

APPENDIX 6

Gary N. Lee, Director, BCABD, Letter to Marc Pentino, Eastern Regional Office, USCCR,
Oct. 11, 2001*



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES
HARRISBURG

October 11, 2001

Mr. Marc Pentino, Civil Rights Analyst
United States Commission on Civil Rights
Eastern Regional Office
Suite 500
624 Ninth Street NW
Washington, D.C. 20425

Dear Mr. Pentino:

This letter is the Bureau of Contract Administration and Business Development (BCABD) official response to your September 21, 2001 correspondence regarding "Barriers to Minority and Women Owned Businesses in Pennsylvania."

The following is the bureau's response to the "Barriers to Minority and Women Owned Businesses in Pennsylvania: "

i) Chapter I, Page 9, Section 1 - Sentence 2

Some agencies that are not under the Governor's jurisdiction may prepare their own contracting report. These agencies are not required to submit the report to BCABD.

Section has
been
revised as
suggested.

ii) Chapter 1, Section 3, Pages 9-12

This information is presented in a misleading and unclear manner. BCABD believes that your interpretation is extremely confusing.

From the inception of the program in 1988 to the present, the bureau receives monthly reports from agencies under the Governor's jurisdiction, specifying commitments to MBEs/WBEs in their contracts. These reports continue to be prepared manually. These reports are not an ideal way to monitor and measure program success but they are the only tools available.

See
Appendix 7
for
response to
this section

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* Broken vertical lines indicate sections incorporated into the report. Unbroken vertical lines represent sections not incorporated. For the Advisory Committee's response to sections not incorporated, see appendix 7.

The Commonwealth has embarked on the implementation of Enterprise Resource Planning (ERP) to replace the aging Integrated Central System and put in place a fully integrated administrative system supporting procurement, personnel, payroll, accounting and budgeting. When ERP is implemented, the desired statistical reports will be available and this decades-old deficiency will be corrected.

*Section has
been
revised as
suggested*

Attached is a copy of the bureau's annual report for years of 1998 through 2000. (See Attachment #1). This report tracks the annual dollars awarded to MBEs and WBEs.

*See
Appendix 7
for
response to
this section*

III) Chapter 2, Page 17, Paragraph 2 – Sentence 6

This sentence is unclear. Therefore, the section should read as follows:

The purpose of the SERB program is to promote the use of small and emerging businesses by giving them opportunities to participate in state contracting.

*Section has
been
revised as
suggested*

Many of the companies that qualify for SERB are too small to bid as prime contractors on most state contracts; however, these contracts may provide subcontracting and joint venture opportunities that would be within the capacity of a small business. The SERB Program encourages prime contractors to consider SERB businesses when seeking supplies and services that their own companies cannot provide.

In the RFP process, contracts are awarded according to a point system. Each proposal is evaluated, and points are assigned for the technical aspect of the proposal, cost, SERB participation, and other possible factors. The total of these points determines which firm will be awarded the contract.

Additional information may be taken from attachment #2.

Chapter 2, Page 18

Description of the bureau's four Units. I would encourage you to use information in attachment #3. This handout explains the bureau's units in a clear and concise manner.

*See
Appendix 7
for
response to
this section*

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Chapter 2, Page 19 - Investigation Unit

This statement is incorrect. The Investigation Unit does not have the power to rescind or deny certification files. Only the certification board has the power to deny a file.

Section has
been
revised as
suggested

IV) Chapter 6, Page 56

Understaffing of State Agencies Assisting M/WBEs and Efficiency of State Programs - Conclusion 2

This statement is incorrect.

The Investigation Unit is staffed with a supervisor and not a director. In addition, the supervisor has full access to the bureau's support staff.

Revised in
part. See
Appendix 7

The Investigation Unit is staffed to meet the current needs of our customers. Any increase in staff would only be justified by an increase in the unit's workload.

The bureau conducts an on-site visit if there are concerns regarding the ownership and control of an MBE or WBE firm. Therefore, a firm will not be certified prior to a comprehensive review being performed.

Section has
been
revised as
suggested

Footnote 35. This statement is incorrect.

The Supervisor of the Training and Development Unit did not make this statement. The Training and Development Unit is properly staffed. The unit is doing an outstanding job in providing quality services to the bureau's customers. The unit's activity level is exceptional.
(See Attachment #4).

V) Final Comments

In conclusion, the bureau strongly suggests that the footnotes regarding telephone interviews with staff be omitted. The staff was attempting to provide you with basic information on the bureau. They were not informed up front that you were conducting an interview. Therefore, by using the staff names, you may be unintentionally misrepresenting their statements.

The information submitted provides a true and accurate description of the bureau's functions.

See
Appendix 7

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Mr. Marc Pentino
October 11, 2001
Page 4

The employees of the bureau work aggressively to represent and accommodate the interests of minority- and women-owned businesses and provide them with the opportunity to compete for state contracts.

If you have any questions, please contact me at (717) 783-3119.

Sincerely,



Gary N. Lee, Director
Bureau of Contract Administration and
Business Development

GNU/z

cc: Gregory C. Santoro, Chief Counsel for the Department of General Services
Les Jin, Staff Director of United States Commission on Civil Rights
Ki-Taek Chun, Director of Eastern Regional Office, United States
Commission on Civil Rights

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**Annual Contract Dollars Awarded to Minority Business
Enterprises (MBEs) and Women Business Enterprises (WBEs)**

The Bureau of Contract Administration and Business Development (BCABD) prepares an annual report to monitor minority business enterprises (MBEs) and women business enterprises (WBEs) participation in state contracts. The report includes Construction Contracts, Invitation for Bid (IFB) and Sole Source Contracts, and Request for Proposals (RFPs).

The Construction Contracts Report tracks the total dollar amount of BCABD bid evaluations on construction contracts over \$50,000.00 for the Department of General Services. In addition, PennDOT prepares a report of the total dollars awarded on construction contracts by their department.

The Invitation for Bid and Sole Source Contracts Report tracks the total dollar amount of BCABD bid evaluations for Invitation for Bid and Sole Source Contracts for all agencies under the Governor's jurisdiction.

The Request for Proposals Report tracks the total dollar amount of commitments made on contracts involving socially economically restricted businesses (SERBs).

The attached report is for the calendar years of 1998 through 2000.

Annual Dollars Awarded to MBEs and WBEs

Year of 2000						
Construction Contracts	Contract Amount	MBE Amount	MBE %	WBE Amount	WBE %	
DGS	\$198,347,133.00	\$30,101,682.00	15.18	\$23,510,543.00	11.85	
PennDOT	\$237,617,820.00	\$9,603,259.00	4.04	\$8,181,880.00	3.44	
TOTAL	\$435,964,953.00	\$39,704,941.00	9.11	\$31,692,203.00	7.27	
Invitation for Bids (IFBs)	\$179,353,162.00	\$1,590,080.00	0.88	\$1,147,870.00	0.64	
Request for Proposals (RFPs)	\$239,068,658.00	\$8,353,679.00	3.49	\$19,867,125.00	8.31	
Grand Total of All Contracts	\$464,407,773.00	\$49,648,700.00	5.51	\$52,707,198.00	6.17	
Year of 1999						
Construction Contracts						
DGS	\$219,367,503.00	\$7,028,703.00	3.20	\$6,430,724.00	2.93	
PennDOT	\$184,988,942.00	\$7,914,657.00	4.28	\$6,429,791.00	3.48	
TOTAL	\$404,338,445.00	\$14,943,360.00	3.70	\$12,863,515.00	3.18	
Invitation for Bids (IFBs)	\$130,153,683.00	\$1,753,727.00	1.35	\$846,785.00	0.65	
Request for Proposals (RFPs)	\$2,517,210,215.00	\$3,428,640.00	0.14	\$3,657,635.00	0.15	
Grand Total of All Contracts	\$3,061,700,363.00	\$20,126,727.00	0.66	\$17,667,936.00	0.58	
Year of 1998						
Construction Contracts						
DGS	\$349,000,681.00	\$11,757,680.00	3.37	\$13,538,897.00	3.88	
PennDOT	\$456,374,383.00	\$19,488,651.00	4.27	\$19,750,558.00	4.33	
TOTAL	\$805,375,064.00	\$31,246,331.00	3.88	\$33,289,455.00	4.13	
Invitation for Bids (IFBs)	\$145,911,021.00	\$525,686.00	0.36	\$494,529.00	0.33	
Request for Proposals (RFPs)	\$768,838,321.00	\$19,137,524.00	2.49	\$28,309,151.00	3.42	
Grand Total of All Contracts	\$1,720,122,406.00	\$50,909,541.00	2.96	\$50,093,136.00	3.49	

Socially and Economically Restricted Business Program (SERB)

The purpose of the SERB Program is to promote the use of small and emerging businesses by giving them opportunities to participate in state contracting.

Many of the companies that qualify for SERB are too small to bid as prime contractors on most state contracts, however even those contracts may provide subcontracting and joint venture opportunities that would be within the capacity of a small business. The SERB Program encourages prime contractors to consider SERB businesses when seeking supplies and services their own companies cannot provide.

In the RFP process, contracts are awarded according to a point system. Each proposal is evaluated, and points are assigned for the technical aspect of the proposal, cost, SERB participation, and other possible factors. The total of these points determines which bidder will win the contract.

How does a business qualify as a SERB?

A business can qualify as a SERB in one of three ways:

First, by being certified by the PA Department of General Services as a Minority Business Enterprise (MBE) or Women Business Enterprise (WBE) or

Second, by being located in a Pennsylvania Designated Enterprise Zone or

Third, by being certified by the U.S. Small Business Administration as a Small Disadvantaged Business (SDB) and/or in the 8(a) Business Development Program.

IN ADDITION: to qualify as a SERB, a company must gross less than \$8 million per year (\$18 million for Information Technology (IT) companies) and have 50 or fewer employees.

Never assume a business qualifies as SERB because it is certified or is located in an Enterprise Zone; you must also verify its gross annual revenues. Proof of gross revenues can include a recent tax or audited financial statement. If the company has subsidiaries or is the subsidiary of another company, the total revenue of the company and its subsidiaries must be under \$8 million (\$18 million for IT companies).

Priority Rankings for SERB points

Of the maximum number of points available for SERB, a prime bidder can earn:

Up to 100% if the prime bidder qualifies as a SERB.

Up to 90% if the prime bidder enters into a joint venture agreement with a SERB.

Up to 50% if the prime bidder is subcontracting to a SERB (includes purchase agreements.)

The prime contractor is responsible for verifying SERB status with each contract

1. If a business claims SERB status because it is DGS-certified, provide a copy of the certificate and proof that the company does less than \$8 million in gross annual revenues (\$18 million for Information Technology companies).

2. If a business claims SERB status because its headquarters is located in a Pennsylvania Designated Enterprise Zone, provide proof of the headquarters address (such as a lease or deed), a statement from the local Enterprise Zone office confirming that the address is in a zone, and proof that the company does less than \$8 million in gross annual revenues (\$18 million for Information Technology companies).
3. If a business claims SERB status because it is a SDB-certified and/or 8(a) business, provide a copy of their registration in PRO-Net (pro-net.sba.gov) and proof that the company does less than \$8 million in gross annual revenues (\$18 million for Information Technology companies).

Include the appropriate verifications in the SERB portion of the proposal.

Read the RFP and follow it carefully! Important information to note:

1. You must name the specific SERB business(es) to which you are making commitments. Include the company name, address, and telephone number for each specific SERB business included in the proposal. You will not receive credit by stating that you will find a SERB after the contract is awarded or by listing several companies and stating you will select one later.
2. Specify the type of goods or services the SERB business(es) will provide. Specify the timeframe for the SERB(s) to provide the goods or services and the location where the SERB(s) will perform these services.
3. Specify the estimated dollar value of the contract to each SERB. If subcontracting, a signed subcontract or letter of intent must be included in the SERB portion of the proposal. Also estimate what percent of the total value of services or products purchased under the proposal will be provided by SERBs.

Bind the SERB portion separately from the rest of the proposal. (Most RFPs ask that the SERB section be sealed in an envelope). Only one copy of the SERB section is needed. Be sure to identify your company on the outside of the envelope.

How do I find qualified SERB businesses?

The Bureau of Contract Administration and Business Development (BCABD) maintains a database of all Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) certified by the PA Department of General Services. Information on these firms is available on BCABD's website at www.dgs.state.pa.us/cabd.htm.

If you have difficulty using the website to search for MBEs and WBEs, contact BCABD for assistance. Please note that the businesses in BCABD's database are coded according to the goods or services they are certified to provide. If you have problems finding the correct codes for the supplies or services you are seeking, you can request a codebook from BCABD. Contact BCABD by e-mail at gs-cabdinternet@state.pa.us. If you do not have e-mail, call 717-787-8708.

For more information on Designated Enterprise Zones, contact the PA Department of Community and Economic Development at 717-720-7342 (phone), 717-787-4088 (fax), or dcad@state.pa.us (e-mail). Request a list of Enterprise Zone offices.

For more information on Federal certification (SDB and/or the 8(a) program), contact the U.S. Small Business Administration at 1-800-U-ASK-SBA (phone), 202-205-7064 (fax), or visit their website at www.sba.gov/gcmed.

SERB Commitments are Binding

Commitments to SERBs made at the time of proposal submittal or contract negotiation become part of the resulting contract and must be maintained throughout the term of the contract. Any proposed change must be submitted to and approved by BCABD.

Joint Ventures

A Joint Venture is an association of two or more companies to carry out a project for profit. A Joint Venture generally requires a shared interest in the performance of a common purpose. After the project is completed, the Joint Venture terminates.

The Joint Venture relationship is created by a contract between two or more companies. Each invests its money, labor or skills in the venture. The profits are divided between them.

The terms of the contract must be agreed on by all parties before a Joint Venture relationship exists.

Co-ownership of the project is one indication of a true Joint Venture, which occurs when two or more companies pool their resources in a common enterprise comprised of equal obligations and benefits. If the contract indicates that one company is merely employed to provide certain goods or perform certain services and has no financial interest in the enterprise other than compensation, there is no Joint Venture. When a company has invested nothing in or contributed nothing to the project, there is no Joint Venture.

Generally, shared interest in the profits and losses resulting from a project is indicative of a Joint Venture. The participation in profits is an indispensable requisite of a Joint Venture relationship. The absence of participation in profits is conclusive that it is not a Joint Venture.

The burden of proving a Joint Venture is on the party who asserts it.

Examples of evidence indicating a Joint Venture relationship include: 1) showing a checking account with the Joint Venture name, 2) providing a copy of the contract establishing the Joint Venture, 3) providing an individual income tax return showing Joint Venture income, 4) documenting a pooling of assets into a common enterprise with a division of profits, 5) providing evidence of a parity in direction and management, and 6) showing proof of the securing of insurance in the name of the Joint Venture.

If asserting a joint venture with a SERB, the Joint Venture Agreement must be included in the SERB portion of the proposal.

For more information on Joint Ventures, contact BCABD's Evaluations Unit at 717-787-7629.

For more information on the SERB Program contact
PA Bureau of Contract Administration and Business Development
613 North Office Building, Harrisburg, PA 17125
E-mail: gs-cabdinmet@state.pa.us
717-787-6708 or FAX: 717-772-0021

To reach our Western Regional Office, e-mail cjumba@state.pa.us or call 412-442-5872.

8/01

Bureau of Contract Administration and Business Development

*Our mission is to provide the necessary resources and inspiration
for our customers, minority and women business owners,
to compete for and participate in the state contracting process;
to teach these business owners how to pursue the opportunities
available through state contracting; and to insure
Commonwealth contracts are executed without discrimination.*

The Bureau of Contract Administration and Business Development (BCABD) fulfills its mission through four organizational units:

Certification Unit

Certification of minority- and woman-owned business enterprises (MBEs and WBEs) is at the heart of BCABD's mission. By becoming certified, MBEs and WBEs can more readily identify and use the opportunities available to small businesses through state contracting.

The certification application is a comprehensive process, which assures only qualified companies are approved. In addition to owning at least 51% of their companies, MBE and WBE owners must be U.S. citizens, must have training or experience in their business fields, and must have management and operational control of their companies.

Training & Development Unit

BCABD's Training and Development Unit promotes successful involvement of MBEs and WBEs in state contracting through education and information. Free training programs, consulting, and resource materials are made available to certified companies, the business community, and organizations assisting small businesses.

The staff provides technical assistance and consulting to all small business owners, especially minority and women-owned businesses, to increase their opportunities to compete successfully in the state procurement system.

Evaluations Unit

The Evaluations Unit monitors the participation of MBEs and WBEs in state contracting, to measure adherence to programs designed to promote opportunities for certified companies and other small businesses. The majority of state contracts over designated cost levels come under the review of BCABD.

Investigations Unit

The Investigations Unit performs on-site reviews of firms that apply for certification, responds to complaints, and investigates alleged fraud in state programs designed to promote opportunities for MBEs and WBEs.

To apply for certification or learn more about BCABD services contact:
PA Bureau of Contract Administration & Business Development
613 North Office Building, Harrisburg, PA 17125
E-mail: gs-cabdinternet@state.pa.us
717-787-6708 or FAX: 717-772-0021
Website: www.dgs.state.pa.us/cabd.htm

To reach our Western Regional Office, e-mail cjumba@state.pa.us or call 412-442-5872.

09/01

ANNUAL ACTIVITIES STATISTICS FOR 2000
BCABD Training and Development Unit

EVENT SUMMARY (see full report for locations, host organizations, and dates):

Type of event	# of events	Total participation	Participation by MBEs & WBEs	Attendance at exhibits
Full Workshop on State Contracting and Certification (2-3 hrs.)	36	708	469	
Presentation/Workshop on Certification	17	573	331	
Presentation/Workshop on State Contracting	2	45	23	
SERB Presentations	53	*	*	
Exhibits	12			2,117
Special Event for State Purchasing Agents and MBEs/WBEs (see report on Special Projects)	1	76	30	
Totals	121	1,402	853	2,117

OTHER SERVICES

Referral Reports	947
Bidding notices sent to MBEs/WBEs	4,050
State contracting help/materials provided	745
Website information/help provided	266
Certification information/help provided	614
Other assistance provided	504
Total services provided, excluding events	7,126**

GROUPS RECEIVING SERVICES (excluding events)

MBEs and WBEs	4,770
Other small businesses	67
Business startups	40
Prime contractors and bidders	1,079
State departments and agencies	385
Others	369
Unknown	33
Total individuals/organizations served	6,743**

* Participation statistics are not collected for SERB presentations. Participants are companies bidding on state contracts.

** Totals are not the same because some entities contacted us for more than one service.