

**Business Enterprise Program Council for Minorities,  
Females and Persons with Disabilities Meeting**

**MONTHLY COUNCIL MEETING MINUTES**

100 W. Randolph  
Room 2-025  
Chicago, IL 60602

401 S. Spring St.  
Room 500 1/2  
Springfield, IL 62706

**Tuesday, May 28, 2013 - 1:30 P.M**

**COUNCIL MEMBERS IN ATTENDANCE**

Florence Cox	Corinne M. Pierog	Beth Doria	Fred Coleman
Alesia Hawkins	Hedy Ratner	Charisse Witherspoon	Larry Ivory
Richard Boykin	Marva Boyd	Jesse Martinez	

**COUNCIL MEMBERS NOT IN ATTENDANCE**

Alfred Ramirez	Rodney Lewis	Samantha Hufnagel	Omar Duque
Joan Archie	Perry Nakachi		

**COUNCIL CHAIR**

Malcolm Weems, Chairman

**COUNCIL SECRETARY**

Paul Cerpa, BEP Deputy Director

**CMS STAFF IN ATTENDANCE**

Harry Reinhard	Kevin Connor	Susan Hartman	Sharla Roberts
Ngozi Okorafor	Jeanetta Cardine	Elias Ricks Ngwayah II	
Ellen Daley	Leslie Taylor	Aundra Williams	
Carlos Gutierrez			

**OTHERS IN ATTENDANCE**

Tom Mikrut	Vir Doshi	Dante Watson	Carlos Charneco
Charles Harrell	Timothy Fishburn	Deanna Rossetto	Kevin Krass
Michelle Casey	Joan Mardo	Michelle Jackson	Margaret Van Dijk
Wendell Harris	Rob Rose	Matthew Cooper	Steve Richie
Matt Brown	Ben Bagby	Debra Matlock	Matt Grady
Sharon Ferguson	Sohair Omar	Amanda Baylor	

## **AGENDA**

May 28, 2013 - 1:30 p.m.

- I. Welcome
- II. Call to Order
- III. Roll Call
- IV. Approval of Minutes of Council Meeting held on April 22, 2013.
- V. Chair's Report
- VI. Posted Business
- VII. Unfinished Business
  - Waiver Posting
  - Sheltered Market Rules Responses
- VIII. Committee Updates
  - Procurement Committee
  - Business Development Committee
  - Capital Access and Banking Committee
  - Certification Committee
  - Policy, Rules and Enforcement Committee
- IX. New Business
- X. Public/Vendor's Testimony

## XI. Adjournment

- Next Council Mtg. – June 24, 2013

### **Welcome**

Chairman Weems called the May Business Enterprise Program (BEP) Council meeting to order at 1:40PM on May 28, 2013.

### **Roll Call**

Council Secretary Paul Cerpa took the roll and announced that a quorum has not been obtained. Secretary Cerpa further said that they would wait for others to join by phone or in person.

Chairman Weems urged Council members to look at the Minutes and as soon as a quorum is established, a vote will be held.

### **Chair's Report**

Chair Weems told Secretary Cerpa to go ahead with the unfinished business because it contains what he had for the Chair's report.

### **Posted Business**

No posted business

### **Unfinished Business**

Secretary Cerpa reminded the Council that when they last met they attempted to address the issue of waivers being posted on the website pursuant to legislation. He further said that one of the issues being confronted with was waivers being presented on a regular basis for consideration. We asked the Council to consider allowing CMS/BEP program to apply its expertise and level of review separate and apart from the Council's review on a monthly basis. The rationale was that there is a certain level of expertise that lies within the BEP staff to be able to administer sound decisions with regards to any waiver request for good faith efforts review. He also said that prior to voting the Council had requested to look at a summary of what have transpired regarding good faith efforts requests.

Secretary Cerpa informed the Council that in their package a copy of a report detailing the activities that transpired thus far in fiscal year 2013.

Secretary Cerpa informed the Chairman that with the arrival of council member Jesse Martinez a quorum had been established.

Secretary Cerpa continued with the report by informing the Council that for fiscal year 13 we had a total of 493 utilization plans to date. Of the 493 plans, 307 were deemed responsive. Of the 307 plans, 40 were deemed responsive for good faith efforts. Plans that were not deemed non-responsive for good faith efforts were totaled 186. The Secretary told the Council that the report broke down the companies that were responded to the good faith efforts. The first section identifies those responses that were deemed responsive by the various agencies. He cautioned the Council that there can be multiple entries. The second section was those responses that were non-responsive good faith efforts. Secretary Cerpa reminded the Council that in every instance, we had to determine that those good faith efforts were exhausted. It had to involve responses by the prime contractor reaching out to certified vendors, identifying and noting what those dates of contacts were, what were the results of those contacts, why firms were not utilized, and actual responses being confirmed by the BEP firms verifying that those contacts were made.

Secretary Cerpa concluded by asking the BEP Council to consider allowing the BEP program to move forward in identifying and rendering determination of waiver requests by those contracts.

Council member Larry Ivory responded by saying that the Council was empowered to administer the waiver requests process by statute. However, he said that during his years on the Council, he had yet to see waiver requests come before him and now the Council is being asked to forego their responsibility. Council member Ivory wants to know why these requests were not brought before the Council in the past.

Secretary Cerpa said he could not answer that question because he cannot account for what happen before his time. He said his rationale was for the Council to keep in-line with the statute. He said he understood the Council's responsibility with respect to the statute however, he said he believes when the statute was written, all the activities surrounding waiver requests on a monthly basis were not clearly taken into account. He referred to the Capital Development Board and the University of Illinois committees that are set up to review waiver requests. He said having the Council reviewing waivers on a monthly basis will stop procurement in its tracks. He said it is difficult to get a quorum in the Council

Committees let alone getting the Council to meet on an additional monthly basis to review waivers.

Council member Richard Boykin said he shared Council member Ivory frustration. He said he was opposed to granting this authority. He acknowledged that the Policy, Rules, and Enforcement committee had reviewed a couple of waiver requests. He concluded that he could not support it.

Council member Beth Doria wants to know how the Council can meet its obligation in an expedient manner. She asked the other Council members how they think they can perform their responsibility when in fact their committee struggles to meet regularly.

Council member Charisse Witherspoon proposed as a solution setting meeting dates ahead of time.

Council member Doria responded by saying that the problem she has with that is that one does not know when these waiver requests will come up. They are not pre-planned. If we are going to take on every single waiver, it is only going to get exponentially compounded.

Council member Witherspoon said they could plan to meet twice a month preferably on the 1<sup>st</sup> and 15<sup>th</sup> of each month which could make it much easier to respond to waiver requests that come up during these periods.

Council member Boykin said he respects what Council member Jesse Martinez is doing but he believes in verifying what has been done.

Council member Martinez said he would give the Council a little bit of insight into what goes on with these waiver requests. He said in the past two weeks he has received 9 waivers requests on construction projects. He said the waiver process is the first step in the process to give the authorization to proceed therefore if it is not handled properly it could shut down critical projects. He said whenever a waiver request comes to him, he reviews them their findings. Next, he meets with an internal CDB committee made up of four other people. He makes a recommendation to the committee based on his findings, the committee reviews it and either agrees with him or not based on the conversation. We then make a final determination and send it to contractor. He noted that the CPO is involved in this process. They get the results and findings. Waiting a month for the Council to meet without a guarantee that there will be quorum will affect critical projects. Council member Martinez concluded by advising the Council to consider the CDB process as an alternative.

Council member Boykin recommended putting a few council members on this committee that council member Martinez is talking about so that they can share in on the information and recommendation. Chairman Weems asked whether there were waivers granted that were particularly troubling.

Council member Ivory said he recognizes the challenge posed by reviewing these waivers but is troubled by the fact that they had not been involved in the process in the past. However, he did mention that if council member Martinez was willing to put together a process that is in writing and that we have an opportunity to review those waivers at any point in time and sit in on those meetings as they happen then we can cherry pick just to make sure that we have a level of confidence in the process and the waivers that are being granted.

Council member Witherspoon said that she believes all waivers are troubling because if council members do not know why they were granted in the first place then they are all troubling.

Council member Martinez said Council members Witherspoon and Boykin are welcome to sit in on the committee and be part of that discussion whenever the committee meets. This means the BEP Council has a representative on the committee and is part of the decision making. Council member Boykin said he was in agreement with that.

Secretary Cerpa said there are 58 other agencies and 9 universities that need to be considered. According to the Secretary Cerpa, their processes are different from CDB. He proposed providing on a monthly basis to one of the committees, such as the Policy, Rules, and Enforcement committee, those contracts that were granted waivers with support information. They can be looked at by that committee and then as part of its report to the Council identify the number of contracts that issued good faith efforts responsive determination versus non-responsive as the acceptance of those minutes by the Council be accomplished.

Council member Ivory asked that those members who are not on the committee and would like to take part be allowed to be a part of be part of that committee. He said this would help him to be accountable to the community.

Secretary Cerpa we could consider that recommendation. Also Council member Boykin expressed agreement and interest in serving on that committee and recommended council member Witherspoon also serve on that committee.

Council member Corinne Pierog asked about getting time with the other 59 agencies and universities when they are meeting so that if interested council

members wanted to be at their meeting they can have the opportunity to do so. She would like to know what contracts are being reviewed and for what purpose. Secretary Cerpa said the majority of those contract reviews do come through CMS. He said his concerns were Toll way, IDOT, and the Universities. He promised to reach out to them to get both their process and their schedules.

Council member Pierog asked whether the Council will be able to bring those waivers that they have problems will back to the Council for review. She also wanted to know whether they would have a vote. Council member Martinez said they could vote. He said the process is overseen by the Chief Procurement Officer (CPO) who makes sure guidelines are followed.

Council Pierog wanted to know if there is a disagreement, whether the contract will be rewarded. Council member Martinez said yes as long as the procedure was followed.

Secretary Cerpa said if we observe a pattern from a particular agency, they could also be brought before the Council.

Council member Fred Coleman said his committee meets and discuss each waiver request and the decision is final. He said the committee has a non uniform set of procedures and practices. He said at another university you might not have a developed process and procedure. He wants to know how comfortable the Council will be with the procedures of other universities that do not have a set procedure and practice.

Secretary Cerpa said most vendors are confused as to what entails a good faith effort. It also needs to be clear in the bid document.

Council member Florence Cox recommended council member Fred Coleman for the reviewing committee.

Council member Ivory said he would like the CPOs to walk us through their process of good faith efforts. He recommended having waivers at the next Council meeting in order to make people comfortable and familiar with the process.

Secretary Cerpa said he would have a couple of waivers at the next meeting along with some CPOs to explain their good faith effort process.

Deborah Matlock of DCFS asked since CMS is overseeing the good faith efforts whether the information gathered from these agencies will be shared. Secretary Cerpa said yes.

Council member Martinez sought clarity from the Council as to whether they were comfortable with CDB going ahead with the committee and having representative on that committee. Secretary Cerpa said the Council would not be making that decision. Chairman Weems said he thought it was asking the council members to vote on waivers in general.

Secretary Cerpa said he will be providing waivers at the next meeting along with some representatives from the CPOs' office to provide some insight on their good faith efforts.

Chairman Weems said there were a number of questions regarding Sheltered Market rules that were submitted to JCAR, CPO office, and JCAR staff. He called upon Kevin Connor to explain the JCAR process and then we will go through the changes.

Mr. Connor stated the first modification has to do with the definition of Egregious Racial/Gender/Disability discrimination. He stated that initially the IDOT rules which mentioned "flagrant", was not included but the universities, CPOs, and the JCAR all raise that issue so it was re-inserted. The sentence: Generalize allegation of societal and/or industrial discrimination are not sufficient on their own to satisfy the standard", was also added at the request of the universities. Also added was "Concepts of interested state agencies. This includes any state agency or university that is associated with any evidence regarding discrimination. We provide for the interested state agency to be able to respond to any evident that the Council ordered department be heard. And we will review their respond". Mr. Connor said that they also added a section that they hope provide greater definition of the Council, departments, and the CPOs. He said they tried to make it clear where we can at the request of JCAR and the other parties that commented that the purpose for this rule making is to provide a structure for the Council to review evidence and make a determination regarding potential sheltered market action but we also say that coordinated action is required between the department and the CPOs. He said they do intent working with the CPOs to the extent we are able to and they request our participation in implementing the sheltered market remedy if the Council so chooses to make that determination.

Council member Ivory expressed concern about the mention of the term "Geographic Market Area". He asked for an explanation.

Matt Brown said he could not help Council member Ivory with an explanation because these were not rules for the CPO offices but are rules for BEP. He said the phrase could be there because of the Disparity Study. He said from

procurement perspective, the state is regionalized based on service delivery not based on where the market of service comes from.

Council member Ivory said his concern was that he did not want the language to be so restrictive that in order to have egregious discrimination that you are only looking at a geographical location.

Kevin Connor said geographic market location is something that will be taken into account in the disparity study. He believes that the data that will be reviewed by the Council will be broken down by geographic market location.

Council member Cox said she observed that the word “egregious” was changed to “flagrant”. She said it implied to her that discrimination is okay but it has to be further beyond just denying me access. She wants to know how flagrant would be determined. And also, what is the difference between “egregious” and “flagrant”?

Mr. Conner said that will be something that the Council itself will define in its review of the evidence. He said flagrant is higher than mere discrimination and it was placed there because this contemplates taking a sheltered market action which is subject to a very high standard of review.

Council member Cox said it leads her to believe that she could be discriminated against as long as it does not reach the high standard.

Secretary Cerpa welcome Council member Hedy Ratner. Council member Ratner apologized for being late. Council member Ratner asked what is meant by “Documentation”.

Mr. Connor said documentation would require some affirmative statement from a party. Secretary Cerpa said it could be from a variety of sources such as emails, procurement review, anecdotal evidence provided during hearings, and the disparity study itself.

Mr. Connor said a provision called “market domination” prevention was also added along with a training and audit provision.

Council member Ratner asked about section 10-100 which eliminate the word “implement”. She asked whether it was addressed in section 1-101.

Mr. Connor said the purpose for eliminating the word “implement” was to make it clear that it would be the CPO who will implement the Sheltered Market.

Chairman Weems noted that the biggest change has to do with adding the word “flagrant” in order to be consistent with what IDOT had done.

Council member Ivory wants to know what it means that the CPO will implement the Sheltered Market. Matt Brown said he is speaking from the point of how he sees it. He spoke of frequency of occurrences and the input of the market place. He also said there are several market factors that will be taken into consideration.

Council member Ivory said if the Council finds egregious or flagrant discrimination, he hopes that a set aside would be established to correct that discrimination.

Mr. Brown said in fact that it is within the administrative rules. Secretary Cerpa concurred with what Mr. Brown had said.

Chairman Weems announced that he has to leave because of a meeting in the Governor’s office. He reminded Secretary to have a vote to accept before the rules can be sent.

Council Ratner asked why in section 10.102 the word “will” was changed to “may”.

Mr. Connor said that is the ultimate decision of the CPO and we do not know what action he might take. He said we can review and recommend but not implement.

Council member Cox said the removal of the will does not guarantee that an action will be taken. She said it implies it may or may not be taken. She said the “will” needs to be put back in. Council member Ivory agreed with Council member Cox.

Mr. Connor said the word “will” will be put back in.

Mr. Brown reminded the Council that there are several stakeholders in this undertaking and that there might be objections from the CPOs to the “will” being put back in. Council member Cox said the implication itself is discriminatory. Ben Bagby, CPO, said when he reads the passage he believes it implies that there are two ways of reacting, whichever way is appropriate. Council member Cox said that if the “may” is left in it becomes more subjective than objective on whether a remedial action will be taken.

Council member Ratner said she will still stick with the “will”.

Council member Coleman said he sees this as a back door attempt by the CPO to say we do not have to do anything that we do not agree with. He said he supports the “will” being put back.

Council member Ivory agreed and supported the other Council members in their quest to put the “will” back.

Mr. Connor reminded the Council that the CPOs may object which will delay or deny them getting the rules.

Council Cox responded by saying she rather have no rules than unfair rules.

Secretary Cerpa called for a motion on the changes to the Sheltered markets rules. Council member Ratner motioned and Council member Doria seconded. The changes were approved 10 yeas, 1 nay.

Secretary Cerpa announced that since there was a quorum in place he would also call for a motion and vote on the April meeting minutes. Minutes were unanimously approved.

## **Committee Updates**

Procurement Committee – Chairlady Charisse Witherspoon thanked Director Weems and other BEP staff for attending the NAWBO program. She said she had asked for how many businesses were certified by public procurement entities but she did not get the answer she wanted. She also said they are still trying to find the best language and approach for forecasting that people want to pursue. She said she wants to have Director Weems send out a memo which we will draft for his consideration to the agencies directors, CPOs, APOs, and the BEP liaisons and that will include a spreadsheet. She said the purpose of the forecasting is to get more minorities, women, and disable companies involved with more time. She said they are hoping to get this to the agencies soon so that they can send the necessary information by July 15<sup>th</sup>. She also said this could be a learning experience for them and that they will start with the trial agencies before expanding.

Council member Witherspoon said they talked about outreach and social media. Lastly they talked about the opportunities that are available.

Council member Boykin wants to be recorded as a “no” vote for rules because of the word “flagrant” being taken off and changed and then added back in.

- Business Development Committee – No report.
- Capital Access and Banking Committee – Chairman Fred Coleman said that per the Council granting of his request at the April meeting he has three distinguish guest presenting to the Council today told the Council with respect to a special unique program involving Capital Access and Banking and Loans in the construction industry. He thanked Gustavo Giraldo for sharing the information and contact. The guest introduced were Mr. Rob Rose, Vice President, Chicago Community Loan Fund; Mr. Matthew Cooper, Inner-City Underwriting, and Ms. Sohair Omar, Deputy Director, Illinois Finance Authority.

Ms. Sohair said the Illinois Finance Authority, Inner-City Underwriting, and Chicago Community Loan Fund was please to present the Small Contractor Bridge, a program designed to lower the finance barrier faced by women owned, minority owned, and disadvantage business enterprises. It is done by providing working capital, surety bonding assistance, and technical assistance on the job. She said the program was developed under the auspices of the National Small Contractor Initiative that was launched by HUD and SBA last fall. Since then, they have garnered the support of Illinois Toll way, IDOT, CDB, among others. This program is trying to help small businesses that have a ton of small contracting work under their belt and who are ready to be prime contractors but just need a little bit of financial assistance to compete for that contract. The financial assistance is for contracts that are public works. It includes site work, construction, landscaping, and pavement. It ranges from contract award amount of \$500,000 to accommodate the small contracts and \$5,000,000 to accommodate the larger agencies. She said this program is not your conventional loan program. It has several unique features. It does not require traditional asset collateral rather the contractor is asked to work with a third party to administer the payments that are made to the contractor during the course of the project. Currently they are focusing on state contracting opportunities but they are trying to local government contract and even universities contracts. Currently they

are focusing on the six metropolitan areas but are expanding to partners throughout Illinois.

Rob Rose said a real need for their involvement is that they saw that their capital could solve a real need of how do you get small businesses bonded if they do not have sufficient working capital. And how they can get the experience needed to get the working capital if they never get the job that requires the bonding. To solve that problem, we are providing working capital, a project based financing for the contractors who are able to secure contracts with the different agencies. The loan works in two ways: It is going to be a pre-qualification which means they will submit a pre-qualification application. This involves underwriting. Next, with approval the contractor will receive the bid bond to be able to bid on different contracts. He said to get started they are asking the Council to refer vendors to them.

Secretary asked for the company success rate in the field of financing project bonding. Mr. Rose said their company was approved and started in March of 2013. Since that time they have had 34 applications and have provided 2.5 million dollars in bid bonds. Unfortunately they were not successful in their bids.

Council member Martinez asked whether their website was up because a lot of vendors that he deals with have the problems that they are helping to solve. He said he would like to refer them to their company.

They responded that it is currently being worked on.

Council member Ivory praised Council member Coleman for inviting the company and invited them to speak at the Illinois Black Chamber of Commerce statewide conference.

- Certification Committee – No report.
- Policy, Rules, and Enforcement Committee – No report. Council member Martinez said they scheduled a meeting but did not have a quorum so the meeting was re-scheduled.

## **New Business**

- None

## **Public/Vendors' Testimony**

Mr. George Claymore who identified himself as an American, resident of Illinois, and citizen of Cook County said he had attended this meeting before. He said it is very important for the public to participate. He said it is unacceptable not meeting or not having a quorum as he has heard today for some of the set meetings. He said there is a need for these committees and participation. He said his main concern was how we have increased black contractors in a given month. He admonished black leadership on these boards in not advocating for their people.

## **Adjournment**

The next Council Meeting will be held on July 22, 2013

Meeting adjourned at 3:45PM.