

**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, April 22, 2013 - 1:30 P.M

COUNCIL MEMBERS IN ATTENDANCE

Florence Cox	Corrine Pierog	Beth Doria	Fred Coleman
Alesia Hawkins	Lynne Marie Turner	Charisse Witherspoon	Larry Ivory
Joan Archie	Nelida Smyser DeLeon	Marva Boyd	Jesse Martinez

COUNCIL MEMBERS NOT IN ATTENDANCE

Alfred Ramirez	Rodney Lewis	Samantha Hufnagel	Omar Duque
Hedy Ratner	Richard Boykin	Perry Nakachi	

COUNCIL CHAIR

Malcolm Weems, Chairman

COUNCIL SECRETARY

Paul Cerpa, BEP Deputy Director

CMS STAFF IN ATTENDANCE

Harry Reinhard	Kevin Connor	Susan Hartman	Ashley Hooks
Ngozi Okorafor	Evonne Velasquez	Elias Ricks	Ngwayah II
Ellen Daley	Leslie Taylor		

OTHERS IN ATTENDANCE

Tom Mikrut	Vir Doshi	Dante Watson	Carlos Charneco
Charles Harrell	Timothy Fishburn	Deanna Rossetto	Art Moore
Michelle Casey	Joanna Gunderson	Amanda Baylor	Margaret Van Dijk

AGENDA

April 22, 2013 - 1:30 p.m.

- I. Welcome
- II. Call to Order
- III. Roll Call
- IV. Approval of Minutes of Council Meeting held on March 25, 2013.
- V. Chair's Report
- VI. Posted Business
- VII. Unfinished Business
- VIII. Committee Updates
 - Procurement Committee
 - Business Development Committee
 - Capital Access and Banking Committee
 - Certification Committee
 - Policy, Rules and Enforcement Committee
- IX. New Business
 - Waiver Posting
- X. Public/Vendor's Testimony
- XI. Adjournment
 - Next Council Mtg. – May 28, 2013

Welcome

Secretary Paul Cerpa called the April Business Enterprise Program (BEP) Council meeting to order at 1:45PM on April 22, 2013. Secretary Cerpa informed the Council that Chairman Weems was running late and would join the meeting at a later time.

Roll Call

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

Vote and approval of the Minutes of the Council Meeting held on April 22, 2013 were established.

Secretary Cerpa announced to the Council the presence of the newest council member Ms. Corrine Pierog. Council member Pierog later introduced herself to the Council.

Chair's Report

Secretary Cerpa told the Council that the whole of last week was spent in Springfield contending with two appropriation Hearings with both the Senate and the House and that it went well. Secretary Cerpa also informed the Council that there were two issues that came up during the Hearings: Waivers and Sheltered Market. He reminded the Council that CMS acting on behalf on the Council had submitted both the regular JCAR rules for the sheltered market in addition to the emergency rules. Unfortunately the emergency rules were met with an objection by JCAR. The objection involves a number of issues submitted by some of the members. These include: The sufficiency of the Disparity Study prior to implementing the sheltered market rules; the method of the selection of the procurements to be used for sheltered market; Concerned whether sheltered market was subject to litigation; what is egregious discrimination; clarity in ensuring the Supreme Court cases supported sheltered market concept; put standards in the rules in defining what is egregious discrimination; revalidation in and clarification between the IDOT and the CMS rules to determine if any discrepancies.

The secretary further said despite the objection, the emergency rules will be in effect until August 11th. We will be filing response to their objection and understand additional rules comments may be forthcoming from CPO's. The earliest the second notice can be filed is after May 14th. If this happens, it will

appear in the June JCAR agenda. The latest we can file for the second notice is June.

Council member Florence Cox asked whether the federal rules defined the word “egregious”. Secretary Cerpa responded that it does not define -the question is asked from JCAR: What is egregious discrimination? However, we are going to provide an analysis of the term itself.

Council member Corrine Pierog asked whether that includes economic discrimination as well. Secretary Cerpa said it can as it relates to funding and bonding. Council member Marva Boyd told the Council that they went through a similar situation with the definition of “egregious” at IDOT. Council member Boyd proposed seeking legal advice on this issue. General Counsel Kevin Connor told the Council that the term egregious is not necessarily defined therefore the examples that are being called for make it even more difficult to define. Secretary Cerpa asked council member Boyd whether they had an issue at IDOT with JCAR regarding the definition of “egregious”. Council member Boyd said no. They used the anecdotal evidence to substantiate the information. She further said they conducted three public hearings at Chicago, Peoria, and East St. Louis. From the verbal testimonies and also written testimonies that were given, we composed anecdotal evidence. The Chief Procurement Officer weighed in and rendered a decision which led to IDOT adopting a Target Market in District 8, the East St. Louis area. So right now District 8 is the only area with a Target Market program in Illinois. Secretary Cerpa asked council member Boyd how they decide which of the contracts are slated for the target market bidding. Council member Boyd said they work closely with the Division of Highways. It takes up to six months to plan for the target market participation. The Highway Division gets together and takes a look at all the contracts coming down the pipeline and looks at opportunities exist to unbundle larger projects so that there can be a wide variety of firms competing for those projects. There has to be a minimum of three DBEs available in a category. Council member Larry Ivory reminded the Council that this topic regarding “egregious discrimination” had been discussed before. He thought the Council had crossed that threshold. Secretary Cerpa recalled the Council talking about the definition of “egregious” but never really defining the word but more considering alternatives as an option.

Council member Fred Coleman sought clarification from Secretary Cerpa regarding the first and second notice filing he had previously discussed. Secretary Cerpa said when rules are filed with JCAR there is a first notice that allows for comments to come back. When these responses come after the first notice then they go back out through a second notice. After that they are voted upon.

Council member Ivory wanted to know whether the emergency rules were rejected. Secretary Cerpa said they were “objected to” until they received responses.

Posted Business

No posted business

Unfinished Business

No unfinished business

Committee Updates

Procurement Committee – Chairlady Charisse Witherspoon informed the Council that the Subcommittee meeting held their meeting at 11:45am. She informed the Council that they had touched on some issues in the most recent minutes and also talked about how to create forecast and the challenges in collecting and presenting that information. She further said in terms of collecting sometimes agencies do not report what they should. She gave an example of how out of 65 agencies only 12 had provided the information that they were expected to provide. According to chairlady Witherspoon, this happened in the first nine months of FY12 to FY13. They also looked at two areas where they felt better opportunity might exist for BEP vendors to bid as primes: contractual services and electronic data processing. The contractual services excluding universities and subcontractors spend is 3.37%; and the electronic data processing is 3.4%. She said they are trying to figure out why these percentages are low and how the numbers can be improved. Also they are looking at how feasible it is to reach the 20% goal with three months left in the fiscal year. Secretary Cerpa reminded the Council that the overall 20% was an aspirational State goal, thus, he wanted to know what the goal of the Committee’s report is: Was it to increase the EDP numbers to twenty percent or increasing overall? Do they have any suggestions? Chairlady Witherspoon responded that getting vendors more knowledgeable about the opportunities available to them should be the first step. She also recommended negotiating and navigating the Procurement Bulletin is part of that process and establishing training workshops as it is being done by certification. They identified small purchases as a place to work with because it has at its heart, capacity building. One problem discussed is that the classification code might be different from the words being used by the vendors.

Chairlady Witherspoon concluded by emphasizing that the challenge was to create a reasonable balance of the burden between the staffer and the vendor. Lastly she said that they were trying to get the procurement agency to help vendors with their procurement. The Chairlady introduced Mr. Dante Watson, procurement office for Illinois Department of Transportation (IDOT) and asked him whether what was being discussed was feasible. Mr. Watson said getting the agencies to submit their monthly reports would be helpful. He also said regarding forecasting that educating the vendors about what is being asked for helping them to know where to find it is very important. Secretary Cerpa asked Mr. Watson whether he was suggesting that procurement workshops would be helpful to these vendors' education. Mr. Watson answered in the affirmative. Secretary Cerpa did mention that BEP has been working with Ms. Evonne Velasquez in the educational aspect of these vendors. Ms. Susan Hartman did also emphasize the education of these vendors by also encouraging having more vendors' conferences. Council member Beth Doria wants to know in those instances where the vendor is deemed unresponsive whether we circle back with them. Ms. Hartman suggested that that should be the responsibility of the buyer. Council member Florence Cox asked whether there are a certain percentage of people to contact in determining good faith efforts. Ms. Hartman responded no. She said they usually stop to five because that is the number of boxes available to be filled. Council member Ivory encouraged the Council to become firm with vendors that do not meet their good faith efforts. Council member Fred Coleman told the Council that from his experience, educating the vendors include attending the pre-bid conferences; explaining to them the process for filling out the paper work, explaining to them what good faith efforts entail; and explaining to them where they can find BEP vendors. In other words, helping the vendors initially will prevent a slow-down of the project.

Chairman Weems arrives and apologizes for being late. He also proposed having mandatory pre-bid to help vendors understand what is expected from them. Chairman Weems asked what was the number one reason agencies might be resistant to having pre-bid conferences. Council member Alesia Hawkins response was time. Council member Beth Doria proposed using webinar as a means to educate the vendors. Council member Witherspoon said most pre-bid meetings are boring. She said it has to have a plan and not just a date. Council member Pierog asked whether there are follow-ups on Small Business vendors regarding why they did not get selected for the contract. She believes this would be helpful to educating the vendors on mistakes they might have made during the application process so that next time they could be competitive. Susan Hartman said there is a provision for the vendors to ask for a post-bid meeting at which time their concerns will be addressed. Council member Pierog added if we want people to be successful, we have to show them the path to success. Chairman Weems responded that we do have a lot of outreach and workshops to

show people how to participate. Council member Witherspoon asked what is the status of the plan that is being worked on that will enable CMS to tell people the history of each procurement. Secretary Cerpa said it is expected to be implemented by July 1st. Council member Witherspoon asked whether it is on track. Secretary Cerpa said yes.

- Business Development Committee – No report.
- Capital Access and Banking Committee – Chairman Fred Coleman told the Council that the subcommittee attempted to set up a teleconference with Matt Cooper, the underwriter for Inner City Underwriting, but we were unable to obtain a quorum. He said he spoke with Mr. Cooper individually and he is willing to visit the BEP Council and explain his approach and the operation of his program which should be very enlightening for the BEP Council. Council member Coleman asked permission for Mr. Cooper to come before the Council for about 15 to 30 minutes to address the Council as part of the Capital Access and Banking Committee report. The topic will be Surety Bonding Program for Contractors. There were no objections from the Council. Secretary Cerpa said he would be granted 15 minutes to address the Council.
- Certification Committee – No report due to no appeals.
- Policy, Rules, and Enforcement Committee – Chairlady Doria said unfortunately she had no report due to difficulty scheduling a meeting. Chairlady Doria asked anyone on the Council that would like to join this committee to please join it. Council member Witherspoon advised Chairlady Doria to select a set date that everyone will plan for. Secretary Cerpa told the council that each member has to be part of a subcommittee. And once you are part of a committee, you have to attend the meetings.

New Business

- Waivers Postings

Secretary Cerpa informed the Council that BEP has been working the CPO office who was responding to the Auditor General as to where the required information, as required by the BEP Act was being posted on the CPO website with regards to waivers. This mandate is found under section 7 of the BEP Act. In summary, the contractor has the ability to request a waiver and the Council has the ability to grant such waivers. He stated that apart from CDB waivers request, this Council

has not reviewed any other waivers. With CDB waivers, they deal with grants. Secretary Cerpa said that there are 60 agencies and 9 universities that have responsibility in presenting good faith efforts, and he does not believe the Council has the time to address all of those requests. Secretary wanted to present new business consideration for the Council addressing the process of Waivers.

Secretary Cerpa then asked council member Coleman to explain how the universities handle waivers and their posting. Council member Coleman started by saying that the waivers process vary from universities to universities. He further said that according to section 6 of the BEP Act, when universities have to submit their annual compliance plan, the universities are dedicated certain authority while developing their plan to deal with good faith efforts and waivers. The university took that as an individual mandate separate from the BEP Act to make decisions concerning waivers and good faith efforts. The universities developed their own guidelines and processes with respect to good faith efforts regardless of whether waivers will result from that. He did acknowledge that there is a lack of clarity on this issue between the universities and the BEP Act.

Secretary Cerpa said understanding this one university's process and being applied to all agencies being included and then to have the Council review relevant waiver requests will bring procurement to a standstill. Council member Doria added in order to deal with all waivers request, the Council will have to meet at a minimum every week.

Council member Ivory told the Council that if there were implementation of a tracking system that each member of the Council had access to and this system is used by the vendors than their good faith efforts could be tracked instantaneously. Council member Jesse Martinez disagreed with Council member Ivory. Council member Martinez said even though the vendor might call a sub in good faith, they might only call to fulfill the requirement and not really seeking a sub in reality. That is why we need follow-up calls from BEP. It is not only good to know that they called but what the responses from those vendors that were contacted were. It is good to hear both sides. Then you get to hear the real story from the vendor as to whether he/she was treated fairly or not. Council member Martinez said because of the quick turnaround time expected from these waivers request, he was requesting permission from the council to implement the CDB process by reporting to the Council about submittals and the decisions that were made. He said to have the council evaluate every decision that is made is going to take months depending on whether we have a quorum or not.

Secretary Cerpa said he would recommend to the Council that until the Act is amended, the Council or it designee should review the waivers request. Council Doria asked for the numbers on those that want adjusted goals and those that

are actual waivers. Secretary Cerpa said there are three times a waiver request can be made: Prior to bid; Post award; and in a Decision memo. Council member were advised that the Council take seriously the need to thoroughly look at the issues dealing with waivers because they can affect the duration of bid award determination. Council member Ivory asked how often waivers are requested and how often are they accepted. Council member Martinez said in a month he might have three or four waivers requests. Council member Coleman receives about 12 to 15 bid construction projects a month. Out that amount I review one waiver request every two months with about 80-90% denial. Secretary Cerpa said BEP receive about 60 to 70 contract bids a month. Out of that amount about 35% are being looked at for good faith efforts with a guesstimate of 15-20% approval rating. Council member Cox asked that the different scenarios being proposed should be put on paper so that the members should look at them. Secretary Cerpa said they will provide a report to provide more insight into the waiver issues and that procedural measures can be voted on next month.

Public/Vendors' Testimony

Chairman Weems opened the floor for the public testimony. Mr. Charles Tyrrell II, President of Technology Architect Corporation, wanted to know when the preliminary Disparity Study report will be out. Chairman Weems said that they have until the end of this month to finish after which a special meeting will be called and reviewing the preliminary report will take place. He concluded by saying that the Disparity Study is on schedule.

Adjournment

The next Council Meeting will be held on May 28, 2013

Meeting adjourned at 3:33PM.