



**Business Enterprise Council
COMPLIANCE SUBCOMMITTEE MEETING
Monday, September 30th, 2019
1:30 pm – 3:30 pm
James R. Thompson Center
100 W. Randolph Street, Room 4-135 JRTC
Chicago, IL 60601**

COUNCIL SUBCOMMITTEE MEMBERS IN ATTENDANCE

Sharla Roberts, Jesse Martinez, Sharron Matthews, Larry Ivory, Denise Barreto

COUNCIL SUBCOMMITTEE MEMBERS NOT IN ATTENDANCE

Sheila Hill-Morgan

ACTING COUNCIL SECRETARY

Terrence Glavin

CMS MEMBERS IN ATTENDANCE

Harry Reinhard, Steve Booth, Radhika Lakhani

OTHERS IN ATTENDANCE

N/A



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Monday, September 30, 2019
1:30 pm – 3:30 pm
Room 4-100 JRTC**

**Join by Phone: 1-312-535-8110 or 1-415-655-0002
Meeting number (access code): 802-914-760**

AGENDA

- I. Welcome
- II. Call to Order
- III. Roll Call
- IV. Posted Business
 - a. Approve of Minutes for the August 19, 2019 Subcommittee meeting
 - b. Update on conducting the survey of process, procedures, practices, documentation, and penalties
 - c. Update on how compliance is monitored and ensured across Chief Procurement Officer (CPO) offices
 - d. Update on the Rules
 - e. Utilization Plan Update
 - f. Provide update on documents regarding contract language best practices
 - g. Update on DOIT Compliance with Contract #CMS793372P
 - h. Provide Status regarding payments and Compliance for MBE(s)
 - i. 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, September 25, 2019
- VII. Public / Vendor Testimony
- VIII. Adjournment

**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**



Welcome

Call to Order

Roll Call

Approve of Minutes for the August 19th, 2019 Subcommittee meeting

Member Ivory motioned to approve, Member Matthews seconded. Motion passed.

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

Counsel Lakhani reported plans to meet with legislative liaison Steven Booth, public affairs specialist Lauren Krupp, BEP Staff and IT Personnel to discuss Key Performance Indicators (KPI) (to measure BEP's success) and different ways to utilize B2GNow System, and BidBuy system. KPIs will be used to measure BEP Outreach, current practices and effectiveness. They are looking at ways to get feedback and utilize KPIs to streamline processes.

Chair Roberts made mention of the survey that was sent to agencies and institutions of higher education to find out what they are doing because everyone doesn't have the same structured program. Member Matthews confirmed that her agency works differently and set up an internal BEP statistical apparatus. Chair Roberts reminded the subcommittee that in terms of compliance (monitoring the contract, utilization plan), the responsibility falls on agencies and institutions of higher education. She stated that in order to streamline the process and make recommendations, a survey is the best way to get answers in a short amount of time.

Acting Secretary Glavin reported that Steve Booth is working towards development of statistics that will achieve a dashboard and that Lauren Krupp is working with Acting Secretary Glavin to finalize questions for the survey. The final version of the survey will be submitted to Chair Roberts in ten days (October 10th, 2019). Acting Secretary Glavin stated the survey is expected to be finalized with 10 to 20 questions. Member Barreto opposed a 20-question survey and stated its inefficiency due to lengthiness. She stated wanting to ensure the integrity of the data by making it more efficient with less questions. Member Matthews expressed her concerns about what questions are being asked and that the Council expects agencies not to respond. She suggested making the survey mandatory and including a specific date as a deadline. Chair Roberts agreed.

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

Acting Secretary Glavin reported attending a meeting with Assistant Director Merchant and Chief Procurement Officer (CPO) Ellen Daley to ensure exchange of data between B2GNow and BidBuy. He reported making progress on making sure we have information we need for enforcement and compliance. Assistant Director Merchant stated the last hurdle relied on getting the technology to match up. Member Matthews asked for clarification on whether the conversation addressed connectivity and interoperability. It was confirmed. She asked whether there was a timeline in place. Assistant Director Merchant stated that he would follow up with the CPO's office for a more specific



timeline. Chair Roberts asked whether there was a chance to meet with other CPO offices. Acting Secretary Glavin stated having met with CPO Ben Bagby to talk enforcement and compliance. He stated having to follow up with CPO Ben Bagby in addition to the two remaining CPO offices out of the four, total.

Chair Roberts stated Business Enterprise for Minorities, Women, and Persons with Disabilities Act extends beyond the CPO offices' authority and cited public institutions of higher education that do not report to CPOs. She asked how creating policies and procedures in compliance is extended to public institutions of higher education including community colleges. She asked how these institutions', including community colleges', compliance with the Business Enterprise Act is enforced. Acting Secretary Glavin stated that community colleges on supplier diversity compliance are coordinated with the Illinois Community College Board (ICCB). He stated that there has been communication with ICCB on project-specific matters. The intention is to follow through with the Board in a similar fashion that is done with CPO offices as well as continuing with the work of the Fair Practices in Contracting Task Force. Acting Secretary Glavin stated that having a point-of-contact for ICCB is the most efficient approach and will be for monitoring compliance and enforcement for colleges.

Chair Roberts asked if public institutions of higher education and community colleges are required to submit a compliance plan where they identify their Business Enterprise Program (BEP) Liaison. Compliance Manager Reinhard told the Council that currently the Community colleges report to the Community College Board according to the tenets of **Public Act 465**. According to Manager Reinhard they report business verticals, diversity, overall spend, contract spend, goals, etc., etc. That information is processed and updated on the website annually. In turn, Compliance Manager Reinhard stated that public institutions of higher education and community colleges were not sent compliance plans. He stated not being clear whether ICCB sent out that type of documentation (compliance plans). Chair Roberts voiced her concerns and stated that each state agency and public institution of higher education shall file an annual compliance plan with the Council. She stated believing that community colleges and public institutions of higher education should follow the same processes and procedures as agencies. Member Matthews recalled public institutions of higher education and community colleges struggling to comply in the past and suggested providing a BEP "orientation" to the schools' Boards of Regents. It proved informative for leadership and management and engaged them in the process of becoming more involved and accountable. Member Matthews encouraged a similar process be put in place with ICCB.

Member Ivory recalled an in-depth analysis spanning 10 to 20-years done by the Procurement Policy Board to measure participation in a professional service. It was concluded that no minorities had been selected to participate in professional services in the history of any one junior college. Member Ivory asked the Procurement Policy Board to participate in an educational presentation at an event on sheltered markets for agencies and especially colleges. He encouraged the opportunity to educate through ICCB. Member Martinez stated that when colleges approach Capital Development Board (CDB), they tend to fall back on language that allows them to state the firm they've selected is familiar with their buildings. Member Martinez stated this language (satisfactory service) closes the opportunity for new firms to participate.

Member McKinnie asked whether there is an enforcement policy and who carries it out. Acting Secretary Glavin responded that a recommendation may be made by the Council to terminate contracts,



which Central Management Services (CMS) may then act upon. Member McKinnie asked who monitored compliance. Acting Secretary Glavin responded that CMS, BEP Compliance staff and the Council all monitor compliance to make the recommendation.

Member Ivory stated that as much as minorities play a part in community colleges and increase revenues, it is a tragedy to not be reflective of the opportunity to involve minorities in contract goals and participation.

Member Matthews stated that enforcement and monitoring are lacking and encouraged working with Compliance Manager Harry Reinhard and compliance staff to be supportive in light of what she called a systemic issue. Acting Secretary Glavin stated seeing improvements with the data coming subsequently making monitoring much more successful, as not having it in the past has been a shortfall. Chair Roberts stated that the responsibility to ensure colleges' compliance falls on the Council.

Update on the Rules

Acting Secretary Glavin stated that Chair Roberts and himself were not able to discuss the updated rules as planned when they met to discuss utilization plans. Nonetheless, Acting Secretary Glavin provided an update stating legislation was proposed to make statutory changes. The rules will reflect the statutory changes and are therefore pending. Acting Secretary Glavin offered to plan another meeting with Chair Roberts and any others who would like to participate to review existing proposed administrative rule changes to determine whether they meet the approval of the Council or subcommittee. Acting Secretary Glavin stated that he would set a meeting to review rules within two weeks.

Chair Roberts recommended the update on rules involve reviewing consistency across the board. Acting Secretary Glavin stated being mindful of the request since consistencies across sections of state government is critical. He noted statutory and rule changes relevant to the subcommittee including reciprocity (recognition of the validity of another entity's certification) across governmental units. Chair Roberts asked for clarification on how reciprocity will work. Acting Secretary Glavin responded that CMS is trying to get as close to true reciprocity as possible with a minimum requirement (I.E. vendor registration—allowing CMS to keep track of money being spent).

Member Martinez stated that reciprocity would be of great help to him stating his only concern was how CMS will track spend. Member Matthews recalled when reciprocity was accepted in the past and mentioned that it became a downward trend when fewer entities would accept reciprocity from the State of Illinois. Member Matthews asked whether the reciprocity in question today would be mutual or just a wider pool of whose certification CMS will accept. Chair Roberts stated others could probably not accept the State's reciprocity because of size standards.

Acting Secretary Glavin commented that CMS has been in talks with legislators in Springfield. Chair Roberts clarified the distinction between accepting other certifications and a recognition process to get vendors certified. Acting Secretary Glavin stated reviewing requirements from other jurisdictions to see where the State will be able to accept those certifications. There is no universal reciprocity at this point. Chair Roberts stated that true reciprocity back-and-forth would mean that the State would have to decrease its size or that other entities would have to increase theirs. She asked which one was being asked for at the legislative talks. Acting Secretary Glavin stated that the dialogue with all governmental units and legislators has been about trying to come together and figure out a solution among the jurisdictions' requirements, meaning that it is a work in progress.



Member Barreto stated that reciprocity needs to be clear whether other entities will be able to accept reciprocity from the state. Chair Roberts restated that is the importance of knowing what the position is when approaching legislative talks. Acting Secretary Glavin stated that the position is to try to achieve reciprocity where possible.

Legislative Liaison, Steve Booth, stated that an issue was identified with the ratio that goes into goal-setting. Where there is a more robust population of vendors, the State can hold agencies and primes accountable to a higher level of participation. Part one is recognition and reciprocity to increase the number of available vendors against which we are grading.

Member Ivory expressed his concerns regarding veterans' three percent goal and not meeting it. He stated believing that one of the most restrictive rules is that veterans must live in the state of Illinois when they are veterans for defending the country. Member Matthews agreed with Member Ivory. Member Martinez stated his challenge to be the lack of certified veteran firms. Compliance Manager Reinhard clarified that restricting to an Illinois base is more for goal-setting and not for contracting. Chair Roberts requested Legislative Liaison Booth to review the process of eliminating the State residency requirement. Acting Secretary Glavin confirmed a follow-up will be conducted on the elimination of the requirement.

Utilization Plan Update

Counsel Lakhani provided the update for the Utilization Plan and mentioned that she had a productive meeting the past September 19th with CPO offices, BEP Council members and CMS staff. Revisions to the Utilization Plan by Chair Roberts and CPO Bagby will be provided at a meeting on October 11th at which point a second meeting will be set. The meeting's goal was to have a final Utilization Plan before the last Council meeting of the year 2019.

Provide update on documents regarding contract language best practices

Counsel Lakhani provided an update on her research in other states and jurisdictions. She referred to the State of Kentucky's rigorous BEP program and wanting to incorporate some of their practices such as: sanctions, clear language, all changes being reported and approved, good-faith efforts, and liquidated damages language. Counsel Lakhani also cited her research on the State of Indiana and the City of Chicago's statutory language and will continue to add to her research with language suggestions from Chair Roberts.

Member Matthews stated than in addition to Counsel Lakhani's research, the language should continue to be reviewed on an annual basis. Chair Roberts stated that if liquidated damages language is added to the language, it must be clearly stated where the funds are going. Member Ivory suggested that whatever funds come from this be used for better enforcement in compliance and more compliance staff. Member Matthews asked if including interest on unpaid invoices was a possibility on larger contracts.

Acting Secretary Glavin stated there being room for improvements and mentioned attacking goal issues on a variety of fronts. He stated that an important improvement to make is increasing the number of firms certified to increase availability (that oftentimes is the challenge based on the formula).

Member Ivory stated that 84 percent of black businesses reside in the Cook County area. He suggested that a part of the overall strategy be identifying opportunities downstate (helping businesses relocate or



expand) where there is major spend. Chair Roberts stated that if there is no region requirement for the prime contractor there should not be a requirement for the subcontractor. She also stated believing that goal-setting should not rely on a formula, but instead historical evidence and trends.

Update on DOIT Compliance with Contract #CMS793372P

Acting Secretary Glavin provided an update stating that there was a utilization, participation and substitution issue involving The IT Architect Corporation. BEP met with the Department of Innovation & Technology (DoIT), Verizon representatives, as well as The IT Architect Corporation representatives and their legal counsel. A meeting was held to hear out all parties concerning whether Verizon's request to make a substitution should be approved. DoIT decided that the substitution would not be granted and The IT Architect Corporation would remain on the contract.

Mr. Harrell thanked the Subcommittee for moving the issue forward. He stated that DoIT's general counsel recommended the State Purchasing Officer deny Verizon's request to substitute for the following reasons: proposed alternate vendor was not a BEP certified vendor, any mistake or confusion held by Verizon was rectified in Spring of 2017 as a result of a subcontract, and that Verizon admitted performing work by its own forces that was designated to The IT Architect Corporation. Mr. Harrell expressed his appreciation but also his feeling that he should not have been bullied by a larger organization in the first place. The IT Architect Corporation requested that CMS look at increasing the goal to the minimum State amount of 20 percent along with DoIT engagement through a quarterly business review as a best practice.

Chair Roberts asked to add an agenda item to the next agenda (next subcommittee meeting) to discuss the Subcommittee's review of these requests as well as all of DoIT's bids and compliance on every bid for the last fiscal year. Acting Secretary Glavin confirmed noting both requests and that Compliance Manager Reinhard will work to gather information on the audit and will follow-up at the following subcommittee meeting.

Provide Status regarding payments and Compliance for MBE(s)

Acting Secretary Glavin provided an update stating that the first of three dispute resolution meetings was held. WESCO is a prime contractor on contract with higher education and has a dispute pending with Obama Energy Corporation regarding the lack of utilization. Acting Secretary Glavin stated the first meeting was productive and that communications began after the first meeting. He stated a second meeting was necessary to work toward complete resolution. Chair Roberts asked that the second and third meetings be held in the interim for an update on the resolution at the next subcommittee meeting.

Provide Status regarding payments and Compliance for MBE(s)

Compliance Manager Reinhard provided an update stating the Fiscal Year 2020's compliance plan has been reformatted to segregate Joint Committee on Administrative Rules (JCAR) 10.22 exemptions and list them independently. Listed independently, it is made easier for the Council and Subcommittee to review requested exemptions by removing the JCAR exemptions. Chair Roberts added that certain JCAR exemptions were voted on. Compliance Manager Reinhard clarified that unless the changes the Council made were instituted in JCAR, JCAR still stands. Chair Roberts voiced her concerns on how the exemptions previously voted on by the Council will be reflected.



Member Ivory stated that the environment has changed since changes made in the past. Member Matthews stated that changes made needed to be codified through the JCAR process and that part was not done. She stated that after making the changes with good intent, getting it through the State apparatus for implementation was not accomplished. Member Matthews asked what the Council can do to support a process for implementation through the State apparatus. Chair Roberts stated that the Act reads under limitations, that any such class exemption shall not be permitted for a period of more than one year at a time. She asked the subcommittee members how the group will move forward as it relates to allowable class exemptions.

Member Ivory stated that between JCAR and listening to agencies' concerns, he wants a fair and equitable solution for all parties. He also expressed his concerns and dismay in making suggestions for solutions, proven effective in different instances in the past, that have not been followed through with. Member McKinnie stated having spent a great deal of time on voting on exemptions in the past and being concerned that the group is not moving forward. Member Matthews again requested guidance for agencies on how to comply. Member McKinnie clarified that the eliminated exemptions voted on were not put together for only a year, it was supposed to be carried out into the future.

Compliance Manager Reinhard clarified that the subcommittee will still be able to review the plans and the subcommittee still has the capability to approve or deny the exemption.

Chair Roberts stated the Council should vote on allowable class exemptions on an annual basis as according to the Act. She requested the vote to be separate and aside from annual compliance plans and people requesting additional exemptions. She asked members of the subcommittee for direction. Member Ivory stated that the Council's fiduciary responsibility was to protect the interests of minority-owned, disadvantaged and women-owned businesses. He stated that the Council failed to follow through on exemptions and that they (including himself) need to question their ability to lead in that capacity.

Member Martinez stated that the goal was being responsible in trying to catch more dollars in diversity. He stated that if the Council voted to eliminate those exemptions, and an agency approaches the Council with difficulties, then the Council needs to understand those difficulties. At the time, the vote was made understanding that the Council could capture more dollars for diversity. He stated the Council needed to know what the challenges facing agencies are, such as vendor availability or scope of work. Member Barreto concurred with Member Martinez.

Member Martinez asked if this was an issue to bring up to the full Council. Chair Roberts stated no, that it is a compliance issue. She clarified that the vote was to reduce the number of allowable exemptions. Acting Secretary Glavin asked for clarification on what specific exemptions were addressed in the vote in order to eliminate the proper ones. Chair Roberts stated that Compliance Manager Reinhard knows what exemptions were voted on.

Chair Roberts stated that if all agree that those exemptions should no longer be allowed and that they should be reviewed annually per the statute of limitations, then a motion should be made to keep the exemptions previously voted on non-exempt.

Member Martinez stated that the Council voted on allowable exemptions. Compliance Manager Reinhard clarified that the Council made withdrawals (specific detail object codes) out of JCAR for about five exemptions. Chair Roberts confirmed. **Member Martinez made a motion that all the allowable exemptions removed from the subcommittee's previous vote, should remain removed from the JCAR**



allowable exemptions. Compliance Manager Reinhard provided administrative clarity, stating those (about five) detail object codes (DOC) that the Council ruled as now non-allowable, he will change in the Fiscal Year 2020 Compliance Plan to show them as requested exemptions. Chair Roberts confirmed that is correct once voted on. The motion was taken to a roll call and carried with one abstention. Member Matthews requested an addendum be made to the motion so that, “the Subcommittee and full Council will provide technical assistance, including CMS and CMS staff, to agencies, upon request, who are striving to get to their goal”. Chair Roberts asked all in favor of the amendment, providing instructions and training to any agency or institution of higher education on the “how” to implement this, to vote. The amendment to the motion carried.

2020 Compliance Plan, Harry Reinhard

Compliance Manager Reinhard stated that for Fiscal Year 2020 the Council ruled they would evaluate with strict scrutiny, requested exemptions. Chair Roberts explained that the motion approved was specific to the JCAR allowable exemptions. She explained that the Council decided last year on additional requested exemptions beyond the allowable exemptions that allowed state agencies and institutions of higher education to reduce their dollar that are subject to the goal. Member McKinnie stated that all compliance plans not reported are now past due. He expressed his concern that the Council is backtracking from its decision last year. He suggested reporting agencies and public institutions of higher education that have not submitted their compliance plans to the Governor. Compliance Manager Reinhard stated that his understanding of the Council meeting regarding Fiscal Year 2020 was that they would still allow agencies and universities to present requested exemptions and that the Council would review and decide. Member Barreto confirmed that she had the same understanding. She stated the point was that those not submitting anything at all was because they didn’t know what to submit. She stated the Subcommittee was voting to keep what the Council voted on to remain in place and that they were debating whether they will provide assistance. The assistance is that they need to submit something so that the Council can respond.

Chair Roberts clarified that the Subcommittee was focused on taking out the allowable exemptions, and specifically talking about additional requested exemptions that the Council made based upon the disparity study that recommended eliminating additional allowable exemptions. She asked for a point of clarity on whether that was something the Council meant to reject permanently or vote on annually.

Member Matthews stated that the Compliance Plan from her agency was submitted as a draft in an effort to not be rejected, but instead for assistance. She stated that the issues being brought up are not singular, they are all interconnected (lacking enforcement, staff, monitoring, grappling with agencies and entities to do better). She urged the group to come up with a plan that covers all of BEP and find solutions that happen in logical sequence (programmatically, legislatively and administratively). Member Martinez stated being sympathetic but that there has to be an effort from within (internal) so that the effort and the exercise has been taken through.

Chair Roberts stated that the Subcommittee agreed that the clarification needed was on what the Council voted on last year. It was clarified that it was a permanent decision to eliminate requested allowable exemptions based upon the Disparity Study recommendations. Compliance Manager Reinhard clarified that the decision was made to be in effect from 2020 on. The Subcommittee confirmed. He



asked for clarification on whether he is eliminating the possibility for any agency or public institution of higher education to request any exemptions. Chair Roberts and the Subcommittee confirmed.

Acting Secretary Glavin stated that last Fall, the Subcommittee, with delegated authority to eliminate exemptions, voted to eliminate exemptions. In a recent full Council meeting, when hearing out agencies that had trouble with the “how-to”, the full Council voted to walk that back to allow agencies to submit plans to submit exemptions for consideration. Acting Secretary Glavin stated that the Subcommittee voted to reinstate its’ Fall vote, despite the full Council’s vote to walk that back.

Assistant Director Merchant stated that the objective of the Council is to make sure the agencies and the universities are increasing the dollars subject-to-goal and that last year the vote was to eliminate requested exemptions. He stated that there was confusion on what the original vote was, and his interpretation was that the Council was willing to accept compliance plans and the Subcommittee would look at some of the requested exemptions. Assistant Director Merchant stated that he would only advocate for that perspective with the knowledge that the compliance plans would require that the agencies really drill down more on how they would accomplish any of the requested exemptions that they were looking for. He suggested making larger categories to make it easier for the Subcommittee to say “we are not going to accept that requested exemption” and why.

Assistant Director Merchant addressed the Subcommittee stating that they have the expertise to help the agencies understand where a better spend can be achieved, “if they don’t know without that direction, then they’ll never be able to get that better spend.”

Member Matthews stated that the agencies are taking the goals more seriously than the Council does. She was concerned with the usage of the term “aspirational goal” and stated that she still sees it as a goal that must be attained. Chair Roberts stated that the Council is responsible for receiving Compliance Plans. She stated that last year was the first year that the Council voted on whether to approve or deny additional requests. Compliance Manager Reinhard confirmed. Member Ivory restated Assistant Director Merchant’s statements on getting a Compliance Plan and working with agencies and public institutions of higher education to make sure they hit their goals. The subcommittee agreed.

Chair Roberts recommended that when the Compliance Plan is put out, the allowable exemptions will be eliminated with the ability to still request exempted items. She stated CMS must come up with a plan on how to credit people when they take out funds for the master contract to count towards their spend. Compliance Manager Reinhard stated that would be a requested exemption subject to the Council’s review to determine a master contract. Chair Roberts stated that a system is needed to credit spend for different agencies and public institutions of higher education when utilizing a master contract.

Public / Vendor Testimony

Chair of Advocacy for the Minority Council (600-700 certified MBEs) echoed Member Ivory and stated that compliance is the law. He stated the State of Illinois has been historically behind.

Thomas Bowling, President of Obama Energy Corporation, stated that agencies need to get to know BEP vendors because the capability for spend is there. He stated that BEP has major firms out there to deal with millions of dollars, so he does not see what the problem is.



David Lochmann, Chief Operating Officer of Obama Energy Corporation stated that Obama Energy's previous ask was that the Subcommittee research Maryland and Atlanta on the "how" because those are two examples of entities meeting their goals. He stated, "you find out who's winning, and you figure out how they're winning."

Charles, Vietnam Veteran, veterans are not well informed on the benefits of being certified and that the state needs to be more proactive in outreach to veterans.

Adjournment

Member McKinnie motioned to adjourn, Member Matthews seconded.