

**Governor's Commission on Minority and Women's Business**  
**June 11, 2012**  
**Minutes (As Amended)**

**Call to Order:** The meeting was called to order by Chairman Jamal Smith at 1:07 p.m.

**Roll Call:** Jamal Smith, Chairman; Robert Wynkoop, IDOA Commissioner; Felecia Roseburgh, IDOA Deputy Commissioner, Marcia Duncan, Sarah Taylor, Alfonso Vidal, Rep. Mara Candelaria Reardon, Ron Alting, Tiffany Mulligan, Lani Chuang, Rae Pearson, Sylvia Trotter, Jesse Moore, Sen. Jean Breaux and Sen. Ron Alting were all present.

**Adoption of Past Minutes:** Minutes from the December 12, 2011 and March 12, 2012 meetings of the commission were approved with one amendment to the March 12 meeting: Commission member Sarah Taylor was present. Marcia Duncan moved for adoption and Rae Pearson seconded the motion.

**Welcome Remarks and Chairman's Update**

**Certification Appeals:** Denial of a recent appeal was upheld, with Sarah Taylor and Jesse Moore serving with Chairman Smith on the panel. A second appeal has been received; a date is being set to proceed with a hearing.

**MWBE Code Updates:** A question concerning the enforcement rights and powers of the Minority and Women's Business Enterprises Division led to a revisit of IAC 25 and a proposal by Deputy Commissioner Roseburgh that the Division's name be updated to the Division of Supplier Diversity. There was no quorum present at the March meeting to accept the proposal.

Title 25, Article 5 of the Indiana Administrative Code, in several places, provides division names but none of the names are consistent; no official name is cited and in light of that, a single, consistent name should be included in the code and made official. The name Division of Supplier Diversity reflects the economic value of the supply chain, implies a broad community support base, prepares for the future and better positions the Division for success.

Sarah Taylor asked what feedback the Division has received. Deputy Commissioner Roseburgh said there has been no negative feedback; the feedback has been positive. Jesse Moore moved for the adoption of the name Division of Supplier Diversity, seconded by Rae Pearson. The motion passed.

**Waiver requests:** Presently, the Indiana Code indicates that if a prime vendor does not provide for MWBE subcontractors on their bid, a waiver must be submitted and the prime may move forward without a MWBE subcontractor. Chairman Smith said the Division would like to tighten the language so that the prime must say yes or no to utilizing MWBE subcontractors and if they say no, that the reason is legitimate.

Rae Pearson asked how often this happens?

Deputy Commissioner Roseburgh said there have been several. The issue is that the language should be clarified in the code so at a future meeting, a recommendation will be made. The need for clarity is also being seen in public works projects, as well as procurement contracts.

Jesse Moore inquired about the qualifications to receive a waiver and can copies of the qualifications be obtained?

Another issue for future discussion was introduced by Alfonso Vidal: what happens when companies do not receive a waiver?

Chairman Smith said that language both issues can be provided to the Commission in its next meeting packet.

Rae Pearson said an entity that is a subsidiary of another company should not belong as a subcontractor.

Commissioner Rob Wynkoop said that is a limited issue in the state of Indiana. For example, the BuyIndiana programs scrutinizes a company's finances, including whether there are financial associations between primes and subcontractors. It is handled administratively now with BuyIndiana and he believes it could be done with a Division of Supplier Diversity.

In the interest of time, Rae Pearson asked if the commissioners could submit e-mails with further suggestions on ways the code could be strengthened.

Chairman Jamal Smith said suggested changes can be provided prior to the September meeting and a new policy can be considered.

Tiffany Mulligan urged IDOA to examine the federal good-faith efforts documentation process that INDOT utilizes for its DBE program.

**Supplier Diversity Briefing for SEIs and State Agencies:** Chairman Smith said state universities should be engaged to address minority and women business issues and concerns.

Jesse Moore said higher education and government must be presented with a business case in favor of supplier diversity. The conversation should identify metrics to assess the value.

Commissioner Wynkoop clarified that the state could provide opportunities to Minority and Women's Businesses.

Deputy Commissioner Roseburgh said an outgrowth of the conversation over the last two quarters would include ways to respond to the disparity study and to articulate the business case to SEIs, as well as state government.

Rae Pearson said Jesse Moore's efforts at Purdue on behalf of supplier diversity makes him a great advocate for the whole process

Alfonso Vidal suggested the new head of purchasing for USI should be included.

Sarah Taylor asked if the Hoosier Lottery and Gaming, with their separate guidelines for processes, should be included.

Chairman Jamal Smith said supplier diversity could be a common theme among state government, its quasi agencies and educational institutions.

**FY2013 MWBE Goals:** Chairman Smith said the goals were not set during the March meeting due to a lack of quorum; however, a recommendation was made at the last meeting to maintain the current goals.

Sen. Jean Breaux inquired when the next Disparity Study would be.

Chairman Smith said the Disparity Study is completed every five years and the goals are changed every year.

Sen. Breaux asked what information is utilized to determine how the goals will change.

Deputy Commissioner Roseburgh said the state is doing very well in nearing its goal of a 13% MWBE spend; however, the state has not eclipsed that mark, so she is recommending the goals remain the same.

Rae Pearson said the spend of quasi government agencies is not included in computation of the 13% goal so the commission must rely on the judgment of MWBE staff.

Sen. Breaux asked how the goal impacts businesses.

Rae Pearson responded that any opportunity for business is helpful. Considering the information provided and the economic times, it should be kept for same for now.

Jesse Moore said that without a new disparity study, the numbers should remain the same for the five-year period between disparity studies. They should be reviewed yearly, though, in case the goal is exceeded.

Sen. Breaux asked if the pay audit system will provide the numbers each year to review the goal.

Deputy Commissioner Roseburgh responded the pay audit system gives a good overview of where the spend has been. What's missing is the availability of new spend. She said the setting of goals is art and science. The art is where we have been and the science is the data on who is in the market place to provide goods and services to government.

Jesse Moore moved that the MWBE goals remain the same. The motion was seconded by Rae Pearson. Passage was unanimous.

### **Deputy Commissioner's Report**

**MWBE Division Update:** Deputy Commissioner Roseburgh recapped the MWBE operational focus for 2012. Improvements to customer service have been sought, a full integration of the pay audit system has been implemented, technology has been leveraged, a brand and marketing strategy has been established and partnerships have been leveraged for success.

Gains have been seen in practically every area. There are 2,421 certified firms; 891 are MBE and 1,530 are WBE. The number of certified firms has increased by 14.31%, including MBE certification increases by 6.07% and WBE certifications are up by 19.72%. The number of applications is up 17.37%. There were

737 applications in 2011 and 865 in 2012. 95.7% of applications were approved; that includes 98.25% of MBEs and 93.22% of WBEs. The goal for days to render a decision on MWBE certifications is 45 days. Due to some process changes, such as more accurate application of the administrative code, the number of days was reduced from 47 to 25 days in March and to 24 days in April.

Sen. Breaux asked for an explanation of the division use of the administrative code to make decisions about certification.

Deputy Commissioner Roseburgh said that if ownership of an applicant firm is apparent through documentation, then the site review is deemed unnecessary; this especially helpful because the fastest growing area for applications is northern Indiana. When determination can be made in the office, the process is escalated.

In technology, the Division is getting into social media, Facebook, LinkedIn and Twitter to promote events. Webinars for certification training are beginning next week and the Division is working on a fillable application that will be faster to complete for applicants. The Division will be utilizing its new intern to jump into some of the technology components. Additionally, the Division is finalizing its agreement with the Women's Business Enterprises National Council.

In April and May, the Division completed a customer satisfaction survey. Some 270 firms responded. The majority were involved in professional services and were from central Indiana, northern Indiana second, next southern Indiana and last, out of state firms. The key message was business development – education and training, networking opportunities. 79% use social media. They wanted technology integration (as in the new Webinars for training) and expanded information on the web site about opportunities and responding to RFPs which will be included in the Central Indiana Resource Fair on July 17. Another response to the survey will be a workshop entitled I'm Certified – Now What? The Resource Fair will have an entire track on how to better navigate the state procurement system.

Jesse Moore asked about small business preferences and their utilization to assist MWBE and all businesses in accessing state business opportunities.

Commissioner Wynkoop said that the small business preference is 15 percent and that businesses that learn how to utilize it effectively can get state contracts. He described a small minority-owned firm that claimed the small business preference to get a multi-million dollar contract with INDOT to supply large chassis trucks. He said the state can look at ways to better communicate the preference and how to take advantage.

Sen. Breaux said that perhaps there is a way to break down large contracts so that small firms that are not large enough to be prime contractors because the contracts are so huge and the bonding requirements too great. She suggested she would be willing to sponsor something legislatively if a way could be found to help some businesses gain business opportunities.

Jesse Moore said that it was important to recognize that the 15 percent preference comes at a premium for the state (or SEI); it's good for the small company but somebody has to pay for that preference. He suggested a way should be found to benefit small businesses but not increase costs for institutions that want to use them.

Commissioner Wynkoop said that one way the Department of Administration keeps costs down (thanks to legislation in 2007) is to continue negotiating, even after the bid is awarded until the price is fair; no money is left on the table, from a negotiating perspective. Perhaps that ability can be expanded to other political entities to negotiate bids. Originally the bill was to include large political entities but in its original form, the ability to negotiate bids was limited to DOA.

Deputy Commissioner Roseburgh said that during the procurement process, DOA procurement staff is being trained to look for MBE-WBE bidders for contracts under \$75,000. For contracts over \$75,000, there is a scoring incentive that gives prime contractors an advantage when they include MBE-WBE participation on their RFP.

While bonding requirements cannot be reduced due to state requirements, but MBEs and WBEs are encouraged to participate in contractor development programs; the Division is seeking way to offer the program across the state. Ivy Tech will be a partner in that.

Commissioner Wynkoop said from a procurement perspective of business services, the requirement for a bond is a policy issue and not a statute. Those requirements are somewhat flexible. Some bonding is required on construction projects.

Sen. Breaux inquired about the number of potential MBE/WBE businesses in Indiana. Commissioner Wynkoop said the best source for that number is the disparity study. Deputy Commissioner Roseburgh said in the next quarter that number will be utilized as a comparison of potential MBE/WBE businesses versus actual MBE/WBE businesses.

**MWBE Spend Report:** Deputy Commissioner Roseburgh said the weighted-average goal for the state spend on MWBE contracts is 13%; the actual spend as of April 30 was 11.8%; 5.14 percent with MBE firms and 6.66 percent with WBE firms. The percentages translate to \$444.1 million in FY 2011 for WBEs and \$346.2 million for MBEs. While the overall spend of state government is down, the MWBE spend percentage remains the state. A summary report by agency was presented to the commissioners.

Accurate numbers for INDOT were not available because its system is not aligned with PeopleSoft. IDOA and INDOT are working on a solution. INDOT operates a DBE program (according to federal regulations).

Tiffany Mulligan said that most DBEs are MBEs or WBEs but the reporting system does not separate the DBEs. A small percentage of state contracts are 100% state funded. The vast majority are federally funded.

Chairman Smith amended the day's agenda to add an update on DBE contracts, in addition to Tiffany Mulligan's report on the Ohio River Bridges Project.

Rae Pearson inquired about agencies on the pay audit report with 0 totals on MWBE spend.

Deputy Commissioner Roseburgh said that it hasn't been discovered whether agencies with 0 totals have opportunities for MWBE spend.

Rep. Candelaria-Reardon asked for the report to be e-mailed to her.

## **Pay Audit System Demo**

Deputy Commissioner Roseburgh said that ENTAP will be giving a demonstration of the system. Tracy Barnes and Annie McCarty will be doing the presentation.

Tracy Barnes said the pay audit system gives visibility to state contracts for small and medium-sized MWBE firms, provides reports to the Commission and provides valid data to allow more data-driven decision to be made on participation percentages, allocations and agency participation. Logging in as a prime vendor or a subcontractor, he demonstrated how payments can be entered or other information obtained. It also tells whether vendors are being paid or sub contractors are being utilized.

The pay audit system utilizes PeopleSoft which is the same system vendors log into to receive their bidder ID or bidder registration. The same IDs and passwords are used for pay audit. He logged in with ENTAP's id and password and showed the company works on three contracts as a subcontractor. It showed the various payments ENTAP had entered they it received from the prime vendor. Prime vendors are required to report monthly.

ENTAP has a nightly process that picks up any new contract, dispatches or P.O.s. Then ENTAP provides reports that show who's been utilizing the system. Automatic notices are sent to prime and subs so when an award is made, they are reminded to start feeding information into the system.

A demonstration of the "back office" part of the system showed the program as utilized the MWBE staff. Committed percentages versus actual spending with subs is included in the data.

Deputy Commissioner Roseburgh pointed out that the pay audit system does not remove legwork on the part of the MWBE Division. Intervention with the number is still required but it is simplified.

Alfonso Vidal asked how the system red flags a problem.

Tracy Barnes said the first way is through the reports that will show a discrepancy between the committed spend and the actual spend.

Alfonso Vidal asked about the follow-up process.

Tracy Barnes said the system is only as good as the rules and policies around it. It's a great source to data-drive decisions and for transparency.

Deputy Commissioner Roseburgh said the current status of the migration of contracts to the system is that 35 agencies have migrated to date, including 22 primes, 61 subs and 147 contracts. It makes \$3.9 billion available for review. Initial monthly reports will be available in August and on a monthly basis, new contracts will be added. As a sanctioning process, she said the intent of the pay audit system is not to end contracts, it's to get a contractor in compliance and to provide oversight on compliance with a vendor's agreements.

### **INDOT DBE/Ohio River Bridges update**

**Ohio River Bridges:** Tiffany Mulligan passed around a one-page schedule of the Ohio River Bridges project. Jim Stark, INDOT Deputy Commissioner for Capital Programs was introduced.

An RFQ was issued in March, following an agreement by the Governors of Kentucky and Indiana to split the project into two separate procurements. Six teams participated in the RFQ process and those were short-listed to four. The procurement is \$1 billion-plus and the four short-listed teams are Indiana companies. INDOT is now going through a three-month industry review period. The P3 (public-private partnership) is the first of its kind. The Toll Road lease was a P3, but there was no construction. Federal Highway is expected to issue its record of decision in June on the environmental aspects of the project. The final RFP will be in July and the short-listed teams will put together proposals. The process is called best-value process – the best value for the least amount of money. A proposer will be selected about a month later.

INDOT has been working on the DBE aspect of the project, building percentage of goals and including a DBE performance plan and a workforce diversity and small business performance plan. The draft for the RFP included a pass/fail component where proposer teams must submit a DBE performance plan that sets out how they will meet the nine percent DBE goal, how they will monitor compliance and their plan for outreach to DBEs to increase participation. The workforce diversity and small business performance plan's pass/fail component means that if they don't submit plans and meet minimum requirements for these plans, the proposer cannot be considered further.

The DBE portion of the RFP is also evaluated as part of the scoring process – a rare thing for a P3 project. Tiffany Mulligan has heard through the project grapevine that some of the proposers are utilizing creative approaches to securing DBE participation.

Additionally, a reciprocity agreement with the State of Kentucky has been finalized, allowing Indiana DBEs to be certified in Kentucky and vice versa for this project.

Networking events will also be part of the outreach to DBEs. In response to offers of assistance from Rep. Candalaria-Reardon and Sen. Breaux, Tiffany Mulligan said networking events may also be conducted in northern and central Indiana, as well as the southern part of the state.

**INDOT DBE:** Tiffany Mulligan reported that INDOT currently has 561 certified DBE firms. The removal of 263 DBE firms from the certified list is proof of the program's integrity. The certification process must be complete in 90 days and processing is currently taking 63 days.

INDOT has completed its 2011 on the job training program that involved 102 construction contractors. There were 443 active trainees in 2011. For 2012, there are 88 construction contractors participating.

INDOT's new DBE orientation just finished in which DBEs receive training on doing business with INDOT. Other outreach programs have been scheduled, in addition to some with IDOA.

INDOT's current participation rate is 7.53 percent. The INDOT goal is 10.17 percent.

Chairman Smith said that from now on the MWBE Commission agenda will allow for both a DBE and Ohio River Bridges Project update.

**New Business:** There was no new business.

**Public Comments:** Matt Price, an attorney with Bingham Greenebaum and Doll thanked the commission for its recent diligence in relation to the two appeals of denial of certification. Mr. Price came to discuss

one of those cases, Platt Construction. He said he had heard the commission discuss ways to improve its program during its meeting and suggested another area for improvement is the enabling statute for Minority and Women's Business Enterprise Program. The regulations that implement the program are unclear as to the standards for determining someone's minority group membership. He said this point was made by the administrative law judge that heard Platt Construction's appeal.

**Adjournment:** Rae Pearson said today's meeting was the most productive and well-informed meeting she has been to in a while. Sen. Breaux said it was wonderful to see a quorum for the meeting. Chairman Smith reminded the commissioners that the commission meets four times per year and commissioners are only allowed to miss one meeting per year.

The meeting adjourned at 3:14 p.m.