

SB6040 Stakeholder Engagement Plan

Goals

- A. Identify stakeholders and practitioners *involved in/well versed in* payment practices on public work contracts in the State of Washington.
- B. Engage identified stakeholders and practitioners.

The following are goals for stakeholder engagement:

1. Identify current practices and experience regarding “prompt(er) pay” in public works projects in the State of Washington.
2. Assess effectiveness of prompt pay practices in use in public works projects in the State of Washington.
3. Identify current “prompt pay” practices in public procurement across the US (e.g., federal).
4. Assess effectiveness of prompt pay practices in public procurement across the US.
5. Have stakeholders provide feedback on any proposed improvements to prompt pay requirements for public works contracts in the State of Washington.

Intent of SB6040 stakeholder feedback:

- Review how well prompt pay provisions are working for small businesses.
- Consider (evaluate, analyze) improvements to prompt pay provisions added to statute.
- Identify impacts to the industry [public works contracting] if such improvements were to be implemented.

Message(s) and Issues Clarification

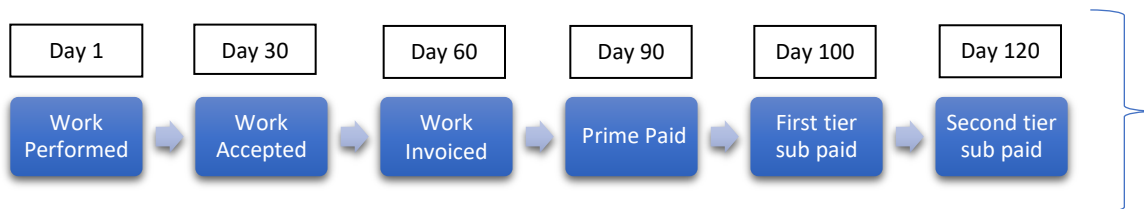
Background and Context

The Washinton State Capital Projects Advisory Review Board (CPARB), through the Business Equity, Diverse Business Inclusion Committee (BEDBI) is conducting a survey and seeking feedback from stakeholders, practitioners, administrators, payers, and payees on public works contracts in the State of Washington. Our survey and feedback relate to any public works/construction contracting method used by any municipality, public agency, state agency, local government or similar that procures public works (RCW 39.04) in the State.

The catalyst for the survey is the State Legislature directing requirements to be implemented for “prompt(er) pay” on public works contracts after a brief period of stakeholder engagement and investigation into possible practices that will improve payment timeframes, particularly to small, lower-tier subs. (See SB6040)

Current State of “Prompt(er) Pay” Investigation and Testimony

- The BEDBI Committee has identified **3 levels of payment process** that have the potential to improve, **1)** local government payments to primes (includes public agency internal or specified processes), **2)** prime payments to first tier subs, and **3)** lower tier subs to lower tier subs.
- Testimony presented to the BEDBI indicates that, in the best-case scenario, first level of payments start **30 days after work is invoiced**, second level **60 days**, and third level at least **90 days** from when work is invoiced; and are often not consistently (regular intervals) paid throughout a project.
- Testimony presented to the BEDBI stated that invoicing by the Prime cannot begin until after work is accepted or verified by the public agency which is often 30 days or more after work was physically completed or resources expended.



- Testimony presented to the BEDBI strongly suggests that payment inefficiencies are more significant with public agencies paying (1st level), than at other levels.
- Contractors and subcontractors testified to the BEDBI that many are using electronic funds transfers and are often paying within a day or two after receiving payment from a public agency, and in the worst case are paying within the required 10 days of receiving payment (RCW 39.04.250). For contractors that are signatory to a union, they are often required under collective bargaining to pay more frequently than invoicing and payment cycles afford under a public contract. (This where contractors and subcontractors end up financing public projects.)
- Testimony presented to the BEDBI included some discussion that the various bidding/contracting types do influence acceptance/verification processes used by different public agencies. Examples discussed where in vertical construction (buildings) often the bid is one lump sum, followed by a schedule of values that is used to **make payments on a percent complete**. On a horizontal (heavy civil, roads, bridges, etc.) the bid form is line items with a lump sum, under which invoices include how many items were installed **the per item price and then a total item installed in an invoicing period**. Testimony indicated that in both common types there was more and more frequency and use of allowance items, mobilization separate costs, or similar in an attempt to have pay for discrete bodies of work faster.

Common under current state
with no disputes

- Testimony presented to the BEDBI included a review of RCW 39.04.250 which currently requires 10 days pay-when-paid (levels 2 and 3) and allows for disputed amounts to be withheld from the disputed party but is not allowed to impede on other parties receiving payment.
- Testimony presented to the BEDBI noted that other than RCW 39.76.011, which directs public owners to pay 1% interest each month that an invoice is not paid on a public contract, there is no other payment requirements for “level 1” payments. The public agencies on the committee were unaware of any specific direction.
- Testimony presented to the BEDBI indicates that alternative public works contracts (Job Order Contracts, Design Build, and GC/CM (RCW 39.10), often have better payment timing, attributed to practices such as different “bidding and billing” approaches (e.g. unit price, schedule of values, cost reimbursable, line items, etc.), additional staff resources on large, more complex projects, use of allowances and contingencies, and the ability to use “equity strategies” as proposed as prime contractor’s “Diverse Business Inclusion Plan.”
- Testimony presented to the BEDBI by State Agencies that the use of subcontractor payment tracking system (B2Gnow), which require subs to attest when they are paid, has improved visibility into the timing and regularity of level 2 and 3 payments. Conversely, businesses that have been using the state’s payment tracking system testified that the system itself is also significantly delayed and businesses do not believe it is effective in understanding if payments are being paid promptly or timely.
- Testimony presented to the BEDBI by businesses directly contracted with large public agencies indicate that payments generally are paid within days of submitting an invoice, particularly for services or goods. The same businesses confirm that when they are subs on a job and/or on a public works project the payments are much slower and often several months in arrears.
- Testimony presented to the BEDBI committee by smaller public agencies indicated that they have fewer public works projects active compared to larger public agencies, that there is limited staffing (finance and project delivery) able to review payment applications and make payments. Several agencies are still using paper checks and are limited to the days and cycles for “check runs.” Testimony indicated that there is concern that smaller agencies will not be able to adopt improved payment procedures that larger, more resourced agencies, can.
- Testimony presented to the BEDBI included the requirement that public agencies are only allowed to pay for “work” that has been completed and accepted, which includes documentation of such. To that end, a “requirement” to pay prior to verification and acceptance of physical work, or receipt for materials received will be impractical and jeopardize funding.
- State agencies testified to the BEDBI that any changes to payment procedures will most likely need to be legislated or part of rulemaking for them to be able to implement.

- Public agencies testified to the BEDBI that on projects that are federally funded, they feel grants prohibit changes to federal contracting requirements including, but not limited to, when and how payment is made. Further, there was a shared concern that changes without consent under federal grant guidance or legislation that is not consistent with federal grant guidance may put needed federal funds in jeopardy.
- Testimony presented to the BEDBI included the identification of current **federal “prompt pay” provisions**; these provisions are available for awarding agencies to use as appropriate for their procurements. FAR 52.232-27 speaks to construction projects and directs federal agencies to pay contractors (primes) within 14 days of receiving a *properly completed payment request*. Additional provisions include “*accelerated payments*” to small business, “*contract financing payments*” (or *allowances*) of disbursement of monies prior to acceptance, and “*fast payments*” or payment prior to verification. (CFR 5.II.B, 1315) *Best assessment, without testimony from federal policy makers*, is that these tools can be used at the discretion of an agency to promote prompt pay, and payment closer to when “work” is performed in the event the review, verification, and acceptance processes are holding up payments to contractors (level 1).
- Testimony presented to the BEDBI indicates that there are currently only a *few versions of prompt payment contracting terms in practice in the State of Washington*. Both are targeted at level 2 and 3, payments by primes to subs and subs to subs. Summarized, 1) primes must pay every 30 days to their first-tier subs, regardless of being paid by the public agency; 2) primes must pay for work “*satisfactorily completed*” or work that “*complies with the quality and performance standard agreed*” (written or verbal), **not** pay when work that is accepted or verified by the public agency or even when work has been invoiced.

Feedback

- A. Two rounds of electronic surveys
- B. Comment at BE/DBI Committee meetings
- C. Written comment via email or similar

Survey Questions

[Recommend the survey is anonymous, with an option to provide your information if you wish]

Introduction: This survey of stakeholders is the first part of a **two-part direct engagement campaign** by the CPARB BEDBI Committee, focused on gathering feedback and experience with prompt pay on public works construction projects in the State of Washington. The feedback being used to inform a recommendation to the CPARB and then to the legislature as directed by SB6040. Our direct engagement seeks feedback from agencies, contractors, subcontractors, small and diverse businesses, practitioners, advisors, community organizations and similar experiencing payment processes on public works construction projects within the State of Washington. The testimony and feedback gathered to-date is available [here](#).

In addition to this survey, BEDBI holds regularly scheduled virtual meetings on the 3rd Wednesday of the month and accepts written comment. In addition to this survey, stakeholders and interested parties are invited to contact the committee [here](#).

Part 1

- A. With which public works contract payment stakeholder role do you identify?**
 - a. Business (payee)
 - i. Prime
 - ii. Sub
 - iii. Diverse firm
 - iv. Small business
 - b. Public agency (payer)
 - c. Community Organization, Advocate
 - d. Other [fill in]

- B. Which area of payment process improvement do you believe is most critical?**
 - a. Public agency requirements/process (e.g., invoicing requirements, backup paperwork, bid form, or similar)
 - b. Public agency to prime payment format (e.g., checks vs. electronic payments)
 - c. Prime to first tier sub payment
 - d. Sub to sub payment.
 - e. Other [fill in]

- C. Have you experienced significant delays (more than 120 days after work is completed) in public work contract payments?**
 - a. Yes
 - b. No

- c. If yes, do you believe the delay was due to:
 - i. Dispute over work completed or work quality.
 - ii. Dispute over changed or additional work cost.
 - iii. Paperwork or payment process.
 - iv. Payment from prime to sub or sub to sub process.
 - v. Other **[fill in]**

D. Have you experienced prompter payments because of...

- a. Payments being made electronically.
- b. Payment being made 10 days (or sooner) after being paid by a public agency.
- c. Payments being made when work is complete vs. 30 days after invoices are submitted.
- d. Payments being made consistently (e.g., every 30 days, etc.)
- e. Payments being tracked in a 3rd party compliance system (e.g., B2Gnow)
- f. The contracting method (e.g., Design-Build, GC/CM, Job Order Contracting)
- g. I have not experience prompt payment/none apply.
- h. Other **[fill in]**

- E. Given your experience with payments on public works contracts payment processes, what aspects of those processes, **what would you like to see “set into law”** and what aspects do you think could be handled at a policy/agency/project level? (a list is acceptable)

a. Fill In

- F. Do you have **experience testimony or feedback** that you would like to provide separately to the BEDBI?

- a. Yes
- b. No
- c. If yes, how would you prefer to do so? (By selecting via email or appear at a meeting, someone will contact you for coordination. All experience testimony needs to be submitted by May 30th, 2024)
 - i. Send an email.
 - ii. Appear at a meeting.
 - iii. Attach to this survey.

- G. The BEDBI is collecting specific contract provisions, policies, practices, or similar from stakeholders. Do you have a **sample you can provide?**

- a. Yes
- b. No
- c. If yes, please attach.

- H. **[Optional]** Please include your **contact details.**

- a. Name
- b. email address
- c. stakeholder group representing