STATE OF CONNECTICUT
OFFICE OF GOVERNMENTAL ACCOUNTABILITY
STATE CONTRACTING STANDARDS BOARD

Draft Minutes
State Contracting Standards Board 4e-36 Contested Solicitations and Awards Subcommittee
Special Meeting
Friday, February 20, 2015, 9:00 AM
Conference Room
First Floor, 999 Asylum Avenue
Hartford, CT 06105

Members Present:

Robert Rinker, Chair
Stuart Mahler
Roy Steiner

Staff Present:

Julia Marquis, Chief Procurement Officer
David Guay, Executive Director

1. Call to order

Meeting was called to order at 9:00 A.M. by Robert Rinker, Subcommittee Chair.

2. Approve the minutes of the February 6, 2015 Meeting

Chair Rinker entertained a motion to approve the draft minutes of the February 6, 2015 meeting of the State Contracting Standards Board 4e-36 Contested Solicitations and Awards Subcommittee as technically corrected.

After discussion, motion made by Stuart Mahler and seconded by Roy Steiner to approve the minutes of the February 6, 2015 meeting of the State Contracting Standards Board 4e-36 Contested Solicitations and Awards Subcommittee as technically corrected. All voted in favor, the minutes of the February 6, 2015 meeting of the State Contracting Standards Board 4e-36 Contested Solicitations and Awards Subcommittee were approved.

3. Discussion of subcommittee's authority and relationship to UAPA

Chair Rinker asked Chief Procurement Officer Julia Marquis to summarize the memo she sent to the Subcommittee members.

Members asked at the last meeting whether the deliberative process the Contested Solicitations and Awards Subcommittee undertakes with regard to contests constitutes a hearing under the UAPA and what the consequences of its findings are.

Ms. Marquis spoke with AAG Mark Kohler last week and they agreed on the following analysis.

The Subcommittee's process and decision does NOT constitute a "hearing" under the UAPA, nor does it meet the definition of a "final decision."

The Subcommittee, as constructed in 4e-36, is designed to provide an administrative remedy to bidders and proposers and is binding upon the state contracting agencies and the contesters. Since the Subcommittee's decision is not a "final decision" as defined in the UAPA, it is not subject to judicial review.

Members also asked whether entities or individuals could seek declaratory rulings from the Board. The answer to this is yes, they could seek a declaratory ruling from the Board, and if the Board declined to hear it, the entity/individual could seek a declaratory judgment against the state contracting agency in question, against the Subcommittee of the Board, or against the Board itself, assuming they have standing to do so.

4. Database USA's contest of DAS' award of a contract.

Chair Rinker began discussion by framing out where he believes the Subcommittee currently is on the matter. Information was to be provided by the Department of Administrative Services (DAS) to Database USA, and it appears, according to Database USA, that DAS did not respond in a timely enough manner for Database USA to respond. Database USA requested an extension of one week from when they receive the information from DAS to respond. Chair Rinker had asked, based solely upon the letter provided to the Subcommittee by DAS and sent to Database USA, for a qualified response from Database USA. Chair Rinker noted that the 56 page qualified response from Database USA was received yesterday, the day before today's meeting and he had not had time to fully review it.

Chair Rinker's first question was whether DAS is providing the information requested by Database USA as they indicated they would at an earlier meeting of the Subcommittee. Devin Marquez, Esq. from DAS responded that DAS did not meet the original promised date for fulfilling the request, but had subsequently met the request; sending Database USA copies of the other bidder's proposal and scoring sheets.

According to Mr. Marquez, in the middle of February DAS received a second request from Database USA for all communications on the project, and noted that the request is huge. Chair Rinker questioned the relevance of the second Freedom of Information (FOI) request of DAS by Database USA. Chair Rinker further commented that he believes the Subcommittee is not at a decision point without all the relevant information before it and a chance to review that information.

Subcommittee members discussed the timeline of information provided and information to be provided and the members' ability to review that information before rendering a decision.

In response to Stuart Mahler's question as to what are the salient points raised in Database USA's qualified response, Ms. Marquis quickly reviewed the response for the Subcommittee.

Chair Rinker stated he believed the contesting of the award was timely.

Chair Rinker asked the other Subcommittee members to speak to a developing consensus of moving a decision to a later date, suggesting March 6, 2015, the date of the next full Board meeting.

With DAS in possession of Database USA's qualified response, Chair Rinker asked for a response by Friday, February 27, 2015 from DAS. Devin Marquez from DAS agreed to keep Julia Marquis apprised of their progress on fulfilling the FOI request by Database USA.

A question of relevance of the FOI request was raised by Chair Rinker, asking what would be the offer of proof that would come from these requested documents. The Subcommittee tasked Ms. Marquis with communicating that question to Database USA.

By consensus the Subcommittee set the next meeting for 9:00 A.M. on Friday, March 6, 2015.

5. Discussion and approval of revised policies and procedures

Julia Marquis reviewed the edits made since the interim policies and procedures were adopted at the January 8, 2015 meeting.

Motion made Roy Steiner and seconded by Stuart Mahler to adopt as final the edited interim policies and procedures. All voted in favor. The State Contracting Standards Board 4e-36 Contested Solicitations and Awards Subcommittee policies and procedures as pasted below were adopted.

The following is a copy of Connecticut General Statutes Section 4e-36. Immediately following the text of the statute are the policies and procedures that were adopted by the State Contracting Standards Board's Contested Solicitations and Awards Subcommittee on January 8, 2015. Additional updates will be forthcoming. Please check back monthly for revisions.

Sec. 4e-36. Contest of the solicitation or award of a contract by bidder or proposer. (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.

(Sept. Sp. Sess. P.A. 07-1, S. 36.)

History: Sept. Sp. Sess. P.A. 07-1 effective June 1, 2010.

Policies and Procedures

1) The Chair of the Board shall appoint three Board members, at least one of whom shall be a legislative appointee, to serve as the Contested Solicitations and Awards Subcommittee.
2) Any bidder or proposer on a state contract may contest the solicitation or award of a contract to the Subcommittee in writing. "In writing" shall mean a written document submitted by email, postal mail, hand-delivery, or fax.
3) Such writing shall be directed to Julia Marquis, Esq., Chief Procurement Officer, preferably via email to julia.marquis@ct.gov, via hand-delivery or postal mail to at 999 Asylum Avenue, 1st floor, Hartford, CT 06106, or via fax at 860-566-2251.
4) Such writing must be submitted within 14 days of the time the bidder or proposer knew or should have known of the facts giving rise to such contest.
5) The Chief Procurement Officer (CPO) shall receive each submission, acknowledge receipt of the document(s), and determine whether the submission is timely. If it is not timely, it shall be referred to the Subcommittee.
6) If the submission is timely, the CPO shall review the contest to ensure that it is challenging only procedural elements of the solicitation or award, or that it claims an unauthorized, unwarranted noncompetitive solicitation process.
7) If the submission is timely and states a claim appropriate for the Board's review, the CPO shall forward the contest to the Subcommittee, at which time the contest will be deemed "received" by the Subcommittee.
8) The assigned Subcommittee may attempt to settle and resolve any such contest and may ask the CPO to obtain additional information in writing on the Subcommittee's behalf.
9) If resolution is successful, the matter will be closed.
10) If resolution is unsuccessful, the Subcommittee shall issue a decision on the matter, in writing, within thirty days of receipt of the contest.

Such decision shall:

(a) Describe the procedure used by such agency in soliciting and awarding such contract;

(b) Indicate such agency's finding as to the merits of such bidder or proposer's contest; and

(c) Inform such bidder or proposer of the right to review the agency's findings.

11) A copy of such decision shall be provided to such bidder or proposer.

6. Other Business

Under other business Julia Marquis asked to respond to a question raised previously by the Subcommittee about whether the Connecticut Airport Authority and the State Education Research Center (SERC) were considered State contracting agencies as defined at C.G.S. 4e-1 (28). Ms. Marquis indicated both are considered quasi-public entities, with the Board appearing to have limited authority and jurisdiction. Chair Rinker asked Ms. Marquis to write up her analysis for the Subcommittee.

Further general discussion was held on the Board's authority and jurisdiction over various entities.

Members also discussed the matter of the production and approval of regulations.

7. Adjournment

Hearing and seeing no other business, Chair Rinker entertained a motion to adjourn.

Motion made by Roy Steiner and seconded by Stuart Mahler to adjourn. All voted in favor, the meeting was adjourned at 10:10 A.M.