

Recommended practices to improve public works construction contract payment time.

In addition to being compliant with statutory requirements, the BE/DBI Current Best Practices Workgroup recommends the following best practices for managing public works contract payments. Through testimony, the workgroup identified several practices used by a variety of agencies that could enable prompter pay. While not required, the workgroup agrees these practices are feasible, and could result in faster payment to primes and subcontractors of all tiers. All the practices recommended work best when used together.

Summary of Recommended Practices

1. Public agencies should continuously review their internal processes and invoicing/billing requirements (contract language).
2. When practical use electronic funds transfers and avoid paper checks and the postal service.
3. Hold preconstruction and post-construction meetings through which payment procedures, schedules, and retainage are discussed and communicated to every tier.
4. Have a payment/retainage checklist (or cover form) to help facilitate complete and accurate billing.
5. Use a “draft invoice” process.
6. Have a notification protocol so all subs are informed when a public agency pays a prime.
7. Have a process for subcontractors to communicate to a public agency when payments are not being made in accordance with the contract (without breaking contract privity).
8. Have a process where subs can confirm when payments are received in real-time.
9. Break down work and pay items into smaller, discreet tasks, that can be invoiced without waiting for larger tasks to complete.
10. Have change orders included with payment procedures and schedule.
11. Everyone involved in the payment process have a back-up for vacations and absences.

Commented [AK1]: 07/02/24. Placeholder. Probably more here on change order best practices.

Practices for Projects (general)

1. Recommend holding **preconstruction meeting** and include the review of every aspect of the payment process such as, but not limited to, cutoff dates, preliminary review process, payment backup requirements, forms, change orders, etc. Use a **checklist**.
2. Review payment checklist at substantial completion, or have a post-construction meeting, and if not included create **checklist for close-out requirements** (flow down) including requirements and steps for retainage release.
3. Create and use a **payment checklist/cover page** (flow down provision) that includes the processes and requirements to define a “complete submission.”

4. Recommend using a **“draft invoice” or “pre-payment application” review process** for all payment applications and prior to the determined and agreed invoice “cut-off” date.
5. Recommend **payment timeframes be reduced (recommendation is 7 business days or sooner), or as agreed to by Owner and Prime**, pay-when-paid for every tier. (in no case more than 10 days per RCW [39.04.250](#))
 - a. *Why make the adjustment?* Reducing payment timeframes will make you more attractive to businesses and increase bidder pools.
6. Recommend **having a contingency plan** for payment approvals during vacations and absences for **all responsible parties and regulatory agencies**.
7. Recommend L&I, DOR, and ESD have the **appropriate resources to meet the timeframe** requirements for processing and releasing retainage.
8. Recommend a **subcontractor communication tool**, where primes and subcontractors can send notification when they have not been paid. Project should provide a contact and “open door” policy for subcontractors to communicate payment, change orders, or contract issues.
9. Recommend that **Disputed and Undisputed amounts are notified and delineated** to ensure partial payments are made if necessary ([RCW 39.76.011](#)).
10. Be compliant with [RCW 39.04.360](#) – Change Orders on Public Works
11. Recommend the use of **written “field directives/authorizations”** for urgent authorizations and unexpected work. (e.g., highway project needs to be wrapped up by 5AM so the road can return to service, at 4:30 an issue is discovered that may delay reopening if a change is not agreed to. Needs to happen in writing to start the additional work. [RCW 39.04.360](#) then applies.)

Commented [AK2]: 07/02/24. Workgroup discussed looking more closely into change order best practices as changed work is a “pressure point” in timely and prompt pay.

For Agencies

1. **Evaluate** individual owner payment requirements beyond what is required by statute.
2. **Recommend reducing invoice requirements** and unnecessary or “legacy” requirements where possible.
 - a. Perform regular reviews, and cleanup of antiquated or historical spec language.
 - b. Remove requirements for documents to be attached to already available elsewhere (e.g., intents, certified payrolls, etc.)
3. Create and use a **payment checklist/cover page** (flow down provision) that includes the processes and requirements to define a “complete submission.”
4. Recommend agencies confirm they are compliant with the contract requirements. (e.g., agency is reviewing payment applications within 7 days, etc.)
 - a. Implement internal controls to ensure that invoice processing timelines are being met per the contract language.
5. **Streamline internal review processes** and requirements.
 - a. Release payments as soon as approved don’t wait until the maximum time of 30 days.
 - b. Concurrent reviews by all required parties, when practical
 - c. Waive inconsequential irregularities in the paperwork (not material) (e.g. form attachments, multiple copies, lien releases, etc.)

- d. Don't require contractors/subcontractors to provide information that can be checked on-line or through other sources (e.g., intents and affidavits.)
- e. Issues change orders per statute requirements.
- 6. Recommend that construction invoice and change order status are a standing agenda item at the progress (OAC) meeting.
- 7. Recommend the **use of electronic funds transfers**, or similar expedited payment options.
- 8. Recommend implementing a **notification** protocol for the project, that includes subcontractors, **when owner has released payment to the prime.**
- 9. **Use and improve a 3rd party tracking system or some mechanism to confirm when subcontractors are paid.**
 - a. Compliance tracking paid-when-paid requirement.
 - b. Improve existing/current 3rd party payment tracking system to reduce duplicity and administrative burden.
 - c. Have a subcontractor notification mechanism when not receiving payment.
- 10. Recommend **using line items/bid items, and/or "allowances" for smaller or discreet bodies of work** that can be paid quicker, unbundle larger bodies of work so subs at lower tiers can bill closer to when work is complete. (e.g., multiple mobilizations, intangible costs like dues, administrative costs, and paperwork, etc.)
- 11. On alternative public works, use **cost-reimbursable practices** to pay for hourly work performed by DB/GC/CM or any subcontractor/subconsultant at any tier. (e.g., administrative time, small business support, mobilization, etc.)
- 12. For alternative public works, require as part of the **project's Inclusion Plan prompter pay strategies**, particularly for small and diverse businesses.
- 13. Include "prompt payment" **compliance** as part of **Contractor Performance Evaluations.**
- 14. Recommend **having a contingency plan and backup staff** for payment approvals and release during vacations and absences of responsible parties.

For Primes

- 1. Recommend the use of **electronic funds transfers** or other expedited payment options, even if not required or used by the public agency.
- 2. Recommend the use of **payment checklist or cover page for subcontractors**, even if there isn't one provided or used by the public agency.
- 3. Recommend designating a **"subcontractor/vendor" payment liaison** for direct communication on payment (flow down), if even if there isn't communication protocol from the public agency.
- 4. Recommend **paying lower tier subs as soon as possible don't wait the maximum 10 days.**
- 5. Recommend the **use "draft" payment review processes**, even if not required or used by the public agency.
- 6. Recommend **using line items/bid items, and/or "allowances" for smaller or discreet bodies of work** that can be paid quicker, unbundle larger bodies of work so subs at lower tiers, or small, minority, women, and veteran-owned firms, can bill closer to when work is complete. (e.g., multiple mobilizations, intangible costs like dues, administrative costs, and paperwork, etc.)

7. On Alternative Public Works, include ***“prompter pay strategies” in Inclusion Plan***, with particular focus on small, minority, women, and veteran-owned firms.
8. Recommend **having a contingency plan** for payment approvals during vacations and absences of responsible parties.