

## APPENDIX 7

Marc Pentino, Eastern Regional Office, USCCR, Response to Oct. 11, 2001, Letter from Gary N. Lee, Director, BCABD, Oct. 30, 2001



UNITED STATES  
COMMISSION ON  
CIVIL RIGHTS

624 Ninth Street, N.W.  
Washington, D.C. 20425

October 30, 2001

Mr. Gary N. Lee  
Director  
Bureau of Contract Administration and Business Development  
502 North Office Building  
Harrisburg PA 17125

Dear Mr. Lee:

Thank you for reviewing portions of the Pennsylvania Advisory Committee's September 2001 draft report, *Barriers to Minority and Women Owned Businesses in Pennsylvania*. Your comments regarding the Commonwealth's Enterprise Resource Plan system and correction to the report's description of the SERB program will be useful as we revise the report based on agency responses.

I wish to take this opportunity, however, to address other points of your October 11<sup>th</sup> response.

1. We value your observations that pages 9-12 of the draft report are presented in a misleading and unclear manner. Indeed, the purpose of affected agency review is for agencies to make needed revisions and suggestions to the draft. Your corrective effort in this regard is much appreciated.

Taking this opportunity, however, I wish to point out the Committee's past difficulty with obtaining information from BCABD regarding M/WBE programs, BCABD development and operations, and progress/difficulties in assisting M/WBEs. You may recall that the Committee invited you or a BCABD representative to attend the Committee's January 1999 forum to speak on these and other issues. On the day of the event, you informed us that you could not attend due to bad weather. At the time, the Committee was surprised as staff from other agencies in Harrisburg did attend. The Committee decided to seek information from written sources and telephone interviews and we contacted BCABD staff at various times between February 1999 and August 2001.

We also sent a written request to you in June 2000 (see attached) asking that you review the Committee's draft report. We wish you had responded to our request then, providing needed information to clarify and strengthen the sections on BCABD. In our request, we suggested that you include items relating to a) improvements in public contracting since the implementation of the State's new contract and procurement procedures, b) updated data on the number of certified M/WBEs and requests for certification which have been approved/denied c) number of investigations for alleged fraud, d) updated information on payments and commitments to certified M/WBEs and Enterprise Zone firms, and e) BCABD reports submitted to the Department of General Services. We also asked for your perceptions of the challenges M/WBEs face and possible solutions that could be implemented. A copy of our request was also sent to members of your staff in key units within BCABD. Regrettably, there was no response to the June 2000 draft from any person at BCABD.

2. You recommend in §III of your October 11<sup>th</sup> response that the Committee use attachments 2 and 3. Please be advised that much of this information had already been incorporated in the Committee's draft report. Your attachment 1 "Annual Contract Dollars Awarded to MBEs and WBEs" is in a different format from data previously supplied by BCABD staff, which was relied in drafting the report. For instance, your attachment 1 provides data on contract dollar amounts awarded under IFBs and RFPs, whereas past data supplied cited commitments and payments to M/WBEs. If one looks at the

totals for 1998, for example, the figures between these two data sets do not match and it is unclear how these amounts were generated. Attachment 4 is very useful and will be duly incorporated.

3. Your October 11<sup>th</sup> response makes two claims: a) some comments by BCABD staff were inaccurate or not made by the persons cited, and b) we failed to inform BCABD staff that we were conducting interviews (see §§ IV and V of your response). As for your first claim, BCABD staff were informed that they would be given the opportunity to review appropriate sections of the report for accuracy and clarification. In June 2000 and in September 2001, we sent letters with appropriate sections to all persons mentioned in the report for them to review for accuracy. However, no one at BCABD responded, which we interpret to mean there are no errors in either substance or attribution. Regarding your second claim, I disagree with your belief that BCABD staff was not informed up front that we were conducting interviews. It is our practice to inform all persons that we are drafting a report referencing their agency/department and that their comments may be mentioned in the text or footnotes. Again, both in June 2000 and in September 2001, no staff person from BCABD responded to us objecting to being referenced, nor asked that their names be omitted.

4. Your October 11<sup>th</sup> response provides little background to the actual operation of BCABD and the important topic of contracting to M/WBEs. For instance, there is little or no information on page 3 of your response, referencing the number of certification files denied by the certification board, whether BCABD conducts on-site visits in response to complaints of discrimination or fraud, and the investigation unit's current workload. This information is critical to an understanding of BCABD's operations and staffing adequacy.

It is most unfortunate that our report cannot benefit from detailed information from your office. The Committee is most disappointed that in the past BCABD has neither furnished requested information on a timely basis, nor fully explained BCABD operations in a way the public can easily understand. Sometime early next year, the Committee will hold a press conference to release its report. At that time, we hope a representative from BCABD and the Department of General Services can participate to share the bureau's efforts to assist M/WBEs.

Sincerely,



Marc D. Pentino  
Civil Rights Analyst  
Eastern Regional Office  
202-376-7533

cc: Pennsylvania Advisory Committee members  
Ki-Taek Chun, director, Eastern Regional Office, U.S. Commission on Civil Rights  
Les Jin, staff director, U.S. Commission on Civil Rights  
Gregory C. Santoro, chief counsel, Pennsylvania Department of General Services

Attachment