

BE/BDI Committee

Meeting Notes 8/16/2023

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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
	Shelly Henderson, Mukilteo School Dist.	X	Charles Wilson, DES
X	Aleanna Kondelis, Hill International		Linda Womack, MBDA
X	Keith Michel, Forma Construction		Olivia Yang, WA State University
	Brenda Nnambi, Sound Transit	X	Janice Zahn, Port of Seattle
X	Cathy Robinson, University of WA		

Alternates

- X Maja Huff, WA State University (in for Olivia Yang)

Guests & Stakeholders:

Monica Acevedo-Soto	Edwina Martin-Arnold, City of Seattle
Patricia Collins, Maul Foster & Alongi, Inc.	Ronald McGlone
Bobby Forch, Forch Consulting	Kara Skinner, Integrity Surety
Cindy Magruder, University of WA	Abigail Vizcarra Perez, MetroParks Tacoma
Monique Martinez, DES	Michele Willms, AGC

Meeting started at 1:32 p.m.

Discussion Highlights:

Welcome & Introductions

Committee members, stakeholders, and guests introduced themselves.

Approve Agenda & Minutes from 7/19/2023

Co-Chair Santosh Kuruvilla moved to accept the agenda for today’s meeting and to approve the notes from the 7/19/23 meeting. Chip Tull seconded, and both the agenda and minutes were approved on a voice vote.

Review BE/DBI report recommendations/Review PowerPoint Presentation

Chair Lekha Fernandes opened discussion of the Business Equity/Diverse Business Inclusion (BE/DBI) recommendations. The goal is to present to the Capital Projects Advisory Review Board (CPARB) meeting in September to get approval of the mission and the work the committee is focusing on. Chair Fernandes reviewed the mission:

The BE/DBI Committee will focus their efforts on the following:

- Utilize strategies from the BE/DBI report to inform potential legislative changes.
- Create consistency in contract language to reduce barriers in policy and eventually statute.
- Evaluate and advocate to bring forth opportunities for firms to successfully compete and build capacity.
- Identify metrics for measuring accountability.

Chair Fernandes showed the first slide: Access to opportunities was the first topic for discussion. She said that the BE/DBI report identified this topic as increasing access to opportunities for everyone. Chair Fernandes would like the committee to focus on two issues: (1) the definition of small business was changed in statute and (2) developing a different process for the Small Works Roster. Chair Fernandes asked the committee,

especially the public owners, what they have seen that has worked and about any opportunities and things that have worked on smaller scales and larger scales.

Alianna shared her experiences of conducting seven presentations across the state through the Municipal Research and Services Center (MRSC) last year. These presentations covered fundamental public works information and allowed her to gather feedback from smaller rural owners. She pointed out the challenges they face, such as engagement and outreach difficulties, basic concepts like bid notifications and opportunities, the need for consistent bidding opportunities, and methods to involve contractors in the bidding community. Alianna recommended that the development of foundational concepts and tools for advertising, outreach, and social engagement was crucial.

Chair Fernandes inquired about the committee's experience with unbundling or forecasting. Jackie Bayne explained that the Washington State Department of Transportation (WSDOT) is constrained by legislative directives, making unbundling a complex issue. WSDOT is currently evaluating scopes of work from an unbundling perspective rather than a broader approach. She expressed the need for guidance on unbundling, acknowledging the challenges it poses in light of project schedules.

Cathy Robinson raised concerns from cities about whether unbundling might conflict with bid splitting statutes, necessitating further clarification. Shelly Henderson shared a similar experience from the Mukilteo School District, indicating confusion surrounding bid laws. Keith Michel highlighted King County's efforts to solicit feedback on unbundling projects over the next decade. Chair Fernandes commended Keith's example, drawing parallels with a long-running forum at Central Washington University. Co-Chair Kuruvilla presented another case, Sound Transit's approach for the West Seattle to Ballard program, which involved one-on-one listening sessions with industry stakeholders to shape program and procurement strategies. Co-Chair Kuruvilla suggested the possibility of hosting listening sessions focused on small businesses.

Cindy emphasized the University of Washington's commitment to diverse businesses through inclusion and procurement plans, particularly for design/build projects. She noted recent projects were divided into 40–50 divisions and there were 8–16 phone calls made per trade to inform firms of opportunities. Cindy recommended providing guidance on where to post availability, as the university often struggles to identify the most effective posting platforms.

Chair Fernandes summarized the interest in the topic of unbundling as follows:

- Identifying specific practices that have proven effective and exploring potential strategies.
- Clarifying the channels or methods for soliciting bids and sharing best practices to enhance outreach efforts and initiatives.
- Discussing potential collaboration with MRSC (Municipal Research and Services Center).

Maja Huff emphasized the need to consider scalability in their discussions. She pointed out that agencies are dealing with both small-scale and large-scale projects, and the approaches and practices should be tailored accordingly. Chair Fernandes suggested that the committee delve into the realm of CPARB alternative design and consider defining typical project sizes and recommended methods based on those sizes. Maja concurred with this suggestion.

Abigail, from MetroParks Tacoma, shared in the chat that her project designers avoid unbundling due to staffing capacity issues, as they perceive it as transforming one capital project into multiple projects. Chair Fernandes acknowledged this concern and suggested that the committee may need to provide guidance on bid splitting and scalability.

Chair Fernandes's next slide concerned 'Access to Capital', which included various subtopics such as Prompt Pay, bonding, insurance requirements, and indemnification clauses. This item includes things public owners

can impact as well as programs that are not focused on public owners. She asked Maja to elaborate on Prompt Pay.

Maja explained that Prompt Pay was developed in response to the extended timelines for paying subcontractors, especially those on lower tiers of a project. Prompt Pay is designed to offer qualified firms, based on design/build and owner consensus, the opportunity to enter into direct contracts with prime contractors and receive prompt payment upon completion of their work. This approach seeks to expedite cash flow to subcontractors, reducing the wait times associated with traditional payment processes. Maja mentioned that it is currently being tested in design/build projects under a single contract, with optimism that it will benefit firms affected by slow payment timelines.

Keith expressed interest in the Prompt Pay program and inquired about its size or scope. Maja mentioned that the project was in its early stages and had identified 4-5 subcontractors due to its small-scale nature. Keith praised Prompt Pay as a positive innovation, highlighting the legal timeframe for payments at each tier and the cumulative delays faced by lower-tier entities. Maja agreed that, despite statutory requirements, payments often take longer than 10 days. She also noted that firms must agree to participate in the Prompt Pay program.

Chip concurred that payment turnaround times were excessively long and appreciated that Prompt Pay placed the responsibility on general contractors to address this issue. He emphasized that this was a critical issue to resolve, particularly as it negatively affects lower-tier contractors.

Young Sang Song shared his personal experience as a Disadvantaged Business Enterprise, noting that he was still waiting for payment on an invoice he submitted in May to a major contractor working with King County. He explained that some companies pay promptly but deduct a 3 percent fee for credit card processing. Young identified the main barrier as contractors being bound to their schedules once they enter into contracts with other companies. He expressed his interest in Prompt Pay. Keith mentioned that he had advocated for clear payment terms during his mentoring and training sessions for bidding companies, emphasizing the possibility of negotiating earlier payment terms.

Charles Wilson, from the Department of Enterprise Services (DES), did not see Prompt Pay as a significant issue in contracting. He explained that DES's Prompt Pay requirements were well-known and effective, with a payment monitoring system in place to track payments to subcontractors and ensure compliance with timelines.

Chair Fernandes summarized that addressing Prompt Pay involves various approaches, including education, tracking payments, and engaging in conversations to understand payment needs and timelines. Maja added that there is a statutory component to consider, with different companies interpreting statutory requirements differently. Chair Fernandes suggested that more education might be needed in this regard.

Young added that when he enters into direct contracts with agencies, payments are prompt. However, issues arise when there is a prime contractor involved, leading to delays. He recommended communicating this issue in RFPs to ensure clarity.

Co-Chair Kuruvilla offered other examples. The Oregon Department of Transportation (ODOT) pays a percentage of an invoice within 30 days once the invoice is sent and then it reconciles the balance within 60 days. This has been a tool that helps small businesses in Oregon. For design/build and general contractor/construction manager (GCCM) jobs, LA Metro creates a draft invoice one month ahead based on the work in process. That way the company gets the future invoice 30 days ahead of time and then they get the final. This prepares the owner and lets them know when an invoice is coming. These examples are both geared toward helping small businesses follow up on payments.

Chair Fernandes summarized that the committee is interested in Prompt Pay—primarily access to capital.

Co-Chair Kuruvilla highlighted the importance of insurance requirements and coverage for design firms, particularly considering the size of these firms. He noted that smaller firms typically carry about \$1 million in liability insurance, while larger small businesses have \$5 million in liability insurance. However, there are often exceptions for higher liability amounts, which smaller firms may struggle to obtain. This raises questions about how risk allocation is managed within project teams. Additionally, he mentioned that indemnification clauses could be of interest to smaller design firms.

Jackie mentioned that WSDOT (Washington State Department of Transportation) was implementing a new prompt payment process for a large project on Portage Bay, although she was not clear on the details. She believed that subcontractors might be paid a percentage of the invoice in advance. Co-Chair Kuruvilla noted that this approach resembled the one used by ODOT (Oregon Department of Transportation).

Co-Chair Kuruvilla added another challenge faced by small businesses: cash flow. He explained that companies often need to borrow money to perform their work, but since banks typically lend money on a 30-to-120-day cycle, businesses may struggle to repay loans, leading to a cycle of bad debt.

Keith inquired if anyone had experience with owner-controlled insurance programs. Co-Chair Kuruvilla mentioned that Oregon had used an owner-controlled insurance program on a design/build project, which was funded through a retainage model where 5 percent of all invoices were collected to finance the policy. The remaining funds were returned to the companies after reconciling change orders. Keith expressed his curiosity about owner-provided insurance policies for entire projects, especially given the complexities and variations in insurance costs.

Janice shared that the Port of Seattle had implemented an owner-controlled insurance program for a large capital program in the late 90s and early 2000s. She explained that the decision to offer such a program depended on factors like the size of the Controlled Insurance Program (CIP), financial considerations, and risk assessment. Janice clarified that when the Port had an OCIP (Owner-Controlled Insurance Program), it was primarily used for design-bid-build projects. However, with the shift to alternative delivery contracts, they evaluate the best approach for insurance coverage.

Janice clarified that CIP is not cost prohibitive when there is an advantage to an owner having control. The key is figuring out who is in the best position to provide the lowest cost for similar insurance coverage. Chair Fernandes asked if it is the prime who has a better opportunity to get a better rate, and Janice Zahn agreed and said it is a larger conversation with contractors. Questions include what the options are and does one help the other. She said she wasn't sure how much owner-provided insurance helps the Minority & Women's Business Enterprises firms to access capital. Keith agreed that it wasn't access to capital; insurance is the barrier. He said that small firms struggle to meet mandatory insurance limits and policy requirements. That causes primes to make compromises; they get what they can from subcontractors and the primes cover the rest of the risk.

Kara Skinner chimed in, primarily addressing surety rather than insurance. She mentioned that some owner obligees waive bid bonds, believing it's a barrier. However, this practice doesn't necessarily benefit contractors and can create difficulties. Kara noted that she is involved in educating owners about how bonding works and emphasized the importance of education in addressing these issues. She welcomed ideas and suggested that contractors should read the information and seek assistance when needed.

Chair Fernandes then introduced the last slide, focusing on "Access to Training." The bullet points included:

- Staff Training (inclusion policies and procedures, biases scoring and evaluation, cultural training)
- Capacity Building Mentorship Programs
- Centralized or Common Data Collection for Public Owners
- Diverse Training Evaluation

Chair Fernandes mentioned that the committee would set aside the topic of diverse training evaluation since there is a CPARB committee that specifically addresses training-related matters.

Jackie discussed WSDOT's capacity-building mentorship program, which was initiated in 2017 as part of the state-funded diversity roadmap. The 2017 disparity study revealed underutilization for every presumptive group on state-funded contracts, totaling 33.3%, far from the ideal goal of 100%. WSDOT's program operates similarly to a mentor-protégé program, but due to state and federal rules, it focuses on building capacity and knowledge rather than onsite field coaching for specific work. The program aims to enhance the skills of individuals managing their organizations.

Jackie mentioned that WSDOT has awarded contracts ranging from \$50,000 to \$2 million to protégées through this program. They have recently launched their 6th or 7th cohort in partnership with the City of Tacoma's Minority Business Development Agency. While WSDOT believes the program has made progress, they feel it has been somewhat slow, so they continue to implement additional initiatives. WSDOT currently administers the program in partnership with Sound Transit.

Chair Fernandes inquired if any committee members had experience with bias scoring, implicit bias training, or revising inclusion policies and procedures.

Jackie suggested that organizations could collaborate with more prime contractors to establish larger-scale programs. She noted that WSDOT's program was primarily implemented within the transportation consulting and construction industry, which is a niche sector.

Janice shared that the Port often hears from small diverse firms that they are busy and seek relevant training that doesn't consume too much of their time. Chair Fernandes mentioned that the Office of Minority and Women's Business Enterprises is developing on-demand training to address this need, as accessibility to training is crucial.

Areas of focus

Chair Fernandes asked the committee how they could craft and create something that makes sense for CPARB. She summarized several ideas she had heard during the meeting, including:

- Outreach models and effective outreach strategies and tools.
- Unbundling practices and related legislation.
- Prompt Pay and ways to promote and utilize Prompt Pay effectively.
- Mentorship programs on a larger scale.

Aleanna Kondelis provided two perspectives on the matter. The first perspective is to consider the appetite for creating new content, potentially producing a work product. The second perspective is to explore opportunities to review and endorse existing content by gathering and improving upon what is already available. She also emphasized the importance of working with groups that are creating content on similar subjects, suggesting that collaboration could be beneficial.

Chair Fernandes appreciated the contributions from various participants during the meeting and asked the committee how they should gather input and share it effectively.

On the topic of Prompt Pay, Chair Fernandes asked if committee members had looked at Prompt Pay and documented examples to present to CPARB and move the needle forward.

Chip stressed the significance of Prompt Pay, highlighting that if companies are not paid promptly, they cannot move forward with their work. He suggested that the committee should investigate existing timeframes that are not being met and recommend solutions to address these issues.

Keith agreed that Prompt Pay is more about a cultural shift than potential legislative changes. He noted that sometimes owner policies embedded in contracts can contribute to delays, but subtle changes in processes can make a significant difference. For example, changing a 90-day payment term to 20 days can be a substantial improvement. Keith saw many opportunities for improvement without requiring significant alterations to terms and conditions.

Janice also agreed, mentioning discussions at the Port regarding invoicing, payments, and forecasting payments versus paying for actual work performed. One of the sticking points is that the Port doesn't want to appear to have provided gifts of public funds. She suggested that with the available technology, there should be a better way for data to flow between tiers, indicating that this topic could be a focal point.

Cindy Magruder suggested that any legislative change should focus on intent. She mentioned that waiving the requirement for all intents to be filed with Labor and Industry (L&I) for low payments could be helpful, as the current process can cause delays, especially for very small contractors.

Young shared his practice of adjusting his hourly pay based on what he is bidding on and adding 5% to account for borrowing costs. He emphasized that if he is not getting paid promptly, he informs the prime contractor that he cannot schedule any work until payments are caught up. Young noted that many small businesses do not have this practice and often find themselves living paycheck to paycheck.

Next Meeting Agenda (9/20)

Chair Fernandes said that at the 9/14 CPARB meeting the committee will present its mission, discussion of Prompt Pay, and the committee's intent to focus on innovative best practices in terms of organizing the wheel rather than recreating it.

Chair Fernandes said for the 9/20 meeting the agenda will be focused on Prompt Pay. She encouraged committee members and attendees to prepare for the meeting and come ready to discuss one or two specific areas related to Prompt Pay. The meeting will include an hour-long deep dive into Prompt Pay, with committee members who use Prompt Pay explaining the process, others sharing what's working or not working, and examples from other states. Charles will describe how contract communication works at DES (Department of Enterprise Services).

Chair Fernandes allocated 10 minutes for introductions, agenda, and minutes approval. After the hour-long deeper dive, the last 20 minutes will be spent discussing if stakeholders want to become members. She asked the committee to consider what the committee's membership should look like and who needs to be involved to achieve their goals, especially in pushing the needle on Prompt Pay and developing innovative practices.

Chair Fernandes also mentioned that during the remaining time of the September 20th meeting, she wanted to hear from committee members about their feelings regarding the work they had done so far. Committee members indicated that the committee was working well.

Meeting adjourned at 2:59 p.m.

Action items:

1. Committee members who use Prompt Pay will explain the process.
2. Committee members will talk about what is working and not working with Prompt Pay.
3. Charles will show how communication in his organization works.
4. All committee members will think about who any potential committee members would be; they should be able to help move the needle on Prompt Pay.

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References\Resources:

Action items from 7/19 meeting:

- Chair Fernandes will contact current members Janice Zahn and Jackie Bayne to see if they are still interested in serving on the committee.
- Chair Fernandes will reach out to WSDOT, her construction contacts in eastern and south-central Washington, and the ports to find out if they are interested in joining the committee.
- Co-Chair Reyes will identify and contact diverse construction firms and Ramiro Chavez.
- Charles will identify and contact diverse A&E firms.
- Young will contact construction firms about committee membership.
- Olivia will ask Bruce Hayashi if he is interested in joining the committee and will check with Cheryl Stewart to see if she is still interested in becoming a committee member.
- Co-Chair Reyes, Charles, Young, and Olivia will communicate to Chair Fernandes and Talia if people are interested in joining the committee.