

# Capital Projects Advisory Review Board

## BE/DBI Committee

Meeting Notes February 21, 2024

Page 1 of 4

**Committee Members:** (17 positions, 8 = Quorum)

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

### Guests and Stakeholders:

Monica Acevedo-Soto  
Talia Baker, DES  
Jack Donahue, MFA  
Bill Frare, DES  
Denia Lanza-Campos  
Monique Martinez, DES

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

**The meeting started at 1:32 pm.**

### Welcome and Introductions

Co-Chair Irene Reyes welcomed everyone to the meeting. Chair Lekha Fernandes was unable to attend, thus Co-chair Reyes facilitated the meeting.

While going through attendance, Co-Chair Reyes asked to confirm that Linda Womack had been replaced with Frank Boykin, MBDA. Talia confirmed and the attendance was updated accordingly.

### Approve Agenda & Minutes from 1/17/2024

*Chip Tull moved, seconded by Olivia Yang, to approve the agenda. The motion was passed by a voice vote.*

Co-Chair Reyes then asked the committee to review the minutes from January 17, 2024. Brenda Nnambi pointed out there was a typo in the spelling of Forma Construction under Carrie Whitton's name. The typo was noted and corrected.

*Olivia Yang moved, seconded by Chip Tull, to approve the minutes from January 17, 2024. The motion was passed by a voice vote.*

### Orientation Discussion

Per the last meeting, the committee moved into a discussion of current payment methods, to build out best practices for prompt payment.

Olivia Yang agreed with Chair Fernandes' strategy for determining best practices and noted the orientation concept that was brought up by Aleanna Kondelis in the last meeting. She also noted there should be a focus on RCW 39.10, and envisioned the orientation as a pre-bid conversation where the owner and contractors can

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

work out a payment schedule.

Aleanna confirmed and mentioned that there were materials available for consideration on this that had been sent around before the meeting.

Brenda would be leaving early, and there was worry that the committee would lose quorum. Olivia suggested that they note there is information available, and that Monique Martinez serve as caretaker for that information so the committee can reconvene with greater context and knowledge on the concept. It was determined that quorum would stay in place.

Olivia added that her suggestion still holds, given the outside information available and wanting to ensure that everyone is properly informed on the topic.

Keith Michel stated that he liked where Aleanna was going in this process, sitting everyone down and ensuring there's clarity on the pay process, which would include establishment of the pay cycle, paperwork, and ensuring that things work in terms of the logistics of getting things paid. The orientation should cover every step of the pay process, to establish a proper sense of timing. He reiterated the importance of transparency during the pay process and that everyone being on the same page will ensure that pay runs smoothly.

Additionally, Co-Chair Reyes suggested that all participants should verify that they've participated in that orientation conversation, so that no one pleads ignorance or misinformation on that topic.

Chip clarified Keith's point, stating that there was a case to be made before the pay-app is submitted to ensure that information is clear, going from sub-contractors up to the prime. He thought that process should be included in the conversation as well. Even though it isn't in the prompt payment window, it's an important part of making sure the pay process runs smoothly.

Olivia asked Chip and Keith if they do progress payment inspections as they go, or if they're even able to. Chip answered and said yes, typically. Verification happens continuously, with project tracking. Keith agreed with Chip, and said that it could happen more often, but doesn't always. He said the conversation will establish a report that the contractor bills accurately, based on the project's progress. However, there's a wide range of how people validate that accuracy, and agreeing on how that is validated is necessary.

Janice Zahn pointed out the importance of definitions, noting that people are not wording things the same way. She encouraged them to not only define barriers, but also agree upon terms.

Olivia wondered whether the level of granularity called for in verification comes from stewardship of public funds or if it comes from a place of trust. Pay must come promptly, and delays of about three months seem unfair. There should be a balance. She then asked Keith why owners adhere to that process.

Keith noted that contractors have their own sets of rules in place that they establish and said most public entities cannot issue payment without proven, completed work. The burden of proof falls upon those participants to ensure there is a clear process. Contractors can turn in preliminary pay applications five to ten days before a pay period ends. That allows the project team to evaluate progress and the anticipated completion, allowing them to schedule visits to ensure things are proceeding as planned.

Olivia described Keith's process stated above as a best practice, and wondered whether a public agency would be able to allocate a certain percentage of the pay-app to ensure there could be allowance for that advance. She also wondered how legislation could help with this, given the various circumstances that owners work within.

Keith added that the ability to project allows contractors the ability to find efficiencies on draft approval. When approvals are reviewed starting the first of the month, they aren't actually made until the middle of the month. It can stretch out the timeline and slow down payments immensely.

Keith and Co-Chair Reyes talked about the bank's role in this, and how it is important to keep them in mind when having that orientation discussion. Banks release money at different rates depending on the circumstance, and that cadence must be kept in mind when determining pay schedules.

### **Schedule of Values**

Olivia provided context around schedule of values, stating that this change to the schedule of values would include a line item that sets up a pot of money that allows for accelerated payments to contractors. Money would be made available in preparation for billing.

Keith said that the schedule of values is a tool that creates a tracking mechanism for payments. It defines how payments will be doled out. He suggested that the committee seek to establish best practices to ensure this process goes smoothly and that the approval process is streamlined.

Co-Chair Reyes wondered whether owners should allow contractors to bill their mobilization costs, in order to draw from the schedule of values in the event of a delayed payment.

Keith pointed out that while that does make sense, however, certain contractor mobilization costs can be much higher depending on the contractor's scope of work. Co-Chair Reyes said that perhaps it'd be best to define rates depending on the contractor e.g. certain rates for heavy machinery, electricians, etc.

Keith then asked the owners in the meeting if it were possible to bill for submittals on a schedule of values. Olivia answered that it depended on circumstance, while Cindy Magruder said that the University of Washington allows contractors to charge for submittals, and that it's even a line item in the schedule of values. Keith followed up, saying that the cost of submittals can vary wildly depending on the project itself. Knowledge of and more support for disadvantaged businesses positions the team to talk about progress/compensation in the approval process.

Aleanna re-oriented the conversation around Cindy's comment, adding that there are several cost models and reimbursement systems in place. Some are working on schedules of value, line items, etc. while others have their own systems in place.

Chip noted that conversation started with Olivia's piece on allowing money to be freed up to serve as a stopgap for contractors and to smooth out the payment process overall. The challenge is getting money into the hands of smaller businesses fast. Owners cannot pay for work before it's completed, and the committee must ensure that is not violated.

Olivia stated that it was important to include inclusion plans in bids, and ensure they have access to training and improve with each new job. There should be insurance in the process that contractors are selecting the proper subcontractors for the right reasons as outlined in their inclusion plans, rather than just based off profit margins.

Young Sang-Song stated that he agreed 100% with Olivia's comment and said that there should be an example in place for people to reference on the creation of inclusion plans.

Cindy expressed concern about the results of the inclusion plans, making sure that those diverse businesses do receive proper payment and are properly following the outlines of the inclusion plans. Olivia then said that she would redirect the question to the contractor, ask them about their engagement in inclusion programs and how their participation is verified.

Robin Strom said that this format generally tends to work out when the owner is most engaged, checking in regularly, leading from the top-down, and setting the tone for the whole project. Co-Chair Reyes added that it then puts the onus on the general contractor and can make them accountable to those values as well.

Olivia said that she wanted to hear from the contractors themselves on the topic and called on Keith and Chip to speak about it. Keith said that the delivery relates to the type of inclusion plan that is included in the applicants' qualifications. Keith considers how the answers about access to opportunity, capital, and training will address diversity.

Aleanna asked Keith what owners should ask for and proposed a document library of RFQs that stand as strong examples for owners to ask for and contractors to look for.

Young suggested, on the topic of inclusion plans, to make them bid items. The contractors' investment into the inclusion plan will clearly show how serious they are.

### **Best Practices**

Co-Chair Reyes proposed listing out practices and using them to build out a manual for the process, and compiling the topics discussed in writing. Olivia agreed that it should be put in writing that materials from this meeting should be collected by Monique to give to Chair Fernandes to be developed into a manual on best practices for the process. Co-Chair Reyes said that it is important to include all the available data, given the diversity of the committee, and to draw from the diversity of expertise on display.

### **Next Meeting Agenda**

- 1. Welcome & Introductions**
- 2. Review & Approve Agenda and Minutes from 2/21/2024**
- 3. Adjourn**

### **Action Items**

1. Monique will collect the minutes and other materials and compile them for the committee review before the next BE/DBI meeting.

**The meeting adjourned at 3:02 pm.**