



Business Enterprise Program
Council for Minorities, Females and Persons with Disabilities
Monday, October 28, 2019
1:30 PM – 3:30 PM
MONTHLY COUNCIL MEETING MINUTES

100 W. Randolph
Room 2-025
Chicago, IL 60601

401 S. Spring St.
Room 500 ½
Springfield, IL 62706

COUNCIL MEMBERS IN ATTENDANCE

Marietta Denise Barreto; Alex Bautista; Janel Forde; Jesse Martinez; Sharron Matthews; Sharla Roberts; Alma Tello

COUNCIL MEMBERS NOT IN ATTENDANCE

Bola Delano; Emilia DiMenco; Jaime di Paulo; Beth Doria; Karen Eng; Larry Ivory; Edward McKinnie; Sheila Hill Morgan; Kaney Frances O'Neil; Jorge Perez; Hedy Ratner

COUNCIL CHAIR

Janel Forde

COUNCIL SECRETARY

Terrence Glavin

CMS STAFF IN ATTENDANCE

Jeanetta Cardine; Carlos Gutierrez; Radhika Lakhani; Irma Lopez; Mike Merchant; Elias Ricks Ngwayah II; Harry Reinhard

OTHERS IN ATTENDANCE

N/A

In accordance with the Illinois Open Meetings Act (5 ILCS 120) and the
Freedom of Information Act (5 ILCS 140) the above meetings are open to the public
BEP Council



**PUBLIC NOTICE
STATE OF ILLINOIS**

Business Enterprise Council for Minorities, Females, and Persons with Disabilities

100 W. Randolph
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AGENDA

October 28, 2019

1:30 p.m. – 3:30 p.m.

- I. Welcome
- II. Call to Order
- III. Roll Call – Terry Glavin
- IV. Approval of Minutes of Council Meeting held on August 26, 2019
- V. Chair’s Report – Janel Forde
 - Mentor-Protégé Program
 - Developing Key Performance Indicators (KPIs) to measure and improve BEP Impact
 - Liquidated Damages language
 - Memorandum sent to all agencies emphasizing BEP Council and Administration’s commitment to supplier diversity; made clear to agencies that the Council will be reviewing FY 2020 Compliance Plans with rigorous scrutiny.
 - Vision 2020
- VI. Subcommittees Reports
 - Certification Subcommittee Report
 - Outreach Subcommittee Report
 - Compliance Subcommittee Report
- VII. Ongoing Business
 - Update on Utilization Plan
 - Update on the Attendance Policy
 - Update on the Data-Sharing and Usage Agreement
 - Update on the One-Pager

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BEP Council**



- Update on Dispute Resolution
- Update on the Internet Egress RFP
- Legislation
 - i. **SB 534 (Jones,III)-NEUTRAL-P.A. 101-0170**
 - Amends the BEP Act to requirement that minority-owned business, women-owned businesses, and businesses owned by persons with disabilities get a specific percentage of the total dollar amount of construction and various other service contracts with the State. Adds persons with disabilities into the goal requirements for construction contracts.
 - The bill language breaks down the 20% goal for construction specifically to mirror the 2% for disabled, 11% for minorities and 7% for women, as it exists for other contracts. Makes these same changes relative to other specified types of contracts (technology, accounting, insurance services, financial services, etc.).
 - Amends the Criminal Code to increase the penalty for deception relating to certification as a disadvantaged business enterprise to a Class 1 Felony (currently a Class 2 felony).
 - Makes other changes relative to waiver and exemption requests including the ability for the Council to charge a fee for waiver requests.
 - **HB 3895 (Arroyo)-OPPOSE**
 - Amends the BEP Act to increase the annual gross sales cap to qualify for certification to \$125,000,000 annually. The cap is currently \$75,000,000.
 - Increasing the gross sales cap creates risk of a potential legal challenge to the program given that the current cap is one of the highest in the nation and the program is designed for small disadvantaged businesses.

VIII. New Business

- Discussion on Council's Meeting date in December
- 2020 BEP Meeting Calendar

IX. Sheltered Market

X. Public/Vendor's Testimony

XI. Adjournment

- Next Subcommittee Meetings
 - Certification Subcommittee Meeting – November 25, 2019
 - Outreach Subcommittee Meeting – November 26, 2019
 - Compliance Subcommittee Meeting – November 27, 2019
- Next Council Mtg. – December 23, 2019

Please note: In case you need to connect to the meeting via teleconference, please use the following number and access code:

Teleconference Number: 888-494-4032

Access Number: 2587213722

BEP Outreach Events: <http://www.illinois.gov/cms/events/SitePages/List.aspx>

Note: There will be no IPB Notices and Solicitations Reports for this meeting.

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MINUTES

October 28, 2019
1:30 p.m. – 3:30 p.m.

I. Welcome

Chair Forde welcomed everyone to the meeting and introduced new member, Alma Tello representing the Department of Commerce and Economic Opportunity. Ms. Tello serves as the Deputy Director of Minority Economic Empowerment.

Chair Forde detailed a recap of a recent events. She was invited to attend an event with BLT on Tuesday, October 22nd, in Chicago, where she participated on a panel along with Jim Underwood of the Capital Development Board and Director Erin Guthrie from DCEO. Also in attendance were Sharla Roberts, Jesse Martinez, Larry Ivory, Terry Glavin, as well as CMS staff, Mike Merchant, Radhika Lakhani, Elias Ngwayah. In the interest of furthering outreach engagement and strategy goals for 2020, Chair Forde requested that Council members alert her of outreach opportunities that the Department could either partner with or attend.

Representing the Department as an event sponsor, Michael Merchant and Chair Forde participated in the DoIT Diversity Supplier Day at Chicago State University where they discussed how to become a BEP-certified vendor and listened to the Governor discuss his initiatives to promote diversity and inclusion, aided by programs like BEP. She encouraged everyone to attend events where the Governor is speaking because it is informative to hear firsthand what his administration's priorities are and how he is challenging the team to make these priorities a reality.

Chair Forde announced the upcoming 1st Annual Native American Chamber of Commerce breakfast on November 19th, sponsored by Andrew Johnson. She encouraged the council to attend.

II. Call to Order

Chair Forde called the meeting to order at 1:39 pm.

III. Roll Call – Radhika Lakhani

Roll call conducted. Quorum was not established.

IV. Approval of Minutes of Council Meeting held on August 26, 2019

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Approval of the Minutes was skipped due to lack of quorum.

V. Chair's Report – Janel Forde

➤ Mentor-Protégé Program

Chair Forde discussed CMS' focus on laying out the framework before 2020 for their broad and bold capacity building, outreach, and enforcement vision. She stated that one of the priorities is the development of Mentor-Protégé Program. Chair Forde said she has been looking across nationally at other program's best practices to find what works best for Illinois.

Chair Forde explained that the Mentor-Protégé Program is willing to support both primes and subcontractors in professional development, increasing vendor's capacity to perform on contracts and eventually shifting them to primes. She said they will be holding interviews in November for who will lead the Mentor-Protégé Program and look to hire them before the end of the year.

➤ Developing Key Performance Indicators (KPIs)

Chair Forde stated that KPIs are important operationally and internally because it is vital to know what levers drive our business, what success looks like, how the Department can be held accountable and hold others accountable. This is often seen through data, KPIs and communication. Internally the BEP team and the folks at supportive data practice, a new emerging part of CMS, are working to identify those data points so that they can be shared with the Council.

➤ Liquidated Damages language

Chair Forde pointed out that the program is only as strong as its enforcement mechanisms. She stated that Maryland's BEP-type program stood out as having strong enforcement mechanisms in their toolkit which are being looked at, one of the mechanisms being liquidated damages, and seeking to introduce them into the contract.

➤ Memorandum sent to all agencies emphasizing BEP Council and Administration's commitment to supplier diversity; made clear to agencies that the Council will be reviewing FY 2020 Compliance Plans with rigorous scrutiny.

Chair Forde explained that the memorandum, which went out in early October, reiterates the commitment of the Governor, Council, CMS, and BEP towards vendor diversity and inclusion. She stated that they wanted to make sure agencies collaborate, which can help achieve the administration's goals.



➤ Vision 2020

Chair Forde stated that the CMS team wishes to come before the Council to share their vision for 2020. She said they will discuss some of their priorities and initiatives at a very high level and share more specific strategies and tactics.

VI. Subcommittee Reports

➤ Certification Subcommittee Report – Chair Sharla Roberts

Member Roberts reported that 5 requests were set to be reviewed on September 23rd; two vendors, Advanced Supply Company, Inc. and TotalMed Staffing were asked to submit additional information; Jennings Painting was a no show; Ezell Excavating, Inc.'s appeal was denied; and Greater Pacific Securities' appeal was overturned and approved.

➤ Outreach Subcommittee Report – Member Alex Bautista

Member Bautista stated that the update to the One Pager introduction to the BEP program for distribution to agency directors, deputy directors, chiefs of staff, and other new personnel, was discussed. He said a rough draft will be reviewed and released.

Member Bautista explained that committee attendance has been a robust discussion topic. He stated that a 100% to 10-20% fluctuation in attendance has been noted and that a consensus was reached in that the council has to self-govern regarding attendance. Member Bautista stated that the draft Attendance Policy is available for review and comment and that everyone should email their feedback to Radhika Lakhani to compile and distribute for review.

➤ Compliance Subcommittee Report – Chair Sharla Roberts

Member Roberts stated that various issues were discussed during the Monday, September 30th meeting, some of which have already been addressed at today's Council meeting. She stated that some of the issues discussed at the subcommittee meeting were conducting surveys, processes, procedures, documentations, penalties, as well as liquidated damages. Member Roberts said they will wait for the information Ms. Lakhani is working on to discuss at the next subcommittee meeting. She stated different compliance for each CPO's office and the update on the rules were also discussed. She asked if there were preliminary rules, if so she requested a copy when Mr. Glavin had the time. Mr. Glavin stated there has been quite a bit of legislation affecting BEP and that updating the administrative rules would need to be pushed back to work on the more critical work of legislation.

Member Matthews commented that the BG2NOW system has experienced a lack of connectivity and interoperability issues. Mr. Merchant stated that CMS is aware of the issues and have been working to correct them.



Member Matthews thanked Sharla Roberts for her immense efforts throughout the 4-5-hour Compliance Subcommittee meeting and the committee for their decision to allow opportunities for participating state entities who are partners for the resources for the program to come to the committee for discussion.

Member Roberts added that the Compliance did go through every request and that Compliance reports are due October 31st. Chair Forde also expressed thanks to all working on committees and subcommittees and all the progress that has been made.

VII. Ongoing Business

➤ Update on Utilization Plan

Ms. Lakhani reported that she met last week with Member Roberts, Member Martinez, Ben Bagby, and BEP staff on the U Plan. She stated that she is working on compiling the existing versions into one document that will be sent out to the working group. After one final meeting it will be finalized and presented at the next Council meeting.

➤ Update on the Attendance Policy

Member Roberts expressed concerns about direct disciplinary action. Member Bautista clarified that there were varying levels of keeping track of attendance levels proposed in the draft attendance policy. Member Barreto pointed out additional challenges faced by independent business members. Member Matthews acknowledged Member Barreto's comments and suggested offering of stipends to offset outside member expense. Member Bautista pointed out the section regarding electronic attendance that assists in dealing with the issue of traveling for members who are not government employees.

➤ Update on the Data-Sharing and Usage Agreement

1st update from Ms. Lakhani: The document is executed and the parties are working together to ensure a seamless transfer of information.

➤ Update on the One-Pager

Member Roberts asked if she had the correct version of the One-Pager. Ms. Lakhani stated that it was the correct version.

➤ Update on Dispute Resolution

Ms. Lakhani stated that Member Roberts already eloquently gave the update on the dispute between IT Architect and Verizon. She added that BEP is working on a dispute resolution process which Chair Forde mentioned in her opening statements. Ms. Lakhani said the goal is to allow program participants to have a forum for their concerns to be addressed as they arise and to have clear and concise policy in place to ensure program rules are complied with. Chair Forde expressed her empathy for the issues vendors had experienced during the dispute resolution process and offered that they reach out to CMS and BEP to help facilitate and to know that a successful resolution will be at hand.

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Ms. Lakhani stated that in regard to the Obama Energy Corporation (OAC) and Wesco dispute, a second mediation meeting took place with OAC, Wesco, BEP Legal and the CMS Assistant Director on October 10th. She said Wesco agreed to host a number of calls with its' manufacturers allowing OAC the opportunity to possibly enter into a distribution agreement with each manufacturer. Ms. Lakhani said Wesco agreed to submit documentation on products ordered and distributed under the contract.

➤ Update on the Internet Egress RFP

Ms. Lakhani stated that CMS is working with DoIT to provide further information at next meeting. Member Matthews asked if the internet Egress RFP would be a sheltered market. Ms. Lakhani stated would need to get more information on the Internet Egress becoming a sheltered market. Mr. Glavin added that he is in ongoing discussions about this item and would be giving an update to the Council.

➤ Legislation

i. **SB 534 (Jones, III)-NEUTRAL-P.A. 101-0170**

- Amends the BEP Act to requirement that minority-owned business, women-owned businesses, and businesses owned by persons with disabilities get a specific percentage of the total dollar amount of construction and various other service contracts with the State. Adds persons with disabilities into the goal requirements for construction contracts.
 - Not commented on.
- The bill language breaks down the 20% goal for construction specifically to mirror the 2% for disabled, 11% for minorities and 7% for women, as it exists for other contracts. Makes these same changes relative to other specified types of contracts (technology, accounting, insurance services, financial services, etc.).
 - Not commented on.
- Amends the Criminal Code to increase the penalty for deception relating to certification as a disadvantaged business enterprise to a Class 1 Felony (currently a Class 2 felony).
 - Not commented on.
- Makes other changes relative to waiver and exemption requests including the ability for the Council to charge a fee for waiver requests.
 - Not commented on.
- **HB 3895 (Arroyo)-OPPOSE**

Amends the BEP Act to increase the annual gross sales cap to qualify for certification to \$125,000,000 annually, the cap is currently \$75,000,000.

 - Ms. Lakhani communicated this agenda item to the Council.

Increasing the gross sales cap creates risk of a potential legal challenge to the program given that the current cap is one of the highest in the nation and the program is designed for small disadvantaged businesses.



VIII. New Business

- Discussion on Council's Meeting date in December
Chair Forde discussed moving the December meeting date forward and that although no vote would occur today she asked that members consider the dates proposed, December 2nd or 9th.
- 2020 BEP Meeting Calendar

IX. Sheltered Market

Ms. Lakhani explained that BEP Legal, BEP staff, along with Michael Merchant have been working together to develop a policy to implement sheltered markets. She said that once other sheltered markets have been identified they will have the knowledge to implement them efficiently. Member Matthews expressed confusion over IT and marketing having been implemented. Ms. Lakhani explained that she was only speaking generally over sheltered market policy implementation. Member Matthews asked how soon before it is ready. Chair Forde stated it is still being worked on and would be shared as soon as it is ready and that until then it remains on a per request basis.

Member Roberts discussed the disparity study and how data should be looked at and how this could address Member Matthews' concerns. She also recommended that the Department should not do disparity studies for everything but look at data to see our spin and discuss at next council meeting those categories and see where the data drives us. Mr. Glavin stated that the constitutionality of the BEP program generally requires disparity studies whenever treating individuals or groups differently based on suspect classification as judged by the courts in order to qualitatively and quantitatively justify past disparity requiring a solution that is narrowly tailored to resolve it. He concluded that disparity studies are a best practice and that the Department can constitutionally fend off challenges.

Member Roberts agreed but expressed her hope that all anecdotal evidence is documented to demonstrate how they are not being utilized in the program to support any sheltered market that may appear in the near future.

Member Matthews also agreed and added that the business sectors within the classes should be easy because the state has that data. Her other concern is about how much work has to be done and recommended the Department look at the agencies as adjunct staff and compare data rather than have BEP do a separate study by itself.

X. Public/Vendor's Testimony

- Bruce Montgomery: Mr. Montgomery thanked BEP for progress made and for tabling the areas that were highlighted such as the Mentor-Protégé program, the Department taking on establishing KPIs and request to get agency reports in by October 31. He detailed how the Fair Practices in Contracting Task Force worked on a granular level with BEP and with

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each agency, holding weekly meetings with each agency, providing detailed reports regarding inclusion opportunities for the vendor community, which could be shared with BEP. Mr. Montgomery said that the data must really be reported at every meeting and that if must be recognized where there has been success in awarding activities. Mr. Montgomery emphasized the need to get ahead of the budget cycle, identify where real inclusion opportunities exist, make the vendor community aware of those opportunities, then encourage the agencies to take advantage of tools like the sheltered market program in order to really move the needle, so that when the effective increase in inclusion of contracts granted were to be reported there would be some evidence that that actually happened. He concluded, thanking BEP for making these very important efforts and stating that he believes that the case was made today for enactment of the Fair Practices in Contracting Task Force to be made into a Commission and working in tandem with BEP would produce the desired results.

- Herb Stokes of Obama Energy Corporation: Mr. Stokes spoke as a committee member representing Chicago Minority Supply Development Council, and chair of the MBIC Committee, which he explained is about advocacy. He said he feels it is important to truly partner with BEP. In that respect, Mr. Stokes stated that he would like to humbly invite Chair Forde to attend their monthly meeting where they would like to discuss the Mentor-Protégé Program and how one may move from protégé to partner, particularly affected by the change to increase the level of the gross sales which he stated affects the level of participation and responsibility that goes along with that.
- Thomas Bowling of Obama Energy Corporation: Mr. Bowling identified himself as the President of Obama Energy Corporation then had his attorney, Tom Planera take the floor regarding the Wesco dispute. Mr. Planera thanked Ms. Lakhani's and Mr. Glavin's efforts to resolve the Wesco dispute. He stated that Obama Energy Corporation does not believe that Wesco has fulfilled the obligations of the minority set aside of the contract. Mr. Planera said that Wesco has not provided documents demonstrating minority spend which Wesco promised at the October 10th settlement meeting, it has now been 18 days and unfortunately, they have not received this information needed in order to settle the case due to Wesco stalling. He said this is third time making the same complaint regarding the same vendor.
- Mr. Bowling thanked the BEP Council, stating he is happy with the Compliance Committee and that many in attendance have put in a lot of time and energy in making sure things are done right from a vendor's standpoint. He said he feels that the Council is stronger now than it has been in many years and that it is appreciated.
- David Lockman of Obama Energy Corporation: Mr. Lockman introduced himself as the Chief Operator of Obama Energy. He asked if there is any program in place for the Council and agencies to educate themselves about the BEP vendors. He elucidated further

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stating it would be a program where BEP vendors invite the Council and agencies out to their offices, free and clear and to not feel they are compromising themselves, where they may educate themselves about what it is that the BEP vendors do in that capacity, so that when they have the combatants of the primes, the Council and agencies already have knowledge of what's going on with those contractors, and they don't have to discuss contracts.

Mr. Glavin replied that there may have been some progress in developing a relationship between Obama Energy Corporation and the manufacturers. He continued, stating that there has been progress but there is a way to go and that the Department is glad to have gotten the two parties at the table. Mr. Glavin expressed appreciation for all the time spent by Obama Energy Corporation and would like to see the business relationship maintained in the interest of capacity building.

Member Roberts pointed out the importance of the resolution of this dispute. She requested a time line due to the contract ending soon. Chair Forde explained that the current dispute resolution process is new and stated she did not want to give a false deadline, but that in this case she said she is committed to a timely and efficient resolution process.

- Andrew Johnson: Mr. Johnson introduced himself as the Director of the Native American Chamber of Commerce. He thanked the Department, Director Forde, Mr. Merchant, and Mr. Glavin for sponsoring and supporting the 1st Annual Native American Professionals Breakfast on Tuesday, November 19th at UIC. Mr. Johnson said it is open to all and reminded everyone that November is Native American Heritage month. He expressed his appreciation and support for the work of the BEP Council and pledged the Chamber's continuing presence to ensure the Native American community is represented.

XI. Adjournment

The meeting adjourned at 2:48 p.m.

- Next Subcommittee Meetings
 - Certification Subcommittee Meeting – November 25, 2019
 - Outreach Subcommittee Meeting – November 26, 2019
 - Compliance Subcommittee Meeting – November 27, 2019
- Next Council Mtg. – December 9, 2019

BEP Outreach Events: <https://www2.illinois.gov/cms/events/SitePages/List.aspx>