

Location: via Teams

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

Committee Members: (20 members, 11 = 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
x Jackie Bayne, WSDOT OEO	x Young Sang Song, Song Consulting
x Stephanie Caldwell, Absher Construction	Cheryl Stewart, Inland Northwest AGC
x Bobby Forch, CPARB DBE Representative	x Andrew Powell (proxy for 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
Keith Michel, Forma Construction	x Janice Zahn, Port of Seattle
x Brenda Nnambi, Sound Transit	Matt Rasmussen, Benton County

Guests and Stakeholders:

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

The meeting began at 1:32 p.m.

Welcome & Introductions

Chair Lekha Fernandes welcomed everyone and thanked them for attending. Due to a packed agenda, she noted they would be skipping introductions.

Approve Agenda

Chair Fernandes walked the group through the agenda. The focus of this meeting will be on reviewing and voting on the language for the proposed legislation and the best practices document. They will also review the draft report.

Bill Frare moved to approve the agenda, seconded by Olivia Yang. The motion passed with a voice vote.

Finalize Vote on Proposed Legislation

Chair Fernandez pulled up on screen the five main concepts for the proposed legislative changes. Bill Frare walked the group through each of those five concepts.

Minutes by Colleen Newell, MFA, edited by Monique Martinez or Talia Baker

Chair Fernandes clarified that these concepts are what the committee is proposing to the legislature. She reviewed the sections that gave more context for these concepts. These concepts, which the committee would be voting on today, were included in the stakeholder survey and were agreed upon by over 50% of respondents. Anything that had less than 50% was not included in the proposed concepts, but the results of which will still be presented to the legislature.

Chair Fernandes reiterated that the five key concepts are backed by the information that was provided in the survey. She outlined some of the results from the stakeholder outreach and surveys included in the report, which was intended to share more background and the “why” behind the concepts. Chair Fernandes opened the floor for comments from the group.

Co-Chair Santosh Kuruvilla asked for clarification on the second concept, with the proposed change that subcontractors must be paid within 10 days after payment is received by the prime contractor. He asked if there was any industry information behind that, as typically it is five to seven days. Bill noted that 10 days is underlying statute, and that timeline is looking to be shortened to five business days. Chair Fernandes confirmed this but noted that 78% of survey respondents were in support of keeping the 10-working day timeframe.

Vicky Schiantarelli noted that the payment timeline is shorter in the A&E community, and it is often stipulated in the contract. The construction side typically uses the 10 days. Sound Transit moved to the five-day payment because the federal government pays in five days. This 10-day timeframe is a reflection of the fact that different documents are being dealt with differently compared to what is seen in construction. She noted that she prefers the five days.

Young Sang Song shared that he provides consulting services and gave an example of how the payments differ amongst the various agencies or businesses with which he works. Working with DES, for example, he receives a payment about five days after submitting the invoice. Doing the same work for a prime contractor, he receives payment much later. He noted that the 10 days may be a challenge for a prime contractor, but on the other hand, there are owners who are doing this all the time. He noted that the challenge of the 10-day timeframe is a good opportunity.

Chair Fernandes explained that typically owners and primes have some sort of payment schedule. However, the subcontractors are not always privy to that information. This is part of that process – to develop payment schedules throughout the tiers. While it’s not always guaranteed that it will be followed, the intent is to create guidelines and clarity for the payment schedule.

Cathy Robinson brought to light that there are a lot of small public entities that only pay twice a month. This consideration should be inserted somewhere in the discussion. There needs to be an allowable timeline if this moves forward to let these agencies implement different procedures and policies.

Chair Fernandes added that there are some notes in the report about fiscal impacts. She indicated that the implementation of timelines can be added into the report.

Vicky clarified that the 30-day timeframe pertains to owners paying the prime. It’s the 10-day timeframe that applies to prime and subs. This may already be addressed for the smaller owners—that they would be paying within 30 days of receiving the invoice.

Vicky shared that for those jurisdictions that use PLA’s or CWA’s in their programs, with the 5-day turnaround, if the prime, first- and second-tier subs are paid within that timeframe then they will be able to pay to the trust fund in time. If they go with the 10-day payment, then only the prime and first-tier sub will be timely in paying into the trust with the funds received from the payment. For those agencies that use those programs and have a fixed fifteen trust fund requirement, they will need to figure out a way to inform those smaller contractors about how they make sure they have money in the bank to pay trust funds.

Jerry Vanderwood agreed with Vicky on the PLA situation with regard to 10 days versus five days. He suspected that contractors will not be happy with the move from 10 days to five days and asked whether there was a middle ground between those two options.

Bill responded that the 10 days are calendar days, and if it's five days its working days. By default, if it's five days it, it's actually seven days because Saturday and Sunday will not count. Jerry asked if this could be clarified in the proposed language, and Bill agreed that in the proposed language it should say that its five business days. Chair Fernandes chimed in, noting that the legal landscape says that five days or under is business days, and anything over that is calendar.

Aleanna Kondelis said this dovetails nicely into the best practices, adding that there may be a few other things that they can clarify in the best practices. John Salinas added that those were not the only items discussed and that the committee tried to create something that was palatable to a wide range of constituents. The committee had representation from a lot of people, which included public comment and extensive discussion.

Chair Fernandes opened the floor up for a vote.

John Salinas moved to vote on approving the five legislative recommendations for prompt payment. Cathy Robinson seconded the motion. The motion was approved by a voice vote. There were no objections nor abstentions.

Vote on Best Practices

Chair Fernandes pulled up on screen the best practices document. Aleanna walked the group through the summary of the best practices document. She noted that these best practices were broken down by those that are good project practices, those that might be good for agencies, and those that would apply to primes and subcontractors.

One of the new items that had been added since the last draft was related to an emphasis on change orders. When it comes to paying promptly, change orders can add some complexity. Additional practices were added around change orders to help add clarity.

Another emphasis with these best practices was a notification protocol for when agencies pay the prime, which helps with accountability. Additionally, there was a process for subcontractors to communicate with the public agency when they are not paid in time. There was also a theme around having processes in place for everyone involved, to ensure that nothing falls behinds.

Aleanna noted that there have been best practices documents created in the past, and the committee was looking for recommendations for what the finished product format should be. They are still open to ideas for how to present a best practices document, including formatting, whether it's searchable, etc.

Janice Zahn said there was another BE/DBI best practices document that had some of these themes embedded in the document. She wondered if there were overlapping themes and whether anything additional could be pulled in and act as a subset of the overall document. She asked whether these will be considered best practices for a point in time, or whether they are creating a community of practice that could be added to as we learn more.

Chair Fernandes responded that this is part of a report to the legislature. It is intended to inform the legislature about what people are doing that is working well before dovetailing into proposed legislation. It is not meant to replace the current report.

This best practices document will be incorporated into the draft report before the next BE/DBI Committee meeting on August 21. Any additional edits will be made and then submitted to CPARB before their September meeting. After CPARB has had a chance to review and provide feedback, they will go ahead and make updates to the report.

Aleanna expressed hesitancy regarding voting on the draft now as it was not included in the pre-read. Chair Fernandes asked the group whether they felt comfortable moving forward with voting on the best practices today. Members of the committee expressed that they were feeling comfortable taking a vote today.

Bill Frare moved to approve the best practices as presented. John Salinas seconded the motion. A voice vote approved the motion. There were no objections nor abstentions.

Vote on Report Draft

Chair Fernandes shared that the Report Creation Workgroup has been working hard to create the draft report. She noted this report is a work in progress and more will be cleaned up before their next meeting. The goal of going through the draft report was to gather any feedback from the group and if anything needs to change. At a high level, she walked the group through what was included in the report.

She noted that barriers under current legislation were included as part of the evaluation for crafting best practices. The sub headers for the “Best Practices under Current Legislation” section will be updated based upon the best practices document that was reviewed and voted on today. Chair Fernandes said she needed input on how to revise the language under the “Proposed New Legislation” section. There will also be a conclusion section included in the report. She pointed out that in order to condense the contents of the report, many of the survey responses are shown via a diagram rather than attached as individual responses in the appendix.

Aleanna reviewed SB 6040 and noted that part of the project was to summarize how the current prompt pay statute meets the needs of small businesses. She asked whether the “meeting of the needs” of the best practices encompasses what is currently being practiced, or rather if there is a summary of how it is not meeting the needs and identifying what is being done to improve it. Chair Fernandes responded that the barriers section of the report identifies where barriers are being seen. The best practices section will identify what the opportunities are to make prompt payment work under the current legislature.

Vicky added that the overall message of the report is that prompt payment is not working currently, and opportunities have been identified for how it can work. She suggested including in the introduction a summary of how this report walks through the process of analysis and recommendations. The reality is that we don’t have prompt pay and there are areas that are working, but it’s all over the map, which causes confusion. The big picture message is that it’s not working and there are proposed ways that it can be fixed.

Chair Fernandes said that instead of incorporating the barriers section with the methodology, it can get looped in with the best practices in order to identify what is and isn’t working with the current legislation. Bill liked the approach to address the issue head on as well as bring up the question the legislature asked. The easier it is to find the answer to their questions the better it will be. He supported having a paragraph that lays out what is working well and what isn’t.

Aleanna noted that the best practices committee was discussing current practices that are used across various owners. These were not thought to be a violation of legislation. Rather the focus was to emphasize practices that were in the spirit and intent of managing projects effectively and paying people on time. There may be proposed language for this.

Aleanna said she should have updated language when they meet with Chip Tull and Cindy Magruder. Once they have that language, Chair Fernandes asked that it be sent to Cathy Ridley, Bill Frare, or Matt Rasmussen.

Chair Fernandes asked whether this draft report should be voted on. Bill suggested that this committee not vote on the draft report. All that was done was the draft report was presented and feedback was collected.

Chair Fernandes reviewed the next steps. The Report Generation Committee will take feedback and place it into the draft report, which they hope to have finalized and ready by August 14. This committee will review the report between August 14 and 21. Committee members were asked to reserve time between now and then to review the report and provide comments and feedback. On August 21, that feedback will be reviewed and either approved or rejected. CPARB will then review that report at their September meeting.

The meeting was adjourned at 2:42 pm

Next Meeting Agenda

- Welcome & Introductions
- Review & Approve Agenda and Minutes from 7/31/2024
- Review Draft Report

- Workgroup Next Steps
- Next Meeting Agenda
- Adjourn

Action Items

1. Aleanna Kondelis, Chip Tull and Cindy Magruder will send any updated language for the draft report to Cathy Ridley, Bill Frare, or Matt Rasmussen.
2. Once the draft report is ready on August 14, all committee members will review the draft report and provide feedback and comments by August 21.