



STATE OF CONNECTICUT
OFFICE OF GOVERNMENTAL ACCOUNTABILITY
STATE CONTRACTING STANDARDS BOARD

Draft
Minutes

Wednesday, February 17, 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, Chair
Bruce Buff
Stuart Mahler

David L. Guay, Executive Director - ex-officio Board member
Xholina Nano, Staff – 2020-2021 UConn Graduate Intern

JP Hernandez of American Dream Clean, LLC
Carol Wilson – DAS
Michael Barrera – DAS
Graham Drew – AAG
Anthony Famiglietti - AAG

1. Call to order

Meeting called to order by Chair Robert Rinker at 11:01 A.M.

2. Approve the Minutes of the January 13, 2021 Meeting

Motion made by Stuart Mahler and seconded by Bruce Buff to approve the minutes of the January 13, 2021 Board meeting. All voted in favor.

3. American Dream Clean, LLC contest of 19PSX0255

Subcommittee Chair Robert Rinker offered a draft decision and asked for a motion to approve after asking for any comments from Mr. Hernandez of American Dream Clean, LLC and Ms. Wilson of the Department of Administrative Services.

No response received from Mr. Hernandez. Ms. Wilson responded that she had no comment.

**DRAFT DECISION
AMERICAN DREAM CLEAN, LLC CONTEST
RFP#19PSX0255**

On January 21, 2021, JP Hernandez, CEO of American Dream Clean, LLC filed a contest regarding 19PSX0255. The filing came after the disclosure of information by Department of Administrative Services (DAS). It is Mr. Hernandez's position that the disclosure does not fully meet his Freedom of Information request.

On January 26, 2021, DAS responded to the contest of American Dream Clean, LLC. The State Contracting Standards Board (SCSB) forwarded DAS's response to American Dream Clean, LLC on January 27, 2021.

On January 29, 2021, the SCSB's C.G.S Sec. 4e-36 subcommittee (subcommittee) submitted additional questions to DAS. On February 1, 2021, DAS responded to those questions. The SCSB forwarded those questions and responses to American Dream Clean, LLC.

Discussion

Public Act 07-1, passed by the General Assembly during their September 2007 Special Session, was entitled, "An Act Concerning Clean Contract Standards." Contained within that Act and codified into State Statute is Section 4e-36, Contest of the solicitation or award of a bidder or proposer.

C.G.S. Sec. 4e-36 provides: *(a) Any bidder or proposer on a state contract may contest the solicitation or award of a contract to a subcommittee of the State Contracting Standards Board which shall be appointed by the chairperson of the board and consist of three members, at least one of whom shall be a legislative appointee. Such contest shall be submitted, in writing, not later than fourteen days after such bidder or proposer knew or should have known of the facts giving rise to such contest and shall be limited to the procedural elements of the solicitation or award process, or claims of an unauthorized or unwarranted, noncompetitive selection process.(b) The filing of a contest pursuant to this section shall not, alone, be deemed to prohibit the award or execution of any such contested contract.(c) The assigned subcommittee of the State Contracting Standards Board may settle and resolve any such contest.(d) In the event such contest is not resolved by mutual agreement, the assigned subcommittee of the State Contracting Standards Board shall issue a decision, in writing, not later than thirty days after receipt of any such contest. Such decision shall:(1) Describe the procedure used by such agency in soliciting and awarding such contract;(2) Indicate such agency's finding as to the merits of such bidder or proposer's contest; and(3) Inform such bidder or proposer of the right to review.(e) A copy of such decision shall be provided to such bidder or proposer.*

The General Assembly in passing Public Act 07-1 and Section 36 wanted an expedited process to resolve contests regarding the solicitations and awards of state contracts. Consequently, any bidder or proposer has fourteen days to file a contest after the bidder or proposer knew or should have known of the facts

giving rise to the contest. Such contest shall be limited to the procedural elements of the solicitation or award process, or claims of an unauthorized or unwarranted, noncompetitive selection process.

The subcommittee of the State Contracting Standards Board has thirty days to issue its decision after receipt of any such contest. The subcommittee has a statutory requirement to issue a decision within thirty days. The subcommittee does not have the statutory authority to extend the thirty-day statutory time requirement.

In this and any contest, the bidder or proposer has the burden of proof regarding the allegations it has made in its contest. Contrary to American Dream Clean, LLC's assertion, the subcommittee does not have the statutory responsibility to conduct an investigation or to do an actual interrogation of the relevant parties.

When American Dream Clean, LLC made claims of collusion and bid rigging, the subcommittee voted on December 23, 2020 to advise the Attorney General's Office of the collusion claim and the Chief State's Attorney Office of the bid rigging claim. Under C.G.S. Sec. 4e-31, when collusion is suspected, a notice of the relevant facts shall be transmitted to the Attorney General. Bid rigging is a class D felony under C.G.S. Sec. 53a-161a. In the event, the Attorney General's Office and/or Chief State's Attorney Office substantiates the claims; the State Contracting Standards Board has the authority under C.G.S. Sec. 4e-34 to take action to disqualify a contractor, a bidder or a proposer.

American Dream Clean, LLC states that DAS should have applied micro-business preference law in this situation. DAS's response is that micro-business preference is applicable to Invitations to Bid, not Request for Proposals. DAS cites C.G.S. Sec. 4a-59(c). The application of the preference in an Invitation to Bid is permissive and not mandatory.

American Dream Clean, LLC states that *"Under Connecticut's Uniform Administrative Procedures Act, the relevant legal test of whether DAS can legally get away with the abhorrent conduct we have cataloged is whether acts were 'arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.'"* The statute that the subcommittee operates under is not a Uniform Administrative Procedures Act hearing. This is not a contested case as described the Uniform Administrative Procedures Act. If the General Assembly wanted it to be Uniform Procedures Act case, it would have so stated it in C.G.S. Sec. 4e-36 of the statute. As stated above, the General Assembly wanted expeditious decisions regarding such contests.

American Dream Clean, LLC believes that DAS has not fully complied with its Freedom of Information Act request. American Dream Clean, LLC has brought such issues in the past before the Freedom of Information Commission and certainly has a right to bring them again. The subcommittee is to decide the contest on the information that it is presented with by American Dream, LLC and DAS.

The principal argument made by American Dream Clean, LLC is that Coastal Cleaning, LLC should not be awarded this contract because Coastal Cleaning, LLC had sexually harassed one of its employees. As proof of such sexual harassment American Dream Clean, LLC produced a document showing a thread of three text messages. The document does not show date, time or place of said sexual harassment. The

document does not show who the text was sent to and who responded to the text. To quote from the text, *“Yes. The union knows all about it. They told me that they spoke with her. But she never came to with apologies. After that I felt that she pick on me. And did feel good working for them that’s. Why I left.”*

The subcommittee asked DAS the following: *“The subcommittee has not been noticed by American Dream Clean, LLC to the date time and place of the alleged sexual harassment contained within the contest. When did DAS become aware of the alleged sexual harassment?”* DAS responded, *“At no time did DAS receive any formal notice of any credible, verifiable and/or actionable information of any alleged sexual harassment from any complainant associated with any prospective contractor.”* The subcommittee asked, *“How did DAS become aware of the alleged sexual harassment?”* DAS responded, *“On January 13, 2020, JP Hernandez, the owner of American Dream Clean, sent an email to Michael Baczewski of DAS alleging sexual harassment of an employee of Coastal Cleaning. Mr. Hernandez attached screen shots in a word document, from an unidentified phone, purporting to show a conversation allegedly between himself and possibly a former employee of Coastal Cleaning ostensibly describing a claim of sexual harassment. As a result, like the subcommittee, DAS never received notice from American Dream Clean as to the date, time and place of any sexual harassment claim involving any of the prospective contractors.”* The subcommittee notes that the submittal by Mr. Hernandez was during the solicitation process for the above-stated RFP. While the subcommittee does not follow the formal rules of evidence, it cannot accept an unauthenticated document from American Dream Clean, LLC.

The allegation of sexual harassment is a serious allegation and is a form of discrimination as described under Connecticut statutes. In this case, we have an allegation of sexual harassment. The subcommittee is asked to adjudicate this allegation and to do so based upon a text thread as described above. The subcommittee would be acting outside the scope of its authority if it were to do so. We have no proof of the alleged sexual harassment; we have no proof that a body of competent jurisdiction has adjudicated the allegation. Conversely, if the Commission on Human Rights and Opportunity or DAS found that Coastal Cleaning, LLC engaged in discriminatory acts, the subcommittee could recommend to the full SCSB that such contractor should be terminated in accordance with C.G.S. Sec. 4e-34.

American Dream Clean, LLC states that DAS should have indicated in its RFP the weights that it was going to apply to the selection criteria. While the SCSB believes such disclosure should be made and while DAS disagrees with the SCSB’s position, there is no statutory requirement to disclose such weights.

On December 17, 2019, DAS issued RFP #19PSX0255 for custodial services for DAS facilities at 24 and 38 Wolcott Hill Road, Wethersfield, Connecticut. The due date for proposals was January 15, 2020. There is no dispute that the issuing of the RFP was the result of pending litigation by American Dream Clean, LLC regarding RFP#19PSX0014. The “settlement” was never reduced to writing nor was there any admissions made by any party to the litigation regarding the settlement. The judge eventually dismissed the case because the matter was moot because of the issuance of the RFP #19PSX0255. American Dream Clean, LLC would like the subcommittee to draw an adverse inference that the State settled because they were going to lose the case. The subcommittee declines to draw such an inference.

On August 20, 2020, an evaluation team scored the proposals. DAS attributes the delay in scoring the proposals and award because of DAS's role in securing goods and services to address the Covid-19 pandemic in Connecticut. Five proposals were scored by the evaluation team. The evaluation team was composed of state employees from the Department of Transportation, the Military Department and DAS. The evaluation team rated the five proposals. SJ Services Inc. was rated first. Service Management Group, LLC and Coastal Cleaning, LLC were rated second. AffinEco, LLC dba Premier Maintenance Inc. was rated fourth. American Dream Clean, LLC was rated last. According to DAS, DAS negotiated with SJ Services Inc., but it was not able to reach an agreement. DAS continued negotiations with the next most qualified proposer in accordance with Connecticut Purchasing Regulations 4a-52(16). In the evaluation, Service Management Group, LLC and Coastal Cleaning, LLC were ranked second. C.G.S. Sec. 4a-59(c) allows DAS to give preference to a Connecticut company in the case of all factors being equal. Both Service Management Group, LLC and Coastal Cleaning, LLC are Connecticut based companies. DAS chose to negotiate with Coastal Cleaning, LLC because it is a certified Small Business Enterprise. In doing so, DAS would comply with C.G.S. Sec. 4a-60(g) and its set-aside requirements. Service Management Group, LLC is not a Connecticut certified Small Business Enterprise.

On or about December 9, 2020, a contract award was made to Coastal Cleaning, LLC for 19PSX0255. The subcommittee finds RFP19PSX00255 was evaluated using the most advantageous proposer in accordance with C.G.S. Sec. 4a-59(c)(3).

The subcommittee finds that C.G.S. Sec. 4a-59(c)(3)(D) does not require price preference to RFPs for micro-businesses. Micro-business preference is permissive and not mandatory only for Invitations to Bid, not for RFPs.

The subcommittee finds that DAS statutes do not require written justification to issue an Invitation to Bid (ITB) or RFP pursuant to C.G.S. Sec. 4a-57.

Decision

The subcommittee's decision is limited to procedural elements of the solicitation or award process, or claims of an unauthorized or unwarranted, noncompetitive selection process.

The subcommittee does not find the procedural elements of the solicitation or award process to have violated state statutes. DAS had the right to issue RFP19PSX00255. RFP#PSX00255 was evaluated by a team that included non-DAS employees. DAS did negotiate with the highest rated proposer. Failing to reach an agreement with the highest rated proposer, DAS moved to the next highest proposer and reached an agreement and award with that proposer.

The subcommittee does not find that this process resulted in an unauthorized or unwarranted, noncompetitive selection process. Consequently, the subcommittee dismisses the contest of American Dream Clean, LLC as regards to RFP#19PSX00255 and DAS's award to Coastal Cleaning, LLC.

The subcommittee will provide American Dream Clean, LLC with a copy of this decision for their right to review.

Motion made by Bruce Buff and seconded by Stuart Mahler to accept the draft decision in the matter of AMERICAN DREAM CLEAN, LLC CONTEST RFP#19PSX0255 as final. The Decision in the matter of AMERICAN DREAM CLEAN, LLC CONTEST RFP#19PSX0255 was approved.

4. Motion made by Bruce Buff and seconded by Stuart Mahler to adjourn. All voted in favor, the motion passed, and the meeting adjourned at 11:03 A.M.

Respectfully submitted: David Guay