

Capital Projects Advisory Review Board

**BE/DBI Committee**

Meeting Notes August 21, 2024

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

**Guests and Stakeholders:**

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

**The meeting began at 1:32 p.m.**

**Welcome & Introductions**

Chair Lekha Fernandes welcomed everyone to the meeting and thanked them for attending.

**Approve Agenda**

*Matt Rasmussen moved to approve the agenda, seconded by Chip Tull. The motion passed through a voice vote.*

**Approve Minutes from 7/31/2024**

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

*Aleanna Kondelis moved to approve the meeting notes from 7/31, seconded by Shelly Henderson. The motion passed through a voice vote. Chip abstained since he was not in attendance on 7/31.*

### **Review of Draft Report**

Chair Fernandes reviewed the draft report, which was sent over as a pre-read to the committee. She asked the committee for their opinions on the formatting of the document, and Matt said that he liked the format, and was glad that someone had cleaned up the document.

Aleanna asked why the bill was not specifically referenced in the report. Maja Sutton Huff mentioned that it was included on the cover of the report, but not mentioned within the report. Aleanna wondered if it would be worth including context from the bill, since it defines the scope of the project.

Chair Fernandes answered that it was not a conscious effort to include the bill, and that she agreed with Aleanna that the bill would be worth including.

Cathy Robinson suggested including a brief overview of the reasons for and scope of the recommendations in the report's executive summary and to add a copy of the bill to the appendix section for reference.

Maja presented a counter-opinion, to keep the reference to legislation very simple, rather a quick reference in the opening paragraph. Chair Fernandes synthesized these ideas, where the report would list out the directive given to CPARB by the legislature and then present language on how the report addresses those concerns.

Matt suggested including a bit of elaboration on the explanation of satisfactory completion in the piece on intent, establishing that a timeline was used instead of completion of the work because that was a difficult thing to define.

Cindy Magruder followed up and asked for direct responses to the questions asked by the language, particularly around when payment is being made. Chair Fernandes noted that the committee didn't have consensus on that, and that was noted in the report. Cindy suggested some language be edited to provide clarity, and Chair Fernandes made note of that.

Jerry Vanderwood noted that the legislative intent of the bill was to be prescriptive, and that the language around it should not have to be defensive.

Maja agreed with Jerry and added that the language could be edited to focus on best practice, rather than a disagreement with the legislation. Aleanna added that it would ensure consistency of application.

Janice Zahn apologized for being late to the meeting and said that she had a couple of comments she wanted to make sure were addressed. One was on the application of 1% interest and whether or not it compounds over time. She asked for more information to be included on how that was calculated. Matt provided a case study, where it was calculated as 1% for every 30 or 31 days.

Cindy pointed out the difficulty that owners have with their payment schedule and added that it was possible for a payment to not meet the payment schedule but still be delivered within the time frame. She added that it might deter some owners from using the prompt pay mechanism.

Keith Michel added that Cindy's point was valid, that his interpretation of the language was that the language around the time frame be changed to an "and" statement, rather than an "or" statement.

Maja agreed with that and added that different agencies are often in vastly different circumstances.

Matt said while that may be true, that other agencies would embrace the mechanism due to an interest in broadening their bidding pool.

Keith said that his impression of the value of payment schedule clarity was, over all else, to describe the mutual process where subcontractors, owners, and general contractors are all involved in getting to an approved invoice milestone.

Janice also noted a typo on page 13. It was addressed.

Chair Fernandes asked the small, diverse business representatives in the committee to provide their notes on the report.

Young Sang Song said that he was excited about the prospect of an end cap day, whether it is 5 days or 30 days. A guaranteed date of payment would remove a lot of difficulty from the process. He asked about the notification process for sub-contractors, to hear when their prime contractor was paid.

Vicky Schiantarelli described the document as very positive, but that a major first step would be monitoring retainage and the PLA/CWA impacts that are not immediately addressed by the legislation.

Chair Fernandes noted that the group definitely has more work in the future and added that subcontractors should be made aware of the payment schedule. Young suggested a higher percentage of interest be applied for delays down the line – for example 3%, the fee to run his credit card, which he often uses to cover expenses that occur while he is waiting on payments.

Chair Fernandes agreed that could be up for debate but reflected Vicki's belief that there should be some tracking done on implementation before they get there.

Maja spoke to Vicki's point on retainage and said that it needed to be fleshed out, noting how it was not really spoken to in the report. Chair Fernandes agreed and added that the committee needed to make sure they had some serious conversations with those agencies.

The group discussed the due date for the report. The document should be fully drafted by September 5, and included as a pre-read for the CPARB meetings on September 12. The final vote will be in October, and the release date is in November.

Matt asked if they needed to resolve the discussion of the payment schedule versus the 30-day limit, or if they should present the two options to the full CPARB and see if they wanted to make the decision, as well as the 1% piece.

Chair Fernandes presented two options in response to Matt's question. One was to use the language as is, noting that there was no consensus on the topic. The other option was to present the counterargument to

CPARB and let them discuss and make recommendations from there. She added that she was worried about presenting the counterargument since they had not done stakeholder engagement on it.

Matt said that he liked the idea of presenting it as it was, but noting to CPARB that the topic was subject to a lot of discussion, hopefully bringing more perspectives from a larger group of owners into the fold.

Cathy suggested adding a statement that specified that there were discussions around it, which would allow CPARB owners to add their own perspectives without being led one way or another.

Keith reiterated that this process demonstrated the need for and efficacy of drafting a payment schedule. He noted, however, that circumstances can change so rapidly that they're not going to be entirely accurate, though some semblance of accuracy is both valid and important.

Cindy asked if there were any diverse businesses on the call, and if they could share what they might be concerned about in regards to their impacts, and the shortcomings that come from running a small business.

Young said that he normally builds a contingency into his hourly rate, an extra charge that is calculated to account for the time he spends waiting for payment.

John Salinas added that more certainty in pay schedule would equal cheaper pricing, and while he doesn't view delays as a hit to his profit, he does view it as a difficulty in ensuring the liquidity of the business, which helps to determine whether a business will remain open in the first place. He added that oftentimes small businesses do have to run off credit, and that can create a compounding problem for them. John then said that consistent language is the most important thing at that level, and that consistency is the biggest factor in ensuring that things are paid out properly.

Young added that the biggest limiting factor in bringing in more people is the lack of consistency in cash flow, and that it is a major factor in limiting growth overall. Chair Fernandes asked how he perceived consistency, whether it was with payment schedule or within 30 days. Young said that he did not really care, rather that it was just consistent.

Matt said that in terms of consistency, the 30-day limit would likely be the most effective. Young agreed. He added that now, the most consistent payment he gets is 90 days, which is too far apart.

John pointed out that 30 days as it currently stands ends up being 90, and that without proper barriers it will probably continue going that way.

Chair Fernandes asked Keith and Cindy to develop the new language around the 1% piece.

Young added that his invoices normally go out within two weeks, and the payment delays he was talking about normally came through the chain of sub-contractors, not when working directly with an agency.

**The meeting was adjourned at 3:00 pm**

### **Next Meeting Agenda**

- Welcome & Introductions

- Review & Approve Agenda and Minutes from 8/21/2024
- Review Draft Report
- Workgroup Next Steps
- Next Meeting Agenda
- Adjourn

**Action Items**

1. Keith Michel and Cindy Magruder will edit language around the 1% interest application, to be voted on 9/4.