



STATE OF CONNECTICUT
OFFICE OF GOVERNMENTAL ACCOUNTABILITY
STATE CONTRACTING STANDARDS BOARD

Final & Approved
Minutes

Friday, March 12, 2021 Meeting of the State Contracting Standards Board
Via Microsoft Teams Video Conference

Members Present:

Lawrence Fox, Chair
Alfred Bertoline
Bruce Buff
Lauren Gauthier
Albert Ilg
Donna Karnes
Salvatore Luciano
Stuart Mahler
Robert Rinker
Brenda Sisco

David L. Guay, Executive Director - ex-officio Board member
Xholina Nano, Staff – 2020-2021 UConn Graduate Intern
Kimberly E. Kennison, OPM
Julia Fوسفeld, OPM

1. Call to order

Meeting called to order by Chair Lawrence Fox at 10:05 A.M.

2. Approve the Minutes of the February 5, 2021 Meeting

Motion made by Robert Rinker and seconded by Sal Luciano to approve the minutes of the February 5, 2021 Board meeting. All voted in favor.

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

Subcommittee Chair Robert Rinker reported:

On January 21, 2021, the 4e-36 subcommittee received a second contest from American Dream Clean, LLC regarding a janitorial contract for state buildings located at 24 and 38 Wolcott Hill Road in Wethersfield. The second contest came after Department of

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Administrative Services (DAS) responded to an information request from American Dream Clean, LLC. In the first contest filed in December 2020, the subcommittee dismissed the contest without prejudice because of the pending information request and the statutory requirement that the subcommittee must issue a decision within 30 days of receiving a contest.

Upon the receipt of the contest, it was forward to DAS for response. DAS respond to the contest in writing and that response was forwarded to American Dream Clean, LLC. The subcommittee had additional questions for DAS and DAS promptly responded to those questions. Those questions from the subcommittee and DAS's response were also forwarded to American Dream Clean, LLC.

Prior to the subcommittee's meeting on February 17th a draft decision was sent to American Dream Clean, LLC and DAS. At the meeting on February 17th, the subcommittee asked the parties in attendance if they had comments on the decision. JP Hernandez, CEO of American Dream Clean, LLC did not respond to the opportunity to comment. Carol Wilson, Director of Procurement for DAS, stated that they had no further comment on the decision.

The subcommittee did not find the procedural elements of the solicitation or award process to have violated state statutes. The subcommittee did not find that the process resulted in an unauthorized or unwarranted, noncompetitive selection process. Consequently, the subcommittee dismissed the contest of American Dream Clean, LLC.

I would like to thank subcommittee members Stu Mahler and Bruce Buff, and Executive Director David Guay of their work and for reviewing the volume of documents in this contest and adhering to the strict timelines for issuing its decision.

Question by Chair Fox for the subcommittee to clarify the time requirement for these types of contests.

Robert Rinker noted that the contest should be filed 14 days from when the bidder knew or should have known, then the workgroup has 30 days to render a decision.

Chair Fox thanked the subcommittee and highlighted the Board's authority in this area, even with quasi-public agencies.

4. Privatization Contract Committee Report

Committee Chair Lawrence Fox reported that no matters were pending before the Committee.

5. Work Group Reports

a. Report from Audit Work Group

Robert Rinker reported:

The Audit Workgroup completed four audit reports that were previously sent to Board members for final acceptance. Mr. Rinker reported that today's audit workgroup meeting had been cancelled. The workgroup expects to meet next month to take up about five or so reports left.

On February 26, 2021, the Audit Work Group reviewed and voted to present to the Board the following audits for acceptance:

- Division of Criminal Justice
- Office of Health Strategy
- Workers Compensation Commission
- The Office of Policy and Management

Motion made by Robert Rinker and seconded by Lauren Gauthier to accept the report of the Office of Health Strategy. All voted in favor.

Motion made by Robert Rinker and seconded by Lauren Gauthier to accept the report of the Division of Criminal Justice. All voted in favor.

Motion made by Robert Rinker and seconded by Donna Karnes to accept the report of the Workers Compensation Commission. All voted in favor.

Motion made by Robert Rinker and seconded by Stu Mahler to accept the report of the Office of Policy and Management. All voted in favor.

Comment made by Chair Fox explaining the goals of the audit workgroup in trying to audit 1/3 of contracting agencies of the state each year. Chair Fox highlighted the areas the questionnaire covers like procurement process, extent of using competitive bidding, results-based accountability, and staff training. Thanked the audit workgroup for their work and noted that this would be done by staff when funding becomes available.

b. Data Analysis Work Group

Data Analysis Group Chair Alfred Bertoline reported no new business was pending before the workgroup. Discussion concerning the Board working with the Department of Administrative Services and the Office of Policy and Management is ongoing.

6. Discussion of Attorney General’s formal opinion and whether the Board should advocate for statutory change

Executive Director, David Guay reported:

According to the Attorney General’s Opinion of February 25, 2021 the Board's jurisdiction over quasi-public agencies in general is quite limited and the Board's jurisdiction is even more circumscribed with regard to the Connecticut Port Authority. Most of the Board's rights, powers, duties, and authorities extend only to state contracting agencies, as opposed to quasi-public agencies.

The Port Authority's enabling statutes include a provision that excludes certain of the Port Authority's agreements from approval, review or regulation by the Board and other state agencies.

That Attorney General Wrote. “We conclude that the Board's jurisdiction with respect to the Port Authority would primarily be limited to regulating a bidder's contest under Conn. Gen. Stat. § 4e-36 involving a Port Authority contract that did not involve real property. The General Assembly would have to change the statutes to expand the Board's oversight.”

According to the Attorney General’s Opinion the Board has authority over a § 4e-36 bid contest, appoints the Chief Procurement Officer who may review procurement processes, and quasi-public agencies must use the State's Contracting Portal. According to the Attorney General’s Opinion the Board's authority regarding quasi-public agencies is much more limited relative to its authority over state contracting agencies.

The Attorney General’s Opinion points out the impact of not filling the vacant Chief Procurement Officer position which has been held vacant since March 2017.

The Board without a Chief Procurement Officer for four years deprived the State taxpayers the bare minimum of oversight that the Chief Procurement Officer position provides for in reviewing and monitoring quasi-public agencies procurement processes.

Comments made by Lauren Gauthier regarding whether the Board could take on the duties of the Chief Procurement Officer (CPO) since it was left vacant and whether a request for clarification should be submitted to the Attorney General.

Response made by Chair Fox that he did not see a request necessary since the Board appoints the CPO and it is within the authority of the board to take on the responsibilities if the position is not filled.

Comment made by Lauren Gauthier to make the legislators aware of the limited authority of the Board over quasi-public agencies due to the limiting language in the statutes of quasi-publics.

Comment made by Donna Karnes regarding considering changing or going to the legislature to make sure we have jurisdiction over what we find in our observations of quasi-public to address what no one seems to be watching.

Response by Chair Fox to Ms. Karnes's comment is that the Board takes such a position on it in this current meeting. No need for a motion, yet open to further discussion.

Comment made by David Guay that the opinion by the AG's Office was sent to the leadership of both chambers, Chairs of the Appropriation Committee, Chairs of Government Administration and Elections Committee, and any authors or co-authors of bills that had something to do with quasi-public agencies.

Comments by Chair Fox recognizing that some work from the Auditors of Public Accounts who already have jurisdiction have made some finds, yet they do not see it as their role to dig deep into the procurement policies of the quasi-publics. Also, there may be ethics agencies that may have some authority over this area as well.

Comments by Brenda Sisco seeking clarification on what role Chair Fox has had already in advocating for the discussed topic and reactions so far.

Response by Chair Fox noted he has testified at a public hearing opposing a bill regarding private-public partnerships removal of oversight by the Board (SB920). Chair Fox referenced two other bills before the legislature that look to bring more oversight to quasi-publics and their importance.

Comments made by Brenda Sisco inquiring about the Board's plan to address this new area of jurisdiction should there be no additional funds committed by the Appropriations Committee and Governor's budget.

Comments made by Chair Fox regarding much needed resources for staff and the responsibility of the Board to sound and alarm as a watchdog agency about insufficient measures.

Comments made by Brenda Sisco regarding the Board taking more follow-up measures with legislators about the work of the Board and needs.

Comments made by Robert Rinker regarding the ability of the Board to appoint a Chief Procurement Officer, even a board member, for the role.

Comments made by Salvatore Luciano raised similar concern as comments raised by Brenda Sisco.

In response, David Guay commented that if there is no change in staff and scope of authority increases regarding quasi-public agencies, the Board will be in a similar situation as they are now since the Board is already doing an initial review of these types of complaints for observations and legislative recommendations.

Comments by Albert Ilg regarding the past four years of appropriations requests being unmatched. The Board assumes the responses are in good faith and that the legislature is indeed interested in the work, and Mr. Ilg hopes to think the executive branch is just as interested. The Board has identified several questions and Mr. Ilg is struck by the redacted information that does not allow the Board to do the even most preliminary of any type of analysis.

Comments by Chair Fox regarding making it the intention of the Chair and Board to be as loud as possible before the legislature on the accountability over quasi-public agencies and the resources the Board needs.

7. Report from the CPA MIRA Special Committee

Executive Director, David Guay reported:

The special committee was formed to split tasks up of looking at both MIRA and CPA. Bruce Buff took a deep dive into MIRA and Lauren Gauthier made observations into the CPA. These reports were distributed earlier to the Board members.

Bruce Buff Reported on MIRA:

The State Contracting Standards Board CPA MIRA Special Committee general observations regarding the Materials Innovation and Recycling Authority (MIRA), previously the Connecticut Resources Recovery Agreement (CRRRA) are summarized below.

This organization was established in 1973 as a quasi-public agency. Though the Attorney General's opinion of February 25, 2021 states that the Board's jurisdiction over quasi-public agencies is quite limited, under General Statute Sec. 4e-2g2 the Board may conduct a review and monitor the procurement processes of state contracting agency, and include quasi-public agencies.

On December 17, 2020, the Board received a formal complaint concerning procurement of goods and services at MIRA's Hartford facility, which is responsible for the development and operation of systems and facilities that turn municipal solid waste into useful materials. The CPA MIRA Special Committee, based on the supporting material from the complainant and complainant interview on February 12, 2021, made several observations.

The CPA MIRA Special Committee discussed the complaint during two special meetings on March 3, 2021 and March 11, 2021 to look into MIRA's self-imposed rules and regulations to determine if they were sufficient to ensure fair, transparent, and cost-effective procurement of goods and services, and whether they contribute to good stewardship of public funds.

Concerns in the complaint noted irregularities in how MIRA managed their procurements, specifically of a refurbished engine from Wood Group, Pratt & Whitney, that seemed like MIRA's jets facilities operator received quotes on different days.

When quotes were submitted or when they were received is not significant if they arrived at MIRA before the requested due date and time. However, standard procurement practices require that all proposals be date and time stamped in, with the unopened proposals locked in a file cabinet until the opening date and time.

A reading of the MIRA procurement manual (updated November 20, 2014) merely states that competitive bids are required, but no specific process is described. The CPA MIRA Special Committee lacks more specific details to indicate if the MIRA procedures resulted in a procurement that was fair and transparent. The CPA MIRA Special Committee cannot determine if MIRA conducted a public bid opening. An initial review

of the MIRA procurement manual finds that it does not reference State procurement regulations.

MIRA's process for handling exceptions to the competitive bid process, according to their procurement manual, lists numerous exceptions including those for "special capability," sole source for over 3 years, approved suppliers by the Department of Administrative Services (DAS), the Department of Transportation (DOT), etc. (CPA MIRA Special Committee needs clarification on meaning of terms), all to be approved by either the President or Chairman of MIRA. Therefore, it seems this process does not provide for the approval of an overseeing independent authority to ensure an objective review.

The CPA MIRA Special Committee's preliminary observation is that MIRA has their own rules and regulations and operates independently of any oversight. It is unknown if it follows best practices in their managing of procurements. MIRA also delegates some procurement to NAES Corporation, which does require solicitation of competitive bids for procurement over \$5,000, but again no process is defined. An interesting provision in the MIRA/NAES agreement is that NAES "shall nominate on-site responsible individuals authorized to sign and issue Purchase Orders for goods and services." No other qualifications are specified.

An initial review of the issue MIRA had with ET&L, wherein the supplier neglected to install overcurrent protection as required in the original design seems to indicate that there was some lapse in the MIRA sign-off procedures required prior to final payment to a supplier. MIRA had to have ET&L correct the problem and provide reimbursement for costs incurred as a result of this issue. The CPA MIRA Special Committee observation is that this could be an indication of lax controls at MIRA.

This cursory review of MIRA procedures indicates a concern about MIRA's processes and lack of control needed to ensure the efficient use of public funds. It is only through proper oversight that concerns, such as discussed here by this Board, can be remedied. Allowing quasi-public agencies to continue to operate without oversight does a disservice to the people of the State of Connecticut.

Comments made by Robert Rinker regarding the Board's authority under Sec. 4e-36 if there was a bidders contest. The Board is challenged when trying to enforce this and cannot nullify a contract under CGS 4e-34. Another example mentioned is if there was a case where a bidder did participate in campaign contributions and the committee identifies them as ineligible, the Board is challenged again and cannot disqualify them. Mr. Rinker asks the question, "so then what is the remedy if there was a violation?"

Comments made by Stuart Mahler complimenting the Board for the observations and for noting some can use Sec. 4e-36 to file a complaint and requests that there should be further discussion about the topic.

Comments made by Chair Fox that the Board has a number of questions and the quasi-public agencies might not have the resources to do the work we expect them to do.

Lauren Gauthier Reported on CPA:

The Board received complaints regarding the CPA's handling of the State Pier, in late 2020. The Board, based on a preliminary review of documents from the CPA, made several observations and identified areas of concern.

The Harbor Development Agreement signed by the Connecticut Port Authority, Gateway New London LLC, and Northeast Offshore LLC is a public-private partnership committing state bonded funds, resources and assets to the development of the State Pier in New London for use by Orsted-Eversource and their affiliates to assemble and deploy wind turbine generators. This agreement was signed February 11, 2020. Other contracts have been signed prior to and since the Harbor Development Agreement was executed (see Table 1).

The CPA entered into a questionable contract with Seabury, a venture capital group, to provide strategic advisory services including the creation of an RFP for State Pier development and operations. This contract was executed at a cost of \$219,500 plus reasonable expenses as well as an additional \$523,000 "success fee" settlement for completing the work that they were originally contracted and paid to do. This amount was negotiated as a settlement agreement. Chairman Kooris told the Day Paper that this amount was less than Seabury Maritime claimed they were due, and that it avoided excessive legal fees and the uncertainty if a settlement could not be reached. The Board inquired about the formula to calculate this fee; this information has not yet been provided. There has not been provided any clarity on how and why this contract was constructed this way.

The RFP response by Gateway New London to become the Port Operator for CPA had significant redactions that would have provided clarity as to whether key objectives of the RFP were being addressed and in what way. While some information was put in the initial RFP solicitation and consequential concession agreement signed by Gateway New London and the CPA regarding wind turbine generators, very little information was provided about the WTG operation that is well-known to be the primary endeavor of

the State Pier redevelopment. Of Gateway New London's RFP response provided to the Board by the CPA, 14 of 17 pages describing the business plan were redacted.

The Northeast Offshore project appears to have taken over the entire State Pier, driving out current users and potentially affecting the port's ability to increase and diversify cargoes and multi-modal transportation methods as envisioned in the RFP. Despite this, the concession agreement reviewed by the Board lacks further details regarding wind energy operations. The few sections that do discuss a wind energy operation include a number of redactions. The Board does not have the information necessary to ascertain if and/or what metric of accountability the concessionaire is being held to in relation to North East Offshore's efforts. As well, there is a section that allows the CPA to at any time enter into an arrangement without the consent of Gateway New London for the use of all of the State Pier for a wind-energy company (excerpt attached). This appears to run contrary to the objectives of the RFP to protect access to current users and increase and diversify users at the Port and there appears to be an issue with the lack of transparency around accountability controls.

The Harbor Development Agreement included an "Environmental & Remediation Agreement" between state contracting agency DOT and CPA. The provided agreement did not contain specific provisions "whereby the employment and utilization of green remediation technologies shall be accorded due consideration" as required by CGS Sec. 4e-50. The Board should consider requesting documentation from DOT for any and all bid, proposals and contracts related to ensure the remediation of the site are meeting the requirement of CGS Sec. 4e-50.

The \$4.4 million Purchase of Services agreement entered into by North East Offshore and Moffat & Nichol states that CPA has enlisted the help of OPM and DAS, who will, "provide Project construction administration and management oversight and services, inclusive of planning, engineering, architectural, schedule analysis, estimating, budgeting, value engineering, cost controls, solicitation of contractors, bidding, award, financial management, construction oversight and legal." This includes public bidding of construction work. What is unclear is what, if any, formal arrangement has been made between North East Offshore and CPA, Office of Policy and Management (OPM), and the Department of Administrative Services DAS to ensure that this work for a private developer is being done. These services are crucial to project management, and especially a project this large. While no state contracting agency or quasi-public is specifically a party to this agreement, there are conditions being placed onto state contracting agencies and the CPA. The Board should consider inquiring into what, if any, contract for services or MOU/MOA has been established between CPA, OPM and DAS and North East Offshore to provide state services to this private developer.

The Attorney General issued a ruling that quasi-publics were exempt from the Board's authority, with some caveats. This includes the requirement by CGS Sec. 4-261(c) that public-private partnerships be reviewed under the provisions of 4e-16 regardless of whether such services were previously privatized. This did not occur at the time the Harbor Development Agreement was signed but is a moot point in light of the Attorney General's opinion. A legislative remedy appears to be the only course of action to provide clarity on the purview and power of the Board.

Comments made by Robert Rinker sharing the same comment as before regarding no effective remedy for bidders' contest. Noted the duration of the contract that was longer than the Board was expecting.

Comments made by Laruen Gauthier regarding the section "minimal scope" and commitments should the project go in that direction.

Comments made by Chair Fox regarding the reports as observations to shine a light for the legislature and to address areas that the Board believes to be a lack of accountability.

8. Conversation with Kimberly Kennison and Julia Fوسفeld

Kimberly Kennison and Julia Fوسفeld presented a slide deck before the Board addressing the following four questions (slides sent to Board members, available upon request). Questions regarding the presentation by Board members are to be sent directly to OPM Secretary.

1. What are Julia and OPM's priorities for the coming year?
2. What is being done to promote a culture of competitive bidding?
3. How is OPM reducing the granting of waivers from competitive bidding?
4. What is the status on the three-year procurement plans from the state agencies?

Topics covered in the slides included

- OPM Procurement Reform Context
 - o Secretary McCall's email to all agencies regarding heightened expectations for competitive procurement
 - o Spearheaded several initiatives to improve processes, policies, and procedures related to increasing competitive procurement
 - o OPM procurement reform four phases
 - Phase 1: revamp OPM's reporting systems to ensure more accurate tracking of procurement
 - Phase 2: implement efforts to increase procurement transparency
 - Phase 3: Support agencies in meeting procurement needs during Covid-19 crisis

- Phase 4: work with agencies to bolster capacity for Results-Driven Contracting competitive procurement and provide training agencies on state procurement practices
- 2021 Procurement Training Schedule
- Additional OPM Procurement Priorities

Comment made by Data Workgroup Chair Alfred Bertoline regarding finding some areas of common opportunities.

Comments made by Chair Fox that Board members who have questions about the presentation follow the recommended procedure by OPM.

9. Other Business

Comments made by Albert Ilg regarding following up on the Board's detailed study on cost of bridge inspections and transferring bridge inspection from contractors to state workers.

Comments made by Lauren Gauthier regarding an article that the Board members shared around concerning some COVID-19 testing that was being done without standard contracting procedures under emergency procurement.

Comments made by Robert Rinker regarding DOT hiring bridge inspectors in response to Mr. Ilg's comments. The Board may have been presented with a 5-year plan to bring those positions in house except for some specialty areas.

10. Public Comment

Philippe De Montigny addressed the Board concerning the date Enstructure was founded.

Matthew Satnick addressed the Board concerning their business with State Pier in New London.

Michelle Farrelly addressed the Board concerning the Connecticut Port Authority and her husband's, Chris Farrelly's, salt company that was operating out of the State Pier.

Kevin Blacker addressed the Board concerning the State Pier in New London.

Board member Lauren Gauthier inquired about pending questions and welcomed Matt and Philippe to connect later to discuss those.

11. Adjournment

Motion made by Robert Rinker and seconded by Albert Ilg to adjourn. All voted in favor, the motion passed, and the meeting adjourned at 12:19 P.M.

Respectfully submitted: Xholina Nano