blast about the committee's work and potential participation.
7. Jerry Vanderwood will recruit members from AGC for the workgroups.
8. Aleanna Kondelis and Co-Chair Santosh Kuruvilla will assist Ethan Swenson in creating a schedule for the committee and subgroups.
9. Olivia Yang will compile the first draft of best practices, sending it to Chair Fernandes for formatting.
10. Chair Fernandes will format and distribute the best practices document to committee members.
11. Committee members will review the document and provide input on gaps in the best practices list via a survey.
12. Janice Zahn will contact Senator Valdez regarding the committee's work.
13. All other committee members will review SB 6040, identify areas of interest and expertise, provide input on the best practices list, and ensure the April 11 meeting is on their calendar.

Resources

- [Washington Senate Bill 6040 Concerning prompt payment in public works](#)
- [Washington Senate Bill 5032 Concerning the reauthorization and improvements to alternative public works contracting procedures](#)
- [Revised Code of Washington 39.10 Alternative Public Works Contracting Procedures](#)
- [Revised Code of Washington 42.30 Open Public Meetings Act](#)
- [CPARB Business Equity/Diverse Business Inclusion Committee Report to Legislature in response to section 20 of SB 5032 \(June 9, 2022\)](#)