

Capital Projects Advisory Review Board

BE/DBI Committee

Meeting Notes May 15, 2024

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Location: via Teams

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

Committee Members: (20 members, 11 = Quorum)

<ul style="list-style-type: none"> x Lekha Fernandes, OMWBE, Chair Irene Reyes, Excel Supply Company, Co-Chair Frank Boykin, MBDA x Jackie Bayne, WSDOT OEO x Stephanie Caldwell, Absher Construction x Bobby Forch, CPARB DBE Representative Shelly Henderson, Mukilteo School Dist. Aleanna Kondelis, Hill International x Keith Michel, Forma Construction x Brenda Nnambi, Sound Transit 	<ul style="list-style-type: none"> x Santosh Kuruvilla, Exeltech, Co-Chair x Cathy Robinson, University of WA x John Salinas II, Specialty Contractors x Young Sang Song, Song Consulting Cheryl Stewart, Inland Northwest AGC x Chip Tull, Hoffman Construction x Charles Wilson, DES x Olivia Yang, WA State University Janice Zahn, Port of Seattle
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Guests and Stakeholders:

	Monica Acevedo-Soto		Patrick McQueen, PCL Construction
	Jennifer Brower	x	Edwina Martin-Arnold
x	Jack Donahue, MFA	x	Monique Martinez, DES
	Michelle Fa'amoe		Rachael Pease, BNBuilders, Vendor Diversity Director
x	Bill Frare, DES	x	Brian Ross, WWU
x	Erin Frasier, WA State Building & Construction Trades Council		Kara Skinner, Integrity Surety
x	Curt Gimmestad, Absher Construction		Robin Strom, Anderson Construction
	Maja Sutton Huff, WSU, Higher education	x	Vicky Schiantarelli, Schiantarelli & Associates
x	Tennille Johnson, OMWBE	x	Ethan Swenson, OMWBE
x	Bryan Kelley, Howard S. Wright	x	Jerry Vanderwood, AGC
	Denia Lanza-Campos		Carrie Whitton, Forma Construction
x	Cindy Magruder, UW	x	Edson Zavala, Sound Transit

The meeting began at 1:31 p.m.

Welcome & Introductions

Chair Lekha Fernandes welcomed everyone to the meeting and offered to skip through introductions, given the committee has a packed agenda for the day. She asked whether committee members were able to read through the questions on payment reform that were sent over as pre-reads. Chair Fernandes then asked that the committee keep those questions in mind as the workgroups presented their findings.

To save time, the committee will hear from the legislative drafting and best practices groups first, compare their findings to the survey results, and go from there.

Approve Agenda & Minutes from 4/17/2024

Jackie Bayne motioned to approve the agenda and meeting minutes, seconded by Chip Tull. The motion was approved by a voice vote.

Workgroup Report-Outs

Legislative Drafting

Bill Frare requested the Legislative Drafting group report out first.

The group met and discussed issues that they had with current legislation. They arrived at several recommendations, including the recommendation to pull the statutes related to payment into a single section, so that the rules around prompt pay are as clear as possible.

Cathy Robinson spoke up and said that she loved the recommendation.

Chair Fernandes asked the committee to think through the recommendation, wondering if it addressed the barriers outlined, particularly by public owners.

Jackie Bayne stated that going through the questionnaire was not repetitive, but consistent with issues that they have found over the years. She said she loved the recommendation, and that it would address a long-found barrier.

Brenda Nnambi agreed with Jackie and added that Sound Transit was developing their own prompt payment process and that the survey would be extremely helpful in that process.

Olivia Yang also agreed with the recommendation.

John Salinas stated that keeping everything in one place adds uniformity and makes a ton of sense.

Bryan Kelley agreed with John and said that simplifying the process really can be positive for everyone.

The group's second recommendation was to apply 1% interest per month on unpaid invoices that are overdue after 30 days. That 1% interest would be paid to every single contractor that was on that bill. Bill recommended that the language be taken from language around change orders, and that when anyone along the line of contractors and subcontractors are late then they are responsible for 1%.

Olivia asked Bill to confirm that the cadence for the interest charges was monthly. She wanted to make sure this was the case with completed paperwork. Bill answered that it was, and they hadn't yet determined a time for the clock to start on penalties in the event of incomplete paperwork.

Jackie added that WSDOT did not consider work to be complete until the paperwork was finished.

Cindy Magruder asked Bill how this recommendation differed from RCW 39.76.11 where there was a 1% interest charge on invoices that go past 30 days. Bill answered that he did not know. Chair Fernandes noted that the original statute indicated it would be applied as requested, while the new recommendation would make it automatic. Bill confirmed that.

John said that he loved the recommendation, stating that making it automatic takes all the subjectivity and emotion around those charges out of the equation. He then asked how to make sure that all the late payment funds are delivered to every subcontractor, and not just hoarded by primes. He recommended that something in writing be put in place to ensure that funds were properly distributed.

Keith Michel chimed in and said that he supported the automatic aspect of the recommendation, but that the core of delays came from the qualifications around finalizing paperwork as an excuse to drag their feet. He clarified that in most cases it wasn't intentional, but that invoicing and paying every 30 days would be easier.

Minutes by Jack Donahue, MFA, edited by Monique Martinez or Talia Baker

Bobby Forch spoke up and answered that there are a lot of things that need to be checked off and approved, but also agreed with Keith that there was a lack of consistency across agencies on prompt payment.

Bryan said that he was stuck on the difference between this recommendation and RCW 39.76.11, given that insisting on payment regardless of circumstance would make for unpopular legislation. He asked if it were just applying RCW 39.76.11 to the recommendations.

Chair Fernandes asked if it were ever paid out, and Jackie replied that they never did, noting that it would never be an amicable circumstance.

Cathy asked for clarification on the term "automatic," specifically asking who applies that 1% interest automatically. Chair Fernandes answered that oftentimes the 1% application by request would create adverse relationships between owners and contractors, while the automatic application may be more amicable.

Chip jumped in, stating that he agreed with Bryan and that it would work as an augmentation to RCW 39.76.11. He said that asking for the 1% application causes contractors to stand out and they are sometimes viewed as problematic by owners.

Santosh Kuruvilla added a footnote, stating that federal contracts automatically pay that 1% already.

The group's third recommendation would be to establish clarity on invoice submissions so that subcontractors are aware of their prime's invoice submittal. Subcontractors would submit invoices to their general contractors to be submitted to the owners. This puts everyone involved on the same timeline. He stated that the clock should be uniform, and payments to subcontractors should follow the same clear schedule.

Cathy stated that she liked that idea, but it may be a barrier for smaller subcontractors to invoice consistently on the first of the month.

Bryan said this wouldn't be able to flow down directly from general contractors to subcontractors, but that it wasn't too big of an ask to establish clarity and simply ensure that everyone was on the same timeline.

Stephanie Caldwell spoke up and said that she agreed with everyone, and echoed the point on processing time, which may be difficult on a set day due to varying circumstances that could impact the production of those documents.

Chip suggested they clearly identify what the best timeline is, so the legislation isn't killed by vague language.

Bill answered that he spoke with the group about that, and they suggested the invoice be submitted on the last working Friday of the month. He said that was John's suggestion.

John added that he based that suggestion off what WSDOT follows. The work that is done by the 30th of the month is submitted, regardless of circumstance. That ensures knowable, steady income for subcontractors.

Olivia asked if it were too idealistic to want to institutionalize submitting draft pay applications by the 20th so that they are fully processed by the 30th.

Bill added to that, saying that he used to meet with other contractors 10 days before pay applications were processed, and said that worked well for him then.

Keith and Chip both stated that they supported the draft submittal 10 days before the submission due date.

Bryan spoke back to John Salinas' details on the billing schedule and suggested that payment could project to a certain date. Contracts can be billed by the 25th but project to the end of the month. It could place less of a burden on subcontractors. He added that draft invoices may slow down the process if included ahead of time.

Cindy went back to the 1% requirement, asking if the 1% penalty were only applied to construction. The RCW applied to several expenditures. Chair Fernandes affirmed that it only applied to public works.

The group's fourth recommendation, which was open to discussion, was to bill twice a month rather than once a month.

Jackie added that she billed on the fifth and twenty-fifth, a process that makes things confusing for everyone involved.

The thinking around this, Bill stated, was that it speeds up the time between work being completed and checks being cut. He characterized it as an idea, but not necessarily a good idea.

Olivia stated that this was an idea, reflecting Bill's clarification, but not a good one. Increasing the administrative cost, she said, would discourage small contractors and overcomplicate the process.

Keith said that he saw that second payment as a challenge, but they should not let the administrative burden hold them back from making changes.

Santosh stated that while it was a worthwhile means of increasing cash flow to smaller contractors, that it may provide too much of a burden and not provide enough benefit to them. He suggested that they submit a draft invoice and a final invoice, speeding up the process and allowing the smaller contractors to get invoices submitted in time.

Bill stated that he was willing to investigate the process but was reluctant since he wasn't sure about the recommendation in the first place. Bryan asked Bill if they could limit this process to small businesses, since they are the ones that need cash flow.

John said, since he is a small business, that adding the question of billing twice per month to the survey might produce results that could backfire. The question would have to clarify that invoicing twice per month would double the administrative burden on the contracting community. He brought up the idea of supplemental payments.

Bill thanked John for sharing his perspective and added that he was intrigued by the idea of supplemental payments. He added that inclusion of fiscal notes in legislation could kill the bill, and that they should be mindful of those administrative costs and how they would apply to fiscal notes.

Chair Fernandes asked the committee if they would like to add this recommendation to the survey, and to think about the barriers involved with this.

John stated that DBE members were strongly in favor of including this, and that it should be included with context. Even if the committee doesn't think of it as the best idea, it is of interest to the community and should be asked.

Olivia posed a question: "In order to improve cash flow, are we considering supplemental pay, billing twice per month, etc.?" Presenting respondents with all of their options would be worthwhile. Chair Fernandes added that they should also present that question with the context around administrative cost.

Brenda agreed with John's statement and said that Sound Transit's prompt payment system was exploring this idea, but leaning toward an accelerated payment system.

Chip said he appreciated the administrative burden in place but said he thought that this system could drive solutions to the breaking points in the current system.

The group's last recommendation was additional clarity around the meanings of words like "approval," including better definitions to ensure they stay in compliance.

Best Practices

The best practices group met and collected ideas and current structures across several agencies. Chip stated that their list as it stands was not a list of recommendations, but after comparing what they currently had to survey results they could generate recommendations from there.

Stakeholder Engagement

Cathy shared the results of the first survey. The goal of the survey was to confirm delays were occurring, to gather testimony and observations, and to find improvements.

There were 179 businesses who responded, and 73 agencies who responded. Both businesses and agencies identified barriers to timely payments, namely paperwork, changed work, and the requirement processes of other agencies. Businesses had many ideas for improvement, agencies did not have as many. The survey contains several comments. The legislative drafting group will review those. The committee will receive all of the survey responses to review.

Workgroup Next Steps

Monique Martinez pulled up the project schedule.

Coming up, the stakeholder engagement group will work on the second survey with the legislation drafting group. The best practices group will be reviewing their list and comparing them to the survey results, as Chip had previously described. The report drafting group has a rough draft, which they will present at the next meeting.

The next meeting will be rescheduled, since it currently falls on Juneteenth.

Jackie spoke up and said she didn't see the last legislative drafting meeting on her calendar.

The meeting was adjourned at 2:57 pm.

Next Meeting Agenda

- Welcome & Introductions
- Review & Approve Agenda and Minutes from 5/15/2024
- Workgroup Report-outs
- Workgroup Next steps
- Next meeting agenda
- Adjourn

Action Items