



STATE OF CONNECTICUT
OFFICE OF GOVERNMENTAL ACCOUNTABILITY
STATE CONTRACTING STANDARDS BOARD

Final & Approved
Minutes

2:00 P.M. – Friday October 22nd, 2021 Meeting of the State Contracting Standards Board Sec.
4e-36 Contested Solicitations and Awards Subcommittee Via Microsoft Teams Video
Conference

Members Present:

Robert Rinker
Bruce Buff
Stuart Mahler

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

Michael Durham, Donahue Durham & Noonan. P.C. – representing Anthem
Philip Schulz, Associate Attorney General – representing the Teachers' Retirement Board
Richard Sponzo, Assistant Attorney General – representing the Teachers' Retirement Board
Helen Sullivan – Administrator for the Teachers' Retirement Board
Theresa DeMattie – Segal Consultant

1. Call to order

Chair Rinker called the meeting to order at 2:00 P.M.

2. Approve the Minutes of the October 20, 2021 Meeting

Bruce Buff moved to approve the minutes; Stuart Mahler seconded. All voted in favor.

3. Anthem contest of Connecticut Teachers' Retirement Board Retiree Health Request for Proposals

Subcommittee Chair Robert Rinker offered a draft decision and asked for a motion to approve after asking for any comments from Attorney Durham and Attorney Sponzo.

DECISION

Anthem Health Plans, d/b/a Anthem Blue Cross Blue Shield And Connecticut Teachers' Retirement Board

INTRODUCTION

Anthem Health Plans, Inc. d/b/a Anthem Blue Cross Blue Shield (Anthem) has filed three contests under C.G.S. Section 4e-36 in regards to a Request for Proposals issued by the Connecticut Teachers' Retirement Board (TRB) and the selection of a proposer to negotiate a contract.

The first contest was filed on August 27, 2021. The subcommittee, established under C.G.S. Section 4e-36, dismissed the contest as not being timely, but did not rule on the merits of the contest. The subcommittee issued its decision on September 27, 2021.

The second contest was filed by Anthem on September 22, 2021. Anthem refers to this contest as its "Supplemental Contest." As previously stated at the subcommittee meeting on September 27, 2021 and again at its meeting on October 13, 2021, the subcommittee considers this contest to be a new contest. For clarity, the subcommittee stated that this contest is the second contest or Contest #2, and not the "Supplemental Contest." Contest #2 regards the difference in the cost of the proposals submitted by Anthem and UnitedHealthcare.

The third contest or Contest #3 filed by Anthem on September 29, 2021 regards the weights of the criteria; when they were developed; and when they were approved by the head of the TRB. Anthem calls this contest "Second Supplemental Contest." Again, for clarity, the subcommittee considers this to be Contest #3. Anthem has requested that the subcommittee consider the two contests together and issue one decision. The subcommittee will only address Contest #2 in this decision, the issue of cost.

As stated in its previous decision, the subcommittee has a statutory requirement to issue its decision within thirty days of the receipt of a contest from a bidder or a proposer. The subcommittee has no authority to extend the thirty-day timeframe for issuing a decision. The subcommittee does not have the authority to stay its own proceedings.

FACTS

1. On September 22, 2021, Anthem filed its second contest or Contest #2. It is Anthem's claim that their proposal to the RFP issued by the TRB is \$2.3 million less expensive than UnitedHealthcare's proposal.
2. Anthem claims to have become aware of the cost difference when the premiums for the participants were released by the TRB on September 8, 2021.

3. On October 6, 2021 Anthem replied to the TRB's response to Contest #2. In an attachment labeled Exhibit A, Carol Stricos, account manager for group retiree solicitations, calculated that Anthem's proposal was \$2.3 million less expensive than UnitedHealthcare's proposal. Ms. Stricos used the same number of participants in the Medicare Advantage plan and the Medicare Supplement plan as Ms. DeMattie of the Segal Company used in her calculations (See #9 below). The total number of participants or covered lives was 31,500 for both calculations. In its initial and subsequent filings with the subcommittee, Anthem claimed there were 38,000 covered lives under the retiree health insurance plan administered by the TRB.
4. On October 13, 2021, the subcommittee held a meeting to ask questions of Anthem and the TRB related to Contest #2 and Contest #3.
5. The TRB stated at the October 13th meeting that the number of covered lives to be 32,000. A covered life is the retired educator and/or his/her spouse receiving benefits under the TRB administered retiree health insurance program.
6. The TRB stated at the October 13th meeting that the Medicare Advantage plan from UnitedHealthcare was \$1.8 million less expensive than Anthem, but the Medicare Supplement plan from UnitedHealthcare was more expensive than Anthem's resulting in a net difference of \$831,000 in savings from UnitedHealthcare's overall proposal than Anthem's overall proposal.
7. The TRB stated at the October 13th meeting that the products offered by UnitedHealthcare and Anthem are both fully insured.
8. The TRB stated at the October 13th meeting and again at the subcommittee's meeting on October 20, 2021 that a contract had not yet been executed between the TRB and UnitedHealthcare, but an open enrollment for the plans offered by UnitedHealthcare had commenced on Monday, October 18, 2021. The TRB also stated that the materials related to the plans and the open enrollment had been communicated to eligible retired educators.
9. On October 8, 2021, Theresa DeMattie, an employee of the Segal Company (Segal) and the consultant used by the TRB for the retiree health insurance RFP, sent to Ms. Helen Sullivan, Administrator for the TRB, a chart depicting the comparative cost of the UnitedHealthcare proposal and the Anthem proposal for both the Medicare Advantage plan and the Medicare Supplement plan. Richard Sponzo, Assistant Attorney General, forwarded the comparative chart to Anthem following the meeting of the subcommittee on October 13th. On October 14th, David Guay, Executive Director of the State Contracting Standards Board (Board), received and forwarded the cost comparison to the subcommittee.
10. The cost comparison from Segal showed 26,000 covered lives in the Medicare Advantage plan and not the 26,500 covered lives stated by the TRB at the October 13th subcommittee

meeting. This discrepancy did not change the projected cost difference of \$831,000 between the UnitedHealthcare proposal and the Anthem proposal.

11. Following the subcommittee's questions on Contest #2, the subcommittee then inquired into the weights developed for the RFP criteria, when the weights were approved by Ms. Sullivan, and if the TRB would provide to the subcommittee the weighted criteria used to review the proposals. This inquiry related to both Contest #2 and Contest #3 filed by Anthem. The subcommittee also asked for the evaluation sheets used to evaluate the proposals and who was on the evaluation team. The subcommittee requested any and all minutes of the evaluation team meetings.

12. At the October 13th meeting, Ms. Sullivan stated that as the TRB administrator she was responsible for approving the weights. Ms. Sullivan stated that the weights were developed by Segal and approved by her. It is Ms. Sullivan's belief that the weights were approved by her prior to the issuance of the RFP. Ms. Sullivan identified the three-member subcommittee of the TRB that evaluated the RFP responses. Anthem restated its position that in an email related to Contest #1 that the approval of the weights was made after the release of the RFP and this violated the Office of Policy and Management (OPM) procurement policies.

13. The Board and its subcommittee have a statutory right to the information related to the weights at any time. The OPM procurement policy makes it clear that release of the procurement file to the public and by extension to other proposers comes after the award has been made i.e., a contract is executed between a state contracting agency and a private entity.

14. On October 18, 2021, Anthem sent a letter to the subcommittee stating the difference between the Anthem proposal and UnitedHealthcare proposal was .347%. At the October 20th meeting of the subcommittee, Anthem confirmed that cost difference between Anthem and UnitedHealthcare and that it was in UnitedHealthcare's favor.

15. At the October 20th meeting, Anthem again made the claim that the TRB announced a 50% savings at the TRB's meeting on June 25, 2021, and by implication that the members of the TRB would believe that this was the cost difference between the Anthem and UnitedHealthcare proposals for the RFP.

16. At the October 20th meeting, the TRB stated that the 50% savings was over the current expenditure for retiree health insurance. The TRB also stated that Anthem was in the relative ballpark with regards to these savings. The TRB stated that if the current plan was to continue for the 2022 plan year it would cost an additional \$45 million. This would increase the cost from approximately \$50 million to between \$90 and \$100 million.

17. The TRB confirmed that the weight for the cost criteria was 20%. The weights and the

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evaluations of the proposal had been submitted to the subcommittee on October 18, 2021 and were made available to Anthem.

18. At the October 20th meeting, the TRB stated that a member of the Office of Policy and Management was on the evaluation team and evaluated the proposals.

DISCUSSION

The cost difference asserted by Anthem and refuted by the TRB raises two issues for the subcommittee.

First, the TRB, through its consultant, claims 31,500 covered lives and this number is confirmed by Anthem in its analysis submitted to the subcommittee on October 14th. While both the TRB and Anthem provided the same level of participation in the Medicare Advantage plan and the Medicare Supplement plan, the TRB and Anthem had initially a costing difference of approximately \$3.1 million (Anthem's projected savings of \$2.3 million plus the TRB's projected savings from UnitedHealthcare of \$830,000). Subsequently, Anthem revised the savings figure to .347% to UnitedHealthcare's advantage.

Second, the subcommittee assumes that cost has a significant weight in evaluating the proposals, but the committee was not aware of that weight or the weights for the other criteria at its October 13th meeting. Subsequently, the TRB communicated to the subcommittee that the cost criteria had a 20% weight and confirmed that percentage and the other percentages for other criteria at the October 20th meeting.

The TRB would like the subcommittee to find the second contest, Contest #2, to be untimely. The TRB claims that Contest #2 is merely bootstrapping Contest #2 to Contest #1 and as such should also consider being untimely as the subcommittee decided in Contest #1. The subcommittee disagrees with the TRB and finds Contest #2 to be timely.

As to the merits of the contest and the cost difference, the subcommittee finds that the TRB costing to be more credible than Anthem's costing. Although there is a difference, the subcommittee finds the two cost saving figures to be in the same ballpark.

With regards to the statement that there was a 50% cost savings statement made at the June 25th meeting of the TRB and that such cost savings statement was attributable to the Anthem and the UnitedHealthcare proposals, the subcommittee does not find this statement to be accurate or relevant. In the transcript provide by Anthem following the subcommittee's October 13th meeting, neither Ms. DeMattie nor Ms. Sullivan stated it was a comparison between the two proposals. As stated in our previous decision, Anthem had opportunity for a debriefing on their proposal. If they had elected to do so, Anthem may have learned that they had scored relatively high on the cost criteria.

As opposed to bidding, wherein the lowest responsible bidder is chosen, a RFP is evaluated on more than just cost. While cost should be a significant factor in evaluating proposals, it is not the only factor in choosing a vendor to negotiate a contract with by a state contracting agency. In this case, the costing criteria was given a 20% weight.

DECISION

The subcommittee finds the contest filed by Anthem, known as Contest #2, to be timely. As to the merits of the Anthem contest, the subcommittee finds the Anthem cost without merit and dismisses Contest #2. With regards to Contest #3, the subcommittee does not issue a decision at this time but is mindful of its October 29, 2021 deadline.

A copy of the decision has been provided to Anthem.

Decision issued on October 22, 2021

Attorney Sponzo made brief comments addressed to the Subcommittee.

Attorney Durham made brief comments addressed to the Subcommittee.

Motion made by Bruce Buff and seconded by Stuart Mahler to accept the draft decision in the matter of Anthem's contest of Connecticut Teachers' Retirement Board Retiree Health Request for Proposals as final. With no discussion from the Subcommittee members, the decision in the matter of Anthem's contest of Connecticut Teachers' Retirement Board Retiree Health Request for Proposals was approved.

4. Adjournment

Motion by Bruce Buff, seconded by Stuart Mahler. All voted in favor.

Meeting adjourned at 03:30 P.M.

Respectfully submitted: Ryan Chester