



STATE OF CONNECTICUT
OFFICE OF GOVERNMENTAL ACCOUNTABILITY
STATE CONTRACTING STANDARDS BOARD

Final & Approved
Minutes

Friday, February 4, 2022 - 10:00 A.M. Meeting of the State Contracting Standards Board
Via Microsoft Teams

Members Present:

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

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



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1. Call to order

Chair Fox called the meeting to order at 10:06 AM.

2. Approve the minutes of the January 14, 2022 meeting

Motioned by Stuart Mahler and seconded by Bruce Buff, Brenda Sisco abstained, majority voted in favor to approve the minutes of the January 14, 2022 meeting.

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

Robert Rinker stated the 4e-36 subcommittee on contested solicitation or awards is a three-person subcommittee composed of Stu Mahler Bruce Buff and himself. It allows a bidder or a proposer to contest the solicitation or award of contract. This is an expedited process in which the bidder or proposer has 14 days from the date the bidder or proposer knew or should have known of the facts giving rise to such contest to file such contest with the subcommittee. The subcommittee has 30 days to render its decision. This expedited process allows for quick resolution of disputes and avoids lengthy and costly litigation. Robert Rinker is happy to say we have no matters pending before the subcommittee.

4. Privatization Contract Committee Report

Robert Rinker stated that the Privatization Committee which is composed of five members of the Board has one matter pending before it. It is a 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. The Department of Mental Health and Addiction Services has timely responded to the Committee's request for information. We have shared that information with 1199 and we are waiting for their response. We will hold a meeting next month on this matter

5. Audit Work Group

David Guay reported that we have few responses to the audit. We are going to send out a notice shortly to solicit more responses. We still need to complete the compliance report template for board members to use in reviewing agency audit responses.

6. Update on possible disqualification of contractor action

David Guay reported that there is no business to report on this matter. However, there was a news story that surmised Mr. Respler might sell his company Respler Homes.

Lauren Gauthier asked if we made any additional requests of the Attorney General's office to help on the matter.

Chair Fox responded that we have not asked again for help on the disqualification.

7. Discussion and consideration of PROCUREMENT REVIEW OF THE CONNECTICUT PORT AUTHORITY draft report

Lauren Gauthier motioned, and Bruce Buff seconded to review and accept the draft report.

Chair Fox made some comments about the process by which this report will be discussed in the meeting, specifically limiting comments to 3 minutes. Last night the Board received an additional comment from the Attorney General's office concerning success fees. Chair Fox recommends that the Board includes the comment as part of Appendix A of the report which shows all the Attorney General's comments on the report. When we first received complaints about the Connecticut Port Authority in December 2020, we discussed the matter at length in a board meeting. We decided to move forward with the issue even though a few board members questioned the lack of resources necessary to complete the review. The Board has a responsibility to review every issue that is presented to the Board for the citizens and businesses of Connecticut. The issue at the CPA raises questions about how Connecticut conducts procurement. Our Board has no judgement and makes no judgement whether the State Pier project is a good idea, this Board's focus is squarely on reviewing the procurement process of the CPA's State Pier project. In the beginning of this issue, the Board did not have jurisdiction to review the CPA, after which the legislature subsequently changed the CPA's status to a state contracting agency. That change allowed this board to review the CPA's procurement process.

Chair Fox introduced the work group that worked on the report and their expertise in procurement and contracting. We received many comments from the CPA, OPM, and the Attorney General's Office. John Henshaw, Executive Director of the CPA, and David Kooris, CPA Board Chair, were very cooperative, having meetings with us and providing us with all necessary materials. The workgroup decided to include their comments in an appendix to the report. The workgroup reviewed every single comment and decided whether to accept the suggested edits. The comments are included in the report to allow other board members and the public to view every piece of information available about this issue.

Lauren Gauthier reviewed the process by which the workgroup reviewed the CPA's procurement policies and procedures. The introduction includes a timeline and communications between the Board, CPA, OPM, and the Attorney General's office. The procurement review section discusses the original and amended procurement procedures. Lauren Gauthier continued to review the topics covered in the procurement review section including but not limited to success fees, conflicts of interest, and best practices for procurement. Lauren Gauthier continued to review the recommendations of the report which can be viewed on the Contracting Standards Board website next to this meeting's agenda and minutes.

Bruce Buff commented that examining the procurement issues at the Connecticut Port Authority highlights a common issue we have found across Quasi-Public's, State agencies procuring services under "Purchase of Services" (POS) and "Personal Service" (PSA) Agreements," and organizations such as the State Teachers Retirement Board – that of having to perform procurement tasks by non-professional procurement personnel. The reason for this, as we stated in our report, and have previously identified in reports looking at Personal Service Agreements (competitive Bidding Process), is the absence of a central procurement organization in the State of Connecticut overseeing these organizations. As a result, they have been forced to perform these critical tasks with limited resources and without appropriate access to procurement professionals.

To resolve the issue of a lack of an acceptable procurement process at the Connecticut Port Authority, this Board will work with the Connecticut Port Authority to create a procurement process and a document reflecting that process, with consideration for the limited resources of the CPA (two employees), which ensures that procurements for goods and services placed by the CPA are consistent with State Statutes which require that all procurements are fair, open, transparent, and cost effective.

Accordingly, subsequent to the issuance of this report, we will transmit a draft procurement document to the CPA and work with them to create a procurement manual to achieve these objectives, the content of which was outlined in the recommendations section of this report, and which will enable this board to review, certify and periodically recertify the CPA's procurement processes, consistent with the legislature's direction.

Al Bertoline commented on the recommendation that the CPA should develop along with their procurement policies to include a code of ethics. Part of that should include avoiding even the perception of a conflict of interest. Al Bertoline asked about the RFP process regarding how success fees were included.

Lauren Gauthier responded that there is language in the report about avoiding the real and perceived conflict of interest. Lauren Gauthier continued to review the RFP process and how success fees were eventually included in the final agreement.

Chair Fox continued to comment that success fees are a bad business practice that should be addressed by both the Attorney General and the CT Legislature to determine if success fees are in fact finders' fees. If the Attorney General finds that success fees are not finders' fees, the legislature should review whether they would like this practice to continue because the Board believes the success fee practice does nothing of value for projects and taxpayers to ensure a fair and open procurement process. Chair Fox continued to state that the Board is responsible by statute to provide the Governor and legislature with recommendations on issues of procurement. Chair Fox commented on the issue of the State Pier being a public private partnership under Chapter 55d. The CPA was aware of the statute and had mistakenly thought the statute had lapsed when it had not. The CPA believes they were operating under their own enabling statutes and that the State Pier is not considered a Public Private Partnership under Chapter 55d. This Board disagrees with that notion. After reviewing the knowledge of board members who were present during the legislative negotiations, the statute itself, and the Harbor Development Agreement, the Board believes the State Pier to be a Public Private Partnership under Chapter 55d. The Attorney General and Legislature ought to review this and act on this issue.

Lauren Gauthier commented that the workgroup discussed success fees with John Henshaw and David Kooris. The CPA redefined the scope of work as to not make the success fee a finder's fee. The CPA believes that success fees are an industry standard. The workgroup believes just because it is an industry standard, that does not mean it is a good business practice. There are many common practices that are in fact harmful and or unethical. The fact it is a common practice is an argument that has no standing.

Albert Ilg asked a question concerning the bonded money that is involved in this project which started at \$95 million and is now over \$200 million.

Lauren Gauthier commented that any cost overruns over the private investment, the State of Connecticut is required to cover all those costs.

Chair Fox stated that one of the CPA's arguments for not considering the State Pier project a public private partnership is that the investment for this project is much more than is typical of that kind of partnership.

Donna Karnes asked about how much the State of Connecticut is required to pay of the State Pier project.

Chair Fox stated that the State of Connecticut is required to cover all cost overruns of the private investments in the project.

Daniel Rovero commented that he is disappointed with the procurement process of the State Pier. The Board needs more staffing to take on more projects like this.

Brenda Sisco asked about the process by which the workgroup decided to include comments in the report.

Chair Fox responded that we wanted all the arguments and perspectives on the CPA's procurement process to be visible and available to the public and the legislature. This will allow the legislature and other parties to make more informed decisions.

Stuart Mahler asked Brenda Sisco about bond attorneys at OPM.

Brenda Sisco responded to Stuart Mahler's question stating that bond attorneys at OPM are there to make sure bonds are issued legally and parties are legally protected.

Salvatore Luciano commented that the report was well done and adding the comments of all parties in the report ensures the Board is practicing our value for complete transparency.

Albert Ilg asked if the other quasi-public agencies have succeeded in doing procurement properly. The legislature needs to read this report and address quasi-public agency procurement practices.

Chair Fox commented that the State is underinvesting in procurement expertise in state agencies, quasi-publics, and oversight agencies. The money that could be spent to hire procurement professionals in different departments or housed in a state procurement office would be less than the money saved from not having faulty procurement practices like this Board has seen many times.

David Guay reviewed the additional comments of the Attorney General's Office. The Attorney General comments can be viewed in the draft report on the State Contracting Standards Board's website in the Agendas and Minutes section.

Chair Fox responded that there is no additional value in using success fees for procurement. Common industry practices should not be considered best practices. Chair Fox continued listing other common industry practices that should not be considered best practices.

Lauren Gauthier commented that David Kooris stated that the CPA would end up paying the success fee amount in other places if they did not use a success fee. The Board would rather see an agency pay a contractor a higher fee to do the work than use a success fee.

All board members voted in favor of adopting the draft report, no abstentions, no votes against, the motion passed.

8. Other business

Robert Rinker asked about Al Bertoline's report on his initial review of the MOUs and MOAs that we have received. Robert Rinker asked what the status of our meetings with OPM and other parties is concerning these agreements.

David Guay stated that he has not received a response from his last query and will reach out again.

Chair Fox reviewed the details of Al Bertoline's report on MOUs and MOAs. Chair Fox wants to have a conversation with OPM about this issue.

Al Bertoline agrees with what has been said. There needs to be a review of the oversight of MOUs and MOAs.

9. Public Comment

Kevin Blacker addressed the Board.

David Kooris addressed the Board.

Michelle _____ addressed the Board.

Barbara Johnston addressed the Board.

Linda Blaze addressed the Board.

10. Adjournment

Salvatore Luciano motioned to adjourn, Al Bertoline seconded, all voted in favor, meeting adjourned at 11:43 AM.

Respectfully submitted: Ryan Chester