

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

DISPARITY STUDY PRESENTATION MEETING MINUTES

100 W. Randolph
Room 9-040
Chicago, IL 60601

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

Monday, January 19, 2016- 10:00 AM

COUNCIL MEMBERS IN ATTENDANCE

Larry Ivory, Sheila Hill Morgan, Edward McKinnie, Beth Doria, Jesse Martinez, Denise Baretto, Samantha Hufnagel, Hedy Ratner, Kim McCullough, Sharla Roberts, Charisse Witherspoon, Catherine Costa, Emilia DiMenco

COUNCIL MEMBERS NOT IN ATTENDANCE

Karen Eng, Susan Shaw, Bobbie Wanzo

COUNCIL CHAIR

Kim McCullough, Chairman

COUNCIL SECRETARY

Paul H. Cerpa

CMS STAFF IN ATTENDANCE

Elias Ricks Ngwayah II, Harry Reinhard, Ben Jones, Jeanetta Cardine, Carlos Gutierrez,

OTHERS IN ATTENDANCE

John Cieslik, Ron Barrelo, Vince Bass, Mark Hardy, Deanna Rossetto, Art Moore, Rodney Hodge, Ben Bagby, Michelle Casey

**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

January 19,, 2016
10:00 a.m. – 11:30 a.m.

- I. Welcome, Roll Call & Introduction
- II. Chairman's Report
- III. Overview of the Disparity Study
- IV. Questions
- V. Public comments
- VI. Adjournment

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

I. Welcome

Chairlady Kim McCullough welcomes all.

II. Call to Order

Chairman Kim McCullough called the meeting to order at 10:15am. She then introduced Mr. Mike Hoffman as the new Acting Director of CMS. Acting Director Hoffman stated he formerly served as the Chief Operating Officer of Department of Commerce and Economic Opportunities (DCEO), has strong interest and commitment in opportunities for small business and looks forward to working with the Council to improve opportunities for them.

Chair asked each council member to introduce themselves and make a little statement about their organization. Chair introduced presenter, Colette Holt Ms. Holt said is an attorney and has been practicing in the area of contract law for thirty (30) years. She further said she had been working on race and gender related barriers for opportunities for twenty plus years. Originally from Chicago and moved to Oakland, California about four (4) years ago.

Chair requested Council members to hold all questions until after the presentation.

Ms. Holt presented an overview of the Disparity Study to the Council (A copy of the presentation can be found in attachment below).

III. Questions/Statement

Council member Hedy Ratner: Asked about annual goal setting and what are the options.

Ms. Holt response: Some agencies have goals target they want to reach every year, others do not. They do not have any overall goal but instead they set goals on a contract by contract basis. She said it is a policy choice and there is no legal requirement one way or the other. She said the one thing she is confident of is that the contract goal has to be narrowly tailored basis. If you are going to have a goal on a contract it has reflect the availability of firms. She stressed it has to be for each contract.

Member Sheila Hill Morgan: She agrees that goals have to be made upon availability. Utilizing the 13 NAICS codes, one should be able to know the availability of firms on a contract by contract basis. She said the work could be done ahead of time which can make buyer's work much easier on a contract by contract basis. She further said if the information was provided ahead of time, there is no reason one cannot succeed.

Council member Denise Barreto: Wants to know when the study commenced and when it was completed because she wants to have a frame of reference.

Ms. Holt said it was completed in the summer. She said it started either January 2012 or 2013. She needed to check to be sure.

Member Barreto expressed concerned about the age of the data. Ms. Holt said States spending does not change that much over the years. She said the court have requested for the best most recent data. She said she is comfortable with the age of the data.

Member Witherspoon asked concerning the mentor protégé program. She wants to know what is in it for the mentor. How do you engage the mentors?

Ms. Holt said you have to have something for them or else it won't work. She said the programs that work well do two things: They give the mentor additional credit for using the protégé and they reimburse mentors for out of pocket cost.

Member Witherspoon asked did Ms. Holt sees the State being successful in a mentor protégé program that involves professional services.

Ms. Holts said yes, it all depends on the type of professional services. She believes it would be much easier than in the construction area because there is less capital involved.

Member Ivory: At what point do the courts take an aggressive stand when everything you have tried regarding race neutral program has failed?

Ms. Holt: There are three approaches: 1.) Race neutral measures that do not provide advantage on the basis of race and gender. 2.) Narrowly tailored contract goals. 3.) Actual quota or set-aside. She said it is hard to predict what a federal court will do but said that the chances of that happening are zero. She said as far as she is concerned, no federal court has ever set approved a set aside.

Member Ivory: At what point can a once under-utilized protective class become over-utilized?

Ms. Holt: If the over-utilization is the direct result of the program, that does not tell me that the discrimination have been fixed. Conversely, it tells me that the program has been working reasonably well.

Member Doria: Wants to know since everyone is focusing on outreach to M/WBEs whether it will be a good idea hold series of classes for minorities such as estimating which would help them in the bidding process. This could help avoid overestimating when bidding on a contract.

Ms. Holt: Believes it is a good idea. However she said because of the state lack of resources it would be good if the state finds out who is doing it

piggyback off that effort. She believes it is mostly a technical and support function. This would help the state avoid the state organizing the classes and finding the people to teach it.

IV. Public/Vendor's Testimony

Dale Morrison from the University of Illinois: Wants to know why there is a disparity between the utilization number Ms. Holt has presented and the ones being reported thru BEP. Also wants to know which number should be reported.

Ms. Holt: We looked at all the state dollars which were not in formal state contracts exempted by statutes. She said exempted dollars were kept in the data pool. Regarding what to report, she said it is a judgment call for the State.

Member Hufnagel: When you use the term contract, are you using it in the general sense of contract or are you specifically referring to state procurements and not grants?

Ms. Holt: Yes, grants were dropped because the State has no control over that. Non-for-profit were also excluded.

V. Adjournment

- a. Chairlady McCullough called for Adjournment
- b. Member Doria casts for a motion (moved) for Adjournment
- c. Member Baretto seconded the motion to Adjourn.
- d. Meeting was Adjourned as of 11:28am

**State of Illinois
Central Management Services
2015 Disparity Study**

**Colette Holt
Attorney at Law**
19 January 2016

**Colette Holt
& Associates**

Guiding Disparity Study Legal Principles

- Evidence must comport with case law & sound science
- 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 (Illinois Tollway's DBE program)

Strict Constitutional Scrutiny

- Two pronged test
 - Strong basis in evidence of the government’s “**compelling interest**” in remedying discrimination
 - Quantitative evidence of disparities between M/FBE utilization & availability
 - State’s contracts & subcontracts
 - » Parity = 100%
 - Economy-wide evidence of disparities using Census data
 - Qualitative evidence of race- and gender-based barriers
 - Interviews with business owners
 - Literature

Strict Constitutional Scrutiny, cont.

- Remedies must be “**narrowly tailored**” to that evidence
- Race-neutral measures must be used to the maximum feasible extent
- Annual & contract goals must reflect availability
- Beneficiaries must be related to the evidence
- Any adverse impact on third parties must be considered & be no more burdensome than necessary
- Program cannot be of unlimited duration

Disparity Study Objectives

- Provide a legal defense if program is challenged
- Provide evidence & recommendations to assist the State to develop & implement an effective program
- Educate policy makers & stakeholders about the legal & economic issues to build consensus

Quantitative Findings

- Product market is 13 NAICS codes (91% of dollars)
 - Study covered all formal non-IT State spending not excluded by statute, not more limited pool of “non-exempt” contracts
- Geographic market is Illinois (88% of dollars)
- Highly concentrated spending
 - 70% of dollars were spent in health care industries
 - 7 firms in the health care or gambling industries received 44% of the dollars

Quantitative Findings, cont.

- M/FBE utilization was 3.20% of total state dollars in the sample pool
- M/FBE availability weighted by the State's spending patterns was 12.8%
- Overall M/FBE disparity ratio was 25.0%, which is substantively significant
- Overall non-M/FBE disparity ratio was 111.0%, which is statistically significant

Quantitative Findings, cont.

- Census Bureau data
- Large economy-wide disparities for business earnings for M/FBEs based on Survey of Business Owners
- Large economy-wide disparities for business formation rates & wages for minorities & women based on American Community Survey
- Barriers to commercial credit and human capital are entrenched

Qualitative Findings

- Interviewed 123 individuals
- Barriers to M/FBE participation & growth
 - Unequal access to industry & information networks
 - Discriminatory attitudes & negative perceptions of competency
 - Difficulty obtaining public & private sector work
 - Little work outside M/W/DBE programs

Recommendations

- Implement an electronic contract data collection & monitoring system
- Lengthen solicitation times
- Increase access to state contracting information
- Increase outreach to M/FBEs
- Provide agency contracting forecasts
- Review experience requirements
- Coordinate the BEP program with the Small Business Setaside program
- Create a cabinet level position with overall responsibility for inclusion

Recommendations, cont.

- Use the study to set M/FBE goals
- Narrowly tailor program eligibility standards
 - Adopt a personal net worth test
 - Set reasonable industry-specific size limits
- Increase monitoring, accountability & transparency
- Consider adopting a Mentor-Protégé Program
- Conduct regular BEP program reviews
- Develop performance measures for program success