

Chairman: David Vaught

Members: Michael Bass, Ed Bedore, Diego Ferrer, Ricardo Morales

### **Minutes – May 13, 2010 Meeting**

Present in Springfield: Ed Bedore  
Mike Bass  
Rick Morales

Present in Chicago: David Vaught  
Diego Ferrer

The Board started the meeting by confirming attendance at 11:35 a.m.

Member Bedore made a motion to approve the minutes of April 8, 2010 and April 22, 2010. The motion was seconded by Member Bass. The motion was unanimously approved.

First item on the agenda was CMS Facilities. In attendance for CMS was Mr. Nick Kanellopoulos, Acting Director of Property Management. Mr. Kanellopoulos stated that the holdovers are currently at 2 leases that will need action by June 30, 2010. At the previous meeting the Board asked for a detailed account of the total amount spent at 500 N. Pulaski in Chicago for the build out of DHS Food Stamp Unit. The total amount spent was \$150,000. About \$70,500 went to a construction carpentry firm for the demo to open up space to accommodate the 60 employees that moved into the facility. Roughly \$79,500 went to an electrical contractor for all the IT and telecom drops that needed to be installed.

Member Bass asked if the 2 final leases in holdover were the only two or if there were going to be more to roll over in May and June. Mr. Kanellopoulos replied that CMS has none that would go into holdover status before July 1, 2010. Chairman Vaught asked if CMS is projecting forward six months to check if any leases would go into holdover. Mr. Kanellopoulos replied no, but there are a few that have been executed and completed that technically that come July 1, 2010 the IOC will still continue to pay rent because the six months have not run out, but those have been done. On July 1, 2010 there will be no leases in holdover and he is not talking about the six month period. Chairman Vaught asked if CMS had a number that absent further action would go into holdover between July 1, 2010 and December 31, 2010? Mr. Kanellopoulos replied affirmatively. Assistant Director of CMS Steve McCurdy stated that he had those numbers. He stated between August 31, 2010 and December 31, 2010 there will be 15 transactions that will have to be dealt with to avoid going into holdover and two are no-cost leases. Then there will be an addition 53 transactions between December 31, 2010 and June 30, 2011. Chairman Vaught stated that CMS has 2 right now and then for FY11 CMS will have a work load of about 70. Mr. Kanellopoulos replied affirmatively. Mr. McCurdy stated that some of those are out for bid right now. Member Bass stated that this is good news and that CMS has the holdovers down to a manageable level. Good job.

Member Bedore stated that during questioning at the Special Meeting in April on the DHS lease in East St. Louis that it was ascertained that the present lease has been underutilized for the last four to five years. The proposed lease will have 84 employees at 298 sq. ft. per employee. The present lease has 28 employees, which is 892 sq. ft. per employee. If the 298 is used times the 28 employees you have 8,344 sq. ft. or 16,656 sq. ft. underutilized. At 16,656 sq. ft. for the 4-5 years cost the State \$1.2 million. There should be a penalty assessed because the citizens of Illinois have been clipped. The penalty should be assessed on CMS and DHS. The walk off should be \$1.2 million. Both agencies should be penalized \$612,000. Member Bedore made a motion that OMB look at penalizing these two agencies in the upcoming budget in the amount of \$1.2 million or \$600,000 each for this infraction. Member Bedore stated that this lease should have been consolidated or moved out, but nothing was done for 4-5 years. Chairman Vaught stated that he understands his point. Chairman Vaught stated that this January the same group of people can document savings of about \$14 million, but have a target of achieving additional savings the next year. Mr. Kanellopoulos and Mr. McCurdy responded affirmatively. Chairman Vaught stated that if the penalty would impair the ability to achieve future savings there could be a counterproductive side to this. Member Bedore wanted to know how else will it get the attention of CMS and other agencies. Member Bedore stated that he withdraws his motion and leaves it with OMB to take a look at this and when they are doing their cutting for the upcoming budget see about transferring \$600,000 from CMS and give it to the Procurement Policy Board since they have additional responsibilities with the SB51 implementation. Chairman Vaught agrees that the additional responsibilities with SB51 would require some additional resources in the PPB's budget and appreciates Member Bedore's point. Member Bedore re-stated that he withdraws his motion. There were no further questions or comments.

Next on the agenda was the Existing Review of OEIG – Learning Management Contract with Meridian Knowledge Solutions. Director Matt Brown stated that this is a review of the Office of the Executive Inspector General's contract for Learning Management's Ethics Training with Meridian Knowledge Solutions. This contract was put under review by 3/5 vote of the Board and at the time was an existing contract. There was some initial discussion at that Board meeting. OEIG has followed-up in writing to the Board on the subject. This was a request by State Senator Susan Garrett that the Board initiate this review. In conclusion, the Board asked questions to get a better understanding of the transaction. The Board has come to some pretty distinct points knowing that this is a contract that OIEG will have an opportunity to review in the coming months that will offer a renewal opportunity in the next fiscal year. The office has suggested that they continuously review reductions in training and seek equal reductions in the cost of the contract. Director Brown invites the representatives for OIEG to make any additional statements necessary at this time. In attendance was Director of Ethics Training and Compliance Dave Keahl, and First Deputy Sydney Roberts in Springfield and Legal Counsel Sean Ginty in Chicago. Mr. Keahl stated that Director Brown's statement about the contract was accurate. He stated that if the Board looks at what has been done the last few years with their relationship with Meridian and saw that OEIG has turned it into an agreement that allowed the class vary depending upon usage of the learning management system. OEIG has been attentive to the terms of the contract with the exception of the volume of usage of CMS and the service levels. He believes that OEIG and the vendor have lived up to both sides of the agreement and will reassess how they choose the ethics training in the future as they reach the end of the contract.

Director Brown offered to the Board that the staff level of review of this contract is complete and Board members might have additional questions after receiving OIEG replies from the previous meeting. At this point the review the Board put this transaction under is headed towards some sort of conclusion and would offer that to the Board members and at some point would want to

put some finality on this and conclude the review. Chairman Vaught asked that in the second paragraph from counsel's letter regarding the need for agreement to the State's offsetting amounts of the State's computation of partially offsetting amounts. Mr. Keahl replied that they gave the vender an opportunity to review their computation and for them to agree that OEIG has calculated those months properly. Chairman Vaught wanted to know what the amount was. Mr. Ginty replied \$5,741. Chairman Vaught wanted to know what that was based on. Mr. Keahl replied it was based on terms in the State's Prompt Payment Act and the standard terms to review the Prompt Payment Act. Chairman Vaught asked how long Meridian has owed \$27,886. Mr. Keahl replied since about July 2009. Chairman Vaught asked if they were paying interest on that. Mr. Keahl replied they are not currently. Chairman Vaught stated that their position is that they want the State to pay interest in accordance with the Prompt Payment Act, but they don't want to pay interest on the \$27,886 and using the \$5,741 liability as an excuse to not pay a \$27,886 liability. Chairman Vaught stated that the Prompt Payment Act provides that the interest is computed and paid after the other invoice is paid. So, why is that language provided in the Prompt Payment Act preventing them from paying their \$28,000 on time? Mr. Keahl replied that he could not speak on the vendor's rationale. Chairman Vaught wanted to know what OEIG's rationale for not collecting the \$28,000 in a timely manner. Mr. Keahl replied that they have asked them for it and stated that they would pay it. Chairman Vaught stated that when you asked someone to pay a bill and it is still not paid in a year that means no, they are not going to pay it. Mr. Keahl replied that that is not the case. They want to see the computation of what was owed them from the Prompt Payment Act. Chairman Vaught stated that they are not owed anything under the Prompt Payment Act by its own terms. The computation of the Prompt Payment Act does not come at the same time as the payment of the voucher. It comes after the payment of the voucher. Mr. Keahl asked the Board what they suggest that OEIG do. Chairman Vaught replied that OEIG should collect what the vendor owes and vigorously figure out the terms of this contract. Member Bass asked if this has happened before. Ms. Roberts replied that no, this was the first time something like this has happened. Member Morales asked what the normal process was for collecting money. Ms. Roberts replied that OEIG has not been in this situation before and does not have a procedure in place. Mr. Keahl stated that under the terms of the contract they are limited on what they can do. Member Bedore asked what OEIG is going to do. Mr. Keahl replied that if the vendor refuses payment then they would consider voiding the contract. Member Bedore asked Mr. Ginty to have written documentation on what actions will be taken in this situation. Member Bedore had another question for Mr. Ginty on why OEIG doesn't sue the vendor for non-payment instead of voiding the contract. Mr. Ginty replied that is an option they will certainly consider. No further questions or comments were made.

Next on the agenda was the Official Review of lease 6315 at North Riverside in Chicago. Mr. Kanellopoulos stated that Mr. Henry Johnson with DHS was in attendance representing DHS. This lease is located at Franklin College in Melrose Park. The proposed lease will move that location into 7222 W. Cermak Rd. in North Riverside. This is a welcoming center that was created in 2007 to offer comprehensive resources for new Americans and refugee populations. The proposed lease will increase the square footage of the facility from 2,650 sq. ft. to 4,270 sq. ft. The estimated direct cost of that lease is \$19.00 per sq. ft., which is \$18.00 for base rent and \$1.00 for electrical and everything else is included. This replaces a small lease with a base rent at \$31.78, which was an all inclusive lease. The square footage will increase, but the total cost of the lease is estimated to go down slightly because of the reduced base rent. Currently available market data in the area indicates that rents go from about \$19.13 to \$28.44 a sq. ft. in that geographic area. Mr. Kanellopoulos and Mr. Johnson would be happy to answer any of the Board's questions.

Member Bedore asked if there was an increase in personnel for this office. Mr. Johnson replied that there has been a slight increase. Member Bedore commented that the State is going to pay \$52,157 for improvements to this lessor's property. Mr. Kanellopoulos responded affirmatively and would include signage, build-out of eight offices, carpeting and paint. Mr. Kanellopoulos stated that under CMS rules improvement can be done to leased facilities in either a lump sum or amortized over a period of years. DHS did have the money and chose to do a lump sum payment so it would not be amortized and no interest will be paid. There is nothing unusual about this except in this situation there were lump sum funds available. Member Bedore asked if Mr. Kanellopoulos feels that the rent rate is justified for this area; this same area that has seen a decrease in value of the area and properties. In this area there is no way the State should be paying \$20.00 a square foot. Member Bedore stated that this lease is wrong and the rent rate is too much for the area. Mr. Kanellopoulos stated that CMS looked at numerous locations to relocate this office and at the end of the day there were two different offices. The other one was not accessible to public transportation and this one was. It is a requirement of this office that it be located near public transportation and those areas come at a higher rate. Member Bedore asked if Mr. Kanellopoulos knew the area and if he would pay \$20.00 a sq. ft. Mr. Kanellopoulos responded affirmatively for both. Member Bedore told Mr. Kanellopoulos that he needed to take a better look at what is happening to the property and values in that neighborhood. Member Bedore commented that there are leases in downtown Chicago that have rate at \$18.00-\$20.00 a sq. ft.

Chairman Vaught asked Director Brown to summarize the review procedure on this. Director Brown stated that this was put under review in a consistent pattern of the leases that have been put under review at prior Board meetings. The staff consideration is based on the fact that the Board is still waiting on administrative rules that should be established and guide the agency in decisions on how to effect a lease, how to associate that lease with the appropriate rates, build-outs, etc. The proposed policy recommendation is that those rules come forward and he believes that CMS needs them to appropriately administer their portfolio. Mr. Kanellopoulos replied that since the last meeting CMS has submitted the rules to JCAR for a procedural review. CMS has received those back and are now finalizing in house their draft of the rules before submitting them to JCAR. Along with getting holdover reduced to zero and a lot of moves associated with that process and also some staff turnover that affected that project, CMS has been a little slow in getting them filed. Chairman Vaught asked what the rules say about downtown versus North Riverside and having public transportation nearby. Mr. Kanellopoulos replied that CMS' search is based on the agencies' programmatic needs. The programmatic need of this office was the geographic boundaries. Chairman Vaught asked how CMS makes determinations on market rate, location and what the rules say about that. Mr. Kanellopoulos replied that CMS' search is based on the agencies' programmatic needs and the programmatic need of this office is geographic boundaries. CMS looks at those with the agency and why the geographic boundaries are the way they are. For some agencies it might be by zip code and others it might be different. CMS then looks at the type of office it is. If it is a client service office then public transportation is a key requirement. This does narrow the field of candidates for offices. Also, looking at rate CMS does look at other locations. Mr. Kanellopoulos stated that a lease under 10,000 sq. ft. can be either bid out or CMS can go out and make calls and try to find potential locations. In this case CMS went out and looked and made calls to find other locations. At the end of the day this location was chosen. DHS is alright with this location and it was the best location out of several that were looked at. CMS agreed and look forward to negotiate a lease. Chairman Vaught stated that Mr. Kanellopoulos did not answer his question about the rules and how the rules cover this issue. Chairman Vaught asked how the rules handle the fundamental decision about planning for how to adjust for different market areas and what the target should be. Mr. Kanellopoulos replied that

what the new draft of the rules is going to say is that with holdovers eliminated CMS intends to bid out every lease and let the market decide. Mr. Kanellopoulos stated that CMS has had numerous discussions about market data and due to economic conditions around the State the market data does not seem to be current when discussing it and he admits that. Mr. Kanellopoulos continued that the rules do not talk about using current market data. Also, once you leave a metropolitan area a lot of the times there is no market data to rely on so the rules cannot use that as a measuring statistic. The rules will stress that basically all leases should be bid out, with very few exceptions. Mr. Kanellopoulos stated that there are a few leases that have specialized space like labs. Bidding out might be a waste of time because it cost more to build-out a lab and to renew a lease where the build out has already been done is the most obvious solution to the lease because of the specialized space. That is one of the main exceptions. Also, Mr. Kanellopoulos stated that intergovernmental agreements are another. CMS might want to enter into an agreement with another municipality or county. There may be deals CMS enters into with other entities and those will not be bid out. These are the two big exceptions. There might be a landlord that has offered CMS a decrease to stay, but is not sure how it will be entertained. Those are the three major categories, but they might find 1 in 20 transactions with an intergovernmental agreement. Chairman Vaught stated that was his concern about the rules is that CMS does not know how entertain. Isn't that what the rules are suppose to tell us, how it would be entertained. Mr. Kanellopoulos replied yes and that is why CMS is going over the final draft and that language has not been finalized.

Member Bedore stated that the market data that Mr. Kanellopoulos uses is a bunch of nonsense and it's out of date. Why is the State paying \$52,000 to paint and carpet this man's building just because DHS has the money? This is being done at the taxpayers' expense. Isn't that a condition of renting the building that the landlord would do these things. Member Bedore doesn't understand or agree with this just because DHS has the money. Mr. Kanellopoulos replied that this lease was open space and walls needed to go up; paint and carpeting need to go in and at the end of the day CMS would be paying for it anyway. Either the base rent would have been different and the agency would be paying forever or pay for it separately. Mr. Kanellopoulos stated that in recent years a lot of old leases came up that had base rent that included, in some cases, millions of dollars in build-out that was built into the rent that never disappeared and when it went into holdover CMS was still obligated to pay those amounts because they were never broken out in leases. Now they are separated out and in this case it is a one lump sum payment. Member Bedore stated that it looks like the State is paying for it and is paying up to \$20 with increases for the rent. Member Bedore stated that he thought that Mr. Kanellopoulos stated that CMS was going to be taking hard looks at the rate and start looking for 10-20% reductions. Member Bedore stated that CMS could get good office space, maybe not right next to the Thompson Center, but in downtown Chicago for up to \$20 a square foot. Member Bedore does not agree with CMS and believes that they did not do a good job of negotiating this rate at all.

Member Ferrer asked if there was any information in the rules for challenging requirements. Mr. Kanellopoulos replied that at the end of the day the rules say is it is CMS' decision to enter into the lease. In this case it was CMS that narrowed it down to a couple of choices that they wanted DHS to see and one of the locations was rejected because of the public transportation accessibility and DHS preferred this location. CMS cannot always offer choices. When leases are bid out CMS might receive one choice back, but at the end of the day it is CMS' decision. Member Bedore stated that DHS has 6 partners and wanted to know how often those partners were in the office or are they field people. Mr. Johnson replied that those are agencies that work with the population that they are trying to serve and are in the office almost every day. This program is specialized and offers evening and Saturday hours.

Director Brown stated that the Board's review authority on this is for policy purposes; the Board's policy recommendation and the expressed anticipation in seeing the rules as soon as possible. At this point the Board would expect to see CMS with some follow-up on what their commitment was and what is next for the rules.

Next on the agenda was the Official Review of NIU – Misc. Non-Food, Food Services Related Commodities. In attendance was Bob Baker representing the Chief Procurement Officer for Higher Education and Al Mueller, the Director of Purchases for Northern Illinois University. Director Brown stated that this is a contract review that was precipitated at the staff level. This is a scenario where the university has a multiple contract environment for food related items. This multiple contract environment was issued some time ago. The multiple contract progression was that some vendors associated with that contract chose not to participate in a renewal and that their other services are through either another procurement or different procurement with the university. The particular contract in discussion was in the same arrangement, but not let at the same time as the multiple contract letting. One of the issues being struggled with is the identification of need, whether a need could be procured and satisfied under a separate procurement contracting event and then shifting to this other multi-contract environment to satisfy the need. In conclusion, if the original letting in a multiple-contract environment included the subsequent contract it would have been permissible to look at them in a secondary or tertiary manner, but in this scenario the contract was no longer available to the State and was let under its own separate identification of need and Board staff didn't see the ability to use the other contracts in the multiple contract to satisfy the need. The request was for the university to bid for their need or execute an emergency contract if their need was critical.

Mr. Mueller stated that he did have discussions with Director Brown and Will Blount with the Procurement Policy Board following the decision to review their contract and came to a better understanding of the concerns. NIU decided to re-bid these commodities and are currently in the process of taking the steps to do that. Chairman Vaught stated that the university referred to this quantity by increasing one vendor by 68%. Is there any significance to that percentage? Director Brown replied that one of the indicators of the staff examination is what sort of quantity examination occurs and when staff sees things in the 5-10% range in an open order quantity environment there is the general assumption that they continue to validate that that is due course under the existing contract. As change orders come forward in such large increments PPB becomes very curious as to the basis to the need and whether that is supported by the change order statutes and the Criminal Code and whether it is germane to the original scope. That 68% is an indicator for those reasons. Mr. Baker stated that NIU is in agreement with Director Brown once it was brought to their attention. Anytime there is a change in a contract the extent of the change should be within the scope of the original contract or bid process and is in agreement that 68% is beyond the scope and that is the reason that NIU was in full agreement with the Board and did require a re-bid rather than a renewal. Director Brown restated that the university is in agreement of the recommendation and that concludes this review.

Next on the agenda was the Official Review of DHS – Elgin MHC Boiler Repair. In attendance was Acting SPO for DHS Bill Strahle. Director Brown stated that this review was initiated at the staff level. This was a 600% increase suggested through a change order to an existing contract and the existing contract served as an open order service and repair contract so that the agency can anticipate a certain level of maintenance and operation at their facilities. The concept that moved this forward was a 600% change order to this environment constituted something other than regular and anticipated maintenance events. If the event was of an emergency nature then

the emergency contract process should have been implemented to protect public safety and welfare. Since that path was not chosen the PPB asked the agency if they were in a situation to go out and contract independently. These have been repairs that have been satisfied at this point. There is no corrective action, but the agency's response today might shed a little light on how they will direct this decision in the future. Chairman Vaught asked if Mr. Strahle had anything to add. Mr. Strahle stated that the agency concurred with the Board's recommendations.

Chairman Vaught asked if this contract was subjected to competitive bid. Mr. Strahle replied two years ago in FY09 and this is the last renewal for it and DHS will go out to bid for FY12. Chairman Vaught asked if this was a master contract. Mr. Strahle replied no that they do an IFB for boiler maintenance repair services and ask for an hourly wage rate for those services. Chairman Vaught asked if this was strictly for DHS facilities. Mr. Strahle replied no it was just for the Elgin MHC. Director Brown stated that again the agency is in agreement with the Board's recommendation and future actions will contemplate this discussion.

Next on the agenda was the Legislative Report. Director Brown stated that the Board Members are aware of the bill that was passed last week out of both houses as a trailer bill to SB51. It provided some modified language on issues that many individuals from the Board and agencies in the Governor's office and the private sector have been participating in. These were refinements to 5 or 6 new policies that most felt needed some adjustment; sub-contracting, filing, financial disclosures, and communication journals. As well as some federal funds issues that DOT was facing by the Federal Highway Administration offering to withhold funds for lack of clarity in the executive structure that DOT would be using to administer contracts. Director Brown stated that his understanding is that that clarification has satisfied the Federal Highway Administration. Moving forward, there is an implementation date ahead of us on July 1 for the majority of the Code. There is a delayed effective date to January 1, 2011 on the communications journal. The Board has been so charged to provide administrative rules on the handling of those communications as well as several other issues. Chairman Vaught asked on this subject if there are remaining pending issues that might be an issue going forward. Director Brown replied that he would summarize this as an 80/20 issue. Meaning that 80% of the issues that are of concern to people are issues that will be vetted out in the administrative rule-making process and 20% of the comments and concerns are stemming from some inconsistencies in thresholds and numbers as applied to the Code at various levels that will make administration of the Procurement Code more difficult. Those are what people are looking for consistency on and will require administrative change. Chairman Vaught asked if the review provision for Senator Kotowski is now in that bill. There was a discussion at the April meeting proposed by Senator Kotowski, which will mandate the review of contracts renewed in excess of \$250,000 value and that the PPB will have the opportunity to object to those transactions. That was shifted into the procurement trailer bill and his understanding is that the original bill might be subjected to adoption by the General Assembly so that the merits of the bill standing alone are heard in that same way.

Member Bass wanted it clarified that the power to the Board in that section is the authority to review based on the threshold, it is automatic. Director Brown responded affirmatively. Member Bass then asked that the ability to then object to the transaction; what is the impact of the objection? Director Brown replied that the rejection in this event is somewhat different than objecting to the renewal of a negotiated lease. In objecting to a negotiated lease you are objecting to the terms that are presented to the Board. That sends the leasing participants back to the drawing board and they can present again. This review of contract renewals have fixed terms and conditions that were agreed upon in their procurement process and there is no opportunity for the

agencies to go out and re-negotiate with those vendors. This is an opportunity for the Board to object to the renewal and at that point the renewal may not proceed.

With no other business to discuss Member Bass made a motion to adjourn and go into executive session on the discussion of personnel and was seconded by Member Bedore at 1:10 p.m. The motion was unanimously approved.