



STATE OF CONNECTICUT  
OFFICE OF GOVERNMENTAL ACCOUNTABILITY  
STATE CONTRACTING STANDARDS BOARD

Final & Approved  
Minutes

Wednesday, April 14, 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

Mr. John DuFour, representing The Data Entry Company (TDEC)  
Attorney Matthew Antonetti, representing the Department of Social Services (DSS)

1. Call to order

Meeting called to order by Chair Robert Rinker at 11:04 A.M.

2. Approve the Minutes of the April 7, 2021 Meeting

Motion made by Bruce Buff and seconded by Stuart Mahler to approve the minutes of the April 7, 2021 Subcommittee meeting. All voted in favor.

3. The Data Entry Company (TDEC) contest of HBPO RFP 07022019

Chair Rinker reviewed a set of questions he asked of the Department of Social Services yesterday and their responses, that had not yet been shared with TDEC.

1. Since TDEC didn't meet the minimum of 372 points out of 620 points under the Functional Proposal as spelled out in the RFP's Evaluation of Proposals, why did DSS give TDEC a Functional Proposal Scaled Score? **Based on the evaluation criteria and weights as indicated within RFP Section I.F.4., "The functional proposal will be scored as follows: proposal with the highest total points will be awarded the maximum points of 620 for the functional proposal section. The other proposals will be scaled accordingly, e.g., if the highest scoring proposal was scaled by 120% in order to be awarded the**

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maximum points, then the other proposals would have their points scaled using the same multiplier.” The “Functional Proposal Total” was used to determine if respondents achieved the minimum available points as indicated within RFP Section I.F.4., the “Cost Proposal will only be evaluated for Respondents that have achieved a minimum of 60% of the available points in Functional Proposal (i.e. a minimum of 372 points out of 620 points).”

2. Did DSS compare a responder's proposal with other responders when evaluating a responder's proposal or was each responder evaluated on its own merits? Could, theoretically, each responder receive the maximum score of 620 points? The evaluation team independently, fairly and impartially review and score each proposal and evaluate each proposal according to the established criteria as indicated within RFP Section I.F.4. and is based solely on the merits of the information received. The evaluation team does not compare proposals against one another.
  
3. Was it an error on the part of DSS to score the cost proposal of TDEC in its first evaluation? In DSS's letter to David Guay on March 29, 2021 footnote #3 indicates that to be the case. As indicated in the DSS letter dated March 29, 2021, footnote #3, “The Department acknowledges that Cost Proposal appears to have been erroneously included on TDEC’s initial score sheet last year (prior to the reevaluation as ordered pursuant to the SCSB’s March 5, 2020 Subcommittee Decision) which TDEC has attached to its Contest letter. The recent/pertinent 2021 Reevaluation Scoring Sheet (Exhibit C) does not contain any such error, and Cost Proposal was appropriately excluded as the 372 out of 620 point threshold was not met.”
  
4. In the questions posed by the subcommittee and responded to by DSS on April 6, 2021, it states in part, "Technical/Functional scaled score is the average of the Technical/Functional submitted proposals ..." When the term average is used, does that mean the average score for the evaluators scoring that element of the proposal? For example, if an element had a maximum score of 10 and three evaluators scoring separately gave it a score of 10, 10 and 7. Would the average score then be 9? The average score is the sum of all the values divided by the total number of values.

Chair Rinker asked for comments. No comments from Stuart Mahler and Bruce Buff and no comments from Mr. DuFour or Attorney Antonetti.

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

The Data Entry Company (TDEC) contest related to the Department of Social Services (DSS)  
Request for Proposal – Health Business Processing Outsourcing – HBPO RFP 07022019

Introduction

Public Act 07-1, passed by the General Assembly during their September 2007 Special Session, was entitled, “An Act Concerning Clean Contract Standards.” The General Assembly, when it passed Public Act 07-1, and signed into law by then Governor Rell, set forth an expedited process for resolving a contest of the solicitation or award of a contract by a bidder or a proposer. These provisions are contained within C.G.S. 4e-36.

The expedited process requires a contest to be in writing and submitted to the State Contracting Standards Board (Board) not later than fourteen days after such bidder or proposer knew or should have known of the facts giving rise to such contest. The C.G.S. 4e-36 subcommittee (subcommittee) has thirty days to render its decision. Any contest shall be limited to the procedural elements of the solicitation or award process, or claims of an unauthorized or unwarranted, noncompetitive selection process.

It should be noted for this particular contest C.G.S. 4e-36(c) comes into play and will be explained later in this decision. It should also be noted as it relates to the procedures and policies of the subcommittee that the position of Chief Procurement Officer as set forth in the C.G.S. 4e-2 has been vacant for four years. The Board has vigorously advocating filling this critical position in State government, but to no avail. Consequently, the subcommittee and the Board’s Executive Director, David Guay, have taken on the responsibility of the Chief Procurement Officer as it relates to the work of the subcommittee.

Background

On March 18, 2021, The Data Entry Company (TDEC) filed a contest with the Board related to the Department of Social Services (DSS) Request for Proposal – Health Business Processing Outsourcing – HBPO RFP 07022019.

On March 19, 2021, Mr. Guay transmitted that contest to DSS for their response. Mr. Guay also asked the following question on behalf of the subcommittee; “Has the Department of Social Services reached an agreement with the highest ranked proposer?”

On March 30, 2021, DSS responded to the TDEC contest and Mr. Guay transmitted that response to TDEC. In DSS's response, it stated that the Department has not reached an agreement with the highest proposer as of March 29, 2021. Consequently, the subcommittee does not know who the highest ranked proposer is and whether or not a contract can or will be reached with that proposer.

On April 5, 2021, TDEC filed a response to DSS's March 30, 2021 letter with the Board.

On April 6, 2021, the subcommittee through Mr. Guay sent an email to DSS asking five questions. The five questions were:

1. What is the Technical Proposal Total?
2. What is the Functional Proposal Scaled Score? How is this number determined?
3. What is the Functional Proposal?
4. What is the relationship between the Technical Proposal total, Functional Proposal Scaled Score and the Functional Proposal?
5. Which number is used to determine if a proposer meets the threshold to determine consideration of their cost proposal?

On April 9, 2021, DSS responded to the above questions. DSS's response in part is as follows:

The word Technical Proposal and Functional Proposal are considered one in the same. The highest point score a proposer can receive is 620 points. In order for a Cost Proposal to be considered a proposer must receive a minimum of 372 points. Once a Technical/Functional score is received it is scaled prior to consideration of the Cost Proposal score. So the highest Technical/Functional score from a proposer is scaled to 620 points. The remaining proposers that meet the threshold of 372 are then scaled using the same factor that scaled the highest ranked proposer. Once the scaling is done, the Cost Proposal is then considered to arrive at a final score.

On April 12, 2021, Mr. Guay transmitted the DSS response to TDEC.

On April 12, 2021, TDEC responded to Mr. Guay. TDEC stated, "As the initial evaluation from 2019 shows (Debrief PDF), DSS used the Functional Proposal Scaled Score to then score TDEC's cost proposal. In this most recent evaluation, DSS uses the Technical Total and not the Functional Proposal Scaled Score. They have not applied their evaluation processes consistently. It should be based on the Functional Proposal Scaled Score for all respondents. If a respondent meets the 60% threshold, then their cost proposal should be evaluated."

On April 13, 2021, the subcommittee asked the following questions of DSS:

1. Since TDEC didn't meet the minimum of 372 points out of 620 points under the Functional Proposal as spelled out in the RFP's Evaluation of Proposals, why did DSS give TDEC a Functional Proposal Scaled Score?
2. Did DSS compare a responder's proposal with other responders when evaluating a responder's proposal or was each responder evaluated on its own merits? Could, theoretically, each responder receive the maximum score of 620 points?
3. Was it an error on the part of DSS to score the cost proposal of TDEC in its first evaluation? In DSS's letter to David Guay on March 29, 2021 footnote #3 indicates that to be the case.
4. In the questions posed by the subcommittee and responded to by DSS on April 6, 2021, it states in part, "Technical/Functional scaled score is the average of the Technical/Functional submitted proposals ..." When the term average is used, does that mean the average score for the evaluators scoring that element of the proposal? For example, if an element had a maximum score of 10 and three evaluators scoring separately gave it a score of 10, 10 and 7. Would the average score then be 9?

#### Procedure Used by DSS and the Conduent Decision

On July 2, 2019, DSS issued an RFP 07022019 for Healthcare Business Process Outsourcing.

On January 21, 2020, Conduent State Healthcare, LLC (Conduent) received a letter from the DSS Commissioner that it had not been awarded the right to negotiate a contract.

Conduent pursued its opportunity to be debriefed by DSS and the debriefing took place on January 30, 2020.

On February 13, 2020, Conduent filed a contest with the Board. The subcommittee found the contest to be timely because at the January 30, 2020 meeting Conduent found out certain information it believed were objective errors in the scoring of the RFP.

On February 17, 2020, Mr. Guay transmitted the Conduent contest to DSS and Mr. Guay followed up with DSS for a written response.

On March 3, 2020, DSS responded to the Board by letter from Deputy Commissioner, Kathleen Brennan. Ms. Brennan in her letter and relevant to the current Maximus contest stated, in part, "While Conduent has asserted several elements as the basis for their appeal and contest, the validation of the flaw in the scoring of references is enough for the Department to reconsider the results of the HBPO RFP evaluation. In this particular case, we have decided that it is in the

best interest of the state and all respondents to this RFP, to reconstitute a new evaluation team and to re-evaluate and score each of the proposals.” Ms. Brennan further stated in her letter to Mr. Guay, “It is unfortunate that we did not uncover this human error before completing the evaluation and, going forward we will be instituting an in-depth peer review for all future procurements. While we are preparing to notify each of the respondents of this action, we will not do so until we are advised that this is an acceptable resolution.”

This letter set forth the opportunity under C.G.S. 4e-36(c) to settle and resolve any such contest. Through a series of email exchanges facilitated by Mr. Guay, he was able to mediate a resolution of the Conduent contest. This resolution resulted in a decision by the subcommittee.

On March 5, 2020, the subcommittee approved the decision. The decision was for DSS to rescore the HBPO RFP 07022019 with appropriate evaluators and that the respondents to the RFP may update their references.

On April 15, 2020, DSS informed the respondents including TDEC. The email stated in part, “As you know, the Department has made a commitment to convene a new evaluation team and to rescore all proposals received in response to the above referenced RFP.”

### Decision

In TDEC’s email of April 12, 2021 to Mr. Guay, TDEC summarized their contest. They stated, “As the initial evaluation from 2019 shows (Debrief PDF), DSS used the Functional Proposal Scaled Score to then score TDEC’s cost proposal. In this most recent evaluation, DSS uses the Technical Total and not the Functional Proposal Scaled Score. They have not applied their evaluation processes consistently. It should be based on the Functional Proposal Scaled Score for all respondents. If a respondent meets the 60% threshold, then their cost proposal should be evaluated.”

With regards to TDEC receiving a Cost Proposal score in its first evaluation, DSS stated in its letter of March 29, 2021, “The Department acknowledges that Cost Proposal appears to have been erroneously included on TDEC’s initial score sheet last year (prior to the reevaluation as ordered pursuant to the SCSB’s March 5, 2020 Subcommittee Decision) which TDEC has attached to its Contest letter. The recent/pertinent 2021 Reevaluation Scoring Sheet (Exhibit C) does not contain any such error, and the Cost Proposal was appropriately excluded as the 372 out of 620 point threshold was not met.” The subcommittee agrees that the DSS erred in providing a Cost Proposal score in its first evaluation of TDEC’s proposal.

TDEC believes that the Functional Proposal Scaled Score for all respondents should be used as opposed to the Functional Score. The RFP is clear on this point. The Cost Proposal will only be evaluated for respondents that have achieved a minimum of 60% of the available points in the Functional Proposal (i.e. a minimum of 372 points out of 620 points) The Functional Proposal score for TDEC in the first evaluation was 305.59 and in the second evaluation it was 354.85. The language of the RFP is clear and unambiguous that a score of 372 is needed in order to receive a Cost Proposal score. TDEC did not achieve 372 points in either evaluation.

The subcommittee would note that it is unfortunate that DSS provided in its debriefing the Functional Proposal Scaled for a respondent like TDEC that did not meet the 372 threshold. One could have easily confused the Functional Proposal Scaled as meeting the 372 threshold as opposed to the Functional Score.

In its letter of March 18, 2021, TDEC states, “We have no reference as to whether this was evenly applied amongst all vendors because we were not given other scoring sheets to compare, even redacting the vendor’s name, which is industry standard.” DSS cites the State’s Freedom of Information Statute for its nondisclosure. If upon conclusion of the negotiations in which an agreement is reached regarding this RFP, the information sought by TDEC may lead it to file another contest. However, the standard for consideration by the subcommittee is whether or not there is a flaw in the procedural elements of the solicitation or award process, or an unauthorized or unwarranted, noncompetitive selection process.

The subcommittee finds that DSS acknowledged and corrected a flaw in its first evaluation. The subcommittee has no information before it at this time that the second evaluation by DSS has resulted in a flaw of the procedural elements of the solicitation or award process, or an unauthorized or unwarranted, noncompetitive selection process has occurred related to HBPO RFP 07022019. Consequently, the subcommittee dismisses the contest filed by TDEC on March 18, 2021.

The subcommittee will provide TDEC with a copy of this decision for their right to review.

Chair Rinker asked for comments from DSS and TDEC about the draft decision.

Mr. DuFour responded for TDEC that he didn’t agree with the decision.

Attorney Antonetti provided comment for DSS asking for a correction to a sentence in the third paragraph on page 2 of the draft decision. Attorney Antonetti asked for the words “that meet the threshold of 372” be removed from the sentence.

The remaining proposers ~~that meet the threshold of 372~~ are then scaled using the same factor that scaled the highest ranked proposer.

Mr. DuFour was asked to comment upon Attorney Antonetti's request and made no comment.

Motion made by Stuart Mahler and seconded by Bruce Buff to accept the draft decision as amended by Attorney Antonetti's request in the matter of The Data Entry Company (TDEC) contest related to the Department of Social Services (DSS) Request for Proposal – Health Business Processing Outsourcing – HBPO RFP 07022019 as final. With no discussion from the Subcommittee members, the decision in the matter of The Data Entry Company (TDEC) contest of HBPO RFP 07022019 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 11:19 A.M.

Respectfully submitted: David Guay