

BE/DBI Committee

Meeting Notes 10/19/2023

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Committee Members: (17 positions, 8 = Quorum)

X	Lekha Fernandes, OMWBE, Chair	X	Santosh Kuruvilla, Exeltech, Co-Chair
X	Irene Reyes, Excel Supply Company, Co-Chair	X	Young Sang Song, Song Consulting
X	Jackie Bayne, WSDOT OEO		Cheryl Stewart, Inland Northwest AGC
X	Stephanie Caldwell, Absher Construction	X	Chip Tull, Hoffman Construction
	Shelly Henderson, Mukilteo School Dist.	X	Charles Wilson, DES
X	Aleanna Kondelis, Hill International		Linda Womack, MBDA
X	Keith Michel, Forma Construction	X	Olivia Yang, WA State University
	Brenda Nnambi, Sound Transit		Janice Zahn, Port of Seattle
X	Cathy Robinson, University of WA		

Guests & Stakeholders:

Talia Baker, DES	Edwina Martin-Arnold, City of Seattle
Patricia Collins, Maul Foster & Alongi, Inc.	Monique Martinez, DES
Bobby Forch, WSDOT	Jolene M Skinner, L&I
Erin Frasier, WA Building Trades	Robin Strom, Andersen Construction
Maja Sutton Huff, WA State University	Abigail Vizcarra Perez, MetroParks Tacoma
Daren Kumar, DES	Carrie Whitton, Forma Construction

Meeting started at 11:31 a.m.

Welcome and Introductions

Attendees introduced themselves.

Approve 10/18/23 Agenda and Minutes from 9/20/2023

Aleanna Kondelis proposed extending the discussion time for Prompt Pay. Chair Lekha Fernandes inquired if any committee members objected to extending the allocated ten minutes for Prompt Pay on the agenda, receiving no objections.

Co-Chair Santosh Kuruvilla motioned, seconded by Aleanna Kondelis, to approve the 10/18/23 agenda and the 9/20/23 minutes. The agenda and minutes were approved on a voice vote.

Discussion Highlights:

B2GNow/Best Practices Discussion

Chair Fernandes initiated discussion about B2G Now, linking it to previous conversations regarding Prompt Pay issues, and how owners have been working on solutions. The committee contemplated whether B2G Now could serve as a best practice for monitoring Prompt Pay.

An introduction to B2G Now was presented by Daren Kumar from DES's Public Works Business Diversity Program. He offered an overview of the DES Public Works Diversity Tracking and Management System and its functionality.

The committee engaged in a discussion about the effectiveness of B2G Now, with Co-Chair Irene Reyes expressing her appreciation for the program. It was noted that various entities, such as WSDOT, Sound Transit, OWMBE, Seattle Public Schools, and King County, are currently using B2G Now. The system's popularity is growing, although concerns about costs, especially for smaller agencies, remain. Despite the system's limited usage, approximately 27 to 30 Washington State public agencies are employing it.

B2G Now conducts audits within each pay cycle to monitor subcontractor payments, ensuring they are made on time and in the correct amounts. The system also tracks when DES pays primes. Additionally, the prime receives monthly notifications to begin reporting for the preceding month upon uploading the project to B2G Now.

Co-Chair Kuruvilla inquired about the system's reporting process once the 20-day plus 10-day period has elapsed. The system flags incomplete audits, and if a subcontractor or prime fails to report after a month, an incomplete audit report is generated, notifying the prime about subs that have not reported. The prime must then rectify the situation. DES can assist in this process, and if the prime neglects to pay a sub, DES intervenes, affecting payment flows to the prime. A retainer is held by DES until all processes, including subs' payments, are completed, as well as compliance with Labor and Industry (L&I) requirements and other closing tasks.

Co-Chair Reyes expressed satisfaction with the accountability and accessibility of compliance reports but highlighted concern about the extended payment timeframe in B2G Now. With a 20-day window for the prime to submit invoices and a further 10 days allowed by the Revised Code of Washington (RCW) for general contractors (GCs) after they've been paid, Reyes suggested exploring ways to expedite the process beyond the current 30-day period. She inquired about DES's actions if the prime delays payments, aiming to prevent potential exploitation of the system. Reyes emphasized DES's intention to deter primes from continuing to delay sub-contractor payments. If DES pays the prime on time and the prime fails to do the same for subs, DES may reciprocate by delaying payment to the prime.

Regarding payments, it was clarified that B2G Now owns the software while DES pays for its use, and payments cover various aspects such as charges for each open contract, setup fees, and an annual fee. Different payment options were suggested by Aleanna in the meeting chat, including the proposal to include B2GNow in the master contract for consideration.

Co-Chair Reyes proposed the idea of seeking grant money through the Capital Projects Advisory Review Board (CPARB) to support smaller jurisdictions in boosting utilization and ensuring timely payments to minority businesses, suggesting charging back to projects as a potential avenue.

Keith Michel, representing Forma Construction, detailed their positive experience using B2G Now with DES across various delivery methods. While highlighting the system's benefits in illuminating cash flow and making the payment process transparent, he acknowledged challenges. Keith emphasized that the system's effectiveness heavily relies on accurate data input and user adherence. He noted ongoing disputes between primes and subs regarding payment confirmations, while appreciating the overall positive impact of having such a system in place.

There isn't an RCW requirement regarding how long an owner has to pay a prime. Forma Construction typically expects a net 30-day timeframe for payment, but various clients may extend this to net 45 or more days. The challenge is in minimizing this extended time, although the B2G Now program offers valuable transparency. It empowers subcontractors through a comment box, allowing them to voice their concerns and gives owners insight into how primes handle payments. Keith encouraged more owners to adopt this program.

Jackie Bayne from WSDOT mentioned that although B2G Now has aided in payment monitoring, it hasn't resolved the fundamental issue. Internal processes at WSDOT hinder prompt payment. Jackie highlighted existing RCW and CFR regulations regarding prompt payment, return, receipt, and "paid when paid" conditions, advocating for a rule with a shorter payment window.

Abigail Vizcarra Perez supported Jackie's remarks about B2G Now enhancing transparency but not resolving underlying problems. Contractors have expressed concerns that some primes schedule work in a way that delays invoice submission. This scheduling issue, out of the owner's control, impacts the subs' ability to

complete work and invoice promptly. Abigail emphasized that if more emphasis is to be given to someone, it should be the subs, not exclusively through B2G Now, as it cannot fully capture the story behind payment delays. Addressing root issues might require site visits. Abigail shared an example where subs working on a prevailing wage job through a temp agency were told they weren't eligible for prevailing wage, highlighting the complexities involved. Abigail developed agency-specific tools to aid in discussions with subs and primes to trace where things went wrong. She retains funds at the project's end, using it for reference checks, particularly with OWMBE-certified subs.

Chair Fernandes inquired if Abigail has utilized collected information to inform bidders about their past practices affecting their selection. Abigail highlighted that RCWs prevent explicit indication that the lower bidder may not present the best value. The system assumes the lowest bid is the best value, even if the prime might not execute multiple change orders or fairly compensate subs. She advocated for tighter definitions of "responsible and responsive" to address this bias in the system, emphasizing that subs' claims against GCs do not disqualify bidders.

Regarding subcontractors, quick pay was recommended as part of DES's approach following a surety study, but DES does not impose restrictions on when primes pay subs. L&I was mentioned as having a useful portal for tracking data, recommended for committee review alongside B2G Now. DES mandates B2G Now in all contracts and agreements.

Chair Fernandes proposed consolidating the committee's discussions with Monique Martinez and Talia Baker, emphasizing valuable aspects and statutory language hindering Prompt Pay. They aim to revisit those points and confirm that members agree so the committee can integrate them into the best practices document. While acknowledging B2G Now isn't a complete solution, it offers advantages and is a favorable recommendation for alternative design and other agencies.

Committee Membership Discussion

Chair Fernandes introduced two matters for the committee's decision: whether current members should remain or if new additions or removals are necessary, and the allowance of proxies to help establish quorum.

Three questions were proposed for voting on proxies: First, whether unfilled positions should count towards quorum, which Chair Fernandes suggested they should not. Second, the use of proxies to establish quorum, and third, whether proxies should have voting rights.

Olivia Yang initially proposed that unfilled positions should not be considered for quorum. Co-Chair Kuruvilla seconded the motion, and it was approved via a voice vote.

Cathy Robinson, previously representing a city but no longer employed by one, expressed willingness to remain as a voice for cities if the committee deemed it necessary. The committee showed agreement for Cathy to continue representing cities without requiring a formal motion.

The committee proceeded to vote on the matter of proxies: *Olivia Yang moved, Aleanna Kondelis seconded, suggesting that proxies should count as substitutes for establishing quorum and have voting rights. The motion passed via a voice vote.*

Additionally, the committee was encouraged to suggest additional representatives, especially from the surety and GC fields.

The committee discussed potential new additions: Kara Skinner for surety representation and Robin Strom for the GC role. Aleanna expressed high regard for Kara's expertise and recommended having her offer testimony on bonding matters, emphasizing Kara's potential valuable insights for the committee. Aleanna took the initiative to reach out to Kara.

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Regarding Robin's nomination by Keith and Chip Tull, Keith expressed concern about adding more members due to quorum requirements and inquired about Cheryl Stewart's participation frequency. There were attempts to contact Cheryl without response.

Chair Fernandes, along with Olivia Yang, moved to replace Cheryl Stewart with Robin Strom as a committee member, which was approved by a voice vote.

Olivia suggested reaching out to CPARB for a surety representative recommendation, particularly when Kara would be attending the CPARB meeting. Chair Fernandes agreed to explore this approach.

Next Meeting:

Chair Fernandes proposed allocating more time for the November meeting to focus on payment when work is performed, intending to explore the RCWs impacting owners' ability to Prompt Pay.

Olivia suggested that at a future meeting the committee expand the discussion to what would be the statutory impediments to getting the second, third, fourth etc. subs paid sooner and turn to generalists in the room and ask how to incentivize the generals to put in place a program for Prompt Pay for the second and lower tier subs. Chair Fernandes said that she didn't think the committee could discuss this at the November meeting because the other two topics will take up the discussion time, but the other two items will highlight a bit of that and would be a place to start asking the questions.

Chair Fernandes and Aleanna intended to organize areas for discussion. Aleanna offered to present research conducted by MRSC on federal Prompt Pay tools and CFR-based best practices related to Prompt Pay.

Chair Fernandes also mentioned working on formulating a best practices document and anticipated presenting initial ideas to the committee.

Action Items:

1. Chair Fernandes and Aleanna meet to discuss Prompt Pay issues.
2. Committee members will find RCW and statutes that hinder Prompt Pay.
3. Chair Fernandes will meet with Monique to consolidate the topics that have been discussed.
4. Chair Fernandes will begin thinking about the best practices document.

Meeting adjourned at 2:58 p.m.

References\Resources:

BE/DBI Legislative Report June 2023

Presentation: *DES Public Works Diversity Tracking and Management System*