



STATE OF CONNECTICUT  
OFFICE OF GOVERNMENTAL ACCOUNTABILITY  
STATE CONTRACTING STANDARDS BOARD

Final & Approved  
Minutes

Wednesday, April 7, 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

Attorney Michael Durham, representing Maximus  
Attorney Matthew Antonetti, representing the Department of Social Services

1. Call to order

Meeting called to order by Chair Robert Rinker at 11:03 A.M.

2. Approve the Minutes of the February 17, 2021 Meeting

Motion made by Stuart Mahler and seconded by Bruce Buff to approve the minutes of the February 17, 2021 Subcommittee meeting. All voted in favor.

3. Maximus US Services, Inc. (Maximus) contest of HBPO RFP 07022019

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 Antonetti.

Maximus Health Services, Inc. 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. Sec. 4e-36.

The expedite 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. Sec. 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. Sec. 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. Sec. 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 12, 2021, Maximus Health Services, Inc. (Maximus) 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 15, 2021, Mr. Guay transmitted that contest to DSS for their response.

On March 18, 2021, DSS responded to the Maximus contest and Mr. Guay transmitted that response to Maximus.

On March 26, 2021, Maximus filed a "Notice of Amended Contest" and a response to DSS's March 18, 2021 letter with the Board.

On March 30, 2021, DSS informed the Board that it had not concluded its negotiations with the highest ranked proposer. Consequently, the subcommittee does not know who the highest ranked proposer is and whether a contract can or will be reached with that proposer.

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

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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 stating 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. Sec. 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 re-score 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 Maximus. The email stated in part, "As you know, the Department has made a commitment to convene a new evaluation team and to re-score all proposals received in response to the above referenced RFP." On that same day, Lauren Fujioka, Senior Director and Legal Counsel for Maximus, Inc. stated to Ms. Brennan, "I am in receipt of your email. I have forwarded this to appropriate bid team for response. Please do not hesitate to reach out if you require any additional information."

### Decision

In its letter of March 26, 2021, Maximus invites us to revisit the Conduent decision. The subcommittee declines this invitation. As stated above, the subcommittee received a contest from Conduent following its debriefing from DSS on January 30, 2020. Conduent filed its contest on February 13, 2020. The subcommittee found the contest to be timely and forwarded it to DSS for a response. DSS agreed that there was a problem. The subcommittee through Mr. Guay facilitated a resolution between DSS and Conduent that resulted in the Conduent Decision.

DSS communicated the day after the Conduent Decision was approved that it was going to re-score the proposals submitted by the respondents. While one could argue that more detail may have been included in the notice, the subcommittee does not believe the lack of specificity harms Maximus or any other respondent. The email stated sent by DSS to the respondents including Maximus, starts with, "As you know,..." This suggests to the subcommittee that the respondents knew prior to the email that there were issues with the first evaluation. Whether or not the respondents were aware of the issues is not relevant since the respondents were put on notice by the March 6, 2020 email.

Once noticed that the rescoring was going to take place at a later date, due in part to DSS's role in responding to the Covid-19 pandemic, Maximus had the opportunity to inquire into the events that led to the rescoring of the proposals. From the record before the subcommittee, it does not appear that Maximus did so. It could be argued that Maximus knew on March 6, 2020 about the rescoring, could have made inquiry as to why, and could have subsequently filed a contest on their own behalf at that time. The Conduent Decision, the exchanges between the DSS, Conduent, and the Board including its subcommittee are matter of public record. Consequently, one could consider that the claims in Maximus's letter of March 26, 2021 more than year after the Conduent decision could be considered as not being timely filed with the Board. The subcommittee declines to find the Maximus contest as untimely.

Maximus argues in its letter that it should have been a party to the first contest since it was highest ranked proposer. First, the subcommittee was not aware that Maximus was the highest ranked proposer. Being the highest ranked proposer doesn't necessarily mean that the parties will reach an agreement on a contract. The highest ranked proposer has the opportunity to negotiate a contract with a state contracting agency or a quasi-public agency. If those negotiations fail to produce a contract, the next highest ranked proposer is given an opportunity to negotiate a contract. In a recent decision by this subcommittee, American Dream Clean, LLC and Department of Administrative Services (DAS) dated February 17, 2021, this was the actual case. DAS was unable negotiate a contract with the highest ranked proposer, but DAS did negotiate a contract with the next highest ranked proposer. Second, and more importantly, the statute speaks to a contest made by a bidder or a proposer. The statute doesn't require notification of other bidders or proposers. The process suggested by Maximus, and not provided for in statute, would be too unwieldy if all proposers were allowed to participate in a contest. It would

be difficult for the subcommittee to meet its statutory requirement to issue a decision within thirty days. The subcommittee would note that TDEC, another respondent to this RFP, has filed a contest with the Board. The subcommittee will judge that contest separate and apart from this contest.

In the Maximus's letter of March 12, 2021, it requested a stay in the process of negotiating a contract with the highest ranked proposer. As stated previously, the subcommittee has not been informed by DSS who the highest ranked proposer is. It was also informed that a contract has not been finalized as of March 30, 2021. The Attorney General's office has advised the Board that the subcommittee does not have the authority to issue a stay. If a contract were to be negotiated and approved by the parties and the subcommittee subsequently found that the contract violated C.G.S. Sec. 43-36(a), the Board under its statutes could nullify said contract based upon a decision of the subcommittee. This would also not preclude DSS from taking such action to nullify a contract based upon the decision of the subcommittee.

Maximus states in its letter that it filed its contest out of abundance of caution regarding the timelines set forth in the statute. Maximus has stated that it has made an information request of DSS and that said information may be the basis for its contest. DSS states that it will not release this information until it successfully completes its negotiations with the highest ranked proposer. The subcommittee has never ruled a contest to be untimely because the bidder or proposer did not have the relevant information to make its case. When the materials requested by Maximus are released to it, Maximus may file another contest related and be based upon those released materials (See American Dream Clean, LLC Decision dated February 17, 2021).

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 Maximus on March 12, 2021 and as amended/supplemented by its letter of March 26, 2021.

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

Attorney Durham made comments and asked questions of the Subcommittee and Attorney Antonetti.

Attorney Antonetti provided comment and responded to questions.

During comments and responses, a date error was discovered on the first line of page 3 of the draft decision. The date was corrected from March 6, 2020 to April 15, 2020.

Motion made by Bruce Buff and seconded by Stuart Mahler to accept the draft decision in the matter of Maximus US Services, Inc. (Maximus) contest of HBPO RFP 07022019 as final. With no discussion from the Subcommittee members, the decision in the matter of Maximus US Services, Inc. (Maximus) 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 11:59 A.M.

Respectfully submitted: David Guay