



STATE OF CONNECTICUT
OFFICE OF GOVERNMENTAL ACCOUNTABILITY
STATE CONTRACTING STANDARDS BOARD

Final & Approved Minutes
Friday, January 10, 2020 Meeting of the State Contracting Standards Board
5th Floor Conference Room
18-20 Trinity Street, Hartford, Connecticut

Members Present:

Lawrence Fox, Chair
Thomas Ahneman – Via Teleconference
Alfred Bertoline
Bruce Buff
Charles Casella, Jr. – Via Teleconference
Albert Ilg
Donna Karnes
Salvatore Luciano
Jean Morningstar
Stuart Mahler
Robert Rinker
Brenda Sisco

David L. Guay, Executive Director - ex-officio board member
Lauren Gauthier, UConn Graduate Intern

1. Call to order

Meeting called to order by Chair Lawrence Fox at 10:00 A.M.

2. Approve the Minutes of the December 13, 2019 Meeting

Motion made by Alfred Bertoline and seconded by Robert Rinker to approve the minutes of the December 13 Board meeting. All voted in favor, with Thomas Ahneman abstaining due to his absence from the December 13, 2019 meeting.

3. Report of the Privatization Contract Committee

No Report.

4. Report from the Sec. 4e-36 Contested Solicitations and Awards Subcommittee

Section 4e-36 Contested Solicitations and Awards Subcommittee Chair Robert Rinker reported that on January 6, 2020, the Board received a notice of a post-award contest from UnitedHealthcare/Oxford regarding an RFP for administration of the State's medical benefits plan. The Office of the State Comptroller acting through the Health Care Cost Containment Committee informed UnitedHealthcare/Oxford a notice of non-award on December 23, 2019. Following the receipt of the contest, the Office of the State Comptroller notified state employees on or about January 7, 2020 that Anthem was selected as the sole vendor pending successful completion of negotiations. Previously, Anthem and UnitedHealthcare/Oxford were the two vendors. The new contract is to be effective July 1, 2020.

The contest filed by UnitedHealthcare/Oxford was out of abundance of caution regarding the timeframe to file the contest. Under our statute, the party filing the contest has fourteen days from when they knew or should have known of the facts giving rise to the contest. In this contest and at the time of the filing, the Office of the State Comptroller had not responded to UnitedHealthcare/Oxford's request for evaluation/scoring material and redacted proposals. The Office of the State Comptroller cited FOIA statute that allows it not to disclose this information while negotiations are ongoing with the winning bidder.

In a prior contest regarding the same RFP, UnitedHealthcare/Oxford made the claim that the disclosure of its proprietary pricing information made this RFP process unfair to them. Without going through the entire case again, the Subcommittee dismissed the case without prejudice. While we found there was risk of harm from the disclosure we did not find at that time actual harm from the disclosure. In the event the disclosure caused actual harm to the competitive process, our decision would allow UnitedHealthcare/Oxford to contest the outcome. In this current contest, UnitedHealthcare/Oxford again claims that the disclosure has harmed them, but also would want to supplement its contest once it received the request materials from the Comptroller's office.

The subcommittee has thirty days to render a decision from the time the contest was filed by UnitedHealthcare/Oxford. These timeframes are set in statute and does not allow any extension therefrom.

Chair Rinker seeks the Board's agreement to:

- 1) Have the Chair or the Executive Director to request legal counsel from the Attorney General's office for this matter.
- 2) Request from the Office of the State Comptroller a timeframe for completion of the negotiations and the release of the request information to UnitedHealthcare/Oxford. We need to this information in order to assess the subcommittee's ability to meet our 30-day statutory requirement to issue a decision.

Finally, Chair Rinker noted that the subcommittee does not have the authority requested by UnitedHealthcare/Oxford in its remedy. It is Chair Rinker's belief that any relief sought regarding this contract rests with the Board under C.G.S. Section 4e-40.

Executive Director Guay agreed to request legal counsel from the Attorney General and communicate with the Office of the State Comptroller.

5. Work Group Reports

a. Report from Audit Work Group

Audit Work Group Chair Thomas Ahneman reported that the Audit Work Group met this morning and reviewed three draft Audit Compliance Reports.

Chair Ahneman noted that six draft FY 18 Audit Compliance Reports are before the Board today for review and approval.

Motion made by Robert Rinker and seconded by Salvatore Luciano to approve the draft FY 18 Audit Compliance Report of the State Elections Enforcement Commission. All voted in favor.

Motion made by Robert Rinker and seconded by Alfred Bertoline to approve the draft FY 18 Audit Compliance Report of the Department of Consumer Protection. All voted in favor.

Motion made by Robert Rinker and seconded by Salvatore Luciano to approve the draft FY 18 Audit Compliance Report of the Department of Agriculture. All voted in favor.

Motion made by Robert Rinker and seconded by Alfred Bertoline to approve the draft FY 18 Audit Compliance Report of the Teachers' Retirement Board. All voted in favor.

Motion made by Robert Rinker and seconded by Alfred Bertoline to approve the draft FY 18 Audit Compliance Report for the Office of State Ethics. All voted in favor.

Motion made by Robert Rinker and seconded by Alfred Bertoline to approve the draft FY 18 Audit Compliance Report for the Department of Rehabilitation Services – State Unit on Aging. All voted in favor.

b. Data Analysis Work Group

Data Analysis Work Group Chair Alfred Bertoline reported that a meeting with representatives of the Office of Policy and Management has been set for January 21, 2020.

6. Report of Special Committee on Dillon Stadium contracts

Chair Fox reported the Committee would be meeting directly after the meeting today.

7. Report on Statutory concern, notes and possible suggested fixes

Executive Director Guay introduced the report from University of Connecticut Graduate Intern Lauren Gauthier. As an agreed upon project she was asked to provide her opinion of the Statute based upon her experiences with the Board.

To: Members of the State Contracting Standards Board; Executive Director David Guay

From: Lauren Gauthier, Graduate Intern

Date: January 10, 2020

Re: Report on issues of statutory concern, notes and suggestions

Chapter 62, Section 4e of the Connecticut General Statutes establishes and empowers the Connecticut State Contracting Standards Board with oversight authority of certain contracting and procurement functions of state agencies. Included in the provisions are at least 49 subjects which the Board is to create and implement regulations for (see Table 1). Some of these subjects have regulations provided by the Department of Administrative Services, and some functions are being provided for by the Office of Policy and Management, however, the majority of these mandated regulations still need to be created and implemented.

Of primary statutory concern are inconsistencies and ambiguities in current language. Over the course of 2019, there were several cases brought to the Board that revealed weaknesses in the mechanisms provided in Chapter 62 Sections 4e-10, 4e-16, and 4e-36.

Section 4e-10

As recommended by the Board in its 2019 Findings and Recommendations report, current state components that are not under the purview of the State Contracting Standards Board need to be brought in line with the rest of the state. Section 4e-10 requires the Board to develop such language as to incorporate the state system of higher education, quasi-publics, and municipal processes utilizing funds from the state. Recent insufficiencies in practices by several quasi-publics have been brought to light that underscore the need to have these agencies, which utilize taxpayer money and incur debt on behalf of the state, to be subject to the objective oversight that the Board provides. Due to the urgency of the quasi-public situation, and the current understaffing of the Board, I would recommend that the statutory language development prioritizes the quasi-public agencies before tackling other units named in Section 4e-10.

Section 4e-16

Section 4e-16 covers new privatization of state services, and outlines the process by which a state agency must apply to the Board in cases where certain cost savings targets are not being met, or where there is a contestation of the proposed privatization. In 2019, the Department of Corrections needed to provide pharmaceutical services to inmates, and issued a request for proposals detailing the services required. The UConn Health employee union unit asked the Board to review the privatization, contested the privatization of these services. The Department of Corrections held that because the services had been privatized prior to UConn Health taking over in the 1990s, this was not a new privatization case and should not be subject to Board approval. This case highlights the need to

clearly define when privatization of services is considered “new.” I would recommend that the Board adds clarifying language into Section 4e-16 regarding the definition of privatization.

Section 4e-16 could be improved by way of statutory language change by clarifying the requirement of a transition plan for reemployment and retraining of employees displaced by privatization of state services in subsection (d)(6) or amending the language to have the state contracting agency work with or have the Department of Administrative Services create such a plan. State agencies are currently facing hardships in staffing and may not be able to sufficiently generate a reemployment or retraining plan, thus causing contract awards that may either not achieve full potential cost savings, or preclude the agency from seeking such cost savings by privatizing a service.

The critical oversight function that the State Contracting Standards Board provides relies on agencies, bidders and contractors providing all necessary and relevant information in a cooperative and timely manner. As such, Section 4e-16(g) should be amended to include language compelling compliance of information transmittal by establishing a time frame and a measure to potentially reject a case due to reasons of insufficient information.

The automatic approval of a business case or contract based on the failure of the General Assembly to vote found in section 4e-16(i) should be reconsidered against the Board’s charge to ensure cost-effective and transparent procurement processes.

Other fixes to Section 4e-16 can be done through the regulatory process, including but not limited to:

- defining significant policy reasons that would justify not achieving a ten percent cost savings as required by subsection (c)(2)
- clarifying the process by which an agency must provide an opportunity for state employees to reduce costs of a proposed service privatization, and what the employee counter bid must provide, per subsection (c)(3)
- updating and distributing templates for cost-benefit analyses, cost-effectiveness evaluations and business cases, per subsection (m)

Section 4e-36

The Contested Solicitations Subcommittee recently issued a decision on a significant case regarding a statewide health insurance provider contract for state employees. One matter argued by counsel of the State was the trigger of the reporting timeline is based on language requiring a potential bidder to notify that there was an issue when they “should have known facts”, and the contesting bidder waited too long to begin the contestation process because they waited until they were *certain* of the facts. Amending the language to trigger the contestation timeline to be clearer about the intent of provision could help clarify future contestations, especially since the Board is bound to rule based on the procedural facts of the case.

Other Recommendations

Populating the Chief Procurement Officer position to the Board, as specifically required by the establishing language of Chapter 62 Section 4e-2 would immediately impact the efficacy of the Board and provide significant cost savings to the state. Other positions that would focus on auditing, training and coordination of state agency procurement practices would substantially help bring state agencies into compliance with state statute, increase transparency and promote cost efficiency to state contracting services. Such additional staff would allow the Board to fulfill its statutory mandates, assist OPM and DAS with their contracting and procurement tasks, increase compliance and transparency of state contracting agencies and modernize the state’s procurement and contracting practices. Filling the Chief Procurement Officer position, and establishing positions for a Procurement Training Officer and a Procurement Auditing Officer should be aggressively pursued in the 2020 and 2021 legislative sessions.

The Auditors of Public Accounts released in December 2019 the third successive audit of Office of Policy and Management detailing issues and inconsistencies with Personal Service Agreements and contractor evaluations. The years audited covered the previous administration, however, the number of non-competitively bid contracts

remains high. Efforts are being made by the current administration to remedy this, however, the responsibility for the objective approval of waivers for Personal Service Agreements should be moved to the oversight and audit of the State Contracting Standards Board. The caveat to this recommendation would be that the Board would need to hire additional staff to help with this workload.

The State of Connecticut faces serious long-term financial challenges and would benefit from finding and achieving efficiencies in procurements and contracts, which account for billions of dollars of state funds every year. The enthusiastic nature of the current Board and the new administration can collaborate to put Connecticut on the leading edge of government procurement practices by modernizing information technology utilized by state agencies, clarifying and updating existing procurement statutes and regulations, and investing in the State Contracting Standards Board to provide the necessary regulation and oversight of state contracting agencies.

Table 1: Mandated Regulations for the State Contracting Standards Board

Chapter	Section	Brief Description	DAS	Reference
62	4e-4 (b)(1)	Delegation of procurement authority	X	4a-52-2
62	4e-4 (b)(2)	Prequalification, suspension, debarment and reinstatement of prospective bidders and contractors	X	4a-100-2; 4a-100-3; 4a-63-4
62	4e-4 (b)(3)	Small purchase procedures		
62	4e-4 (b)(4)	Procurement of perishables and items for resale		
62	4e-4 (b)(5)	Use of source selection methods concerning procurement		
62	4e-4 (b)(6)	Use of emergency procurements	X	4a-52-20
62	4e-4 (b)(7)	Selection of contractors by processes w/o competition		
62	4e-4 (b)(8)	The opening or reject of bids and offers, and waiver of errors in bids and offers	X	4a-52-8
62	4e-4 (b)(9)	Confidentiality of tech. data and trade secrets submitted by actual or prospective bidders		
62	4e-4 (b)(10)	Partial, progressive and multiple awards		
62	4e-4 (b)(11)	Supervision of storerooms and inventories, supplies		
62	4e-4 (b)(12)	Definitions and classes of contractual services and procedures for acquiring such services		
62	4e-4 (b)(13)	Conducting cost and price analysis		
62	4e-4 (b)(14)	Use of payment and performance bonds	X	4a-52-6
62	4e-4 (b)(15)	Cost principles in negotiations, adjustments and settlements		
62	4e-4 (b)(16)	Identification of procurement best practices		
62	4e-4 (c)	Consistent application and implementing best practices		
62	4e-4 (d)	Recommendations for info. systems		
62	4e-4 (e)	Guide for state procurement for state agency use		
62	4e-4 (f)	Assist in state agency procurement compliance		
62	4e-4 (g)	Train procurement officers for state agencies	X	4a-52-2
62	4e-4 (h)	Review and certify each agency's procurement process		

62	4e-4 (i)	Recertify each agency triennially		
62	4e-4 (j)	Define contract reporting requirements		
62	4e-4 (k)	Provide rec. to Gov & joint standing committee		
Chapter	Section	Brief Description	DAS	Reference
62	4e-6	Triennial audits and compliance reports		
62	4e-10	Submission of legislation re: quasis, higher ed, etc		
62	4e-11	Adoption of procurements codes by constitutional officers		
62	4e-14	Provisions for transparency of all state contracts by SCSB		
62	4e-18	Approval of DAS requisition system		
62	4e-20(a)	Regulations for invitations to bid		
62	4e-20(b)	Regulations for contracts >\$50,000 not competitively bid		
62	4e-21(a)	Regulations for small purchase procedures <\$50,000		
62	4e-22	Non-competitive award of contracts supply, service or construction	X	4a-52-15
62	4e-23	Waivers for competitive bid or proposal requirements		
62	4e-24	Emergency procurements; threat to public health/safety	X	4a-52-20
62	4e-26	Specifications for supplies, services and construction req.		
62	4e-27	Use of cost-reimbursement contracts		
62	4e-28	Submission of accounting system documentation by contractors to state contracting agencies		
62	4e-41	Procurement of architectural and engineering services		
62	4e-42	Bid security for certain competitive sealed bidding		
62	4e-43	Regulations concerning errors and omissions insurance		
62	4e-44	Regulations concerning the procurement of consultant services		
62	4e-45	Infrastructure facilities contract adjustments		
62	4e-46	Contract modifications, change orders and price adjustments for construction contracts in >\$50,000		
62	4e-47	4e-18 thru 4e-45 applying to state system of higher ed		
62	4e-48 (c)	List of states that give in-state bid preference		
62	4e-49	Contracting procedures for the Metropolitan District of Hartford County		

8. Discussion of upcoming Legislative Session

Discussion held on dates and deadlines for the 2020 Legislative Session. Discussion centered on the continued need for a staff.

9. Other Business

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No other business.

10. Public Comment

Alyssa Peterson addressed the Board.

11. Continued annual Executive Director Performance Evaluation (Executive Session per C.G.S. §§ 1-231 and 1-200(6) Discussion concerning the employment, performance, and evaluation of the Executive Director)

Motion made by Robert Rinker and seconded by Brenda Sisco to enter into Executive Session per C.G.S. §§ 1-231 and 1-200(6) for discussion concerning the employment, performance, and evaluation of the Executive Director, with Executive Director Guay invited to attend. All voted in favor.

The Board exited Executive Session.

12. Vote to reconsider

Salvatore Luciano expressed second thoughts about the votes taken concerning the draft FY 18 Audit Compliance reports and the motion expressing approval.

Motion made by Salvatore Luciano and seconded by Robert Rinker to reconsider the votes taken concerning the draft FY 18 Audit Compliance reports. All voted in favor.

Motion made by Salvatore Luciano and seconded by Robert Rinker to change the vote on the draft Audit Compliance reports to accept the reports rather than approve. Friendly amendment offered by Thomas Ahneman to include accept and issue. Friendly amendment accepted by Mr. Luciano and Mr. Rinker. All voted in favor.

Motion made by Salvatore Luciano and seconded by Robert Rinker to adjourn. All voted in favor, the motion passed and the meeting adjourned at 11:28 A.M.

Respectfully submitted: David Guay