



STATE OF CONNECTICUT
OFFICE OF GOVERNMENTAL ACCOUNTABILITY
STATE CONTRACTING STANDARDS BOARD

Draft
Minutes

Friday, November 12, 2021 Meeting of the State Contracting Standards Board
Via Microsoft teams meeting

Members Present:

Lawrence Fox, Chair
Alfred Bertoline
Bruce Buff
Lauren Gauthier
Albert Ilg
Donna Karnes
Stuart Mahler
Jean Morningstar
Robert Rinker
Daniel Rovero
Brenda Sisco
Salvatore Luciano
Thomas Ahneman

David L. Guay, Executive Director - ex-officio Board member
Ryan Chester, Staff – 2021-2022 UConn Graduate Intern

1. Call to order

Chair Fox called the meeting to order at 10:02 AM.

2. Approve the Minutes of the October 8, 2021 Meeting

Alfred Bertoline motioned to approve the minutes, Stuart Mahler seconded, Brenda Sisco abstained, majority voted in favor.

3. Approve meeting dates for 2022

Robert Rinker motioned to approve the meeting dates for 2022, Salvatore Luciano seconded, all voted in favor.

4. Expression of thanks to Paul Felix, DAS Fiscal Administrative/Supervisor upon his retirement

David thanked Paul Felix for his dedication and support of the Board.

Brenda Sisco commented on Paul's amazing support and work.

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

Robert Rinker reported on the 3 contests the subcommittee reviewed. The issues raised were looking for input and direction from the Board. The TRB and CPA both have small staff and do not have the procurement expertise which larger agencies have. What happens is that they rely on their subject matter experts for contracting. With the TRB, the weights related to the criteria occurred after the RFP was issued. This is contrary to the OPM procurement standards which states the weights should be created before the issuance. The AG argued that OPM procurement standards are but guidelines and suggestions; they do not have the force of law. Under the OPM procurement guidelines, the procurement file is not released until there is a contract in place. Contestants are left guessing what the status of this procurement is. Anthem filed a companion case in court which was dismissed. The AG's office took the position in court that a contract can be retroactive. We believe it is bad public policy to have retroactive contracts. Small agencies lack a hired procurement officer which gives the agency nowhere to go for help or guidance. We need to think about whether these OPM procurement standards should be made into regulations by the Board. What is a reasonable negotiating period between when a bidder is chosen to contract with selected and when the contract is signed executed? How do you go back if you cannot come to an agreement with the selected bidder?

Bruce Buff stated that the common issue is poor procurement practices. This Board made several recommendations years ago. The state needs a centralized procurement organization that oversees procurement state-wide. We need to have a lessons-learned meeting with DAS and OPM. Without any professional procurement support, that would be a good next step for the agencies.

Stuart Mahler stated if there was no contract, it's possible that the state could not come to an agreement with UnitedHealthcare. They might have to go back to Anthem to negotiate which would not be ideal. Stuart Mahler complemented Robert Rinker for his handling of the complicated process.

Salvatore Luciano commented that he agrees with Robert Rinker's recommendation that weights should be approved and disclosed before RFP issuance.

Chair Fox stated that we must sit down with OPM and DAS to discuss the inability of smaller agencies to carry out proper procurement processes that the public can have confidence in. We

do not have the infrastructure for this at the moment. This is a serious issue that must be addressed.

Salvatore Luciano stated that disclosing the weights is important.

Chair Fox stated that the Board and the public thanks the subcommittee for their service in getting these responses done within the restricted timelines.

6. Privatization Contract Committee Report & Referral from the Board to the Committee
 - a. Referral of petition by SEIU District 1199 New England concerning the Department of Mental Health and Addiction Services plans to close the Hilltop Residential Program at 556 Blue Hills Avenue in Hartford replacing it with privatized services.

Chair Fox recused himself from discussion and decisions related to the referral of petition by SEIU District 1199 New England to avoid any conflict of interest or even the appearance of a conflict of interest. Chair Fox designated Robert Rinker to Chair the committee on this issue alone.

Al Bertoline motioned to refer the petition to the Privatization Committee for review, Lauren Gauthier seconded, all voted in favor.

Chair Fox stated that we are going to meet with the DOT commissioner to discuss the Bridge Inspectors issue.

7. Work Group Reports
 - a. Audit Work Group

Thomas Ahneman reported that we are furthering our FY2020 audits. It was reported that there was an issue with including MOUs and MOAs in the audit. Last year we asked about these agreements and there was no pushback. Although, this year OPM said that requiring agencies to report on these agreements is a burden on agencies and that the Board lacks jurisdiction over these agreements. The jurisdiction is in fact vague. If we continue down this path, OPM will solicit a formal opinion from the AG's office. The work group believes that we should continue and include MOUs and MOAs in the audit. We need to understand these agreements. We would like to hear from the Attorney General who has jurisdiction to track these agreements.

Chair Fox stated that MOUs and MOAs have always been a part of our audit instrument. This will be a separate issue from completing a formal study of these agreements under the Data Analysis Work Group.

Salvatore Luciano commented that MOUs and MOAs are contracts and there are vague definitions of these agreements.

Robert Rinker stated when we did the State Department of Education's procurement manual, we approved definitions of MOUs and MOAs. The reason we did was because of PITA's controversy over using master contracts and MOAs. These agreements are apparently used interchangeably and that is inappropriate.

Bruce Buff commented on the State Department of Education's use of MOUs and MOAs.

b. Data Analysis Work Group

Alfred Bertoline reported that the MOU and MOA study has been suspended primarily because of the pushback from agencies and OPM.

Chair Fox reported that he had a conversation with OPM Secretary Melissa McCaw. With respect to MOUs and MOAs, OPM was getting pushback from agencies. MOUs and MOAs might not have to do with procurement. Some agreements are between agencies that only outline how they will work together. The approach we have taken, requesting all MOUs and MOAs, is blunt and should be reformed to be narrower in focus.

Salvatore Luciano stated that we may need to reframe our request to only ask for procurement related agreements.

Chair Fox stated that he agrees we need to reframe and narrow our request to only specific procurement agreements.

Brenda Sisco commented that we might want to wait for the AG formal opinion to think about reframing the request.

Chair Fox stated that we have informally asked the AG's office for guidance and definitions on MOUs and MOAs. I want to reframe our request to make sure these agreements cannot be used to subvert a formal procurement procedure.

Salvatore Luciano commented that there have been issues with using these agreements for avoiding formal procurement procedures.

Robert Rinker stated that he is not in favor of forcing the AG to write a formal opinion. He is concerned about the issue Salvatore Luciano raised.

Lauren Gauthier commented about the agreement between OPM, DAS, and the CPA about procurement that the CPA is doing. It is important that we be proactive to identify these issues, create recommendations, and go to the legislature with that recommendation.

Jean Morningstar stated that the Board should not walk away from this issue because of pushback.

Bruce Buff stated that we should focus on where the money being exchanged in these agreements goes and the end use of these funds.

Alfred Bertoline stated that in hindsight we took a broad approach to this issue because this data does not exist; no one has ever asked for this data before. We can reframe this request and learn as we go, but we must continue with this issue. There is a ton of money flowing through these agreements which must be monitored and follow proper procedure.

Salvatore Luciano stated that he agrees with Alfred Bertoline.

Albert Ilg stated this is a good opportunity to educate the public on how the State is run and how these transactions are done.

Chair Fox says we will schedule a meeting with OPM and DAS to discuss this issue.

8. Update from Connecticut Port Authority Review

Lauren Gauthier reported that the work group met with David Kooris and John Henshaw. We reiterated our request under 4e-3(b) for the redacted information in requested documents. Mr. Kooris agreed but will consult their attorneys. We discussed the use of master contracts and which guidance they are using. We discussed what their procurement procedures are, and we subsequently sent a proper procedure manual for their review. There is an issue between balancing expertise of the CPA Board in the industry and avoiding conflicts of interests. We will send OPM guidance about conflict of interests and the proper way to communicate that to bidders and the public as well as the relative statutes. Because of staffing constraints of the CPA, the director of the CPA identified himself being the procurement officer. We are uncomfortable with overlapping duties and responsibilities for one person. There is debate whether the contract is a public-private partnership. We appreciate Mr. Kooris' and Mr. Henshaw's time and cooperation.

Bruce Buff stated the discussion is about the CPA's procurement policy. The SCSB is required by the legislature to review the CPA's procurement policies. The CPA's procurement policies are inadequate. The CPA Executive Director also serves as the procurement officer even though they should be able to hire a dedicated procurement officer. The CPA's procedures do not

outline a process and we recommend that CPA discuss with OPM to adopt a formal process for procurement.

Chair Fox stated that we need to have more conversations with OPM and DAS to understand what their relationship is with the CPA's procurement procedures. We hope to get a narrative and recommendation before the end of the year.

Albert Ilg asked about the success fee's perception, conflicts of interest, and the total cost of this endeavor. The CPA has lost the trust of the public.

Lauren Gauthier stated that we discussed the success fee and our thoughts about it. CPA's response was that a success fee is standard industry practice. They believe there would not have been cost savings by prohibiting a success fee because they would have ended up paying a higher rate. The RFP that started the contract included an amendment that there will be no success fee but was subsequently amended to allow success fees. There were 2 bidders, one did not include a success fee but the other did. The one who included the success fee ended up winning the contract who had an active board member who was privy to CPA discussions about the RFP.

Chair Fox stated that we requested the unredacted information. In the discussion with OPM Secretary Melissa McCaw, she sincerely apologized for the comments of an undersecretary at a CPA meeting. Those comments do not represent the opinion of OPM, the Governor, or the administration about the SCSB.

9. Update from Mystic Oral School Review

David Guay reported that he consulted the AG on all aspects of the review. We will only be looking at procurement and contracting. There are several items involved (Development agreement, RFP, lease, and the sale). We have no jurisdiction over the sale. The RFP was issued jointly with the Town of Groton and DECD. Clearly under the lease, Mr. Respler is a state contractor and is under our jurisdiction. Mr. Respler pled guilty to criminal activities in the State of NY which could disqualify him as a state contractor. I recommend that under C.G.S. Sec.4e-34, we begin that process. The next step is consultation with DAS. We need to appoint a 3-person panel and to schedule a hearing date.

Chair Fox will chair that panel and has asked Donna Karnes and Robert Rinker to serve on the panel with him.

David Guay stated that the hearing is to determine a recommendation to the Board whether Mr. Respler should be disqualified.

10. Other business

No other business reported.

11. Public comment

Van Brown addressed the Board

Kevin Blacker addressed the Board

12. Adjournment

Motion by Salvatore Luciano to adjourn, seconded by Albert Ilg, all voted in favor.

Meeting adjourned at 11:52 AM

Respectfully submitted: Ryan Chester