

BE/DBI Committee

Meeting Notes December 20, 2023

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Committee Members: (17 positions, 8 = Quorum)

X	Lekha Fernandes, OMWBE, Chair	X	Santosh Kuruvilla, Exeltech, Co-Chair
X	Irene Reyes, Excel Supply Company, Co-Chair		Young Sang Song, Song Consulting
X	Jackie Bayne, WSDOT OEO		Cheryl Stewart, Inland Northwest AGC
X	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	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:

Bob Armstead	Scott Middleton, Mechanical Contractors Association
Talia Baker, DES	Angela Peterson, Port of Seattle
Patricia Collins, MFA	Brian Ross, WWU
Erin Frasier, WA Building Trades	Kara Skinner, Integrity Surety
Joseph Kline, WA State U	Robin Strom, Anderson Construction
Monique Martinez, DES	Carrie Whitton, Forma Construction

The meeting started at 1:32 p.m.

Welcome and Introductions

Charles Wilson said that Frank Boykin was willing to participate for MDBA in place of Linda Womack. The committee will follow the steps to make the change in membership.

Approve Agenda and Minutes from 11/15/2023

Co-chair Santosh Kuruvilla inquired about the recording of planned breakout sessions and proposed removing them from the agenda. Monique Martinez affirmed that breakout sessions cannot be recorded.

Olivia Yang supported Co-Chair Kuruvilla's proposal, noting that the breakout discussions would likely exceed the allocated 15 minutes. She recommended that the committee utilize the time to discuss different issue categories, form subgroups to facilitate discussions, and subsequently report their findings.

Co-chair Kuruvilla concurred with Olivia's suggestion and proposed making changes collaboratively on a shared screen during the meeting.

The breakout session was removed, and the meeting agenda was revised to the following:

- Identify Prompt Pay buckets in a broad way.
- Identify categories.
- Identify category subgroups, which build the matrix.
- Make more time for talking about categories and making subgroups.
- Populate the matrix.

Chair Lekha Fernandes requested a motion to approve the new agenda. Co-Chair Santosh Kuruvilla moved, seconded by Aleanna Kondelis, to approve the new agenda. The motion passed through a voice vote. Co-Chair Kuruvilla then moved, seconded by Cathy Robinson, to approve the meeting minutes from 11/15/2023. The motion was approved on a voice vote, with Chair Fernandes abstaining as she was not present at the meeting.

Discussion Highlights:

Identify categories affecting Prompt Pay

Chair Fernandes proposed that the committee focus on identifying issues specifically within the context of RCW 39.10.

During the meeting, Chair Fernandes took notes on the screen, and Monique volunteered to organize and share the document with the committee afterward. The final document can be found in the References/Resources section of the CPARB BE/DBI website.

The main buckets identified by the committee are as follows:

- Owner to Prime
- Owner to Small Diverse Prime Contractor
- Prime to Sub
- Agency Internal Processes

Olivia suggested considering both RCW 39.10 and the Small Works Roster, particularly in the context of Owner to Prime, as often the Prime is the diverse business in the Small Works Roster. She proposed refining these categories and adding sub-bullets under Owner to Prime.

Olivia also recommended adding a category for requirements and documentation for getting paid, which could fall under the Owner to Prime category.

Cathy suggested including a Sub to Sub category for requirements, considering both first tier to second tier interactions.

Olivia suggested the inclusion of a different category: establishing available funds in support of diverse businesses. This category would focus on the mechanics and RCWs supporting and enabling the establishment of available funds. Chair Fernandes asked how this category would be categorized, to which Olivia explained that it involves roles for the Owner, Prime, and first tier, addressing how small diverse businesses get paid.

Regarding making payments out of cycle and providing for those payments, Joseph Kline clarified that the trial's goal is to achieve 30-day payments. The discussion included methods such as making a pot of money available to the general contractor for prompt payments to small businesses, bypassing the wait for a paid-when-paid passthrough.

Bob Armstead noted that addressing stress on smaller contractors through mobilization is similar to mobilization for Primes and could alleviate pressure on the payment cycle. Olivia agreed, emphasizing the need for nuance in addressing the ripple effects of the problem.

Co-Chair Kuruvilla mentioned that the organization at that point was based on payment events and wondered if there should be a fourth category related to Owners needing funding from another agency. Olivia admitted not fully understanding how federal funding works but highlighted the importance of having cash in hand before committing to a contract, especially for Washington State University (WSU) and public agencies. For federally funded projects, funding availability might be a significant factor.

Jackie Bayne addressed mobilization, noting that it's generally allowed unless working as a condition for awarding disadvantaged business enterprise (DBE). In such cases, DBEs can receive mobilization, but it cannot be listed on the DBE form and must be included in other bid items. Aleanna added that for federal contracts reimbursed based on completed work documentation, Owners typically have a pre-existing funding source.

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Keith Michel referred to the previous meeting's identification of project time and processes to establish the cadence of reviewing and approving progress. He suggested that the funding point could weave into a project team's approval process and be placed in the Agency Internal Process section. Payment events, money changing hands, and categories of pay or bid items could be considered in this section.

Charles Wilson placed payment tracking in the Owner to Prime category. He mentioned the B2G Now system, used by the Department of Enterprise Services (DES), which allows flagging payments and asking subcontractors about their payment status. Brenda Nnambi noted that payment tracking is an Owner obligation under the DBE program.

Regarding electronic payments, Aleanna mentioned that Sound Transit has a Prompt Payment initiative and is adding a requirement for ACH payments to ensure faster payments to small diverse businesses. Aleanna shared an example where a company paid for subcontractors to be in the ACH program, overcoming a monetary barrier for them to set up ACH payments with their banks. Exploring such options was suggested.

Olivia suggested adding confirming delegated authority under Agency Internal Processes, as some owners may have limitations on delegation of authority when approving change work. Cathy said that this is an issue in mid-sized cities.

Brian Ross shared that his company requires a sub-payment affidavit for every invoice after the first one, providing proof that subs have been paid as of the previous invoice. He said that when the general contractors (GCs) first encounter this, they do not like the requirement, but they end up liking it because it protects them especially once everyone gets in the rhythm. He said that it provides proof that the Subs have been paid as of the previous invoice.

Aleanna mentioned past discussions about incentivizing payments in the Owner to Prime conversation, where contracts could have incentive payments and a plan. Olivia highlighted that in WSU's RFPs, they ask for an inclusion plan that includes a plan for paying small businesses sooner. The inclusion plan is part of the selection process.

Stephanie Caldwell raised a question about scoring and incentives, suggesting including a question about the number of prompt payments the applicant has completed over the last ten jobs. Olivia suggested including a question so the applicant could give information about Subs paid within 30 days over the last ten jobs.

Keith said he liked having the inclusion plan ask the applicant about their role as a public entity and how to evaluate applicants. Keith said the BE/DBI report talked about the barriers as access to capital, training, and opportunities. He said if a GC's inclusion plan doesn't attempt to touch on those topics, it should probably reflect a lower score. He said that in the committee's discussion they are evaluating ways to improve Prompt Payment. He said that absent all of the brainstorming, he thinks it is smart to evaluate and prioritize managing payments for all subcontractors and especially smaller DBE firms. He said that it comes down to the principles and priorities of a Prime contractor.

Aleanna added internal enforcement strategies to the Agency Internal Process bucket. Chair Fernandes clarified that would include how things are tracked and enforced. Jackie emphasized the importance of payment accuracy, noting that discrepancies can arise even if the Prime pays the subcontractor.

Brenda suggested considering the extent to which slow or no payment by the Prime affects their performance on the contract.

Keith said that retention should be included under the change work bullet and that historically, it's a delayed part of getting paid on jobs.

Co-Chair Kuruvilla added that retention should also be a bullet in Prime to Sub, and he suggested differentiating between Prime professional contractors (e.g., designers) and Prime construction. Charles highlighted the importance of retention release rather than just retention.

The committee agreed that this list was representative, and Chair Fernandes suggested devising a strategy for group formation, where groups could add or simplify elements and discuss their thinking process with the full committee.

Subgroup formation discussion

Chair Fernandes suggested that the larger group not meet in January. Instead, smaller groups could meet during the normal meeting time to focus on specific plans.

Olivia suggested meeting as usual with the entire committee to discuss the identified items together. She believed that small groups can really drill down, but when reporting back, that often inspires conversations with other people. She said that it might be better for everyone to listen to everything. Co-Chair Kuruvilla supported Olivia's idea, emphasizing the value of everyone listening to each discussion.

Jackie asked if, with Olivia's suggestion, the committee members would then all be working on all of the subcommittees. Jackie raised a question about whether committee members would then work on all subcommittees. Olivia clarified that the idea was to go down the list during the regular meeting, rather than forming subcommittees.

Jackie mentioned the efficiency achieved by subcommittees in the DBE advisory group, which did ten times the amount of work. Chair Fernandes agreed that subcommittees often expedite the work.

Co-Chair Kuruvilla highlighted that the genesis of the Prompt Pay issue was to afford enough time to discuss various buckets and provide a forum for more community input.

Chair Fernandes asked how many committee members had in-depth knowledge of the internal processes of owners outside the Owner bucket. She suggested that owners might need to have specific conversations.

Chip Tull said that if everyone can hear what is being said, there is value to that, particularly to the Owners. He said it would be insightful as a GC to know what clients are up against. He also felt it could be efficient to break into groups.

Scott said in chat:

"I agree with Chip. Our members are primarily top-tier Subs, and I'd like to know what some of the GC challenges are because much flows down."

A vote was taken to determine the meeting format. Olivia moved, seconded by Co-Chair Kuruvilla, that the entire committee meet to discuss the listed items one by one. The motion was approved on a voice vote, with two opposed (Jackie and Stephanie) and Chair Fernandes abstaining.

Co-Chair Kuruvilla suggested that those opposed (Jackie and Stephanie) could send their comments and concerns to Chair Fernandes for consideration. The intent was to ensure that concerns were noted. Chair Fernandes summarized what she thought the issue was. Stephanie agreed that the main issue was about efficiency. She suggested that subcommittees could allow small groups to produce plans with bullet points, followed by a comprehensive discussion.

Chair Fernandes emphasized the need for efficiency and encouraged members to have more detailed conversations outside of the meeting time. Chip highlighted the opportunity for members to be in listen-only mode if they don't have anything to say, which can help speed up discussions.

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Chair Fernandes suggested prioritizing the list. Olivia recommended starting with "Owner to Prime" as it might provide templates for subsequent categories. The committee agreed to prioritize discussions in the following order: Owner to Prime, Owner to Small Diverse Prime Contractor, Prime to Sub, and Agency Internal Process.

Olivia proposed discussing ideas and exploring concepts before developing best practices. Keith emphasized the importance of identifying barriers and constraints.

Aleanna suggested using terms like "good practices," "better practices," and "best practices" instead of just "best practices." Co-chair Irene Reyes suggested including the term "current practice."

Co-chair Reyes asked if "best solutions" mean "best practices." Chair Fernandes clarified that using "best solutions" allows for challenges and discussions about the effectiveness of proposed solutions. Co-chair Reyes suggested changing it to "test solutions and outcome."

The final list of the meeting flow was:

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

Next Meeting Agenda, 1/17/2024

Chair Fernandes said that the next meeting would discuss the list that was created. She said the committee should be able to get through base work and part of change work in the next meeting.

Monique said that the committee doesn't have any meetings scheduled for 2024. Chair Fernandes and the committee agreed to meet on the third Wednesday of the month from 1:30 to 3:00 p.m.

Action items:

1. Monique will send the BE/DBI 2024 Priority Listing to the committee.
2. Monique will send a calendar invite for the 2024 meetings.
3. The committee will come prepared to talk about base work and change work.

The meeting adjourned at 2:57 p.m.

References/Resources:

BE/DBI 2024 Priority Listing

Meeting Flow:

Define Barriers

Current Practice

Possible Solutions

Test Solutions & Outcome

Create Good/Better/Best Practices Document

Prompt Pay Categories within 39.10:

1. Owner → Prime
 - Base work
 - Change work

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- Undisputed change work
- Disputed change work
- Retention release
- Requirements for payment (application monthly)
 - Sub → Sub
- Money available for small diverse to be paid within 30 days
 - (By first tier Subs/contracting financing)
- Making payments out of cycle
- Payment tracking tool/system
- Use of electronic payments
- Requirement of Sub payment affidavit
- Incentive payments use for Prompt Pay to all Sub tiers
- Social equity plan requirements (talk about programs for opportunities, training, and access capital for small diverse firms)
 - Experience and track record for Prompt Pay to all Sub tiers in evaluation of RFP/RFQ
- Payment accuracy
- Performance evaluation criteria on project for slow/no payment

2. Owner → Small Diverse Prime Contractor

- Money available for small diverse to be paid within 30 days
- Mobilization available for small diverse
- Use of electronic payments

3. Prime → Sub

- Requirements for payment (application monthly)
 - Sub → Sub
- Mobilization available for small diverse
- Use of electronic payments
- Retention release
- Prime professional contractors
- Prime construction contractors

4. Agency Internal Processes

- Approval process after invoice
- Payment frequency (more than monthly)
- Confirmation of delegated authority
- Enforcement strategies