



STATE OF CONNECTICUT
OFFICE OF GOVERNMENTAL ACCOUNTABILITY
STATE CONTRACTING STANDARDS BOARD

Final & Approved
Minutes

Friday, November 13, 2020 Meeting of the State Contracting Standards Board
Via Microsoft Teams Video Conference

Members Present:

Lawrence Fox, Chair – Via Microsoft Teams Video Conference
Thomas Ahneman – Via Microsoft Teams Video Conference
Alfred Bertoline – Via Microsoft Teams Video Conference
Bruce Buff – Via Microsoft Teams Video Conference
Lauren Gauthier – Via Microsoft Teams Video Conference
Albert Ilg. – Via Microsoft Teams Video Conference
Donna Karnes – Via Microsoft Teams Video Conference
Salvatore Luciano – Via Microsoft Teams Video Conference
Stuart Mahler – Via Microsoft Teams Video Conference
Robert Rinker – Via Microsoft Teams Video Conference
Brenda Sisco – Via Microsoft Teams Video Conference

David L. Guay, Executive Director - ex-officio Board member – Via Microsoft Teams Video Conference

Xholina Nano, Staff – 2020-2021 UConn Graduate Intern – Via Microsoft Teams Video Conference

1. Call to order

Meeting called to order by Chair Lawrence Fox at 10:14 A.M.

2. Approve the Minutes of the October 9, 2020 Meeting

Motion made by Salvatore Luciano and seconded by Alfred Bertoline to approve the minutes of the October 9, 2020 Board meeting. All voted in favor, with Thomas Ahneman and Brenda Sisco abstaining due to their absence from the October 9, 2020 meeting.

3. Approve Meeting Dates for 2021

Motion made by Robert Rinker and seconded by Alfred Bertoline to approve the meeting dates for 2021. All voted in favor.

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

Subcommittee Chair Robert Rinker reported that no matters were pending before the Subcommittee.

5. Privatization Contract Committee Report

- a. Report of conversation with Department of Labor Commissioner Kurt Westby and Deputy Commissioner Dante Bartolomeo.

Privatization Contract Committee Chair Lawrence Fox reported on his conversation with Department of Labor Commissioner Kurt Westby and Deputy Commissioner Dante Bartolomeo.

An issue of possible privatization was brought to the Board's attention by way of a copy of a letter from the Officers of the State AFL-CIO to the Governor concerning two contracts at the Department of Labor. Chair Fox noted that the Board has not been asked to review the matter, though, on the Board's own Statutory authority he reached out to Commissioner Kurt Westby and Deputy Commissioner Dante Bartolomeo and held a virtual meeting on October 16, 2020.

Two issues to understand, did these contracts meet the definition of an emergency and come under the Governor's Pandemic emergency orders. Chair Fox expressed that after speaking with Commissioner Kurt Westby and Deputy Commissioner Dante Bartolomeo, his belief is that they did fall under the Governor's Pandemic emergency order on procurement.

The second issue was whether after the Pandemic do these privatization contracts for a core governmental function become permanent, without the scrutiny they would normally have through the Board's Privatization Contract Committee. Chair Fox informed Commissioner Westby that if the contracts were to become permanent the Board would expect them to go through the process outline in C.G.S Sec. 4e-16 and the Commissioner agreed.

Chair Fox did not believe Board action is necessary at this time.

Salvatore Luciano stated that this is a manufactured crisis. Employees of the Department of Labor were laid off and the department was gutted.

6. Work Group Reports

- a. Report from Audit Work Group

Audit Work Group Chair Thomas Ahneman reported that the Work Group is closing out the audit of FY 18. We currently have thirteen agencies under audit for FY 19. Eight have

responded and we have follow-up questions for them and five are receiving a second notice to respond.

b. Data Analysis Work Group

Data Analysis Work Group Chair Alfred Bertoline stated that they have been quite busy.

The Work Group is continuing its work on a benchmarking study and has met with Professor Mohamad Alkadry, Department Head of the UConn Department of Public Policy. The Work Group is in the process of obtaining data from the Core-CT system. The Work Group is in the process of reviewing the benchmarking criteria. Chair Bertoline reported that the benchmarking criteria will be refined and once the data is acquired the process will be to create a draft benchmarking study.

7. DAS – Carol Wilson presentation on the new contracting portal



The New State Contracting Portal

Carol Wilson, Director of Procurement, Department of Administrative Services

November 13, 2020

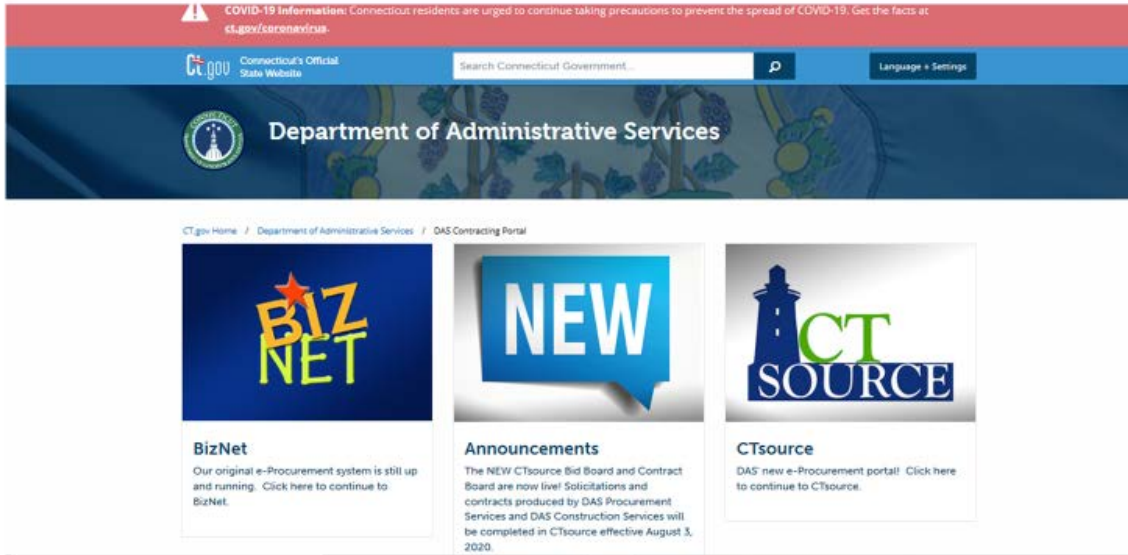
Why CTsource over BizNet?



- Unlike Biznet, CTsource is a Software as a Service (“SaaS”) solution hosted and fully supported by Proactis
 - All system maintenance and product support is performed by the Contractor
 - This includes upgrades/new releases
 - SaaS products are inherently easier to use since they are proven products and built on best practices. We get the benefits of upgrades and new features when they are rolled out to all customers.
-
- This change in systems will enable us to sunset outdated, legacy technology freeing up state human and technological resources.



DAS went live on CTsource - August 2020!



- Some of the improvements include:
 - Simple public search functionality for bids and contracts;
 - Modern search filtering tools, online document management tools and libraries;
 - Online solicitation evaluation tools, work assignment tools and tracking, comprehensive reporting, and more.
- This allows the State and participating municipalities to have consistency with the sourcing tools.



8. Report of Special Committee on Dillon Stadium contracts

165 Capitol Avenue, Suite 1060 – Hartford, Connecticut 06106
 Phone (860) 947-0706
www.ct.gov/scsb
An Equal Opportunity Employer

Chair Fox provided an introduction. The draft report was shared with the Capital Region Development Authority (CRDA), the Office of Policy and Management (OPM) the Auditors of Public Accounts (APA) and the Attorney General (AG) for comment. Comments were asked to be provided within thirty days, November 9, 2020. The special committee comprised of Brenda Sisco, Robert Rinker, Lauren Gauthier, Jean Morningstar, Chair Fox and Executive Director Guay met this past Tuesday, November 10, 2020. CRDA wrote to Executive Director Guay on Monday, November 9th requesting fifteen more days to respond. No comments were received from OPM and the AG provided informal comments.

Chair Fox granted the CRDA fifteen more days to respond, informing them that the draft would be discussed with the Board at today's meeting, but a vote on the report would not be held, allowing the CRDA to respond before taking a vote at the December 11, 2020 meeting of the Board.

Chair Fox asked Robert Rinker, as the primary drafter of the report, to present for review the conclusions and recommendations.

Mr. Rinker expressed his appreciation for Chair Fox's leadership of the special committee, Executive Director Guay for compiling the information, Lauren Gauthier, first as an intern and now as a Board member for digging out all the information.

The conclusions and the recommendations were reached by consensus of the special committee. Mr. Rinker asked the Board to remember our mission in reviewing the report.

It is the mission of the SCSB to require that state contracting, and procurement are understood and carried out in a manner that is open, cost effective, efficient and consistent with State and Federal statutes, rules, and regulations. Consistent with its mission, the SCSB undertook a review of the Capital Region Development Authority and its role in the renovation of Dillon Stadium.

Mr. Rinker presented the conclusions and recommendations.

CONCLUSIONS AND RECOMMENDATIONS

1. When the City asked CRDA to conduct a RFP on its behalf, the City and CRDA should have entered into a memorandum of understanding outlining the roles, responsibilities and procedures for conducting such a RFP. In the future, CRDA should enter into memorandums of agreement when acting on the behalf of a state agency or a public subdivision of the state.
2. The circumstances for the waiver of competitive procurement applicable to the JCJ Architecture contract are found in C.G.S. 4e-1(16), emergency procurement and C.G.S. 43-

- 16(6), waiver of bid or proposal for extraordinary circumstances. The SCSB does not find these circumstances to apply to the JCJ contract. CRDA should have known of the need for transparency in this process given the prior history regarding the Dillon Stadium renovation and the expenditure of public dollars. CRDA should incorporate language regarding the waiving of competitive procurement into its policies and procedures on procurement.
3. In issuing a RFP, it is assumed that all interested parties submitting responses have access to the same information. It appears that HSG through its prior discussion with the City was aware of the need for \$10 million for renovating Dillon Stadium. It also appears that CRDA was also aware of those discussions. In issuing the RFP, it should have included the amount of funds necessary to renovate Dillon stadium and the potential source of public funds so that respondents or potentially other respondents were aware of such funds. CRDA should in future procurement make sure that all bidders or proposers are operating on a level playing field.
 4. If the City and CRDA knew at the time public money was going to be available or possibly available, it should have been explicitly stated in the RFP.
 5. CRDA listed objectives for the RFP. These objectives and selection criteria should be used by the evaluation team to assess each proposal. In the future, CRDA, when issuing a RFP with multiple objectives/criteria, should disclose the weight of each objective/criteria. Disclosing the weighted criteria will allow each bidder/proposer to make their best offers and, eventually, the bidder/proposer will see how their offer lined up with other respondents to the RFP. Such weighting of objectives and selection criteria are recommended in the American Bar Association's Model Procurement Codes.
 6. Following the RFP and recommendation of HSG by CRDA to the City, the City effectively abandoned the RFP by substantially changing the construct of the original RFP. CRDA and/or the City should have declared at that point the RFP and its evaluation were no longer valid. CRDA should develop as part of its procurement policies and procedures; 1) notification to bidders or proposers when it plans to abandon a RFP 2) notification to bidders or proposers of any substantial change to a RFP, and 3) the effect of any substantial change to a RFP and the proposals submitted by the bidders or proposers.
 7. Following the abandonment of the RFP, HSG, CRDA and the City entered into term sheets that were approved by the CRDA Board, and the City's Common Council. The initial term sheets were between the City and CRDA, and CRDA and HSG. It appears that the parties operated as though the term sheets were legally binding contracts. CRDA should have only engaged with HSG under a legally binding contract. CRDA should develop as part of its procurement policies and procedures that any expenditure of public funds or commitment of resources with a non-public entity should not occur until there is a legally binding agreement. SCSB further

recommends any agreement between a quasi-public and a non-public entity should be reviewed for form by the Attorney General's office.

8. As recommended above, CRDA should conduct a review of its policies and procedures for the procurement of goods and services. The SCSB will share with CRDA model language for undertaking its review.
9. In February 2018, the State Bond Commission approved \$10 million in public funds for the renovation of Dillon stadium contingent upon a signed agreement for a professional sports team. The funds were released to CRDA prior to a signed agreement and CRDA expended those funds prior to a signed agreement. OPM should put into a place a procedure to ensure that the terms of a bond authorization are met prior to the release of funds. CRDA's representation that then Secretary Barnes knew of the situation is insufficient to secure the funds and to expend such funds. As state in #7 above, term sheets are not legally binding agreements. In the event that CRDA and/or the City failed to reach an agreement with HSG, public funds would have been improperly spent. In the case of the original arrangement under the term sheets, it would not have been possible for CRDA to have entered into a legally binding agreement with HSG because of the political contributions made by HSG owner, Bruce Mandell to the gubernatorial campaign of Bob Stefanowski. Such contributions would have made Mr. Mandell's company a non-qualified proposer and/or contractor under C.G.S 4e-34. CRDA should inform prospective bidders, proposers and contractors at the onset of its procurement process of the prohibitions on political contributions under C.G.S. 9-612(f).
10. CRDA should not have directed HSG to enter into a non-competitive contract with JCJ Architecture. As stated above, term sheets are not legally binding agreements and therefore CRDA had no authority to direct HSG to circumvent the competitive bidding process for a project that CRDA would ultimately be the project manager. SCSB saw no authority or contract that allowed CRDA to direct HSG to use JCJ Architecture. CRDA should develop as part of its procurement policies and procedures that any expenditure of public funds or commitment of resources with a non-public entity should not occur until there is legally binding agreement.
11. CRDA in the Dillon Stadium renovation had in effect become the project manager. It instructed HSG to hire JCJ Architecture to design the renovation work and it hired through a RFP process Newfield Construction to do the renovation work. To assume that role, the City entered into a license agreement with CRDA. Any actions taken by CRDA as the licensee would have to be in compliance with State law and its own policies and procedures regarding the procurement of goods and services.
12. The SCSB finds that it is not in the public interest to have public funds expended without legally enforceable contracts; to do so puts these public funds at risk.

Chair Fox provided an opportunity for other members of the special committee to comment. No other comments were added to Mr. Rinker's presentation.

Salvatore Luciano began his comments with expressing thanks to Mr. Rinker and the others on the special committee in getting so much information and digging through it. Continuing, Mr. Luciano expressed that clearly the procurement was problematic, especially when it concerns the expenditure of public funds without a signed contract. The special committee was right to focus on that and recommending that it not happen again and put the public's and taxpayers' dollars at risk. He further commented that clearly there was not an even playing field and with the political contributions it certainly has the appearance of pay for play and the appearance of corruption and conflict of interest. Mr. Luciano offered that issues identified in the report should be raised with the Legislature, so it doesn't happen in the future with other contracts.

Chair Fox added that it is the intention to bring these matters to the attention of the Legislature through OPM and the Office of the Governor to have a more fair and robust procurement process. Chair Fox expressed his belief that he does not believe any laws were broken, because there aren't laws that exist that should exist. He further added that the way this RFP was conducted undermines public confidence and integrity of an RFP process, which is not good for this State. Chair Fox expressed belief that public funds were put at risk.

Alfred Bertoline also expressed his thanks to the special committee. Mr. Bertoline noted that taxpayers' funds were expended without a contract. Mr. Bertoline reviewed his understanding; we have a signed contract with an unqualified bidder, primarily for political contributions, all the information was not shared with all the bidders, a noncompetitive contract was entered. Mr. Bertoline questioned, where was the Board of CRDA while all of this was going on. Where is the oversight, where is the governance of this organization? Mr. Bertoline expressed a desire to see a recommendation targeted to the Boards of the quasi-public agencies and CRDA should respond to us on where was the Board is on this matter, and come back to us with a plan for increased oversight.

Al Ilg congratulated Mr. Rinker on the report and the people on the committee and asked a question concerning the amount of funds expended. Mr. Rinker responded with the other sources of funds besides the bond funds. Mr. Ilg expressed his surprise with the licensing agreement.

9. Other Business

No other business raised.

10. Public Comment

No public comment.

11. Adjournment

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

Respectfully submitted: David Guay