



**Business Enterprise Council  
COMPLIANCE SUBCOMMITTEE MEETING  
Monday, August 19<sup>th</sup>, 2019  
1:30 pm – 3:30 pm  
James R. Thompson Center  
100 W. Randolph Street, Room 4-404 JRTC  
Chicago, IL 60601**

**COUNCIL SUBCOMMITTEE MEMBERS IN ATTENDANCE**

Sharla Roberts, Jesse Martinez, Sharron Matthews, Sheila Hill-Morgan

**COUNCIL SUBCOMMITTEE MEMBERS NOT IN ATTENDANCE**

**Staff Assistant**

**ACTING COUNCIL SECRETARY**

Terrence Glavin

**CMS MEMBERS IN ATTENDANCE**

Harry Reinhard, Jeanetta Cardine

**OTHERS IN ATTENDANCE**

N/A

**Business Enterprise Council**  
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 Compliance Subcommittee



**Business Enterprise Council  
COMPLIANCE SUBCOMMITTEE MEETING**

**Monday, August 19, 2019**

**1:30 pm – 3:30 pm**

**Room 4-404 JRTC**

**Join by Phone: 1-312-535-8110 or 1-415-655-0002**

**Meeting number (access code): 803 951 251**

**AGENDA**

- I. Welcome
- II. Call to Order
- III. Roll Call
- IV. Posted Business
  - a. Approve of Minutes for the April 3, 2019 Subcommittee meeting
  - b. Approve of Minutes for the May 30, 2019 Subcommittee meeting
  - c. Update on conducting the survey of process, procedures, practices, documentation, and penalties
  - d. Update on how compliance is monitored and ensured across Chief Procurement Officer (CPO) offices
  - e. Update on the Rules
  - f. Provide copy of Utilization Plan upon approval of all CPOs and Business Enterprise Council members
  - g. Provide update on documents regarding contract language best practices from the City of Chicago and Cook County through their general and detailed terms and conditions
  - h. DOIT Compliance with Contract #CMS793372P
  - i. Provide Status regarding payments and Compliance for MBE(s)
  - j. 2020 Compliance Plan, Harry Reinhard
- V. Define Action Items
- VI. Upcoming Business Enterprise Council meeting date
  - Next Council Meeting – Monday, October 28, 2019
  - Next Subcommittee Meeting – Wednesday, November 27, 2019

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VII. Public / Vendor Testimony

The Information Technology Architect Corporation will be appearing to testify.

VIII. Adjournment

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I. Welcome

II. Call to Order

III. Roll Call

Roll Call conducted, quorum was not present.

IV. Posted Business

**a. Approve of Minutes for the April 3, 2019 Subcommittee meeting**

**b. Approve of Minutes for the May 30, 2019 Subcommittee meeting**

Moved forward to next scheduled subcommittee meeting in October.

**c. Update on conducting the survey of process, procedures, practices, documentation, and penalties**

General Counsel Glavin provided an update to the subcommittee on conducting the survey of processes, procedures, practices, documentation, and penalties. General Counsel Glavin stated a policy subject matter expert (Lauren Krupp) will be building out an electronic survey (with the permission of the Compliance Subcommittee) for agencies to provide answers to categories which will include supplier diversity, including compliance and enforcement.

Harry Reinhard, from the Business Enterprise Program Compliance Unit, stated that to BEP's knowledge, agencies rely on BEP staff to conduct compliance and monitoring activities and that BEP is the primary source for compliance.

Chair Roberts asked if vendors or agencies know that they can utilize the B2GNow system as a vehicle to comply on contracts.

Harry responded that public statements were disseminated to all Agency Procurement Officers (APOs) and State Procurement Officers of State (SPOs) notifying them of the new system. He stated that as far as monitoring of contracts, BEP staff will monitor any size contract if given to them to place in the system.

Chair Roberts asked how the subcommittee can ensure contractors being awarded contracts are not posting voluntarily.

Harry responded that the initial intent of the monitoring system was to monitor all contracts that have a BEP goal. Currently, the system does not possess the capability of importing data from BidBuy, the state procurement system. Until then, BEP staff can only monitor what is reported to them individually by the APO.

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Member Matthews stated her agency as an example that in the Department of Human Services (DHS), there have been 38 procurements from Fiscal Year 2019 and only three are posted in the B2GNow system. She stated that there is a Statewide discrepancy internally and between agencies. Agencies and universities are supposed to submit information.

Member Matthews stated that a survey would not help answer why it is not happening. She suggested a directive be put out explaining the situation and B2GNow participation is mandatory and an expected piece of compliance.

Chair Roberts stated the B2GNow system has been implemented for several years now and we are trying to ensure that agencies that award contracts are monitoring their compliance and how the process can be streamlined.

Member Matthews asked the purpose of the survey.

Chair Roberts responded that the purpose was to find out how many departments (62 agencies under the Governor) are utilizing B2GNow system.

Harry stated BEP has a list of agency users that access the system.

Member Matthews restated her question asking then what is the purpose of the survey.

Chair Roberts stated most agencies and universities are not utilizing and entering contracts into the system.

Harry added that the system is only geared to evaluate contracts with a BEP goal.

Member Martinez stated the need to see all of the contracts so they could ask why goals are not being set on certain contracts.

Member Matthews stated that we know already who is using the system and who is not. Again, she questioned the purpose of the survey. She suggested the group have a look at what they can ask and why, and how it will relate to enforcement because the two computer systems (BidBuy and B2GNow) aren't relating. She stated that perhaps the council should be asking a different set of questions. Harry explained that utilization of the B2GNow system is by primes and subcontractors. The agencies' component is merely looking at what primes and subcontractors enter into the system.

Kimberly McCullough-Starks asked if the goal of the survey is to capture information with respect to available contracts in the overall state's apparatus where there is light of sight into where there are opportunities for minority and women-owned businesses.

Chair Roberts introduced Member Hill-Morgan to the roster.

General Counsel Glavin notified Chair Roberts of achieved quorum.

Chair Roberts responded that the intent is to ensure we implemented a system and it is being utilized properly. Contracts are voluntarily being submitted if we don't have contract language that says prime vendors have to input that information.

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General Counsel Glavin stated the system could include most, if not all data needed to perform quantitative analysis, yet the survey could be a qualitative component that provides improvements that could be incorporated into B2GNow to leverage more participation.

Member Matthews reiterated that agencies and others perhaps don't even have in their contracts that a prime is expected to participate in this aspect of compliance and they are voluntarily posting what is going on in terms of payments. She stated it would have to be stipulated and a standard stipulation of any contract that has a BEP goal.

Harry stated that there is enforcement language in the new Utilization Plan that has not yet been approved.

Ms. McCullough-Starks asked if the universities or college system that are required to report on BEP currently have utilization plans that they submit to state CMS for consideration.

Harry responded that They do not submit to CMS they submit to themselves.

Ms. McCullough-Starks stated that it negates whole notion that the language is in the Utilization Plan because they don't have one and there's no oversight for them.

Member Hill-Morgan asked if the goal of the survey was to provide greater insight to the process as it exists. Chair Roberts responded that yes, the intent is to gather information and implement the proper oversight process.

Chair Roberts recommended that General Counsel Glavin create the survey with a timeline in place.

General Counsel Glavin asked to have committee permission for Lauren Krupp and/or other CMS staff to reach out to individual members to get feedback on how to best build-out the survey between meetings.

Chair Roberts asked for drafted questions to be sent to the Compliance Subcommittee members and a deadline for those questions.

General Counsel Glavin responded that questions will be drafted in ten business days.

Chair Roberts requested a strict turnaround time for members to respond. Deadline in place to move forward or agree with what we say if no response received.

Member Matthews asked when the glitches between the two systems (B2GNow and BidBuy) will be handled.

General Counsel Glavin responded that after reopening communications between the CPO's office as well as within CMS positive feedback should be available by the next meeting. Actual data exchange is being worked on diligently and the subcommittee will be notified before the next meeting if it has been resolved sooner.



Quorum obtained with the presence of Member Hill-Morgan.

Member Hill-Morgan motioned, and member Martinez seconded to approve minutes for April 3<sup>rd</sup>, 2019 subcommittee meetings and May 30<sup>th</sup>, 2019.

Vote taken, motion passed. Minutes approved.

**d. Update on how compliance is monitored and ensured across Chief Procurement Officer (CPO) offices**

Item was Discussed previously.

**e. Update on the Rules**

General Counsel Glavin stated being in the process of drafting rules to reflect the law as it is expected to be finalized as well as working on adjustments to the Administrative Code. He stated the draft was ongoing and extended an invitation for members of the subcommittee and Council to schedule meetings regarding suggestions for rule changes. General Counsel Glavin will provide an update to the next scheduled meeting.

**f. Provide copy of Utilization Plan upon approval of all CPOs and Business Enterprise Council members**

General Counsel Glavin provided an update and stated that CMS BEP provided to the Council and all Chief Procurement Officers (CPOs) a copy of then-labeled "The Final Draft Utilization Plan". He stated the offered opportunity for objections or proposed revisions to the plan (by members and CPOs). General Counsel Glavin met with Chair Roberts and CPO Bagby for proposed changes. He will be reconvening a meeting with all CPOs and extending an invitation to Council members in efforts to finalize revisions. Chair Roberts voiced concerns from a best practice standpoint about the Utilization Plan feeling intimidating because of heavy program history and processes reading. Member Martinez stated the Utilization Plan should outline what vendor is being used, how much they are being paid and what job they are performing along with a copy of the agreement or sub agreement. He stated providing that information should not be intimidating.

Member Matthews stated that the forms should take every opportunity to educate on the BEP.

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Member Hill-Morgan stated her intended attendance to the meeting with General Counsel Glavin and CPOs. Member Matthews stated the same.

**g. Provide update on documents regarding contract language best practices from the City of Chicago and Cook County through their general and detailed terms and conditions**

General Counsel Glavin restated the Utilization Plan being closer to a final draft that includes supplier diversity, participation, substitution language, and other enforcement mechanisms. Samples of default language and termination language for failure to achieve supplier diversity were used from the City of Chicago, Cook County, and outside jurisdictions.

General Counsel Glavin introduced Radhika Lakhani, an attorney with CMS, who was newly approved to contribute legal resources to BEP including the Subcommittee. General Counsel Glavin also announced the intent to have connectivity between BEP, BOSS and other procurement authorities throughout the State.

He reported that additionally, Radhika would be researching jurisdictions outside of Illinois for best practices in other states to implement in the BEP process.

Chair Roberts expressed concerns about the lack of BEP language in contracts. General Counsel Glavin stated the intent to put BEP specific provisions within the default language so that failed supplier diversity triggers termination.

Chair Roberts requested a projected timeline in the case a directive memo needs to be sent out.

Member Matthews asked whether CMS still holds the authority to enforce certain sections (in terms of clauses and compliance) into State contracts as she recalled from about twelve years ago.

Radhika stated she will investigate legislation that Member Matthews referred to. Radhika also noted several changes in legislative session that will impact terms and conditions.

Chair Roberts mentioned needing fundamental information on the BEP that is not currently included in State contracts.

**h. DOIT Compliance with Contract #CMS793372P**

General Counsel Glavin provided an update on receiving information that there may be a substitution of one certified BEP vendor for another. He stated that there was no indication of changed goals on the contract and that BEP is not aware of a reduction or a waiver request. Ownership and representatives of The IT Architect Corporation attended the meeting.

Chair Roberts asked when the BEP Council received the substitution request.

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General Counsel Glavin responded that substitutions can happen without notifying CMS. He also stated that CMS cannot object to even a received notification if the goals are being met in accordance with the BEP Act.

According to General Counsel Glavin BEP was copied on a letter at the end of June/early July. The actual substitution had not taken place but was under consideration.

Chair Roberts asked if the vendor was ever contacted with a reason for the substitution and whether the firm participating on the contract was contacted to validate the substitution request.

General Counsel Glavin responded that the BEP has received written explanation from the prime vendor and have been in communication with the certified BEP vendor possibly being substituted. BEP has advocated for the certified BEP firm to have the opportunity to be heard and that their arguments to remain on the contract be considered during the substitution process.

Chair Roberts asked what the process is for substitutions and whether that is stated in the contract documents or the Utilization Plan. She stated concerns about the participating firm not being contacted to validate the request.

General Counsel Glavin stated the forum for substitution is in the end-user space but that CMS would like to work with the Council to produce best practices that could be recommended to the agencies (end-users).

Member Martinez stated that the Council and subcommittee can develop a very simplified process for substitution requests that require legitimate and specific reasons. He added that he could share the Capital Development Board's concept with the subcommittee for reference. Member Martinez recommended forcefully implementing the process rather than making the recommendation.

General Counsel Glavin stated that the Department of Innovation & Technology (DoIT) is open to the idea of making sure both sides are heard and that there is a due process.

Member Hill-Morgan stated the most important thing is that a substitution cannot be arbitrary or capricious, it needs to be with good reason.

**i. Provide Status regarding payments and Compliance for MBE(s)**

General Counsel Glavin updated the subcommittee restating the dispute between Obama Energy and Wesco. He stated having had a successful meeting and informal mediation where all parties came together and made progress. The goal is to have the payment dispute resolved within three total meetings.

**j. 2020 Compliance Plan, Harry Reinhard**

Harry Reinhard restated the December 3<sup>rd</sup> Council meeting decision to no longer allow agencies to request exemptions on their compliance plans. The Fiscal Year 2020 Compliance Plan eliminated column 4, requested exemptions. As a result, Harry stated receiving numerous concerns from several agencies regarding how it will affect their

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goal and meeting it. Most would like the Council to reconsider eliminating the requested exemptions. As an example, Harry stated that in Fiscal Year 2019 the dollars subject to goal based on requested exemptions was \$3 billion, the BEP goal based on requested exemptions was \$609 million. With the elimination of requested exemptions using the same FY19 numbers (since Fiscal Year 2020 is not yet available), the new dollars subject goal increased to \$27 billion dollars and the BEP goal increased to \$5,000,454,000. Harry asked for guidance on what message to return to those concerned.

Chair Roberts appreciated the concerns and recommendations. Chair Roberts suggested Harry provide those concerned, with the response from Colette Holt & Associates' Disparity Study.

Member Matthews stated her concerns with meeting goals that are so seemingly disparate to her without requested exemptions.

Chair Roberts stated that it mostly shows just how much more work has to be done to ensure women and minority owned vendors understand how to do business with BEP. Kimberly McCullough-Starks stated her understanding of the Council's position to eliminate requested exemptions based on the Disparity Study. However, she stated that as it relates to her agency, Healthcare & Family Services (HFS) there just are not enough providers ("vendors") in healthcare and the goal becomes less attainable and a disservice. The HFS agency will issue a formal communication around the statement.

Member Matthews reminded the subcommittee that the argument from agencies is how they are supposed to carry this out. She stated that unless further guidance is provided, both BEP and the agencies will be at odds.

Kimberly McCullough-Starks asked "... what goal are we trying to achieve?" and what is the process being followed.

Chair Roberts responded that the question would be taken into consideration and an answer would be returned.

#### **V. Define Action Items**

**General Counsel Glavin will email action items to the Chair for feedback.**

#### **VI. Upcoming Business Enterprise Council meeting date**

- Next Council Meeting – Monday, August 26, 2019
- Next Subcommittee Meeting – Wednesday, September 25, 2019

#### **VII. Public / Vendor Testimony**

The Information Technology Architect Corporation will be appearing to testify.

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Member Roberts opened the floor to vendor testimony.

Charles Harrell II, President & CEO of The IT Architect Corporation, attended the hearing to give testimony on a compliance issue regarding Contract #CMS793372P. The initial three-year contract started on October 2nd, 2016. Mr. Harrell stated that his organization received a Letter of Intent to not renew the contract from Verizon (prime contractor) on July 1st, 2019. Mr. Harrell stated no issue with the services his organization rendered. He cited section 3.2.1 of the Master Contract #CMS793372P and Section 7 of the BEP Utilization Plan in support of his request for a commitment letter from DoIT as it relates to The IT Architect Corporation's participation in the contract.

Member Martinez recalled the same issue at the beginning of said contract. He expressed concerns over whether the prime wants a replacement for a lower dollar value and the same scope of work or for the same dollar value and more scope of work. Chair Roberts asked why Verizon is requesting a substitution and where DoIT stands on the request and whether mediation is an option.

General Counsel Glavin stated DoIT has an interest in wanting to see arguments from both sides on paper. He stated his intention to have the requests for those writings made by the next Council meeting.

Chair Roberts stated that if the contract is up for renewal, the BEP vendor on the contract is part of the renewal until a substitution is granted.

Member Hill-Morgan asked for clarification on whether it is customary to change the scope of work. General Counsel Glavin presented as an example that it is standard procurement practice to include change orders, amendments (can include changes to scope). It is something the Council should investigate if done for the wrong reasons or in bad faith.

Member Matthews asked the subcontractor whether they were having difficulty performing or in terms of payment. Mr. Harrell responded no.

Al Coleman, The IT Architect Corporation, Corporate Counsel, asked whether CMS is in a role that allows for a forum or in between stage before reaching the point that the firm must respond to the end-user's (DoIT) proposal.

General Counsel Glavin responded that CMS may act as an advocate on behalf of BEP. He stated the firm (The IT Architect Corporation) will be given the opportunity to counter the arguments on an even playing field created by written responses from both sides.

Chair Roberts asked General Counsel Glavin to present the actual substitution request in writing and whether the request agrees with what is outlined in the Utilization Plan at the full Council meeting.

General Counsel Glavin offered to work directly with The IT Architect Corporation's Corporate Counsel for expedition. He also stated that he would ask for a copy of the Utilization Plan from DoIT and provide the information requested.

Member Matthews voiced her concerns about the Business Enterprise Program backtracking and recalled similar issues being resolved in the past.



Former Senator James Clayborne, Jr. voiced concerns about not adequately shifting the burden to the prime contractor and having the prime contractor justify the substitution. Former Senator Clayborne stated that the determination should be whether the prime contractor is complying with the contract and if not, what are the consequences. He stated believing that these actions would send a stronger message to prime contractors.

Chair Roberts asked whether a prime contractor's compliance with the contract may be reviewed at the time of renewal including the original goal established and whether the goal should be increased.

Harry stated that it is statutorily mandated that the agency reviews all renewals and new contracts at least six months prior.

Chair Roberts asked General Counsel Glavin to report whether DoIT made the review. She also asked whether the BEP receives notification of assessments at the time of renewal. Harry responded that they do receive a revised goal setting form on renewals. He also mentioned the sheltered market including the IT category and stated that a low goal for this contract did not make sense.

Former Senator Clayborne and Mr. Harrell II enquired about the DoIT Internet Egress Request for Proposal (RFP) put out with no goal, later achieving a 20 percent goal, and the same RFP being canceled last month.

Former Senator Clayborne asked whether a change or amendment to the contract requires a new contract to be signed stating compliance with new changes/amendments.

Chair Roberts used the example to highlight the need for contract language to specify a process concerning amendments (increasing goals) to the contract.

Member Matthews stated the need for enforcement capacity within the Council.

#### **VIII. Adjournment**

Meeting adjourned without quorum at 3:44 p.m.