

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

INDIANAPOLIS

**OFFICE MEMORANDUM**

To: Volkswagen Mitigation Trust Committee

Date: February 26, 2019

From: Nancy King, IDEM General Counsel

Subject: MBE/WBE/VBE preference related to grant awards

Question Presented by Dr. Beranek

Is there a state statute that requires the committee to allow additional points in the scoring model for the use of minority, women, or veteran business enterprises (MBE/WBE/VBE) in awarding grants under the VW Mitigation Trust?

Analysis

The statutes pertinent to this question, are found at IC 4-13-16.5, the chapter of the code that creates the Governor's Commission on Minority and Women Owned Business Enterprises. Section 2 of the chapter outlines the responsibilities of the commissioner and speaks to the awarding of state contracts, not grants, per se. There is no state statute that requires the state to consider an incentive such as giving bonus points for the use of a MBE/WBE/VBE when considering awards to grant applicants. However, within IC 4-13-16.5-2, there is a specific statement which provides:

“(j) The commission shall advise the department on developing a statement, to be included in all applications for and agreements governing grants made with state funds, stating the importance of the use of minority and women's business enterprises in fulfilling the purposes of the grant.”

**IC 4-13-16.5-2(j).**

Additionally, within the list of commission responsibilities, the statute provides the following:

“(11) Establish annual goals for the use of minority and women's business enterprises for any contract that:

(A) will be paid for in whole or in part with state grant funds; and

(B) involves the use of real property of a unit (as defined in [IC 4-4-32.2-9](#)).”

**IC 4-13-16.5-2(f)(11).**

Although not directly on-point, the above language reflects the state policy of the importance of fostering a broader pool of participation in state-funded projects.

IDEM staff asked representatives of several state agencies about their practices in awarding grants, including: the Department of Transportation; Department of Administration; Family and Social Services Administration; and the Department of Child Services. While not all agencies give out grants, those that do consider any type of evaluation or scoring preference based on the requirements attached to the particular funding source. Absent specific requirements, each agency stated that it follows IDOA guidelines which provide for the addition of five (5) points for MBE/WBE/VBE subcontracting or participation. Again, there is no statutory requirement to include bonus points for MBE/WBE/VBE, however, IDOA guidelines reflect the state policy of encouraging more broad-based representation in the bid processes.

While the primary task of the VW Mitigation Trust Committee is to award grants in accordance with the constructs of the VW Consent Decree, the committee is not operating in a vacuum. It is, by its actions, representing the state in making determinations as to what types of projects best meet the goals set forth in the Governor's Executive Order and may be considered "transformative" in the benefits they provide to the state as a whole. The committee has had lengthy discussion about the meaning of the word "transformative" as it pertains to this program. One might argue that the concept could include acknowledging historic disparities in access and opportunity in some way. Such an interpretation would be in line with state policy, but that is not a mandate. Whatever the ultimate decision of the committee may be, it is an important discussion for the entire committee to have.