

Capital Projects Advisory Review Board

BE/DBI Committee

Meeting Notes January 17, 2024

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Committee Members: (17 positions, 8 = Quorum)

X	Lekha Fernandes, OMWBE, Chair	X	Santosh Kuruvilla, Exeltech, Co-Chair
	Irene Reyes, Excel Supply Company, Co-Chair	X	Young Sang Song, Song Consulting
X	Jackie Bayne, WSDOT OEO		Cheryl Stewart, Inland Northwest AGC
	Stephanie Caldwell, Absher Construction	X	Chip Tull, Hoffman Construction
X	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
X	Brenda Nnambi, Sound Transit		Janice Zahn, Port of Seattle
X	Cathy Robinson, University of WA		

Guests and Stakeholders:

Monica Acevedo-Soto
Jackie Bayne
Jennifer Brower
Jack Donahue, MFA
Bill Frare, DES
Denia Lanza-Campos
Monique Martinez, DES

Bobby Forch, Consultant
Tennille Johnson, OMWBE
Maja Sutton Huff
Kara Skinner, Integrity Surety
Robin Strom, Anderson Construction
Carrie Whitton, Farma Construction

The meeting started at 1:32 pm.

Welcome and Introductions

Chair Lekha Fernandes welcomed everyone to the meeting and opened the floor to the committee for introductions.

Chair Fernandes previewed this meeting's agenda and proposed an amendment. She noted two Prompt Pay Bills are currently in circulation and asked the committee whether they wanted to discuss those bills or stick to the original agenda. Bill Frare shared that he would like to discuss those bills, if possible.

Aleanna Kondelis moved, seconded by Olivia Yang, to approve the agenda with the proposed amendment to include the bill review. The motion passed by a voice vote.

Bill Review was added to the agenda, with time taken from Base Work and Change Work to compensate. Approval of minutes was moved to the end of the meeting.

Bill Review, SB 6192 and SB 6042

Chair Fernandes and Bill Frare provided context on SB 6192 and SB 6042. Chair Fernandes reviewed the contents of Bill 6042, which concerns Prompt Pay for certain certified firms. The bill asserts that prime contractors must pay subcontractors within 30 days of the owner's acceptance of the work. Chair Fernandes noted the bill does not discuss the meaning of "accept the work," which tends to have different meanings for owners.

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

Bill added that there are three completion dates: substantial completion, acceptance of the work, and L&I approval. Acceptance of the work is the final portion of the contract. Chair Fernandes requested that committee members, in providing their reactions, to keep their thinking within the context of RCW 39.10. The effects of this bill would be far-reaching, but understanding how it impacts the committee within RCW 39.10 can help to define CPARB's thinking on that piece.

Shelly Henderson posed the question of whether there is an understanding of "acceptance of work." In many cases, this does not happen instantaneously and there may be a possibility of a gap between when the prime and subcontractors will get paid. Additionally, accepting work on the spot and accepting work in invoices are two very different things.

Keith Michel asked Bill if this provision was added on to RCW 39.04.250. He stated that subcontractors could be paid much later than expected, if "acceptance" only occurs after the subcontractor's scope is performed.

Jackie Bayne stated that acceptance is not defined, so it is best to work off the bill's intent. The intent is for the subcontractors to get paid, and in that case one can assume that the prime contractor has 30 days to pay subcontractors after that initial acceptance, rather than being strung along. Overall, she thinks this is great legislation for diverse subcontractors.

Co-Chair Santosh Kuruvilla asked Bill if this legislation would affect contracts approved by RCW 39.10. If that is the case, there may be concern for designers and architects. Bringing on a designer as a subcontractor could prove problematic, since portions of design invoices are sometimes retained.

Bill stated that he supports Prompt Pay and that it generally supports subcontractors. One concern is that this piece of legislation may be a knee-jerk reaction. The holes in the bill may be a lack of definition – of payers, of the term "acceptance", and the timelines on which subcontractors could be paid. Prime contractors do not have contracts with lower-tier subcontractors, and one worry is how they will be doled out, particularly if the legislation states that primes must have contracts with those lower-tier subcontractors.

As a subcontractor, Young Sang Song shared that when he receives payment and is asked if the payment came 30 days after it went to the prime, he normally does not know the answer to that question either way. The timelines are not communicated to subcontractors.

Olivia Yang appreciated Bill's articulation of the committee's concerns about the bill, and re-asserted the complexities of the issue, noting that the process should be as thoughtful as possible.

Chair Fernandes summarized the discussion and comments from the committee: the committee wants small businesses to be paid as quickly as possible, but the bill may have unintended

consequences that could cut those small subcontractors out of the process entirely. Additionally, there could be other barriers posed by the bill that could cause even greater delays in payment.

Olivia would like to see time granted to CPARB to review the bill and provide legislators with recommendations, rather than an outright “no” to the bill. The committee voiced agreement, noting it’s important to have time to review the bill.

The committee will ask CPARB Chair Janice Zahn to go before the legislature and suggest eight to ten months for CPARB to review and provide suggestions for a later legislative session.

The next bill, SB 6192, modifies RCW 39.04.360, on extra work. If a contractor performs extra work, a municipality has 30 days to issue a change order. Bill had questions about the complexity of these contracts and the cascading series of change orders that are possible. This legislation could be easily amended. This amendment could include the authorization of statements and removal of the piece on subcontractors, as the municipalities and the state do not have contracts with those lower-tier subcontractors, just with the prime.

Olivia voiced appreciation for Bill’s articulation of those concerns and recommended that this committee take the same course of action. One consideration is for this committee to prepare a report on changes to present to the legislature.

The committee will also recommend an opportunity to put together a report on SB 6192.

Review BE/DBI Priority List

Chair Fernandes had Monique open the priority list and thanked the committee for their ability to pivot to a topic that had come up quite suddenly and to have difficult, productive conversations.

The committee’s goal with the priority list was to review RCW 39.10 and discuss the following items:

- Define Barriers
- Current Practice
- Possible Solutions
- Test Solutions & Outcome
- Create Good/Better/Best Practices Document

BE/DBI Priority List – Base Work

Define Barriers

Chair Fernandes asked the committee to provide barriers that they face regarding Prompt Pay. Keith shared that he finds Prompt Pay to be a big, nebulous topic. When it comes to base work, he considers what is clearly defined in the contract to be that base work. Pay is not fast enough for everyone, and it could be made faster in many ways. At the same time, net-30 is everyone’s goal and seems to be a reasonable expectation.

Young stated that base work payment is dependent on the team itself, and normally comes on a case-by-case basis. It depends upon how the approval process goes, and the process in between that and payment is not always known. Payment isn't exactly a 30-day process but can rather be a 90-day process.

Olivia asked other public owners within the group how base work payouts are conducted on their part. What documentation do they need for the prime to validate their Payapps, and what does the prime require of subcontractors to dole out payments?

Shelly shared that she sends out a checklist of documents that are required before any payment, and generally uses the same documents for those monthly Payapps. Contractors are informed of payment regularity so that they can schedule around that.

Cathy Robinson shared that mid-size cities do the review process similarly to other public organizations, verifying that percentages are correct before they go to accounting. There is normally one accounts payable person, which ensures that backup on checks is being sent. Once the check is cut, they are reviewed for other supporting documents being included.

Olivia suggested that rather than a cascading series of subcontractors, primes and owners integrate to better ensure payments happen quickly and regularly enough. The coordination would be from primes to subs rather than from primes, to subs, to more subs. Primes should opt to prioritize small or minority-owned businesses. Subs will be paid quickly because they are first tier, instead. However, this may introduce more complexity. She asked Keith and other contractors for their input.

Keith shared that the schedule of values and potential misunderstandings about payment may put contractors and sub-contractors in difficult situations. He added that there can be a wide variance in how quickly money flows.

Chair Fernandes asked the committee what the best possible scenario is on pay applications. Young's best scenario was receiving a schedule as part of Payapps. He could see how the budget was divided and understand on a planned basis from where and when money would come. That clear communication was extremely helpful. Keith agreed and re-affirmed the importance of a clear schedule of values.

Co-Chair Kuruvilla agreed, and asked about the period when invoices are subject to edits in the early portion of a contract. Payments during that period are slow, and he noted the process could be smoothed out and that money should be able to flow smoothly throughout the process.

Olivia suggested developing a best practice, including an orientation package with the first interaction between contractors, with instructions and support on payments. Co-Chair Kuruvilla added that an owner preparedness training would be important to include as well, however, those may be up to the cadence at which owners can disburse payments in the first place.

Aleanna has been working on building and running a workshop on the “rules of engagement” with contractors. It is done before any other considerations are even made. She stated that it was a super valuable practice that has added a lot of clarity to the partnering process, etc.

Next Meeting Agenda, 2/20/2024

Chair Fernandes noted three items to be discussed further at the next meeting: orientation, schedule of values, and best practices. Olivia suggested discussing the owner-to-prime, then prime-to-sub, as a scope to view and discuss for next time.

Approve Agenda & Minutes from 12/20/2023

Keith Michel moved, seconded by Santosh Kuruvilla, to approve the minutes from December 20, 2023. The motion passed with a voice vote.

The meeting adjourned at 2:59 pm.

Action items:

1. The committee will come prepared to talk about base work and change work.