



**Contested Solicitations Subcommittee
MINUTES**

Wednesday, September 25, 2024 - 10:00 A.M.
Virtual Only

In Attendance:

Rochelle Palache, Chair of the State Contracting Standards Board
Bruce Buff, Chair of Contested Solicitations Subcommittee
Stuart Mahler, Member of Contested Solicitations Subcommittee
Greg Daniels, Executive Director of State Contracting Standards Board
Gene Burk, DAS, Director of Procurement Programs and Services
Antionette Webster, Department of Administrative Services
John Dunn, Vendor: Common Cents EMS LLC
Meghan Portfolio, Vendor: Common Cents EMS LLC

1. Call to Order: Chair Palache requested Subcommittee Chair Bruce Buff run this meeting. Subcommittee Chair Buff opened the meeting at 10:01 a.m.
 - a. Roll Call of Contested Solicitations Subcommittee Members
2. Approval of Minutes
 - a. Approval of the minutes from the July 10, 2023, Contested Solicitations Subcommittee Meeting
A motion to accept the minutes as written was made by: Stuart Mahler
The motion was seconded by: Rochelle Palache
The motion was passed unanimously without discussion.
3. Contested Solicitation
 - a. Common Cents EMS Supply LLC
Bruce Buff shared the facts of the case and the decision of the subcommittee:
On September 9, 2024, the State Contracting Standards Board received a complaint, submitted under Statute 4e-36, Contest of the solicitation or award of a contract by a bidder or proposer. The complaint was submitted by Common Cents EMS Supply, LLC (Common Cents), located in Old Saybrook, Connecticut, and was based on being notified on September 4, 2024, by the CT Department of Public Health (DPH) that they would not be receiving an award in favor of these items being purchased under a multi-state contract of which Connecticut is a participant.

The salient facts related to this issue are as follows:

- The Department of Public Health mistakenly believed that the items previously purchased from Common Cents were not covered by the multi-state contract.
- Based on this belief, DPH requested Common Cents, via email, to provide updated pricing for these items. There was no formal competition solicitation issued.
- On September 9, 2024, after learning that these items were indeed covered under the multi-state contract, DPH advised Common Cents that these requirements would not be procured from them and that DPH would be acquiring these items under a multi-state contract.

On September 16, 2024, Gene Burke, Director-Procurement Programs and Services, indicated that Common Cents' allegation that the awards were made on the basis of an "unwarranted, non-competitive solicitation process" was without merit, referring to the fact that the multi-state contract, placed by the State of Minnesota was the result of the competitive solicitation process of the State of Minnesota, and that both core and non-core items in the contract do have contract discounts defined.

In preparing our decision, it must be noted that it is not the responsibility of this committee to judge the efforts of the Connecticut Department of Administrative Services to leverage our procurement dollars to secure the most advantageous pricing for State requirements, in the best interests of the taxpayers of the State of Connecticut. Part of these efforts include participating in multi-state contracts which provide Connecticut with more attractive total pricing than we could achieve on our own. Ideally, the State of Connecticut would like to secure the lowest pricing for our material and service requirements while placing contracts with Connecticut suppliers. Unfortunately, in response to the need to drive down costs, this is not always possible.

Decision:

By statute, this committee's evaluation shall be limited to the procedural elements of the solicitation or award process. In this specific case, there was no formal competitive solicitation, but instead an email message was sent to Common Cents requesting that they provide updated pricing. There is, therefore, no issue regarding whether the competitive solicitation was fair, open, and transparent. Therefore, this committee finds that the contest holds no merit and is dismissed.

Vendor, Common Cents EMS LLC representative, John Dunn offered comment:

Mr. Dunn stated that the items that are on quotes numbered 9910 and 9911 are not on the Minnesota contract categories core and non-core tabs. Many, if not all, of the items are not encumbered under any of the category in the non-core tab. The multi-state contract is confusing because there is a core section and a non-core section. He explained that he emailed the committee information from Minnesota when they went out to bid for this solicitation, explaining what non-core is and how works. Non-core is a catch-all category for items that are not core. There are only 436 very specific items in core.

The Minnesota contract allows vendors to add products into the non-core tab along with the discount off your company's catalog price for those categories. The contention in his complaint was that they placed items into the non-core categories that should not have been. He is confident that had DAS or DPH provided the subcommittee with the quotes in question, it would be evident that the State is paying thousands of dollars more for the exact same item and two, or maybe three vendors do not sell all the items that the State was looking for. Also, those vendors do not sell the items in the quantities and units of measure that the State was desiring; therefore, the items could not be considered non-core. Those items then could not be considered non-core, they have to be non-contract, and the discount provided under the non-core tabs should apply.

Mr. Dunn has requested those contracts under an FOI request and is awaiting that response as he is confident they will reveal more information. Mr. Dunn referenced the 30% discount offered by his company and challenged discounts offered by other vendors. He is that an audit will reveal that the items in question are do not qualify as non-core items and alleged the items are not in their contract or catalog and are not pre-existing. Mr. Dunn explained that if they are not pre-existing, they are not in their catalog, and if they are not in their catalog, they are not in the non-core tab which is being used as a catch-all. This is not the way it is supposed to work, because there is no vetting that they are actually getting a discount.

He stated that all the state agencies do not have a catalog or the ability to log in to get a quote, so they reach out to the vendor for a quote. He offered the example of: If the vendor states that the item is medical in nature, they can call it medical in nature. They add their profit, send it to the state. The state is happy to place the order. There's never any vetting if they are actually getting the discount off the non-core tab, that the product is in their catalog as required by Minnesota, or that the category even fits with their purchasing these items on these quotes and are not in any of those categories, so they are not on state contract and the information you were provided is inaccurate.

Subcommittee Chair Buff thanked Mr. Duff for his input and explained that the extent of this committee's authority is limited to the procedural elements of the solicitation or award process. In this, in this specific case, there was no solicitation, so there cannot be an error in procedure. He explained that if there was a question regarding the upfront criteria or if a resulting contract differed from an RFP (Request for Proposal), it would be under the purview of the subcommittee; however, his case did not meet this criterion.

Mr. Buff confirmed that the subcommittee did not look at the issue raised by Mr. Duff which is not under the purview of this agency (State Contracting Standards Board). The subcommittee worked with the assumption that the items are covered by contract. He stated that Connecticut is a small part of that overall multi-state contract that has resulted in significant savings to the State of Connecticut.

Mr. Dunn confirmed that he understands our agency's limitations and thanked them for their work on his claim; however, he challenged if the claim of savings had been vetted and said state employees in multiple agencies have said they are paying more now to use out-of-state contracts than they were before. He asked if there was another committee to which he could appeal that could determine if the State was utilizing their contracts appropriately. Neither Mr. Buff nor anyone else present at the meeting, was able to provide a referral, so it was recommended that he forward his concerns to the Attorney General's office.

Subcommittee Chair Buff invited additional comments:

Gene Burk thanked the subcommittee for their consideration of the matter and offered that he would welcome a meeting with Mr. Dunn to further discuss why he disagreed with the conclusions he has drawn from this use of this contract.

He clarified that DAS is responsible for contracting with in-state and out-of-state suppliers, managing the registration process for small, minority, and women-owned businesses, and working with all executive branch agencies to determine their annual set aside goals. They are actively involved in measures to support the interests of small minority and women owned businesses throughout the State. Mr. Burk stated that it is not just a statutory obligation, it's a passion of our team to do that, so he takes the concerns that are raised by members of the business community very seriously.

Although this committee's ruling was not in his favor, he does not see it as a victory and welcomes further conversations to explore other opportunities for Common Cents to do work with the state going forward.

Mr. Dunn clarified that his company was registered with DAS as a small business enterprise under their diversity program and were on state contract for almost 23 years and the State received credit for all the purchases made under their contracts. Two of the three contracts they used to hold have been sent out to other States who are now enjoying Connecticut's business. He offered to provide additional information along with information about the decades of work his company has supplied to 14 separate state agencies. He remarked on state agency vehicles pulling into their parking lot all day picking up items that they needed, and unfortunately, that is no longer the case.

Mr. Burk said he looked forward to their future conversations.

Subcommittee Chair Buff thanked Mr. Burk for his invitation to the vendor. After inviting additional comments and receiving none, the business of this meeting was concluded.

4. Adjournment

A motion to adjourn the meeting at 10:20 a.m. was made by: Stuart Mahler
The motion was seconded by: Rochelle Palache
The motion to adjourn the meeting at 10:20 a.m. was unanimously approved.

Respectfully submitted,

Aleshia M. Hall
Administrative Assistant