

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

MONTHLY COUNCIL MEETING MINUTES

100 W. Randolph
Room 2-025
Chicago, IL 60601

401 S. Spring St.
Room 500 ½
Springfield, IL 62706

Monday, June 26, 2017- 1:30 PM

COUNCIL MEMBERS IN ATTENDANCE

Larry Ivory (Ph), Ngozi Okorafor, Jesse Martinez, Hedy Ratner (Ph), Emilia DiMenco, Sharla Roberts, Charisse Witherspoon (Ph), Michael Hoffman, Khari Hunt, Beth Doria, Edward McKinnie, Sheila Hill Morgan

COUNCIL MEMBERS NOT IN ATTENDANCE

Denise Barreto, Karen Eng, Marcus Yancy

COUNCIL CHAIR

Michael Hoffman, Chairman

COUNCIL SECRETARY

J. Marcos Peterson

CMS STAFF IN ATTENDANCE

Elias Ricks Ngwayah II, Carlos Gutierrez, Harry Reinhard, Irma Lopez, Jeanetta Cardine,

OTHERS IN ATTENDANCE

Donald Tiemeyer, Jennifer Jobe-Gavin, George Blakemore, Artheitha Monroe May, Michelle Flagg, Gustavo Giraldo, Rodney Hodge, Marle Hardy, Jason Perry, Ben Bagby, Jenessa Conner, Lynette Schafer, Art Moore

**PUBLIC NOTICE
STATE OF ILLINOIS**

Business Enterprise Council for Minorities, Females, and Persons with Disabilities

100 W. Randolph
Room 2-025
Chicago, IL 60601

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

AGENDA

June 26, 2017
1:30 p.m. – 3:30 p.m.

- I. Welcome
- II. Call to Order
- III. Roll Call
- IV. Approval of Minutes of Council Meetings held on April 24, 2017
- V. Chair's Report
- VI. Subcommittees Reports
 - Certification Subcommittee Report
 - Outreach Subcommittee Report
 - Compliance Subcommittee Report
- VII. Posted Business
 - Ride Right LLC Appeal
 - Vote on Sheltered Market Administrative Rules
- VIII. Public/Vendor's Testimony
- IX. Adjournment
 - Next Subcommittees' Meetings
 - Certification Subcommittee Meeting – July 24, 2017
 - Outreach Subcommittee Meeting – July 25, 2017
 - Compliance Subcommittee Meeting – July 26, 2017
 - Next Council Mtg. – August 28, 2017

Please note: In case you need to connect to the meeting via teleconference, please use the following number and access code:

Teleconference Number

888-494-4032

Access Number

2587213722

BEP Outreach Events: <http://www.illinois.gov/cms/events/SitePages/List.aspx>

I. Welcome

Secretary Peterson welcomes all.

II. Call to Order

Secretary Peterson called the meeting to order at 1:40pm and proceeded with roll call.

III. Roll Call

Roll call conducted. Quorum was established.

IV. Approval of Minutes

Approval of Minutes was established.

V. Chair's Report

Chair Hoffman told the council about the importance of reaching quorum for the various subcommittee meetings. He reminded the council members that participation in the meeting could be from any state facility throughout the State. He said "even if we can't establish quorum, we will move forward with the meeting except when there is a need for a vote". He urged anyone with specific challenge to talk to the Secretary of the council or his staff in order to be accommodated.

The Chair announced the presence of member Larry Ivory.

Chair Hoffman listed several BEP accomplishments over the past year. He spoke about the new BEP online certification system (B2GNow). Next, he informed the Council about the next phase in the process, the Compliance system, which will be coming in service shortly and that the council will be briefed on it at the next meeting. He elaborated that it will ensure that all contracts over 250 thousand pass through BEP.

Chair Hoffman talked about the Sheltered Market implementation. He said this system will ensure that both primes and subcontractors are in compliance with the contract goals. He further said we are approaching the one year mark of the Governor's Executive Order instructing us to implement a Sheltered Market program. He stated that the council would be voting on the sheltered market rules later on in the meeting. He explained that the goal is to get the rules submitted to JCAR before July 1, 2017.

Chair Hoffman informed the council that CMS was moving on with the Mentor Protégé program. He said they have been having discussions with primes and subcontractors who are interested in participating in the program.

Chair Hoffman also talked about the electronic portion of procurement, Bid Buy, which the Bureau of Strategic Sourcing (BOSS) has partnered with the Chief Procurement Officers' (CPOs) office to implement. He stated that this

was a soft rollout. He said CMS was online with this program and before too long it will be spread out to all the other agencies. He explained that the program was not BEP specific but it is gear toward making the procurement process easier, streamlined, and transparent. He pointed out that it helps our vendors, especially the smaller vendors.

Chair Hoffman talked about working with DCEO regarding access to capital for our BEP firms. He said an update on this partnership will be forthcoming at the next meeting.

Chair Hoffman talked about goal-setting. He said they are working with the CPOs' office to make sure we are all seeing the same universe. He said they are making sure that the universe that they are working with is as large as possible.

Chair Hoffman talked about our outreach strategy for FY18 and the need to have our certified pool of businesses expanded. This, he said could be done through more outreach and partnerships with the various state agencies.

Member Ivory told the council that one of his main concerns is being informed about a procurement that has no BEP goals on it. He said in some cases there are reasons for it. And, in other cases there are no reasons for it. He said it is in those cases without reasons that it gets challenging for us because people at look us and ask what are you doing and why will such a procurement of that magnitude get out without a goal. He said there have been times when procurements have come out of the Illinois Department of Transportation without a goal and there was no justification and I will make some calls and they would take it back and put a goal on it. He said he is encouraged that we now have in place a system that will prevent something like this from occurring again.

Member Roberts also complimented the BEP staff for all the hard work related to moving the program forward. She wanted to know whether the new system will utilize the B2GNow or we will be going out with a new bid. Secretary Peterson said there was a RFQ that was just returned with a no-bid response so it will be a small purchase.

Member Okorafor talked about Sen. Laffor's statement about the lack of placement of goals on large contracts. She wonders whether Director Hoffman have spoken to Sen. Laffor regarding this issue.

Chair Hoffman responded that he will be meeting with the House State Government Admin Committee following this meeting to discuss the contract in question. He said he also received some information from Sen. Laffor. He further said he fully understands the frustration by a lot of people on the slow pace of execution of any number of these initiatives. He said it does frustrate him because they take a long time. In this case he said it brings up an issue of

interest of the council. In the past the council had adopted or approved rules associated with waiver categories or exemption categories. One of the categories involves benefits. Under a previous administration the vast majority of benefits procurements were exempted from the BEP goal. He said in the past we had voluntarily added goals with mixed results. He said he would welcome the chance to revisit those exemption categories because it goes along the line of our efforts on improving our goal setting. He further commented that moving forward this assignment could be given to a subcommittee to go thru and have an analysis to either continue some of the exemption categories or challenge them. He told the council that “we exempt too much”.

Member Roberts told the council that according to the BEP Act, each class of exemption should not pass a year. She said there were subcommittees that reviewed the exemptions and addressed them on an annual basis in the past. She wants to know what happened in those committees. Secretary Peterson said in the previous compliance subcommittee, it was on the agenda so the compliance subcommittee will be taking over this portion of it and going thru an annual review. He said after review the subcommittee will bring it to the full committee. Member Roberts said she does not understand why Benefits was exempted in the past because there are several parts to it that could have had goals. Member Doria explained to the council that in the past they were presented with a pretty large document and they would go thru them line by line. She said if they determined that there were BEP vendors available they would say we are no longer going to exempt this. It is left with the agency to defend why it should be exempted. After that is done, then we will report back to the full council.

Member Roberts want to know if the rules are going to be changed. How are we going to avoid things falling thru the cracks? Chair Hoffman said trying to change JCAR rules annually will be unnecessarily burdensome but also said the rules could be changed if the council agrees to indicate a process the council will use to both ably evaluate the exemption categories as well as communicate the exemption categories to all the bodies with the State under the purview of the BEP council. He said we need to look at options for ensuring that we are in compliance with the Act and we are reviewing exemption on an annual basis and making sure we have a mechanism in place to communicate to various bodies what are the current exempt categories and what is not. He charged Secretary Peterson to look at different options and come back to us with these options after discussing with the Compliance subcommittee group with recommendations on how we do this.

Member Ivory said he, members Doria, Ratner, and Roberts remembered going thru the process of reviewing exemptions and after doing their due diligence and taking an in-depth look at the number of exemptions, they were surprised that there were so many things that were exempt and this had been going on for a long time. He said when the committees were invited to come

before the committee and justify those exemptions they said they have always had them. He urged the members to do a deep dive into reviewing these exemptions and after two or three years take another look at it again.

Member Doria countered that she feels that a revision of the exemptions should be done on an annual basis. She said that because it was not done on an annual basis it fell thru the cracks so they should commit to doing it on an annual basis to keep on top on things. She also stressed the need of the council to establish an ongoing relationship with members of the legislature. She proposed inviting members of the legislature to meet with the council for a special meeting when they are not in session where we can talk about what our role is and how they can interact with us and what it is we are trying to do. She said this would help them respond to their constituent with knowledge of what they know about the activities of BEP council.

Chair Hoffman concurred with member Doria and proposed that this meeting could take place in the late summer or early fall.

Member Roberts believes there are two separate things: Changing the rules for exemptions and the other is the annual compliance plan. She said we will still have to look at the annual compliance plan from the agencies but we will need to change the rules to say these are no longer exemptions, go to BEP for the annual list of exemptions.

VI. Subcommittees' Reports

Certification Subcommittee: Chair Roberts said the subcommittee had a meeting and upheld the denial of Ride Right for being over the threshold.

Outreach Subcommittee: Chair DiMenco said they had a May 23rd meeting scheduled but they did not obtain a quorum. She echoed what Chair Hoffman had said. She said everyone needs to RSVP and once you commit to attend, please attend because people were sitting here for twenty minutes waiting for a quorum that was expected. She asked those on the committee to please be respectful of everyone's time.

Secretary Peterson said they checked with the attorneys and he said they will move forward with the meeting even if there is no quorum but without making any decisions.

Compliance Subcommittee: Chair Okorafor informed the council that she was elected as Chair and that there was no quorum at that meeting. She said she is happy with this new policy that states with or without quorum we will still get the meeting done.

VII. Posted Business

- **Vote on Sheltered Market Administrative rules**

Sheltered Market Administrative Rules: Secretary Peterson said there was a meeting with CMS attorneys and council members for questions, comments, and suggestions last week. He said the proposed changes have been made. He said the JCAR rules were submitted to the council for review last Thursday. He then opened the floor for discussion and vote.

Member Ratner commended the council members and the staff for doing a superb job on getting comments and understanding what our issues were. She also commended Director Hoffman and team for making major reforms within BEP. She said the issue of Sheltered Market is very critical for our BEP vendors. Member Ratner wants to know who has the responsibility over BEP. Is it CMS, BEP Council, or the procurement officers that are responsible for the Sheltered Market?

Chair Hoffman said his understanding is that the responsibility of the Sheltered Market lies with the BEP Council. He said the areas that are defined as Sheltered Market should be voted as such by the BEP Council. He however feels that the next step in reviewing individual contracts should be the responsibility of the resolute department.

Member Roberts quoted from Section 10.103 which states that the department (CMS) shall work with the Chief Procurement Officers and any state agency or public institution of higher education to implement or adjust the existing Sheltered Market as establish by the council. She said when the university puts out a solicitation; it is their thought that they do not have to work with CMS because they already work with their legal department and their CPO. She said the universities work with their CPO on things relating to procurement and not CMS.

Chair Hoffman said he thinks the intent behind this is to strengthen the Sheltered Market initiative and ensure that CMS, as your agent of the Governor is in a strategic role in all the agencies under the Governor's purview and he couldn't imagine that you want to extend that beyond what the statute allows.

Counsel Ryan said member Roberts' concerns make sense and we should allow for the flexibility to the extent that the university is running the procurement and it doesn't fall under general services or fall under the purview of the Governor. He said we should incorporate the flexibility for the council and CMS to the extent that it administers the BEP program to be involved but the university should be involved as well. He said conceptually we could tweak the language to incorporate the comment.

Chair Hoffman said he does not see a problem with the language which he said instructs CMS to work with other state agencies on this issue.

Member Roberts said she did submit language that she thought was reasonable and obtainable but it was not included in the document that would have addressed this issue. She said she read the Executive Order which basically directs CMS to work with General Services orders and leaves out the universities and other CPOs. She said her language was "The State agencies or public institution of Higher Education shall work with its Chief Procurement Officer to implement or adjust existing Sheltered Market as established by the council".

Counsel Ryan does not feel the language is inconsistent with the language in the document.

Chair Hoffman said a compromise could be made whereby section 10.103 remains and section 10.104 be changed.

Member DiMenco is concerned about the language in 10.103a which says the council "may" vote instead of the council "shall" vote. She said she understands it is a small word but it is a powerful word. She said it is a big difference.

Chair Hoffman said he does not expect the words "may" or "shall" to limit our ability to vote on an issue. He said using the word "may" gives the council the flexibility to vote or not to vote on an issue.

Member Ivory reminded the council about a similar issue that the council dealt with in the past. He reiterated his concern that "shall" and "may" mean two different things. He said "may" is not clear while "shall" is clear.

Member Okorafor endorsed what member Ivory said. She said the difference is that "shall" gives you no options. She said you are obligated, no flexibility. Whereby "may" gives you discretion and she believes you should always have discretion. She said saying "shall" denote that we must every time.

Member McKinnie said he is confused. He said we are not talking about a vendor but instead where the council finds a racial, gender, or disability discrimination. He said where discrimination is found there should be no option but to act. Another issue he had was the issue of having "may" in (A) and "shall" in (B).

Member Hill-Morgan said the word should change from "may" to "shall".

Member Roberts said the law said the council "shall" establish sheltered market and therefore we should be consistent with the law.

Counsel Ryan said member Roberts point is a good one. He said the struggle for us was balancing the landscape we inherit with crafting language that is appropriate. He said in this situation they came up on the side that “may” was better for the reasons that were already noted. He said this gives the council the discretion to review and not be bound by the evidence before them but to review and evaluate the evidence and come to a conclusion.

Chair Hoffman said his proposal will be to change in 10.103a “may” to “shall”; leave 10.103b “as is”; and regarding 10.104 we either adopt Sharla’s language or we simply strike out the words “by the department”. He stated he believes it would be a fair compromise. Member Ratner motioned the proposed law new language of 10.103b: “Solicitation selected by the procuring state agencies or public institution of Higher Education to implement the sheltered market thru the specific procurement shall be narrow tailored remedy to address identified discrimination.” Member Okorafor seconded. Vote taken, motioned approved.

Regarding section 10.103a which aims to change the language “may” to the language “shall”, member McKinnie made the motion. It was seconded by member DiMenco. Vote taken, motion passes.

Member Roberts motioned that we change the language for 10.103b to state “that the procurement state agency or public institutions of Higher Education shall work with its prospective chief procurement officer to implement of adjust existing sheltered market as established by the council”. This was seconded by member McKinnie. Roll call vote taken, Larry Ivory (yes); Sheila Hill –Morgan (yes); Edward McKinnie (yes); Ngozi Okorafor (abstain); Beth Doria (yes); Jesse Martinez (yes); Hedy Ratner (yes); Emilia DiMenco (yes); Sharla Robert (yes); Michael Hoffman (yes); Khari Hunt (yes); Charisse Witherspoon (yes). Motion passes.

Member Okorafor moved to approve the sheltered market administrative rules as amended today for approval by the full council. It is seconded member McKinnie. Vote taken, motion passes.

- **Ride Right, LLC Appeal**

Ms. Lynette Schafer, the APO for the Department for Health and Family Services said she received the notice around noon on Friday and did not have enough time to put together some numbers. She said she can tell the council that up until January when ride right, LLC was decertified they were used by four (4) different organizations for a total of twelve different contracts for managed care. She does not have the total dollars amount of the contracts spent with the company but said they reported income in the first and second quarters of FY17 as 25 million dollars.

Chair Hoffman said given that we did not give HFS enough time to gather all the information, we will proceed with having Ride Right present their case

and if we feel comfortable we can vote and if not then we can postpone the vote until we get the information we need from HFS.

The CEO for Ride Right, LLC, Ms. Alaina Macia, said Ride Right, LLC has been a success story for BEP. She said we feel that because of the size of the dollars that are being contracted in the state for the Medicare Program and the Medical Transportation Program that the limit of the 75 million revenue requirement is not a true reflection toward the amount of dollars available for contract needed. She said these things are difficult for a small company to participate in so putting a limit of 75 million on a company makes it difficult to even be considered for contracting for these kinds of services. She stated that they have a lot of women in leadership and they contract with a lot of minority based transportation companies so they are meeting the intent of the BEP program to facilitate women and minorities in business. She further said 70% of the company's leadership is women and the majority of their transportation is minority. She said they would like to be a larger partner to BEP to help it succeed in its mission and goals.

Mr. Donald Tiemeyer, Chief Counsel for Ride Right, LLC said Ride Right, LLC was started by Alaina Macia. He said she used her own money and grew the company into a 32 million dollars in revenue company. She is one of six children from her parents. Her parents had a very successful business called Medical Transportation Management Inc. (MTM). MTM has no ownership in Ride Right, LLC. Ride Right has no ownership in MTM. MTM is a broker management company. It does not own or operate vehicles. On the other hand, he said Ride Right, LLC. is a smaller company that owns and operates vehicles. He further elaborated that because MTM is a successful company and because of estate planning, her parents gifted non-bonding/non-voting stocks to all the kids. Because of that gift, she now has a 13% interest in MTM. He said by inheriting her gift from her parents she did not stop being a small business. He re-emphasized that the stocks they got are non-voting and that they have no control over the company. He does not believe that the regulations being followed did anticipate that she will have to give up her inheritance to become certified by BEP. He does not believe it was the design of the legislature. He said she has been a BEP vendor for 7 years but as soon as she gains an inheritance from her parents, she is no longer a BEP company. He does not believe this was the intention of the legislation. Lastly, he asked the council to reconsider their decision to deny Ride Right, LLC their BEP certification.

Member DiMenco asked what is the operational relationship between affiliate MTM and Ride Right, LLC. Counsel Tiemeyer responded "None". He further went on to say that they share the same office space and Alaina Macia is the CEO of both companies. She does not control the Board of Directors or the parents.

Member Roberts said that she understands his concerns but we will have to enforce the law as it is currently on the books.

Member McKinnie wants to know whether Ms. Macia gets the 13% of these 390 million dollars from MTM revenue. Counsel Tiemeyer said she has a 13% owner interest; she did not get 13% of the 390 million dollars. She said she got \$62,000 dollars after dividend.

Member Roberts reiterated that the way the rules are currently written, if a business that is part of this program and has a 5% ownership in another affiliate, it throws you out of the program.

Secretary Peterson said there is one exception to the rule. It is 1064.b.1 of the JCAR rules which states “For the impact to be significant in terms of employment the business would have to hire employees to perform the work of the contractor of which 51% must be minority, females, or persons with disabilities”. He alluded to the fact that Ms. Macia said over 70% of her business are females. Member Roberts reminded the council it refers to new hires for the contract. She wants to know whether Ride Right is appealing thru the exception.

Counsel Tiemeyer said their company is over 70% female and minority therefore every time they get a new contract that does not change.

Member Doria wants to be sure whether the company makeup is 70% females/minority or they are going to hire new females or minority to work on the contract. Counsel Tiemeyer said the company makeup is over 70% females and minority and could still hire a couple more females/minorities to work on the new contract.

Member Hill-Morgan wants to know are you going to hire 70% new hires that are females/minorities and not just transfer minorities already working with the company. She stressed they have to be new hires. He thinks they can commit to that going forward. He again emphasized that they have been doing that for 7 years.

Member Ratner wants to know how long Ms. Macia has been the CEO of the larger company.

Ms. Macia said since 2008 when the company was an 80 million dollars company.

Member hunt wants to know if we have to decide this case based on the exception they are appealing on or one that we feel can be applied.

Secretary Peterson said it is taking into consideration all variables involved which includes the BEP calculation and the 51% new hires.

Member Ratner wants to know whether independence from MTM is not an issue as well. Secretary Peterson said it is.

Member McKinnie wants to know how you can run a 400 million company and then owned a minority company and then the company still be a minority company. Secretary Peterson said that has to do with the independence issue.

Member Ratner wants to know how long has Ride Right been certified by BEP. Ms. Macia responded 3 years.

Secretary Peterson asked whether Ms. Schafer had anything to add to the conversation. She said they are currently involved in twelve different contracts. She also said it would be hard to state the impact when she hasn't been able to gather the numbers. She again stated that they reported a 25 million dollars income for the first two quarters for FY17.

Chair Hoffman said from his perspective some of the points that have been made earlier that this is your BEP firm that have been successful and have partnered with the state in an area that is characterized by low income, and there is an impact on the community is commendable. He further said their percentage of employment of females and minorities is pretty impressive and would be impactful to that area as well. He talked about the impact on the agency and the twelve different contracts. He said they are crucial for the services HFS provides. He said it sounds as though we have three different options here: the independent clause, the hiring clause, and the calculation of ownership. He said he agrees with Sharla that the law is the law and that this council exists to make determination of this type taking into account the best interest of our BEP businesses and BEP community. He said he would be comfortable to vote on any one of those three areas.

VIII. Public/Vendor's Testimony

Mr. George Blakemore said it was not right to put public testimony at the end of the meeting when people usually leave before the end of the meeting. He also chided the council members for not being in regular attendance for these meeting as evident by the lack of quorum in the subcommittees meeting. He said they are failing the people they represent. He said he was speaking on behalf of the black community. He said there should be a set-aside for people of colored, black people because of the history of slavery.

Michelle Flagg, owner of Redacre Solutions Inc. was wondering whether we have considered starting out by setting goals and if the goals cannot be met then we go to the exemption. She said we should not start by have an exemption. She said the reason why she is proposing that is because it forces business owners to make themselves known to every agency. She said the

area that she worked in has been title search and legal services and they don't have goals.

Secretary Peterson responded by saying that we as a council will be switching the goal setting process. He said BEP does goals facilitations. He said our outreach team goes thru many RFPs as we can.

IX. Adjournment

Member Doria motioned to suspend the regular session and go into executive session. Member Martinez seconded. Motion passes.

Executive Session commences.

Member Roberts moved that the decision be changed based upon the exception that they participate in the program as a BEP firm with the exception that they present evidence that they have hired 51% minority and females employees. Member Martinez seconded.

Chair Hoffman clarified that the reinstatement will be effective back in January 2017 when their renewal was denied. Secondly, we as a council will further look into the various ways that either by statutes of administrative rules the point that Mr. Tiemeyer made BEP council regarding whether they envision a scenario like this. He said he believes we should continue looking into that to make sure it is fair across the board.

Vote taken, motion passes.