

**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, December 18, 2012 - 1:42 P.M**

**COUNCIL MEMBERS IN ATTENDANCE**

Richard R Boykin	Beth Doria	Marva Boyd	Fred Coleman
Larry D Ivory	Lynne Turner	Jesse Martinez	Hedy Ratner
Charisse Witherspoon	Perry Nakachi	Joan Archie	Samantha Hufnagel
Nelida Smyser-DeLeon			

**COUNCIL MEMBERS NOT IN ATTENDANCE**

Omar Duque   Rodney Lewis   Alfred Ramirez   Florence Cox   Alesia Hawkins

**COUNCIL CHAIR**

Malcolm Weems, Chairman, CMS Director

**COUNCIL SECRETARY**

Paul Cerpa, BEP Deputy Director

**CMS STAFF IN ATTENDANCE**

Norma Sutton	Harry Reinhard	Philina King	Chimaobi Enyia
Denise Reed	Susan Hartman	Sharla Roberts	Ellen Daley
Agueda Corona	Ngozi Okorafor	Matt Runyen	Kevin Connor

**OTHERS IN ATTENDANCE**

Ben Bagby	Vir Doshi	Sharron Matthews	Kim Stewart
Colette Holt	Tammi Davis	Carlos Charneco	Georgina Syas
Matthew Grady	Art Moore	Joanna Gunderson	Michelle Casey
Joe Kim	Margaret VanDijk	Michelle Schober	

## **AGENDA**

December 18, 2012 - 1:30 p.m.

- I. Welcome
- II. Call to Order
- III. Roll Call
- IV. Approval of the Minutes of the Council Meeting held on November 26, 2012
- V. Chair's Report
- VI. Posted Business
  - Disparity Study Update – Colette Holt
  - Public Hearings Review
- VII. Unfinished Business
- VIII. Committee Updates
  - Procurement Committee
  - Business Development Committee
  - Capital Access and Banking Committee
  - Certification Committee
  - Policy, Rules and Enforcement Committee
- IX. New Business
  - BEP Certification Update
- X. Public/Vendor's Testimony
- XI. Adjournment
  - Next Council Mtg. – January 28, 2012

## Welcome

Chairman Weems called the December Business Enterprise Program (BEP) Council meeting to order at 1:42 PM on December 18, 2012.

## Roll Call

Council Secretary Paul Cerpa called the roll. A quorum had been obtained.

**Correction to the Minutes:** Matthey Grady from DHS noted that he was present at the previous BEP Council meeting but his attendance was not noted in the minutes. This correction to the minutes was approved and Mr. Grady's name will be added to the list of attendees.

## Chair's Report

There were two points of interest noted by the Chair, Malcolm Weems.

The first point involved a potential *resolution*, later the status was modified to a *discussion*, regarding the ownership of firms, specifically financial services firms. Due to the highly complex structure(s) of incorporations that defined ownership of these firms, it was suggested that a task force or certification committee be established to understand this ownership phenomenon.

The second point raised by the Chair, focused on the Illinois Policy and Procurement Board's stance on emergency purchases by the State. The IPPB feels that there are too many purchases identified as "emergency" and, as a result, my compromise the BEP goals. The message from the IPPB is "plan better" so there will be less emergency purchases.

## Posted Business

### Disparity Study Update

Director Weems noted that the new Disparity Study contract has been awarded to Collette Holt. He expects this study to be completed in a timely manner and also expects the full cooperation of all those involved.

Collette Holt and her associates were introduced and a presentation of the proposed study ensued. "Attachment A" is the Agenda presented by Ms. Holt, and "Attachment B" contains copies of the slide presentations.

The presentation followed the attachments. Following the presentation, Ms. Holt noted that the relevance of this study relates to the Business Enterprise Program in that the Program remains legally defensible and effective.

There will be three statewide meetings surrounding the Disparity Study. Times and dates of these meetings are to be announced.

Council Member Ivory queried the focus of the study with respect to contractors. Ms. Holt stated that all data surrounding both prime and subcontractors will be examined and availability estimates constructed. She also noted that Small Business Set Asides were not subject to the Disparity Study. Council Member Ivory inquired as to Sheltered Markets relevance. Ms. Holt stated that there was no court opinion on SBSA nor Sheltered Markets and that four Supreme Court Justices are against Affirmative Action.

There is a consensus of hope that this Study will help the vendor community. It is anticipated that some good plans will be established that moves the mindset from one of subcontracting to the role of primes.

Council Chair Weems noted that contracting policies differed among agencies and universities, and that statutory mandates may work towards a consolidated solution, however, there are a number of operational issues that must be addressed. Chair Weems noted that if we commit the time and resources to utilize the results of the Study, solutions may be obtained.

Council Member Boykin is seeking more answers to contracting issues that this Study will address. He suggests that a different study be instituted in addition to this one.

Council Member Smyser-DeLeon requested that the BEP Compliance Plans be made easier to complete as DHS has multiple cost centers and one must be completed for each.

### **Public Hearings Review**

The Council was asked to review the latest IT hearings that were held, and be prepared for any discussions. At this point in time, there were no questions.

Council Member Ivory requested an opinion on the results of the IT hearings from the Council and/or Council Chair. Council Chair Weems noted that the hearings revealed more of a 'story exchange' than providing any evidentiary information. What was noteworthy was the reason(s) why BEP certified vendors do not participate in the state procurement process. Noted were, slow pay, no pay, and bonding issues. Council Member Witherspoon inquired as to what else can be done to move forward.

### **Unfinished Business**

No unfinished business.

### **Committee Updates**

There were no Committee updates.

### **New Business**

Council Member Martinez, also a representative of the Capital Development Board, expressed concern over receiving goal credit from vendors that fall in and out of approved certification status throughout the term of the contract.

Secretary Cerpa acknowledges that Certification Manager Gladys Rodriguez was retiring at the close of the year. Secretary Cerpa noted that Carlos Gutierrez will temporarily assume the responsibility of BEP Certification Manager, and Yvonne Velasquez will assist in outreach activities for the Program. Council Member Witherspoon was pleased that Carlos Gutierrez was assigned the position of BEP Certification Manager and assigned all the duties and responsibilities of that position on a temporary basis. However, Council Member Witherspoon expressed concern that the additional duties and responsibilities would detract from already understaffed outreach options and initiatives.

Secretary Cerpa announced that BEP/CMS certification will now be recognized by the Illinois Water Reclamation District.

Secretary Cerpa announced that for the Fiscal 2012 BEP Annual Report, achievements by Sheltered Workshops will not be calculated in the BEP goal achievement, however, the amount will be reported for each agency/university that had achievements in this category

### **Public/Vendors' Testimony**

No testimony

The next Council meeting is scheduled for January 28, 2013.

### **Adjournment**

The December BEP Council meeting was adjourned at 3:55 PM. Moved and seconded by Council Members Doria and Witherspoon, respectively.

NOTE: See Attachments

# Attachment A



## STATE OF ILLINOIS CENTRAL MANAGEMENT SERVICES DISPARITY STUDY BUSINESS ENTERPRISE PROGRAM COUNCIL MEETING

Tuesday  
December 18, 2012

### AGENDA

- I. Introductions
  - A. BEP Council Members
  - B. CMS Study Team
  - C. Disparity Study Team
  
- II. Disparity Study Presentation
  
- III. How can the Council and stakeholders assist with the Study?
  - A. Familiarize yourselves with the Study elements
  - B. Review the Frequently Asked Questions sheet
  - C. Direct people with questions to the Study Manager
  - D. Encourage attendance at the business owner interviews and public meetings
  - E. Participate in the business owner interviews (for owners)
  - F. Attend public meetings
  
- IV. Study timeline for 7 deliverable chapters
  - A. Preliminary Availability & Disparity report for IT/Telecom – due April 2013
  - B. Legal Analysis and Private Market chapters – due July 2013
  - C. Program and Policy Review chapter – due September 2012
  - D. Anecdotal Evidence chapter - due November 2012
  - E. Utilization & Availability chapters – due January 2014
  - F. Disparity chapter – due April 2014
  - G. Draft and Final Report - due June 2014
  
- V. Closing/Questions

# Attachment B

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**State of Illinois  
Department of Central Management Services  
Disparity Study Kickoff Meeting**

**Colette Holt & Associates  
Trinal, Inc.  
Decision Information Resources, Inc.  
Abaci Research & Consulting, LLC**

18 December 2012

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Colette Holt  
& Associates

## Disparity Study Team

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– Colette Holt & Associates

- Colette Holt, JD – Project Manager & Legal Counsel
  - Nationally recognized expert, educator & author on D/S/M/WBE issues
  - Conducted court-approved disparity studies & designed court-approved D/SMWBE programs for over 20 years
  - Long time consultant to CMS on Bep Program & Issues
  - Worked with numerous Illinois governments on M/W/DBE issues, including defending IDOT's DBE Program & the city of Chicago's M/WBE Program
  - BEP certified firm

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& Associates

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## Disparity Study Team

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### – Colette Holt & Associates

- Steven Pitts, Ph.D. – Economist & Statistician
  - Nationally recognized expert, educator & author on market issues regarding minorities for over 20 years
  - Labor Policy Specialist at University of California at Berkeley's Center for Labor Research & Education
  - Extensive experience using large databases, including Census Bureau files, to perform statistical analyses of labor & employment issues
  - Recently provided data to the Water Reclamation District of Greater Chicago to support its M/WBE Program

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## Disparity Study Team

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### – Trinal, Inc.,

- Alicia Garcia-Abner, MA & MCA– Outreach for Public Meetings
  - Strategic business management consulting firm specializing in procurement policy development, and economic development program monitoring, including program management, certification, affirmative action and community outreach
  - Clients include the Chicago Housing Authority, the Public Building Commission of Chicago, the University of Chicago and the Metropolitan Pier & Exposition Authority

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## Disparity Study Team

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– Decision Information Resources, Inc. (DIR)

- Russell Jackson , Ph.D. – Survey Manager & Statistician
  - Statistician with more than 30 years of evaluation & research experience in quantitative & qualitative data collection, evaluation & analysis, all types of surveys, demographic research & study designs
  - Clients include the US Departments of Education, Labor & Health & Human Services; City of Houston; Baylor University; Rice University; and a variety of foundations, utilities, and research institutions

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## Disparity Study Team

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– Abaci Research & Consulting, LLC

- Kim Stewart, MS – Quantitative and qualitative data collection
  - Most experienced researcher in the country on identifying, collecting & preparing data for statistical analysis specifically for Disparity Studies
  - Over 7 years experience as an Analyst and Assistant Project Director for over 20 Disparity or Availability Studies
  - Extensive experience identifying and collecting prime and subcontract data for federal subrecipient agencies

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## Guiding Disparity Study Legal Principles

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- Evidence must comport with case law & sound science
- D/S/M/WBE programs must reflect this evidence
- Programs that result from inadequate legal & economic analyses or political motivations will be struck down if challenged
- Properly supported & narrowly tailored programs based upon expert testimony will survive strict scrutiny

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## Disparity Study Objectives

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- Provide a legal defense if the program is challenged
- Provide evidence & recommendations to assist the State to implement & defend its BEP initiatives
- Educate legislators, State staff, policy makers & stakeholders about the legal & economic issues to build consensus

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## Legal Standards

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- *City of Richmond v. J.A. Croson Co.* (1989)
  - Strict constitutional scrutiny applies to race-based government decision making
  - Court struck down Richmond's 30% MBE quota
  - Government can use spending powers to eradicate private discrimination
  - Government must be “passive participant” in discrimination marketplace
  - No need to prove agency discriminated
  - Motive cannot be racial stereotyping or politics

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## Legal Standards, cont.

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- “Societal” discrimination not sufficient
- All racial & ethnic groups must suffer in local marketplace
- Disparities between population & agency utilization of M/WBEs is insufficient
- Race-neutral measures must be seriously considered
- Strict scrutiny not fatal in fact: some affirmative action programs are permissible

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## Legal Standards, cont.

- Strict scrutiny as applied
  - Government must have a “strong basis in evidence” of its “compelling interest” in remedying discrimination
    - Statistical evidence of disparities between M/WBE availability & utilization
    - Anecdotal evidence of race & gender discrimination
  - Remedies must be “narrowly tailored” to that evidence
    - Race-neutral measures must be seriously considered
    - Annual & contract goals must be related to availability, with waivers for good faith efforts to meet goals
    - Program eligibility must be based on the evidence
    - Burdens must be lessened where possible on third parties
    - Programs must be regularly reviewed

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## Disparity Study Elements

- Legal Analysis
  - Review of case law
  - Provide a framework for litigation defense
- Review of CMS’ BEP Program
  - Annual & contract goals
  - Goal submission & contract award policies & procedures
  - Small business elements & other race-neutral measures
  - Data collection & monitoring systems
  - Payments
  - Closeout procedures
  - Sanctions for non-compliance

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## Disparity Study Elements, cont.

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- Development of Agency Procurement Data
  - Platform for utilization, availability & disparity analyses
  - Includes prime & sub data
    - CMS & agencies' prime contract & subcontract records
    - Missing subcontractor records directly from primes
- Determination of the State's geographic & industry markets
  - 75% of counties where the State purchases
  - 75+% of the detailed industries in which the State purchases
  - Results used to narrowly tailor availability

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## Disparity Study Elements, cont.

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- Development of the State's Contract Utilization Data
  - Master Contract Data file will be the basis for measures of M/WBE utilization combined by race/sex & industry groups & detailed by race/sex & industry group at the 6-digit NAICS code level
  - Utilization estimates will be adjusted for classification bias through surveys
  - Detailed estimates are necessary to provide strong evidence & narrowly tailor Program development & implementation, including contract goals

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## Disparity Study Elements, cont.

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- Availability Analysis Using Custom Census
  - Create representative database of CMS & Agency contracts
  - Identity geographic market
  - Identity industry market
  - Count all firms in the market
  - Identify M/WBEs in markets
  - Verify ownership status of M/WBEs
  - Verify ownership of all listed firms
  - Estimate weighted availability

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## Disparity Study Elements, cont.

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- Analysis of Disparities in the State's Contracts
  - Calculate disparities by race/sex and industry combined & disaggregated
  - Apply statistical significance tests
- Analysis of Economy-Wide Disparities
  - Necessary for ongoing programs; approved in the IDOT case
  - Data sources
    - Census Bureau's American Community Survey & Survey of Business Owners
    - Meta study of Federal Reserve Board/SBA Survey of Small Business Finances

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## Disparity Study Elements, cont.

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- Anecdotal Data Collection
  - Business owner interviews
  - Prior disparity studies
  - Legislative findings
  - Periodical literature
  - Community meetings
- Recommendations & Goals
  - Race & gender-neutral measures
  - If warranted, race- & gender-conscious goals, including contract goals

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