

Capital Projects Advisory Review Board

BE/DBI Committee

Meeting Notes June 21, 2024

Page 1 of 4

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
x	Irene Reyes, Excel Supply Company, Co-Chair	x	Matt Rasmussen, Benton County
	Frank Boykin, MBDA	x	Cathy Robinson, University of WA
x	Jackie Bayne, WSDOT OEO	x	John Salinas II, Specialty Contractors
x	Stephanie Caldwell, Absher Construction		Young Sang Song, Song Consulting
	Bobby Forch, CPARB DBE Representative	x	Cheryl Stewart, Inland Northwest AGC
x	Shelly Henderson, Mukilteo School Dist.		Chip Tull, Hoffman Construction
x	Aleanna Kondelis, Hill International	x	Charles Wilson, DES
	Keith Michel, Forma Construction	x	Olivia Yang, WA State University
	Brenda Nnambi, Sound Transit	x	Janice Zahn, Port of Seattle

Guests and Stakeholders:

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

The meeting began at 1:31 p.m.

Welcome & Introductions

Chair Lekha Fernandes welcomed everyone and thanked them for attending.

Approve Agenda for 6/21/2024 & Minutes from 5/15/2024

Cathy Robinson motioned to accept the agenda, seconded by Santosh Kuruvilla. The motion passed with a voice vote.

Jackie Bayne motioned to approve the minutes, seconded by Cathy Robinson. The motion passed with a voice vote. Janice Zahn abstained, as she was not present for the last meeting.

Workgroup Report-Outs

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

Best Practices Group

Shari Bartell pulled up the document that the Best Practices Group had put together.

Cindy Magruder presented. The plan contains best practices for subs, primes, and agencies for communication norms and accounting processes. The text was included as a pre-read.

Santosh said that the version of the Best Practices text that was sent over and posted on the website came across incomplete. He suggested that the text be changed to state "draft invoice" on point #3 but added that he liked that suggestion.

Janice thanked the Best Practices Group for their thorough work on the recommendations. She had prepared comments on the group's recommendations. They were pulled up on-screen and sent over to the committee.

Santosh suggested including retainage as its own conversation, rather than including it with construction meetings. Janice suggested a separate meeting, like the preconstruction meeting mentioned in the recommendations. Janice said that the meeting would help smooth the process out and reduce bottlenecks. Irene Reyes added that it sometimes takes months for retainage to be released.

Irene suggested a model or channel for progressive and continuous feedback between prime and subcontractors. Matt Rasmussen added that owners cannot provide direction to subcontractors, and that the relationship between owners and subcontractors should remain as-is. He suggested a mechanism for basic questions but reiterated that measures should be in place to ensure that the order of operations remains the same.

Aleanna Kondelis agreed with Matt but clarified that this would just be a mechanism for ensuring compliance and flow-down to subcontractors. She suggested making that channel for notification, rather than dialogue.

Chair Fernandes suggested describing it as a "continuous feedback process to ensure compliance," to which the committee agreed.

Irene shared an example, where a general contractor was told to do something under the assumption that the general contractor would make a change order for it. The prime didn't ask for the signed change order, so that work was never paid out. She suggested that the feedback process would allow the subcontractor a mechanism to go to the agency to step around the hierarchy and ensure that work is paid out.

Matt added that he agreed with Janice and Irene and suggested providing a sort of helpline for subcontractors to reach up the chain of command. He reminded the committee that it is important to keep in mind that overcomplicating this process could provide contracting issues for owners and contractors.

Cindy agreed with Matt and added that it could be as simple as including a contact point for payment difficulties on contracts.

Irene added that she'd heard from subcontractors that they'd been asked by primes to go beyond the bounds of the contract. Giving them a means to report that back to owners would help them remain within the confines of the contract.

On the question of "confirmation" on point #4a, Cindy stated that the controls are to ensure timelines are met and agencies are compliant with their own requirements, rather than passing the burden of reportage to a governing body of some kind.

In response to Janice's comment on point #10, Aleanna said that it would speed the process up all around. She then said that they will clarify the statement on its efficacy, though, to show clearly how the process is sped up.

Legislative Drafting

Chip Tull pulled up the group's recommendations. They were included as a pre-read to the committee. The overall goal of their edits was to ensure prompt payment and to codify some of those best practices.

Santosh asked Chip if it would be worth introducing the idea of a draft and final invoice to the legislative language. Chip responded, saying that when something is put into legislation it needs to be proven ahead of time. When that practice is taken from the best practices recommendation and proven, it can rise up to the legislative level.

Aleanna asked if the intent of the drafting group was to ensure that the requirements for owners were also requirements for contractors. Chair Fernandes clarified that the intention was more to clarify who the 1% interest charge applies to, and how it goes down the chain from owners to contractors to subcontractors. Aleanna thanked Chair Fernandes for the clarification and recommended clearer language be used there.

Olivia Yang asked if there was a chance to check in with LNI on the topic of retainage. With three agencies required to confirm numbers, that could prove to be a bottleneck, particularly as retainage is something that is not directly within the control of owners. Chair Fernandes stated that if the legislation goes through, a fiscal note could be provided with the expectation that the work is done in a timely manner. Olivia added that LNI has been a great partner of CPARB over the years, that they would be a valuable resource and that it was worth checking in with them ahead of time, rather than dropping a piece of legislation on them.

Reasa Pearson was on the call and said that she could help the committee get in touch with LNI. She stated that the hold-ups aren't necessarily things that can change, but that a conversation would be helpful.

Olivia suggested giving agencies 45 days to release retainage and emphasized the importance of collaborating with them on that, to ensure that everyone was in agreement on the timeline to release retainage. She said she would be willing to meet on that, along with Reasa and Bill Frare.

Santosh stated that contractors have been holding retainage without a clause, discrediting receivables by not paying itemized invoices. He suggested that retainage be included in the contract. Chip said that he found that practice interesting and problematic, as the practice functions as retainage without any of the protections of formalized retainage. Santosh suggested that it be mentioned up front in the contract.

Cindy stated that she found Santosh's news concerning, particularly given that the statute has a clear definition of retainage and what retainage is for. She commented that she'd love to see the statute change to allow an early closeout for Design-Build projects so that early-phase contractors could be paid sooner.

Chair Fernandes asked Aleanna if the Legislative Drafting and Survey Groups could work together on language.

John Salinas returned to Santosh's earlier point, saying that "project closeout" often takes on the same role as retainage. Chip asked whether project closeout was in addition to retention, or in lieu of it. John answered that it was in place of retainage. He added that retainage can crush smaller contractors, as payments can take years to go out.

Olivia reiterated the importance of the feedback process, especially given how it seemed like retainage had been weaponized.

Chip continued to read through the document, which was included as a pre-read.

Chair Fernandes asked those with feedback to email her and Chip before Monday.

Workgroup Next Steps

The meeting was adjourned at 3:00 pm.

Next Meeting Agenda

- Welcome & Introductions
- Review & Approve Agenda and Minutes from 6/21/2024
- Workgroup Report-Outs
- Workgroup Next Steps
- Next Meeting Agenda
- Adjourn

Action Items

The committee will send feedback on the Legislative Drafting document to Chair Fernandes and Chip.