



**Business Enterprise Council
COMPLIANCE SUBCOMMITTEE MEETING
Wednesday, December 11, 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; Larry Ivory; Jesse Martinez; Sharron Matthews

COUNCIL SUBCOMMITTEE MEMBERS NOT IN ATTENDANCE

Denise Barreto; Edward McKinnie; Shelia Hill Morgan

COUNCIL SECRETARY

Radhika Lakhani

CMS MEMBERS IN ATTENDANCE

Steve Booth, Patricia Boscan; Jeanetta Cardine; Radhika Lakhani; Michael Merchant

OTHERS IN ATTENDANCE

Thomas Bowling; James F. Clayborne; Charles Harrell, II; Paul Kuchuris; Reginal Lampkin; David Lockman;
Dale Morrison; Herb Stokes;



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AGENDA

- I. Welcome
- II. Call to Order
- III. Roll Call
- IV. Posted Business
 - a. Approval of Minutes for the September 20, 2019 Subcommittee meeting
 - b. Goal Setting
 - c. Compliance Plans
- V. Define Action Items
- VI. Upcoming Business Enterprise Council meeting date
 - Next Council Meeting – Monday, December 9, 2019
 - Next Subcommittee Meeting – Wednesday, January 29, 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 meeting is open to the public**

BEP Council Compliance Subcommittee



MINUTES

I. Welcome

Chair Roberts welcomed everyone.

II. Call to Order

Chair Roberts called the meeting to order at 1:38 p.m. Michael Merchant proceeded with roll call.

III. Roll Call

Roll call was conducted. Quorum was established.

IV. Posted Business

a. Approval of minutes for the September 30, 2019 Subcommittee meeting

Member Matthews moved to approve the September 30, 2019 Subcommittee meeting. Member Rodriguez seconded. All agreed. The motion was carried.

Member Matthews recommended creating a running action list to be placed alongside the minutes for tracking purposes. Chair Roberts asked for further comment. There was none. Member Roberts agreed with the proposal, asked that the Secretary keep the list and forward it to members for review. She thanked Member Matthews for her suggestion.

b. Goal Setting

Chair Roberts gave a brief history of goal setting for new members. She explained that a few years ago CMS implemented a goal setting process using the Hoovers database to set goals on a contract-by-contract basis. Chair Roberts said there was some outreach and training done through CMS which she stated should continue on an ongoing basis to ensure everyone is applying the same goals. She pointed out that use of the Hoovers database was a stop-gap method set-up by Collette Holt, but that now they have the B2GNow database which can be used instead. Chair Roberts stated this has impact on the General Services CPO and the Higher Education CPO whereas they now have a place to register vendors who are interested in doing business with the State. She said they realized the Hoovers process generated low goals, although the process outlined that anecdotal or other evidence could also be used. Chair Roberts passed out information regarding this process. She informed the subcommittee that for the most part, once people used the formula to establish goal, no further work was performed to help refine their results.

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BEP Council Compliance Subcommittee



Chair Roberts mentioned that at Monday's Council meeting, Mr. Merchant discussed that CMS has started a Pilot Program not utilizing Hoovers. She asked Mr. Merchant about the work being done on goal setting through the pilot program. Mr. Merchant stated it has been about a month. He related how they started out using the registered Secretary of State vendors, however they found there were no sole proprietors or other such businesses to be found in that database. Mr. Merchant said they began using the BidBuy system because it is the most accurate, comprehensive pool of vendors looking to do business with the state. He added that out-of-state vendors are also counted towards the goal. Ms. Lakhani added that they are also looking at geographic areas of the vendor pool to help improve outreach targeting.

Member Martinez expressed shock that agencies don't do things the way they (Capital Development Board) do and can now understand why it has been so difficult, because when they have a large project they host a mandatory prebid meeting where the minority vendors will partner with all prime vendors. Alternately, he said the minority vendor can go to the architect or planner, ask who took the job, and call them. Member Matthews stated that what is needed is for prebid conferencing to be part of the policy, but it needs to come from CMS. Mr. Merchant stated that the head of BOSS, Ron Wilson indicated that he will begin to attach a list of eligible vendors on the front end of bids so that the respondents have no reason not to reach out. Member Matthews restated that she would like to see the prebid conferences set up to a certain amount that would be worth someone getting on a plane.

Chair Roberts said that she would like a memo to go out informing POs to use their CPOs registered database and then to show them how to do research because most of the vendors she finds also do business with the City of Chicago and Cook County, who have higher goals and tend to surpass their goals while here at the State of Illinois she has seen goals set at 2%, 3%, 5%. She highlighted that vendors tell her they won't respond to something that only has a 2% goal on the contract and asked how can the State attain their 20% goal on 2%'s. Mr. Merchant responded that changing the goal-setting formula is one way they are working towards that, another is that behind the scenes they are working with procurement to reach out to larger organizations. For instance they will be having a conversation with larger automotive companies to understand how to achieve better goals. Chair Roberts spoke to breaking down procurements and recounted how when she worked with the county that the State's vehicle contract came without goals, however the county purchased vehicles "naked", whereby the minority-women-owned business would fulfill the part of the contract that related to completing those cars, the add-on's, such as painting and placing medallions and the vendors were able to fulfill those goals. Member Martinez and Mr. Merchant referred to dealerships being over the \$75 million cap. Chair Roberts countered that certain commodities, such as pharmaceuticals, are going to grow out of the \$75 million cap, but there can be

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exceptions, that outreach is needed in order to inform the public, and the law should be looked at.

Member Ivory pointed out that there is pending legislation to increase the cap, but that it is not the silver bullet. He stated that procurement is complicated and not just about setting the goal and having a higher goal. Member Ivory said that people don't want to do extra work and once they find someone who can perform the work and be accountable that is who they go with and that there are also cultural issues that need to be looked at.

Member Matthews discussed that in the non-construction agencies, the RFP has already been written by the procuring entity, therefore if de-bundling and having a prebid conference aren't already a part of the RFP, then there is nothing she can do about it. She stated her objective is to try to up the BEP goal, which is again why they need to work with the APO and not just the BEP liaison. Mr. Merchant responded that since he now has BOSS and BEP under him, they are about to launch statewide agency and university APO trainings and best practices for BEP liaisons. Member Matthews suggested that they work with each agency and have them bring together all procurement staff and do the exact same training, because if they don't this will go nowhere since the APO's and BEP liaisons are not the only folks who touch procurement.

Chair Roberts recommended that they have a process in place. She said that they recognized from beginning that the goals are low, CMS secretary put out memo with new guide lines on what database to use to yield higher goals, also give examples how to increase and justify goals. She offered that by the end of January they could have something to present before the Council. Mr. Merchant announced that by that time the first wave of training would have been implemented. Chair Roberts recommended making the aforementioned recommendations a part of the training process, and to utilize their BEP liaison to make sure they have the right people there. She said they could have an outside meeting to codify what needs to be provided by them. Member Matthews stated that this will get people's attention and let them know that it is on the radar again on a high level.

c. Compliance Plans

Chair Roberts communicated that CMS sent out compliance plans that were due back October 31st and that the report to the Governor is due by March, but they have not received any of them. Ms. Cardine revealed that they have received most of the compliance plans, are missing about five to six due to new staff coming in, and that approvals are almost completed; however she was unsure if Mr. Reinhard wanted them presented them today but that he can present them at the next meeting.

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Chair Roberts noted that in the past it has been a process reviewing the plans and wanted sufficient time for there to be a healthy conversation regarding them. The written compliance plan section where an agency can write a narrative about how goals will be achieved was brought up. Chair Roberts observed that this section was locked for universities. Ms. Cardine explained that this could be a tech issue and would look into it.

Chair Roberts explained that the plans are in arrears, stating that the fiscal year was over in July, the report is due in Governor's office by March, and it is now essentially January. Member Ivory emphasized that the compliance plans are one of the most critical objectives they have as a Council and review should start now. Mr. Merchant agreed and said he will speak to the compliance manager and will start distributing them. Chair Roberts furthered the idea of rearranging when compliance plans are due and perhaps request them in July. Mr. Merchant affirmed they would check into that.

Member Ivory stated that one of the best things they have to help improve current minority participation is a sheltered market. He outlined that if companies or agencies are woefully underperforming, this is the perfect opportunity to justify a sheltered market, it is a legal tool, they should put more in place, it would improve productivity and they should make it a priority. Member Matthews responded that she fully supports what Member Ivory stated and with that hopes that the problems with implementation that have not been worked out at CMS will be able to be focused on and also have sheltered markets included in the training. She added that they have to be placed into RFP from the beginning, otherwise it doesn't get there.

Member Ivory specified that sheltered markets do not operate across groups, but across those who are despaired against, which would be the disabled, Native Americans, and Asian business owners. He also emphasized that there is no place where African Americans or Hispanics are doing well and everyone should be engaged in the fight. Member Ivory stated that sheltered markets are the best vehicle they have that legally allows them to correct the disparity. Chair Roberts stated there are already rules regarding sheltered markets and speculated that what is wanted is communication put out by the BEP secretary so that when people use BidBuy, one of the questions that should come up is if the agency or university tried to use a sheltered market. Member Ivory cautioned the subcommittee not let the process get watered down and stated every minority should be pursuing sheltered market. Chair Roberts said they would take a look at sheltered markets and figure out a more aggressive approach. Mr. Merchant agreed. In summary, Chair Roberts listed that in the APO and BEP liaison meeting they should be discussing goal setting, compliance plans and sheltered markets. Member Matthews interjected they should also include the history of BEP.

V. New Business

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- a. Chair Roberts introduced discussion of the bid that went out with a 10% goal and asked if there was a DoIT representative available to converse about a goal. She related how it had no goal at first, then they voted on it and motioned it should have a 20% goal, a year later it has come out with a 10% goal. Chair Roberts also asked about the Verizon goal, they requested a replacement from the vendor and where they are at achieving a 20% goal on this contract as well. Mr. Lampkin explained that regarding the Internet Egress contract, there is a goal certification requirement and when they sent it out, they only had 2 and they were not certified, so they had no choice but to reduce the percentage to 10%. Chair Roberts asked for further explanation regarding having to be “goal certified” citing that the barriers are sometimes unknown and that in her role and disparity studies scope of work and certifications can be impediments. Mr. Lampkin stated that had he known they would need it, he would have brought more information and the end user to explain further as he is new with DoIT. Chair Roberts detailed the history, explaining how Internet Egress was not a critical need since it has been two years without resolution. Member Ivory said he was amazed the contract is being discussed again with a lower instead of higher goal. He stressed this should be explained, it should be challenged and that this same type of behavior cannot continue. Member Ivory stated his respect Mr. Merchant and his team for allowing them to participate in a meaningful way, but that more needs to be done.

Chair Roberts underscored that the law states if contract goes out with a less than 20% goal and it is over \$20 million, it should be brought before the Council. She said this did not happen and asked why. Chair Roberts stated this one is probably 50 plus million dollars. Member Perez cited (30 ILCS 575/8g .(a)Business Enterprise for Minorities, Women, and Persons with Disabilities Act.) that CMS...

“...shall provide a report to the Council identifying all State agency non-construction solicitations that exceed \$20,000,000 and that have less than a 20% established goal prior to publication.”

Chair Roberts stated they have to follow the law. Mr. Merchant said he will have the DoIT representative check this to give justification. Chair Roberts recommend they do an extension, then they could address it to the compliance subcommittee at an emergency meeting. She requested the CMS Secretary send a letter in the morning asking they do an extension because the law was not properly followed, BEP Council did not weigh in, if they cannot do this, they recommend that they pull the procurement until the issue can be resolved. Mr. Lampkin stated he would deliver the message. Chair Roberts asked that a copy be provided to the compliance subcommittee members. Member Matthews asked that they provide the name of who is currently providing internet egress.

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Chair Roberts requested an update on the answer on Verizon contract. Mr. Lampkin answered he did not have that information, but to let him know in advance and he will bring all the information for them. Chair Roberts thanked Mr. Lampkin.

VI. Define Action Items

Chair Roberts requested a reading of today's action item list from previous meeting minutes. Ms. Lakhani listed,

1. set up pre-bid conferences and publish the attendance from them
2. memorandum detailing the process regarding the differences in the processes of attaining reasonable attainable goals
3. follow-up on the exception on the \$75 million exemption cap
4. by the end of January, have the BEP Secretary put out a memorandum on guidelines how to get higher goals on databases with examples on how to increase and justify the goals and incorporate this into training
5. provide the subcommittee sufficient time to review compliance plans before the next compliance subcommittee meeting
6. gather and deliver compliance plans as they come in
7. add sheltered market training to APO/BEP liaison training
8. have DoIT extend the Internet Egress contract until the issue regarding goals is resolved
9. provide a report to the Council for all contracts above \$20 million to be reviewed if they have a goal below 20% to be reviewed by the Council
10. DoIT Liaison must return to determine if the contract is critical and move forward
11. Potential Emergency Compliance Subcommittee Meeting to be scheduled to discuss Internet Egress goal
12. Extend the due date of Internet Egress from December 16th, as they did not follow the law to present the contract before the Council
13. Provide documentation to the Subcommittee showing who currently provides internet egress to the State

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Chair Roberts thanked Ms. Lakhani. Member Matthews asked about the action steps from the last meeting. Chair Roberts stated Ms. Lakhani will add them together and asked Member Matthews to send the previous action items to Ms. Lakhani. Member Matthews agreed. Chair Roberts added that they would like to hear before the 20th if they need to hold an emergency meeting and confirmed there are minority-women-owned vendors in IT and would like to seek to increase those goals working in conjunction with DoIT.

VII. Upcoming Business Enterprise Council meeting dates

- **Next Council Meeting – Monday, December 9, 2019**
- **Next Subcommittee Meeting – Wednesday, January 29, 2020**

VIII. Public / Vendor Testimony

Chair Roberts opened the floor to public/vendor testimony.

- Mr. Thomas Bowling, COO of Obama Energy; Mr. Thomas Morris, attorney for Obama Energy

Mr. Bowling gave Mr. Morris the floor to speak on his behalf. Mr. Morris introduced himself. He spoke about the Wesco contract for which he stated he has presented to the Council many times and which had goals. Mr. Morris continued, detailing Wesco's "alleged good faith effort" to provide 22% minority spend on this contract with the universities. He said he was retained about a year ago when Tom (Mr. Bowling) said they had not gotten any business as a result of this contract and they are the only minority that has been actively involved.

Mr. Morris stated they did the analysis for the settlement proposal he made to Wesco which Tom distributed at the last Council meeting and have yet to hear from them. He explained that in year one of the contract, Wesco did almost \$3.8 million in total contract amount from the universities and \$29,800 of that went to minorities which he proclaimed is ridiculous. He said half of that was with Obama Energy, the rest of it was pieces with companies they have done business with before and not with minorities they had sought out. Mr. Morris reported that in year two, again Wesco did \$3.8 million and this time \$85,000 of that went to minorities, so that for the first two years Wesco did 1.5% on a commitment of 22% and he noted there was no showing of good faith.

Mr. Morris stated they wrote a letter saying, "let's resolve this Wesco" and to Wesco's credit after they received his letter, they picked up minority participation but have still not come close to the 22% and added that at least they had done better. Mr. Morris said the contract is going to be up in six months, June 3rd and outlined that if they gave every penny to minority spend Wesco will not hit their goal. He stated that Tom asked him to come to



this meeting since it is the Compliance Subcommittee and they have been asking about this for about a year. Mr. Morris said people had told him “hold off Tom, don’t file your lawsuit, let us get involved”. Chair Roberts asked him who said that. Mr. Morris asked Mr. Bowling who said that. Mr. Morris stated they have had several settlement meetings where Terry Glavin brought in Wesco. Member Matthews reiterated the question. Mr. Morris could not recall and requested to see if this could be resolved. He said the threat of pulling the contract was not enough and that frankly, they are looking for help. He added that the lawsuit is ready to go. Chair Roberts asserted they cannot provide them with any legal advice. Mr. Morris stated they are not interested in that.

Chair Roberts stated that she will ask CMS to have Wesco presented at the next Compliance Subcommittee meeting and be given timely notice in order to be able to rectify their lack of compliance on this particular contract. Member Matthews pointed out that they only have six more months, five from the next meeting, and as it stands now, if what she as a new member is hearing is factual, they need to take that money from Wesco that was not used because it was not meant for them. She continued, stating the only option the State has is for the last payment and anything that is still on table that was not spent, to be pulled because that money is not theirs.

Chair Roberts stated they are going to request Wesco come before the Compliance Subcommittee to explain their compliance and that the Subcommittee has options, one is to terminate the contract, prohibit the respondent from public contracts for a period not to exceed one year, meaning they could make recommendations that they are not able to bid, and impose a penalty, which will be made very clear to Wesco when they are invited to provide an update on where they are on compliance. Ms. Lakhani said they will issue a request for appearance under the Act. She also informed Chair Roberts that she has been participating in the resolution meetings between Obama Energy and Wesco and that their goal was to maintain the relationship and assist in a resolution. Ms. Lakhani stated that being said they will issue the letter.

Chair Roberts recognized Mr. Bowling. He related that at the last council meeting, regarding respect, he noticed that the big companies do not respect the Council, what is going on there, and alternately expressed respect for what the Council is doing but that he would like things moving faster. Mr. Bowling made known that he has been waiting and said yes give them time to catch a plane, train, whatever, he voiced disinterest due to the time Obama Energy has been waiting for the last three years. He pointed out that Wesco has enough money, being a “19 billion dollar Anglo” company and that they can fly someone in today. He requested to make this an emergency meeting to take place as soon as possible. He said Wesco has the money, time, and many general counsels.

Member Matthews emphasized that this has been going on since BEP and MAFBE and that when a prime is non-compliant, that money is not theirs and the State has to reclaim it. She

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noted that the State has not been doing that since this program was set-up, has lost millions and that the State is in trouble because it doesn't have enough resources. Member Matthews stressed that this is one area where it can legally stop, that (Wesco's conduct) almost approaches fraud. She emphasized that if they don't spend (the money) the way they said they would, still have the balance of what is left, then that amount comes back to the State.

Chair Roberts announced she will have Ms. Lakhani look into that. Member Matthews summarized that current law states that penalties paid fall to the program. Chair Roberts affirmed that Mr. Merchant will make an assessment and if the decision is made to hold an emergency meeting, they will hold one for both Wesco and internet egress for the same day.

➤ Mr. Herb Stokes, Chicago Minority Business Development Council, Chair of Advocacy

Mr. Stokes stated he is not here on an individual basis for any individual company. He remarked he is more interested in the over 1,000 MBEs and how we behave on behalf of them, including some of the MBEs in the room. Mr. Stokes emphasized he thinks it is unreasonable to be reasonable. He said he thinks DoIT is an opportunity to demonstrate compliance for all of us. He said BEP is oversights if he understood correctly. Mr. Stokes described that what compliance means to him is a proactive approach in holding people accountable by law with an action, not giving a warning ticket, but an action. He stated half the agenda should include a sergeant of arms in a proactive way of who deserves a ticket and who exercises the violation whether it be DoIT or CMS. Mr. Stokes said towards Mr. Lampkin that he thinks it unfair, unreasonable, and intentional for DoIT to have sent him out unprepared. Mr. Stokes reaffirmed that he does not want to be reasonable when they should be unreasonable. He stated he thinks it intolerable for a committee defined as compliance to not exercise consequences immediately, and on behalf on the MBEs he represents as Chair of Advocacy, he has to return to report to CMBC on why MBEs should participate which not many on his committee don't want to. Mr. Stokes said he thinks this committee is the strongest committee, but as far as the exercise through compliance., if he breaks the law he goes to jail, some cop stops him for a ticket, gives him a warning, and this is way over warning. He strongly suggested to send a message to DoIT, because there is due process for actions for them.

➤ Mr. David Lockman, COO, Obama Energy

Mr. Lockman affirmed Mr. Stokes' statements that when a person breaks the law, even so they still have rights, but when they don't' comply after breaking the law and being notified, then they lose those rights also. He said it's like what he (Mr. Stokes) said, if you shoot up the town, when you lay your gun down, that's it, you have your rights, but that obviously these entities are still shooting, so you have to use deadly force to end that trauma and the



deadly force is “that letterhead saying guess what, we’re suspending your money and we’re going to give you the ultimate sin of that contract and you’re not to bid on a contract.” He added that it’s a 10 year recovery when you can’t bid one year. Mr. Lockman interjected that they don’t even have anything to recover from and are still recovering and hemorrhaging from Wesco’s act, so why shouldn’t Wesco suffer. He elucidated that if they had complied and come in they would still have rights. Mr. Lockman said Wesco is still disrespecting the board and are essentially telling them that they don’t believe it, the value of the Compliance Subcommittee. He added that he knows them (the executives from Obama Energy) personally and that they “filled out 500 pieces of paper to say they’re black.” Mr. Lockman concluded stating “let’s start knocking some helmets off, you’ll get their attention” and thanked the subcommittee.

Chair Roberts responded that CMS will look into emergency compliance meeting for next week, to address the issues discussed with DoIT and Wesco, it will be posted on the website, She requested that the attendees leave their contact information for Mr. Merchant and he will provide them with meeting information.

IX. Adjournment

Member Matthews motioned to adjourn. Member Martinez seconded. The meeting adjourned at 3:25 p.m.