



**Business Enterprise Program Council
CERTIFICATION SUBCOMMITTEE MEETING MINUTES**

Friday, June 26, 2020

10:00 am – 11:30 am

Location: Webex

SUBCOMMITTEE COUNCIL MEMBERS IN ATTENDANCE

Bola Delano; Jaime DiPaulo; Beth Doria; Karen Eng; Larry Ivory; Edward McKinnie; Sharron Matthews; Sharla Roberts;

SUBCOMMITTEE COUNCIL MEMBERS NOT IN ATTENDANCE

N/A

OTHERS IN ATTENDANCE

N/A

COUNCIL SECRETARY

Radhika Lakhina

CMS STAFF IN ATTENDANCE

Kori Acosta; Steve Booth; Terrence Glavin; Carlos Gutierrez Radhika Lakhani; Mike Merchant; Elias Ngwayah



**Business Enterprise Program Council
CERTIFICATION SUBCOMMITTEE MEETING**

Friday, June 26, 2020

10:00 am – 12:00 am

Location: Webex Videoconferencing

Webex Meeting Number (access code): 133-536-6611

Password: dsKaf8s53Zi

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AGENDA

- I. Welcome
- II. Call to Order
- III. Roll Call
- IV. Posted Business
 - Approval of Minutes for the May 29, 2020 BEP Certification Subcommittee Meeting
 - Appeals:
 - Central Illinois Painting & Decorating, Inc.
 - Peacock Consulting, LLC
 - Marucco, Stoddard, Ferenbach & Walsh, Inc.
 - Boswell Pharmacy Services, LLC
- V. Upcoming Business Enterprise Council and Subcommittee Meeting dates:
 - Next BEP Council Meeting – Monday, August 24, 2020
 - Next Subcommittee Meeting – Monday, September 28, 2020
- VI. Public / Vendor Testimony
- VII. Adjournment

**In accordance with the Illinois Open Meetings Act (5 ILCS 120) and the
Freedom of Information Act (5 ILCS 140) the above meeting is open to the public
BEP Council Certification Subcommittee**



I. Welcome

Chair Roberts welcomed everyone to the meeting.

II. Call to Order

Chair Roberts called the meeting to order at 10:04 a.m. and proceeded with roll call.

III. Roll Call

Roll call conducted. Quorum was established.

IV. Posted Business

- Approval of Minutes for the May 29, 2020 BEP Certification Subcommittee Meeting
Member Eng moved to approve the minutes from May 29, 2020. Member Delano seconded. All agreed.
- Appeal:
 - Central Illinois Painting & Decorating, Inc.
The vendor requested the subcommittee allow them to reschedule. Chair Roberts stated they will allow them to reschedule.
 - Peacock Consulting, LLC
Chair Robert welcomed Ms. Hedley, introduced the Council members, and explained the proceedings. She gave the floor to Ms. Hedley for opening remarks.

Ms. Hedley stated she was informed that they were denied certification because the tax returns for the company indicate that Mr. Craig Stewart receives 50% of the profits of the company. She explained that although this is true it is just a financial agreement between them. She said she started the company while working doing primarily consulting for debt collecting agencies and was in need of software to address their needs. Ms. Hedley stated she contacted a former employee and he developed the software system for her. However she reported she was unable to pay him anything, cashed in her 401k which she lived off of and had her first client and no income. Ms. Hedley offered Mr. Stuart 48% equity and 50% of any future profits to which he agreed. She stated that since then the primary income for the company is the software. Ms. Hedley said all he does is development and manages IT while she does everything else for the company. She pointed out she has 52% equity of the company and voting power, although they split the profits because of their financial agreement. She affirmed she is both the owner and decision maker for the company.

Chair Roberts asked if the Council members had any questions for Ms. Hedley. Chair Roberts stated her company is an LLC and in the taxes one of the things they review is the schedule K1s which typically identify the owners and what is paid out to the individuals. She asked Ms. Hedley to help her better understand that. Ms. Hedley



explained that the accountant said that was the easiest way to do it so that it could be pass through income instead of her having to pay income in salary. She further stated there may be years there is no income there or they lost money and she is the one who pays into the business while he does not. Ms. Hedley said he doesn't own the company and he only owns 50% of the profit.

Member Eng indicated that the 1125E of employer compensation it does say there is 50% common stock between the two of them. Ms. Hedley replied that the agreement on how the company is run it is very specific that she owns 52% and has 52% voting power for any decision made. She stated understanding it's from a financial statement but as far as her business runs and what she is responsible for she stated belief that it falls between their guidelines as far as her being the primary owner. Chair Roberts related that when they look at it as far as owner control, the owner's pay should be commensurate.

Member Ivory asked if she has a sub chapter S corporation. Ms. Hedley confirmed this. Member Ivory asked that her intent is that he would make 50% of the profit and that was the easiest way to do it because she is in a subchapter S because the profits are shared equally between the shareholders. Ms. Hedley confirmed this. Member Ivory asked if he didn't advise any other way because from a legal position he would have 50% ownership. He asked how she supersedes the corporate law and was puzzled how an accountant would give that advice. Ms. Hedley said she can't answer that. Chair Roberts asked if there were any other questions. She gave Ms. Hedley the floor for closing remarks. Ms. Hedley stated she provided everything she has. Chair Roberts thanked Ms. Hedley for appealing the BEP Council Certification Subcommittee and explained the proceedings.

- Marucco, Stoddard, Ferenbach & Walsh, Inc.

Chair Roberts welcomed Ms. King, introduced the Council members, and explained the proceedings. She gave the floor to Ms. King for opening remarks.

Ms. King thanked the Council for the opportunity to appear for her appeal. She introduced herself as Corporate President, Secretary, Treasurer and 52% stock holder of MSF & W. Ms. King introduced her attorney Irene Caminer. Ms. King narrated that she purchased the majority ownership last year. She stated her journey from Administrative Staff Manager to majority owner began in 2001 when she was hired. Ms. King explained she rose through the ranks learning all aspects of the company and has held the role of software trainer, account manager, engagement manager, director of consulting, and now majority owner. She pointed out that in 2005 she was also offered the chance to purchase one-third ownership of the business but declined. She reported that since 2016 she has been working side by side with Mr. Marucco and Mr. Stoddard, who now hold 24% of the business, as their apprentice and has acquired the back-office operation knowledge. Ms. King stated that MSF & W have been in operation since 1991 and she has been with the company for two-thirds of its life. She



affirmed she has seen the ins and outs of the company, is fully capable and is already leading the company into today and into the future. She emphasized that her 52% ownership is real, substantial and not simply a matter of form. Ms. King stated that as seen in the documents she submitted in her appeal, she has made a real bonafide and substantial investment in the business. She reported that the company was valued by a third party and that she has no familial relation to Mr. Maruccio nor Mr. Stoddard. Ms. King asserted that as is common according to a letter from her banker, her stocks were pledged as collateral meaning the bank holds the title until the loan is paid in full and does not mean she is not 52% owner of MSF & W. She stated that upon execution of the legal documents Mr. Maruccio and Mr. Stoddard resigned from the board and entered into employment agreements with her which outlined a 50% reduction in time spent at the company beginning January 1st of this year. Ms. King said that as a result of COVID-19 and due to their age and health, Mr. Maruccio and Mr. Stoddard have further reduced their time and involvement with the company.

Addressing her role and management of MSF & W, Ms. King affirmed she maintains and assumes control of all major decisions, management, fiscal, and operational matters, including hiring, firing, negotiating and executing contracts, process improvements, strategic planning and forecasting. Ms. King detailed that she made significant changes to modernize the company such as replacing the old accounting system with a new cloud-based accounting system, changed the way they manage employee benefits by purchasing a new employee navigator application to streamline their hiring processes. She said she has updated several policies and procedures addressing employee benefits, compensation and other HR issues. She attested that they are in the process of installing new videoconferencing capabilities to allow them to continue navigating their business through this new normal.

Ms. King declared that MSF & W is an information technology and software integration company that provides IT and consulting services to various state governments such as Illinois, private companies, and non-profit organizations. She listed some of her largest clients as the Illinois Department of Transportation, the Illinois and Iowa Departments of Education, Central Management Services, the Office of the State Fire Marshall, the Illinois Treasurer's Office, the American Hospital Association, Impact International, Minnesota Secretary of State, Osceola County in Florida, just to name a few.

Ms. King reported that MSF & W has more than 83 employees, in addition to Mr. Maruccio and Mr. Stoddard as minority owners, and herself as the sole majority stake holder. She stated that since her application for BEP status as a woman-owned business, MSF & W has entered into 17 contracts with Illinois state agencies totaling almost \$69 million over the next 8 years. Ms. King said that 3 of those contracts are included in the packet. She asserted that she personally wrote those, reviewed, negotiated and signed on all of those executed contracts almost on her own with a little help from other people in the office. She outlined that the services they provide range from software integration, training, onsite IT support and other IT services.



Ms. King declared that BEP issued its denial of her application solely on the basis of her financial structuring of her purchase of MSF & W. She attested that this evaluation was insufficient and should have balanced the decision against the realities of seeking funding to purchase an existing, viable and independently run 30-year-old, well-established business. Ms. King stated that when they look at all the facts of her ownership and control, they must conclude that she is 52% owner, exercising, management, policy and fiscal matters. She asserted that she cannot be denied the certification.

Ms. Caminer pointed out that the factors that may indicate insufficient contribution are discussed in the regulations section 10.67-2. She pointed out that in this matter Ms. King has pledged her stock purchase for her collateral, but she didn't have a minimal cash out regarding the factors that are insufficient, she didn't make a promise to contribute, she did, she doesn't have a note payable to the firm or other owners who are not eligible group members, her contributions are not solely services rather than capital, she did commit substantial capital in addition to her own services, her contributions were not loans from her former employer or stock holders, they are real, arm's length, they are secured by her pledge, and if god forbid there is a default she will be responsible for the repayment of those loans. Ms. Caminer concluded that she hopes they will consider that the decision to deny was an error they will overturn the decision and provide her the status she deserves as she has demonstrated both in her significant contribution as well as in her control and management of MSF & W. She thanked the subcommittee for their time and said Ms. King will answer any questions. Chair Roberts thanked them and asked members if they had any questions.

Member Ivory asked that she walk him through the process when she put her stock up as collateral and did a third party do the evaluation, assuming they are a C Corp or an S Corp. Ms. King answered they are an S Corporation. She responded that the company was valued by the C R Group and she spoke to many banks about making the purchase. Ms. King stated they had offered her 100% of the company which was more than she was willing to take on. She said they discussed at what percentage of debt she could handle, and they came up with 52%. She ended up with a securities-based lending loan at a local bank. Ms. King described that this acts as a lean to the loan. She said the bank has no controlling interest and in case she is not able to make payment, they would be able to sell her portion of the company to gain payment. Member Ivory asked what was the valuation of the stock she had put up for collateral? Ms. Caminer answered that the bank structured the loan based on not only stock but the other property as collateral and the stock was valued at its value based on the 3rd party valuation. She said there is a letter from Mr. Kraeger at the bank which outlines how this transaction was put together which was not a unique situation. Member Ivory explained that if they issued common stock to the bank, creditors would be paid first and the bank would be paid second if not last, which he found a little surprising that a financial institution of a thinly traded stock would allow a valuation to be done in that



fashion. He said they've got a great bank, but it is not common. Member Ivory explained that you and I know the stock value goes up and down based on the performance of the company, but if you have a downturn and they had to use the stock to collateralize the loan how does a bank put a value on thinly traded stock. He stated he was just a little puzzled at that. He said he could understand if was a Fortune 100 company or major stock traded on the stock exchange but that's all.

Ms. King replied that the valuation from the C R Group was at \$9 million. She explained that she was required to come up with 80% to support a loan of almost 4.7 and she was then able to come up with collateral, to equate the 8% which was based on the value of her home, 40 acres of farm land and life insurance policies and of course there was sweat equity there too and then the stock. Ms. King said she understood what Member Ivory was asking, but she did not understand why it matters. She attested that if she fails she loses her home, farmland, life insurance, and her portion of the stock to her company. She added that she is not going to fail, this is the one bank willing to work with her, they saw the financial figures, the contracts that she had, the sweat equity she put into the company and felt very comfortable in giving her this loan and saw it was a very viable company to invest in. Member Ivory responded he was definitely not questioning that, just coming from the industry he was puzzled about how does a bank sell a thinly traded stock if she were to have unfortunately a downturn being in the last position to be paid.

Ms. Caminer replied that she appreciated that question, and added that when they think about all the factors that have been laid out, the company has been around 30 years, she's been part of the company for two-thirds of its life, this isn't like having an idea to make coffee and saying give me a loan but this is an established business with an established reputation and so doesn't think it is as thinly veiled as he described it, not meaning to be disrespectful. She said they have all the details, the valuation, loan documents and it isn't like it was in 2007 where you could buy a house with 2% or 0% down.

Member Ivory said he appreciated that and meant no disrespect to the counselor or the leader of a fine organization. He explained he was just asking the questions from a banking side, to get the money back from the stock they would have to sell the stock and get back their money. Ms. King asked if that's part of the consideration for certification. Member Ivory responded he doesn't know if it's part of it, but it is part of his question though. Chair Roberts asked if there were any other questions from the Council. There were none. Chair Roberts gave the floor to Ms. King for closing remarks.

Ms. King thanked the Council and turned the floor to Ms. Caminer. Ms. Caminer thanked the Council for their time and thoughtful questions. She stated that they believe this committee's purpose is to balance and weigh the factors in consideration as outlined in the Illinois statute and Illinois administrative code. Ms. Caminer said that



against the realities of anyone seeking and obtaining the necessary financing to own an existing viable and independently run business, she stated belief that Mrs. King has established that she is in 52% ownership, the stock certificates are there (she pointed to a box) and are not in anybody's possession. She said nobody is making the decisions on the day-to-day operations, she has control and management. Ms. Caminer stated they ask that the factors are weighed together to help determine whether her ownership is real, substantial, continuing and not a matter of form. Ms. Caminer affirmed that the financial structure of the sale is a typical financial structure and that Mrs. King should not be discriminated against. She said that very few people have the financial wherewithal to make an outright cash purchase of an ongoing successful enterprise. She continued that Ms. King with contribution of her knowledge, sweat equity and expertise of MSF & W's business made substantial financial commitments. She added that Ms. King and not the bank and trust makes all the major decisions relating to the management, policy, fiscal and operations.

Ms. Caminer stated that weighing these factors and all the circumstances surrounding the ownership of MSF & W they believe they must find that she is a 52% majority shareholder of MSF & W. She stated belief that BEP is misinterpreting the language of Section 10.67(3) chapter 44 of the Illinois Administrative Code which states that how the applicant holds ownership in terms of stock holdings the following factors may indicate that ownership is not as stated, and for part B is says that stock certificate purchase, not in the possession of the applicant. She said that is not true and that the stock certificates purchased are in her name and sitting right there (pointing to the box by Ms. King) and are not in anybody else's possession.

Ms. Caminer added that the security-based lending transaction is not uncommon. She said Mr. Kraeger the Executive Vice President of Bank & Trust wrote in his letter "...as to the pledge of King's company stock to secure funding for the purchase, this is a relatively common stock purchase transaction. The bank has provided funding for stock purchases to a number of individuals both men and women for bank stock or total franchises, etcetera. Further it's not unusual for the bank to provide up to 100% financing for the stock purchase with the pledge of stock and other personal assets to further secure the purchase. Securities-based lending provides among other things the capital to help people buy real estate purchase personal property and to invest in businesses, so for these reasons we hope that you will reconsider the decision that was previously made and overturn it because it's clear that as to the other elements of control that Ms. King has demonstrated her control in the day-to-day operations of MSF & W. We ask that overturn decision and we thank you for your time and for your attention to this matter." Chair Roberts thanked Mrs. King for providing closing remarks and explained the proceedings

- Boswell Pharmacy Services, LLC
Kathleen Martella Zucco, Jackie Martella, and Adam Layman were identified as present to represent the company. Mr. Gutierrez summarized that this appeal was regarding



the over-the-cap \$75 million limit and subsequent documentation for employment submitted by Ms. Martella in support of her appeal. Chair Roberts proposed that the subcommittee go into closed session for deliberation.

Member Doria asked if the employees on this project are Illinois residents. Kathleen Martella responded the employees are Pennsylvania residents based at their Jennerstown, Pennsylvania in Somerset County facility. Jackie Martella added that they also use Illinois consultants who are pharmacists.

Member Ivory requested a brief summary of the case. Mr. Gutierrez narrated that in combination with their affiliates, Boswell Pharmacy Services is over over-the-cap \$75 million cap allowed by BEP. He said Boswell Pharmacy Services' total gross sales is \$55 million, Boswell Prescriptions has \$18 million, 10 more pharmacy LLCs have \$1 million in gross sales, Martella's Pharmacy Reports \$4 million, Martella Pharmacy of Clarkdale with \$3 million, Martella Pharmacy of Briers \$2 million, Coffee Beans \$197,000 for a total combination of \$84 million.

Chair Roberts opened the floor to Ms. Martella to provide additional information. Kathleen Martella outlined from their denial letter that a firm is allowed to appeal to the Council for certification for a particular contract if they can demonstrate that the value of the contract would have a significant impact on a business owned by minorities, women or persons with disabilities. She stated that there are a lot of factors that come into play regarding their gross sales. Kathleen Martella detailed that approximately \$65 million in medication costs make up their gross sales which she affirmed is their pass-through cost and their margin is 2-4% annually. She pointed out that their business is probably set up differently than most businesses. She declared that about \$7.5 million are their handling fees that they charge, which covers the cost of labor, building supplies, taxes, insurance, software, and etc.,

Ms. Martella offered that they have no control over the medications that are prescribed. She noted that Hep-C and HIV medications the increase in use of those medication has put them over gross sales and as she mentioned the margins are only 2-4% annual. She said they are appealing the denial based on how losing the certification would have a significant impact on their business, 39% of their business is in Illinois, they have been women's business certified in Illinois for 15 years, 92 % of their employees that service the Illinois contract are minority, female, or disabled.

Ms. Martella added that she has been with the company for 19 years and it has always been part of their philosophy not just for the Illinois contract but 75% of their overall employee base represent 75% in minority, women and the disabled. She explained that there are one of very few in Somerset County that offers employment opportunities for people with disabilities specifically and minorities. Ms. Martella stated that Jackie Martella is her sister and those are the reasons why they are fighting



to keep this contract. Chair Roberts asked if there were any further questions from the Council. There were none. She gave the floor to Ms. Martella for closing remarks.

Ms. Martella explained that the impact of losing the certification and therefore the contract would mean losing over 50 staff, 92% for Illinois, the contract represents 39% of their business and they would have to eliminate a little less than 50 staff members. She said they have been bringing special programs to the Illinois Department of Corrections (IDOC) over the last 15 years they have been servicing them and most recently hired employees have been in the mental health area, providing more clinical enhancements and directives for inmates for the entire IDOC system. Ms. Martella said in closing this would severely affect their business and employees and ask that they please look at the information they provided them and take all that into consideration in making their final decision.

Chair Roberts thanked Ms. Martell for taking time out of her extremely busy schedule and explained the proceedings. Jackie Martell asked to make one final comment. She detailed that the \$82 million is an inaccurate reporting in their federal income tax. Chair Roberts asked if the number is over the \$75 million. Ms. Martella responded yes. Chair Roberts explained that any extent over the amount of \$75 million falls under the same process. Mr. Adam Lehman stated the amount is \$75.9 million. Chair Roberts explained the Council will still have to make a decision based on the over-the-cap process and asked if they were aware of that. Ms. Martella stated they understood. Chair Roberts thanked Ms. Martella and explained the proceedings moving forward.

Member Eng motioned to move to executive session to discuss the appeals presented today. Member Ivory seconded the motion. All agreed.

Deliberations were held, votes taken, and the following recommendations were made:

- **Central Illinois Painting & Decorating, Inc.** – Appeal to be rescheduled
- **Peacock Consulting, LLC** - Recommended upholding the denial
- **Marucco, Stoddard, Ferenbach & Walsh, Inc.** – Recommendation pending
- **Boswell Pharmacy Services, LLC** - Recommended upholding the denial

V. Upcoming Business Enterprise Council and Subcommittee Meeting dates:

- Next Council Meeting – Monday, August 24, 2020
- Next Subcommittee Meeting – Monday, July 27, 2020

VI. Public /Vendor Testimony

Chair Roberts asked if there was public/vendor testimony. There was none.

VII. Adjournment

Member Eng moved to adjourn. Member Ivory seconded. Meeting adjourned at 11:42 pm.