

**Governor's Commission on Minority and Women Business Enterprises
September 10, 2012
Minutes (As Amended)**

I. Call to Order

The Governor's Commission on Minority and Women Business Enterprises was called to order by Chairman Jamal Smith at 1:10 p.m.

II. Roll Call

The following Commissioners were present: Felecia Roseburgh, Sarah Taylor, Sylvia Trotter, Jesse Moore, Rae Pearson, Lani Chuang, Alfonso Vidal, Tiffany Mulligan and Sen. Ronnie Alting.

III. Establish quorum

Chairman Smith determined that there was no quorum.

IV. Adoption of Past Minutes

Minutes of the June 11 meeting were not approved because it was determined that they had not been received by the Commission members. Minutes of the June 11 and September 10 meetings will be forwarded to the Commissioners prior to the December 10 meeting.

V. Welcome Remarks and Chairman's Update

Chairman Smith reiterated that the Commission meets four times per year and Commissioners may miss one meeting. If Commissioners are unable to attend the meetings, the issue will have to be addressed.

a. Update on MWBE Certification Appeals

Chairman Smith said that the conclusion of one appeal was discussed at the last meeting, leaving one appeal, the Platt Construction case, left. The appeals panel upheld the division's decision to deny certification, as well as the ALJ's decision to deny certification. Sarah Taylor and Jesse Moore served with Chairman Smith as the appeals panel.

b. Supplier Diversity Briefing for SEIs and State Agencies

Chairman Smith said the commission is working on a collaborative effort with SEIs to bring them into the fold.

VI. Deputy Commissioner's Report

Ms. Roseburgh said the operational focus in 2012 has been in five key areas:

- improving customer service,
- full integration of the Pay Audit System and making it able to do the reporting expected of it,
- expanding the use of technology,

- launching a new branding and marketing strategy for the division, and
- leveraging partnerships for success.

At the previous meeting of the MWBE Commission, Ms. Roseburgh stated the MWBE Division's goal to complete certifications was 45 days. With the conclusion of the fiscal year, the Division's average number of days to certification was 39. The average for the 2011 fiscal year was 45 days.

At the end of the fiscal year, the number of certified firms was 2,424; a 13% increase over the previous fiscal year. The number of certified MBEs increased by nearly 7% and the number of certified WBEs increased by 17%. The Division's intake of new applications increased by 14%, the highest number ever. Approval rate for all firms applying for certification was 95%, or nearly 98% MBE and nearly 94% WBE. The breakdown of the 2,424 certified firms is 883 MBE and 1310 WBE.

The improvements to certification and the certification process were achieved by utilizing the MWBE regulations to the fullest advantage, expeditiously processing applications and moving backlogged applications forward through the system.

MWBE is working with the Indiana Department of Transportation and Tiffany Mulligan (also a Commission member) to discover ways to streamline the certification process. Presently, INDOT passes its DBE certification to the MWBE Division but it is a one-way process; MWBE does not pass its certifications on to INDOT. The MWBE Division will explore whether there is a way to share. The two state agencies did finalize a partnership agreement.

Sarah Taylor asked how the Division achieved such a large drop in the number of days to certification.

Ms. Roseburgh said one reason for the drop was the easing of the requirement for a site visit. Now, if the documentation indicates the applicant is eligible for certification, the site visit will be waived. If it is not apparent the applicant will be eligible, the site visit will be made.

Another partnership that is being leveraged is with the Indiana Minority Supplier Development Council.

As to technology updates, the Division has moved toward automating its certification application by creating a fillable digital application which should be available online by October. The Division is also separating its initial application from its renewal applications. Additionally, the Division's certification clinic is now online via webinar. At the request of Commissioner Marcia Duncan, there will be a recertification clinic in Southern Indiana on Nov. 7.

One way that encouragement of state contract primes and subs to use the Pay Audit System on a consistent basis is being achieved is through training.

A portfolio of workshops is being developed. Additionally:

- The MWBE brochure has been translated into Spanish (debuted at the Latino Expo this summer).

- An analysis of outreach efforts is that 50% are in Central Indiana ; 21% in Northern and Southern Indiana. Nationally, the Division was represented at the Women's Business Enterprises National Council in June and later this year at the National Minority Supplier Development Council conference.
- The team – Debbie Walker, Nate Lofton and Connie Smith - has worked hard to increase the Division's communications through its web site. She encouraged the Commissioners to visit the site.

Outreach efforts: 1st quarter, FY 2011, one event; 1st quarter, FY 2012, 15 events; 1st quarter, FY 2013, 20 outreach events. She hopes to link the number of outreach events and the number of certifications and the amount of the State's spend.

In regards to Pay Audit, it is in production. There are challenges in getting all suppliers to utilize the system but for FY 2012, the year ended with 11% MBE/WBE utilization; 5.34% MBE and 5.67% WBE. Currently, there are \$4 billion worth of contracts loaded into Pay Audit; \$3.9 billion are active contracts.

Rae Pearson asked if year to date information could be supplied at Commission meetings. The Commission would like to know how many women-owned and minority-owned businesses are actually doing business with the state.

Felecia Roseburgh said that Pay-Audit becomes more familiar, information that the Commissioners would like to see could be presented.

Rae Pearson would like to see how the spend works in quarterly reporting.

Jesse Moore said there is a difference between the commitment and the actual spend with women and minority businesses – the \$3.9 billion number is the amount of awards, not the actual spend.

Rae Pearson said she would also like a differentiation between professional services and RFP spend. Because the Pay-Audit system is designed to report subcontractor spend, there was also a question whether any women or minority-owned businesses were prime contractors.

Chairman Smith said that the Commission's goals are specifically for subcontractor goals; they're not measured among primes. Whether a company has the capacity to be a prime contractor, the MWBE certification program entices more businesses to become subcontractors with the ultimate goal of becoming a prime.

Rae Pearson would like the Pay-Audit statistics to report MWBE primes as well.

Felecia Roseburgh reported that 44 subcontractors and 29 prime contractors have reported payments. To encourage more reporting, Pay Audit Supplier Training Sessions are being scheduled each month, September through December.

Sylvia Trotter asked whether the Pay-Audit report breaks down contractors/subcontractors from Indiana – she would like to see what the state numbers look like.

Felecia Roseburgh said she would do this.

Jesse Moore inquired whether procurement contract language specifies expectations for reporting by primes so that they would know failure to report is a breach of contract.

Felecia Roseburgh said the language has been added to contracts although the intent is not to end contracts but to move contractors toward reporting. However, failure to report could escalate into termination.

Rae Pearson added that subcontractors need to document everything in the event of an issue with a prime.

The MWBE Division ended the fiscal year with \$140.7 million in spend, equaling 11.1 percent of the state's spend. For the new fiscal year, committed participation is .93 percent, equaling \$211,000.

Jesse Moore asked if the MWBE certification list is ever purged. Felecia Roseburgh responded that firms that are not renewed are removed from the list.

Mr. Moore asked if an exit interview is completed with firms that do not renew. Felecia Roseburgh said an exit interview is not conducted but it is a good suggestion.

Mr. Moore asked why the denials for WBE certification are 7 to 8 percent and the denials for MBE certification are four to 5 percent. Felecia Roseburgh responded that the key areas looked for in certification of a business is business, ownership and control. Jesse Moore and Rae Pearson agreed that of the three key areas, control is probably the main reason for non-certification. Felecia Roseburgh said the Division can begin to keep track of that data.

VII. DBE Program Update

Tiffany Mulligan of INDOT reported that there are 542 certified DBEs – 114 new certifications were processed last quarter. 51 days is the average time for processing. 90 days is allowed under federal law. Federal law specifies that all certified DBEs must have an on-site review. Out of state DBEs are reviewed by their home state.

In development and outreach, the summer development program included the DBE Initiative in Indianapolis, Merrillville, Fort Wayne, Evansville and New Albany with 45 participants. The events focus on businesses that have the potential to become DBEs.

The Entrepreneurial Development Institute (EDI) is an intense 2-day refresher course with construction and consultant DBEs.

The next EDI Initiative will be in December. Participants must commit to participating in every session.

The on-the-job-training program has 113 contractors enrolled; the program provides apprenticeship and training for women and minorities to reach journeyman status in construction-related fields.

In contract compliance, there were 12 onsite reviews last quarter and there have been 20 so far this calendar year. In the last quarter INDOT awarded 84 federal contracts; all contracts but one met their DBE goals and that contractor was determined to have put forth a good faith effort.

DBE commitment on INDOT construction contracts is 7.39%. INDOT's DBE goal for FY 2011 to 2013 has been raised to 12.4% - INDOT intends to do all it can to meet that goal.

Sarah Taylor asked for an example of professional services contract activities. Tiffany Mulligan responded that there are quite a few DBE professional contract firms and INDOT has DBE professional contract goals. Design engineering, real estate appraising and geotechnical services are examples. Professional services contracts can be challenging to subcontract but the goals are set based upon the ability to subcontract; we have only assigned DBE goals on professional services contracts for about three years.

Sylvia Trotter inquired if the seminars INDOT presents for DBEs is on the web site. Tiffany Mulligan replied she is 99% sure that the Statewide Indiana DBE Initiative (SINDI) seminars are located on the INDOT Support Services web site. Sissy Guynn, Supportive Services Manager, can answer questions by firms. SINDI training is a better fit for newer firms and Entrepreneurial Development Institute (EDI) training is more intensive and perhaps a better fit for firms that have been working for a longer time.

Another type of training on INDOT's Support Services site is Title 6 Nondiscrimination Training and DBE commercially usable function training for prime contractors to help them comply with Title 6.

Training is usually during construction breaks – late fall through late winter.

Tiffany Mulligan offered a brief overview of the East End Crossing DBE component of the project. A DBE networking event was conducted on June 29 in Jeffersonville. All four proposer teams attended, in addition to 90-100 small businesses. A "speed dating" approach allowed each small business to spend 10-15 minutes in a room with each of the proposer teams. Additionally, each of the proposer teams had sponsored their own information/outreach events for DBEs. The proposer teams are being proactive in seeking out DBEs.

At the request of Rep. Reardon-Candelaria, a DBE event was conducted in Highland to reach northern Indiana firms.

The DBE web page has been upgraded to encourage participation and to answer questions.

INDOT is considering issuance of an RFP to monitor DBE and EEO compliance on the East End Crossing project.

Chairman Smith urged commissioners to take the information back to their communities concerning the East End Crossing project to encourage DBE participation.

VIII Ohio River Bridges Project Update

Ron Heustis, INDOT ORB project manager, said the East End Crossing has made significant progress since June. The extensive federal environmental document, the Record of Decision, was approved on June 20 – a critical turning point. Additional federal approval was received, including the tolling agreement that authorizes Indiana and Kentucky to toll the East End and Downtown Crossings – a major part of the projects' funding. Also approved was the major projects financial plan and the project management plan. These plans are on the Bridges web site. Those approvals allowed the final RFP to be issued on July 31. The procurement is being done by the Indiana Finance Authority as a public-private partnership with INDOT being the technical lead.

There is also a small contract directly through INDOT called Salem Road, a future overpass over the new State Road 265. That was let on July 11 and groundbreaking was August 30. The design-build Salem Road is a \$3.1 million job. The August 30 groundbreaking ended up serving as the groundbreaking for both the East End (Indiana) Crossing and the Downtown (Kentucky) Crossing.

INDOT is still receiving questions and providing clarifications for the four proposers; the interaction helps to clarify or correct errors or omissions in documents. Three addendums have been issued so far and a fourth is being considered. A bi-state development agreement with Kentucky that defines each state's roles and responsibilities is also being finalized and will be on the Bridges site when that happens.

INDOT and IFA have been conducting meetings with local citizens in Jeffersonville, Clarksville and Utica in Indiana and in Prospect, Kentucky.

October 26 is a critical date in the Bridges project, when proposals will be received from the short-listed proposers. Then INDOT will start a significant effort to evaluate the proposals over three to four weeks. DBE and small business diversity plans are part of the evaluation process.

After one proposer is selected there will be public hearings and the Governor will sign off – hopefully in mid-December.

Sylvia Trotter asked about the dollar value of the project. Ron Heustis said that the Indiana and Kentucky projects will be \$1.2 billion each, or \$2.4 billion total.

In response to Sylvia Trotter's question about the proposers, Ron Heustis explained that the proposers are not really companies, they are teams comprised of international financial people, a large design-build contractor and large design firms with international experience. Along with that are Indiana design firms and contractors.

Chairman Smith said the four primes have been active and visible and aggressive in recruitment of subs.

Felicia Roseburgh said her office has received inquiries about the identity of the selection team. Ron Heustis responded that executives of the IFA and INDOT will make the final selection with input and recommendations from a team of reviewers.

Jesse Moore asked about the value of the MWE-WBE criteria and its weight in the overall selection total? Ron Heustis replied that since it is a federal highway project, the DBE goal is nine percent.

Jesse Moore further inquired if there is a percentage that's been assigned to the DBE in the selection criteria. Ron Heustis said the weighting for DBE has not been released; typically, public-private participation procurements are rated between 70 and 80 percent on financials and 20 to 30 percent on the technical side, including design, etc. DBE, workforce diversity and the small business plans are considered technical – part of the 20 to 30 percent. Something as critical as the main bridge structure may only get a point or half a point, so the DBE plan would have a similar weight.

Jesse Moore asked if there could be a winner awarded with a minimal DBE participation because of its minimal impact on the overall score. Ron Heustis said it is true in one sense, but only after the proposer has passed a pass/fail criteria that shows they will strive for the goal in good faith.

Tiffany Mulligan added that the DBE performance plan is much more detailed than any required before on a design build project. Proposers must describe their past success in DBE performance and to explain who their DBE manager will be, in addition to what outreach efforts they will have. The proposers will also not know the weight of each item in their proposals.

Ron Heustis added that proposers will get no points for what they have done so far to attract DBE firms so he anticipates they will make a good-faith effort.

Felecia Roseburgh added that many DBE firms are also WBE and MBE certified.

Sylvia Trotter asked whether consideration is given to firms from the Indiana or Kentucky area. Ron Heustis said that there can be no specifications on a federal project that a certain percentage of firms must be from a local area such as Louisville.

Tiffany Mulligan added that it's reasonable to assume there will be a lot of participation from locals on a project this size. Chairman Smith said efforts have been made to insure there is participation from all parts of Indiana, including the northern part.

IX New Business

Rae Pearson inquired about the status of the Gaming Commission Disparity Study. Felecia Roseburgh said the study is underway; she offered to have a representative of the Gaming Commission at the next meeting. Rae Pearson said that would be great.

Jesse Moore said that he had recently participated in the National Supply Diversity Institute that involved 40 school, university and college representatives that spent 2 ½ days immersed in topics such as best practices of supplier diversity in higher education and embedding supplier diversity in academia, record keeping, reporting of diverse spend and collecting Tier II data. Other topics were "Certification, is it really important?" and corporate responsibility and sustainability.

As the Commission begins to consider workshops for SEIs, Jesse Moore would like folks in higher education, such as chancellors and presidents involved.

X. Public Comments

Loretta Gurnell inquired of Felecia Roseburgh whether in the pay audit system, subcontractor spend, was the same thing as Tier II spend. Felecia Roseburgh said they were the same. Loretta Gurnell also asked whether the spend Felecia Roseburgh reported was for one month. Felecia Roseburgh said it was for one month.

As to the National Supply Diversity Institute that Jesse Moore discussed, Loretta Gurnell said Dr. Lasiter, chancellor of Dallas Community Schools has committed to speak at an event at Indiana University. She would be happy to let everyone know when that event will take place.

XI. Adjournment

There being no further business, the meeting adjourned at 2:33 p.m. Jesse Moore moved to conclude the meeting and Sylvia Trotter seconded.