

**Business Enterprise Program Council for Minorities,
Females and Persons with Disabilities Meeting**

MONTHLY COUNCIL MEETING MINUTES

100 W. Randolph
Room 2-025
Chicago, IL 60602

401 S. Spring St.
Room 500 1/2
Springfield, IL 62706

Monday, February 27, 2012 - 1:30 P.M

COUNCIL MEMBERS IN ATTENDANCE

Samantha Hufnagel
Charles Lynn Lowder
Alesia Hawkins
Beth Doria
Florence Cox
Nelida Smyser Deleon
Hedy Ratner

Joan Archie
Rodney Lewis
Fred Coleman
Jesse Martinez
Charisee Witherspoon
Larry D Ivory

COUNCIL MEMBERS NOT IN ATTENDANCE

Omar Duque
Richard Boykin
Lawrence Parrish
Alfred Ramirez
Perry Nakachi
Lynne Turner

COUNCIL SECRETARY

Paul Cerpa, BEP/ Deputy Director

CMS STAFF IN ATTENDANCE

Ngozi Okorafor
Agueda Corona
Elias Ricks Ngwayah II
Harry Reinhard
Philina King
Denise Reed

Radhika Lakhani
Gladys Rodriguez
Carlos Gutierrez
Ruddy Ortiz
Susan Hartman
Darryl Harris

OTHERS IN ATTENDANCE

Kacy Bassett
Margret Van Dijk
Ruddy Ortiz
Timothy Fishburn

Omar Brown
Darryl Harris
Gustavo Giraldo
Michelle Casey

AGENDA

1.0 Call to Order

2.0 Roll Call

3.0 Approval of the Minutes of the Council Orientation Meeting held on January 23, 2012

4.0 Chair's Report

5.0 Posted Business

5.1 Deputy Director Committee Summaries

6.0 Unfinished Business

6.1 Committee Updates

A. Exemption/Compliance Committee

B. Bonding Committee

C. Professional Services

D. Policy/Enforcement Committee

7.0 New Business

8.0 Adjournment

1.0 Call To Order

Secretary Cerpa called the February Business Enterprise Program (BEP) Council meeting to order at 1:40pm and informed the Council that Chairman Weems would be unavailable for the meeting.

2.0 Roll Call

2.1 Council Secretary Paul Cerpa took the roll call and announced that a quorum has been obtained.

3.0 Approval of the Minutes of the Council Meeting held in November, 2011

- 3.1 With a quorum established, a vote on the January minutes was taken and minutes approved, with the noted omission of Council member Samantha Hufnagel name from the list of those present. Correction was made to include her name before the vote.

4.0 Chair's Report

- 4.1 Secretary Cerpa informed the Council that there was no Chair's report but that he would instead deliver his own report. Secretary Cerpa disclosed that BEP was looking forward to completing and submitting the Annual Report for FY11. He noted that over all, the State has achieved 35.6% of BEP participation. Secretary Cerpa stated that this achievement was significant because we had fewer dollars for State contracting than the previous year. Secretary Cerpa also stated that for the first time in his report, he will be separating the DBE portion of the dollars that are received from both IDOT and Illinois Toll way to ensure that what we are reporting are in fact true BEP dollars. The dollars from these two agencies will be accounted for; however, we will keep them separate and apart from our overall achievement as CMS does not have oversight responsibilities for those DBE activities. Secretary Cerpa stressed that the report will be submitted to the Governor's Office and General Assembly on March 1st.
- 4.2 Secretary Cerpa further talked about the reporting structure brought up by IDOT in the previous meeting. He went on to explain that monthly reports will be made by all agencies. These reports are expected to be streamlined and that BEP is working on a format that will easily modify your existing system so that it will be able to provide us that information. Secretary Cerpa promised to release the reporting format layout, and the template which should be adopted, the instructions that will apply and a series of meeting that will be held with the agencies so that the instructions can be clear. The format will be sent to all agencies with the next 90 days, in anticipation of reporting needs for FY13. Secretary Cerpa explained that currently, agencies are reporting on twice – every six months and on an annual basis. He also said we want to make sure we identify those dollars well in advance before there are actually problems with our agencies meeting the overall goal and more importantly, BEPs being utilized to the maximum extent possible.
- 4.3 Council member Larry Ivory sought clarification about the 35% goal achievement. He noted that the percentage of BEP participation was commendable and great. He also alluded to questions he had regarding the percentage.
- 4.4 Darryl Harris asked the questions whether the agencies were reporting on projects that could have goals or are they reporting on actual expenditure versus the goal?
- 4.5 Secretary Cerpa responded that it was the actual expenditures on those contracts that had an established goal.
- 4.6 Darryl Harris asked what the threshold for agencies was across the board. Was it uniform?

- 4.7 Secretary Cerpa responded by saying that it is a 20% overall goal for the State, however, every agency has its budget along with allowable expenditures and requested expenditures. He went on to clarify that not every agency has achieved the 20% goal against its budget.
- 4.8 Darryl asked who is responsible for the subject to goal. Is it independent of each agency or is the continuity amongst the agencies?
- 4.9 Mr. Harry Reinhard responded that it was the Council. The information was given to the Exemption Sub-committee.
- 4.10 Council member Beth Doria confirmed that the Council did in fact review the information and had in fact denied some exemption requests.
- 4.11 Darryl Harris stated that his concern is what variable change that had an impact on the 35 percentage goal achievement.
- 4.12 Secretary Cerpa recommended that BEP will share the detailed aspects of the Annual report with Mr. Harris addressing all of the dollars and how they were achieved from the various agencies.
- 4.13 Council member Ivory stated that he agrees with Darryl and that this is one of the Council's biggest challenges to ensure that there is uniformity and consistency.
- 4.14 Council member Hawkins sought to explain when an agency has a procurement how do they decide whether or not to put a goal to it. Council member Hawkins said that there was a Paul Campbell memo that went out a couple of years ago that said when procurement is five hundred thousand dollars or more and includes an RFP, and then an agency can seek to have a waiver. This practice formed the basis by which agencies used to determine whether or not to apply for a waiver. She went on to say that other agencies used different criteria such as a hundred thousand dollars threshold.
- 4.15 Secretary Cerpa noted for the Council that we now had Council members Jesse Martinez and Charisse Witherspoon joining the meeting.

5.0 Posted Business

5.1 Committees' Summaries

- 5.1.1 Secretary Cerpa announced the next topic to be discussed is the Committee Summaries. He thanked everyone for their participation in the various committees. Secretary Cerpa called for a vote to approve the Special council

meeting minutes which was held on January 30, 2012 that established the various committees.

- 5.1.2 Before the vote, Council member Ratner thanked Secretary Cerpa for his leadership on appointing the various committees and asked whether everyone on the council was appointed to one or two committees.
- 5.1.3 Secretary Cerpa said everyone should participate and said we had asked for volunteers at the last meeting. He also said as of the present time, Council member Ratner was the only member of the Ad Hoc committee.
- 5.1.4 Council member Nelida Smyser-Deleon asked whether Council members wanting to participate on a committee should call the Secretary. Secretary Cerpa said yes and emphasized that if he does not hear from the council members, he will be calling them.
- 5.1.5 Council member Charles Lynn Lowder asked to be put on the Business Development committee.
- 5.1.6 Council member Ratner asked to be added to the Capital Access and Banking committee.
- 5.1.7 A vote for approval of the Special Council meeting minutes was taken and approved.

6.0 Unfinished Business

6.1 Committees' Update

- 6.1.1 **Procurement Committee:** Chairman Omar Duque was absent. No report submitted.
- 6.1.2 **Business Development Committee:** Chairman Rodney Lewis informed the Council that they on February 23, 2012 and discussed the following topics:

Vision, Mission and responsibilities are agreed to by consensus.

1. 30 ILCS 575/8a "Progress Payments"

Recommendation for the BEP Council to schedule a time for Mr. Don Lynch, CMS, to define and highlight the implementation of "progress payment" for BEP vendors. There are questions to pose to the Comptroller's office. How does the prime insure the subs or advances? How are contacts for BEP vendors payments expedited?

Phillip, Comptroller list of payments for vendor payment project.

II. 30 ILCS 575/8b "Shelter Markets"

An understanding for "Shelter Markets" has historically been focused on companies operated by persons with disabilities and not-for-profit agencies. "State Use" is the term CMS uses for its "Shelter Markets". Further information is available by contact on the regional coordinators, Corrie Smith and Brynn Henderson.

III. 30 ILCS 575/8c "Recommend rules and Regulations"

A review of some public acts affecting the mission of BEP was discussed. One recommendation is possibility in the future to research all statues which impact BEP vendors disproportionately. The objective is to see are there laws/regulations which are counterproductive to the BEP mission.

After all committees have refined their goals and objectives, the council will have a better position to recommend legislation and regulation reform.

30 ILCS 575/5 (2) (b) "Business list"

The committee had discussion on maintenance of the vendor lists. The current category coding system was under review to adopt the NAICS standard. Currently, the State doesn't have one single standard adopted. There was some concern some vendors are not fully capable to perform all function listed in their profile. A suggestion of incorporating into existing audits, a random verification process.

A hand full of vendors would be chosen to verify their capabilities. Another option was for the host agency to perform and onsite verification when performing their own audits or conducting business.

30 ILCS 575/5 (5) (d) (i) "Encourage Inclusion"

Contact the Secretary of State office requesting a small display of BEP opportunities place near business license applications and/or place a link on the CyberDriveIllinois page. A discussion referenced holding an entrepreneurship/career fair to provide exposure to the BEP and Illinois incentives in general. Areas for consideration Southern, Central and Northwest Illinois.

30 ILCS 575/5 (5) (d) (iii) "Investigating and Recommendations"

This item was excluded from discussion. Duties are more in line with another existing committee.

30 ILCS 575/5 (5) (f) "Grants and Donations"

Applying for grants to encourage business is mostly pursued by DECO. There was no interest in competing with another state agency for federal funds. Clarification was provide federal funds maybe still subject to the BEP act.

Donations from foundation and corporations are possible, to encourage development and growth of BEP vendors. However, a list of companies doing business with the State would have to be reviewed. There should be reasonable attempt to avoid an appearance of conflict of interest.

Council member Doria asked whether BEP verifies vendors' information regarding work they are applying for even after they have been certified to see whether they are certified in those areas.

Secretary Cerpa explained that their initial application states their areas of business activities to be certified with BEP. However, whenever they expand, they will have to reapply in those new areas of expertise. Council member Ratner also confirmed that the same action is taken at the Womens Business Development Center.

In closing, council member Lewis expressed two recommendations for actions: 1.) Have Don Lynch and others appear before the Council and explain the Progress Report, and 2.) Have Don Lynch and others explain the usage of the \$15.00 for every contract a \$1000.00 and above received by the Office of the Comptroller for processing.

Council member Ratner stated that in the past, CMS participated in a lot of conferences and trade shows. CMS used to give grants and contributions to these non-for profit organizations such as WBDC, CMBDC, and the Hispanic chamber of Commerce which was of great help. However, because of budget constraints, these contributions have stopped, yet some of these organizations still allow CMS to participate. Council member Ratner said it has been hard on the non-for profits and said it would be nice to receive some contribution from CMS to help these organizations until the state budget can improve. She therefore recommended that the Business development Sub-committee should look into that.

Mr., Dan Johnson asked the question whether there was progress made on picking which commodity codes made more sense.

Council member Lewis responded by saying that some universities have different codes and he would like the Council to look and see what codes are out there and whether there is a path way to one consensus code.

Council member Witherspoon asked if the \$15 is going for outreach then who is responsible for monitoring the success of that outreach.

Secretary Cerpa said he is also curious to know more about this program and as soon as he knows he will inform the council of such.

6.1.3 Capital Access and Banking Committee: Chairman Fred Coleman II informed the Council that the committee met on February 23, 2012 and that it was a teleconference meeting. Chairman made one correction to the minutes: the word "Bonding" was changed to "Banking". Chairman Coleman discussed the following agenda:

I. *Review Mission Statement*

Mission: To influence policies, legislation and practices that would favorably impact access to capital and bonding that will assist in the growth and development of minority, women, or person with disability business enterprises.

Outcome: Committee reviewed the mission statement and concluded that no changes were needed.

Committee Charge...This Committee recognizes the challenges minority, women, or persons with disability business enterprises face in gaining access to capital and bonding for stability and capacity-building. This committee seeks to identify and promulgate best practices, policies and legislative actions in ensuring financial capital access and bonding resources are used as an effective tool in their business development.

II. *Discuss IL CMS BEP Act Sections as Goals for the Committee*

a. *30 ILCS 575/5(3) Providing equitable bond rates....*

i. *What might be actionable information to develop as input for legislation?*

1. *Committee Action Item: Inquire and collaborate with the Department of Insurance as to information or data reporting from Surety agencies on the rates and/or criteria for rates charged to all who have sought, gained or been denied bonding.*

2. *Committee Action Item: Inquire and collaborate with various advocacy organizations on whether they have anecdotal evidence or collected data on the rates and/or criteria their members have experienced for bonding.*

b. *30 ILCS 575/5 (5) 9d (ii) Bonding small construction jobs*

i. *What might be actionable information to develop as input for legislation?*

1. *Committee Action Item: Focus is to broaden and expand the concept to “alternative bonding practices” to include and consider a variety of means and methods to achieve surety bonding on construction.*

2. *Committee Action Item: Inquire and assess other state agencies (outside of Illinois), governmental units and municipalities (outside of Illinois) the type and content of bonding and non-traditional bonding programs.*
 3. *Committee Action Item: Inquire and collaborate with surety companies throughout the United States that have a track record of bonding with minority, female and persons with disabilities owned enterprises.*
- III. *Solicit suggestions for other appropriate goals for the Committee (No action to be followed up at next committee meeting.)*
 - IV. *Identify Other State Agencies that Require Bonding Committee (No action to be followed up at next committee meeting.)*
 - V. *Discuss compiling an inventory of other state agency bonding requirements at various dollar thresholds Committee (No action to be followed up at next committee meeting.)*
 - VI. *Overview of Senate Bill 2491. Committee Action: Reviewed the bill and a copy of bill was provided to committee members. Committee will keep abreast to the movement of this legislation.*

Chairman Coleman gave an update on Senate Bill 2491. The Bill has been postponed.

Council member Doria encouraged Council member Coleman to look at the various Disparity Studies done by the city of Chicago, the State, Toll Way, and IDOT which specifically addressed the issue of Bonding.

Council member Ratner said she wants to work on the issue of Access to Capital for Minority and Women businesses.

Secretary Cerpa talked about some creative programs that could help with the issue of Bonding. He named the U.S. Department of Transportation Office of Small Business Utilization.

Council member Doria informed the Council that the Federation of Female Contractor tried tackling this issue in the last legislative session and the National

Surety Group heard about it and send out a letter saying it was not an issue with the industry but an issue of credit worthiness.

Mr. Dan Johnson informed the Council that they worked on a solution that wanted agencies such as Illinois Department of Transportation (IDOT) and Capital Development Board (CDB) to look at whether we are over insuring PBEs, MBEs and FBEs. He said Senator Sandoval is working on this issue. He encouraged the Council to echo the call for agencies to comply with Senate Bill 199.

Darryl Harris responded by saying that when he worked in CDB they worked on the Bonding issue and led for the increase of the threshold. Mr. Harris said they sought resolution to increase threshold from \$5,000 to \$100,000 but settled at \$50,000. According to Mr. Harris the Federal Government and also the City of Chicago had a threshold of \$100,000 for Bonding.

Council member Ivory expressed his belief that there may be some opportunities on the Bonding issue because of finds that point to there being disparity at IDOT and well as the Toll Way.

Secretary Cerpa said an opportunity for Capital Access could be identifying those banks that the State is depositing funds and see whether some lines of credits could be established guaranteed against the scope of contract awarded.

- 6.1.4 **Policy, Rules, and Enforcement Committee:** Chairperson Beth Doria told the Council that due to a very busy schedule the committee was unable to meet this month however, a meeting will be scheduled within the next two weeks.
- 6.1.5 **Certification Committee:** Chairperson Florence Cox told the Council told the Council that they had a certification committee meeting that morning and praised the staff for doing a great job because over the years since she been on this committee, there have only been about three (3) reversal of decisions taken by the committee. She told the Council that the decision taken by BEP to deny the vendor was upheld. She also informed the Council that a question came up during the Appeals hearing regarding if it was permissible to hold a hearing over the phone. She asked the Council to look into that question.

CMS Legal Counsel Nadine Lacombe encouraged council members to go through the Attorney General's office online for FOIA training. She further said she look into that question and get back to the Council.

BEP Legal Counsel Philina King reiterated what Counsel had said that question will be looked into in order to make sure we are doing the right thing as it relates to the requirements.

Secretary Cerpa urged the Council to consider changing the rules so that BEP will be able to approve recognition applications for one year in spite of the date of certification from the certifying agencies. According to Secretary Cerpa this would help BEP avoid a backlog.

7.0 New Business

- 7.1 Secretary Cerpa informed the Council that CMS is hosting a summit for IT firms on April 10, 2012. He encouraged Council members to inform IT firms that they know about the summit. It will be held at Governor's State University at University Park.
- 7.2 Council member Jesse Martinez informed the Council about CDB giving out some school grants. He talked about a school that got about 18 million dollars and has submitted a waiver request. He further said that he will review the request and make some notes and findings which will be submitted to the Chairman for review. The waiver is for the 5% minority and 5% female. Council member Martinez would like for the whole Council to weigh in on this request. Their funding is on hold until BEP Council makes a determination on their request.
- 7.3 Council member Cox asked what would happen to the money if their request id denied. Council member Martinez said they would not get the money but wants the council to weigh in on it.
- 7.4 Council member Cox said "on hold" is one thing and "not having the money totally" is another thing. She could not record reading anything that said if you don't meet the goal requirement that you do not get the grant.
- 7.5 Darryl Harris said it all depends on the Board acceptance of their good faith efforts. He also recommended that someone research the idea of the threshold being reduced to two-fifty where one could set a goal. He said it passed when he was in the Council.
- 7.6 Council member Ivory requested that BEP staff send out our official opinion on how the Council is going to be handling waiver request. According to Council member Ivory this issue has come up to him at the Procurement Policy Board and with other people.
- 7.7 Council member Martinez requested that any CDB grant dealing with this large amount of money be brought before the full council. He does not believe they would be many.

- 7.8 Secretary Cerpa sought clarification from council member Martinez about the amount of waivers that will be brought before the Council.
- 7.9 Council member Martinez responded that the committee and CMS staff could work on those, not the full Council.
- 7.10 Darryl Harris wants to know if Senate Bill 3249 authorizes the waiver requests to come before the BEP Council.
- 7.11 Counsel Philina King explained that SB3249 said any Capital Grants over \$250,000 dollars must comply with the BEP ACT. If it follows the ACT then it has to meet the requirement of the ACT which states that waivers have to come before the council.
- 7.12 Darryl Harris wants to know whether that applies to all CDB waivers.
- 7.13 Secretary Cerpa wanted to know whether CDB cannot handle certain waivers and not bring them all to the Council.
- 7.14 Council member Martinez said because this is the first waiver request on grants, he would like everyone to have an input but would work with CMS.
- 7.15 Council member Lowder said it been some time since the passage of SB1270 and a lot of Veterans still do not know the implications. He wants CMS to get the word out and make this a front issue.
- 7.16 Secretary Cerpa said that we have the Vet's application online and the rules were submitted to JCAR.
- 7.17 Council member Ratner informed the council that on March 22, 2012 Director Weems will be speaking at the City Club of Chicago and will need some support because it is a very intimidating crowd.
- 7.15 Dan Johnson informed the Council about three Bills the Council might be interested in. These Bills are on behalf of the Federation of Women's Contractors. Bill #1 is to have the Illinois Commerce Commission require all utilities to report what their goals are for all of their spent to the ICC. Bill # 2 seeks to impose goals on all gambling institutions, boats, and race tracks. Bill # 3 is trying to get some direct pay for IDOT subcontractors pilot program.
- 7.16 Council member Ivory his organization supports the Bills and would like to know what kind of support they could give.
- 7.17 Darryl Harris asked that the Council's lawyers should look into having lobbyist participating on the Commissions or Councils.

8.0 Adjournment

Meeting adjourned at 3:21pm

Note: The next special Council meeting was scheduled for Monday, March 26, 2012, Room 2-025, James R. Thompson Center, 100 W. Randolph Street, 1:30pm to 3:30pm.