



STATE OF ILLINOIS PROCUREMENT POLICY BOARD

Chairman: David Vaught

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

Minutes – September 1, 2010 Meeting

Present in Springfield: David Vaught
Ed Bedore
Mike Bass

Present in Chicago: Diego Ferrer

Present via telephone: Rick Morales

The Board started the meeting by confirming attendance at 10:00 a.m.

A motion was made to accept Member Morales participating via teleconference by Member Bedore and was seconded by Member Bass. The motion was unanimously approved.

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

Next on the agenda was CMS Facilities. In attendance was Mr. Nick Kanellopoulos, Acting Director of Property Management. Mr. Kanellopoulos stated that the facilities rules have been drafted, but they have not been filed with JCAR yet. They are still going through the administrative process at CMS to get the formatting completed, but they are drafted and will be filed within a few weeks or sooner. Member Bedore wanted to know if there was any discussion with the Procurement Policy Board or staff or did CMS do this on their own. Mr. Kanellopoulos replied that they did it on their own. In the past CMS had filed rules that dealt with space standards and at the time the position of the Board was that the process of filing the rules was to give them to the JCAR and to the Board, which gave the Board time to respond during the public notice period. Mr. Kanellopoulos assumed that it would be the same process. Chairman Vaught wanted to know if they are the same as the previous draft or is there more substance to them. Mr. Kanellopoulos replied that the space standards are the same as before. The other changes to the rules are updates to comply with statutory requirements, which are very similar to the draft; they also reflect CMS current procedures for issuing RFIs and evaluating bids. Other major changes are relationship agencies and how CMS obtains information and works with the agencies to issue RFIs for leases. Mr. Kanellopoulos stated that there are not changes in the rules from the previous submission. Chairman Vaught asked if the rules would be filed before the next meeting. Mr. Kanellopoulos replied affirmatively. Member Morales asked if there were any major changes that CMS wanted to talk about the rules being submitted. Mr. Kanellopoulos replied that one of the major changes that are a long-standing problem at CMS was awarding bidders and then negotiating for a good rate. With these changes CMS is going to select a lessor and start negotiations to come up with a good rate. If one cannot be met then CMS would move onto the next best bidder and do the same. This would continue until CMS finds the best rate for the State and then award to that bidder. This will lead to better contracts being entered into in the future.

Member Bedore asked why the Board has not received any update on where CMS was at on the consumption of energy, like light switches and thermostats. Mr. Kanellopoulos replied that CMS could provide an update at next month's Board meeting. No further questions or comments were made.

Member Bedore asked if the Board could discuss lease 6277 while CMS is already at the table. Chairman Vaught agreed.

Next was CMS lease 6277 at 1107 W. DeYoung Street in Marion. Executive Director Aaron Carter stated that on August 17, 2010 the Procurement Policy Board placed this lease under review. The PPB is concerned with the policy of the lease solicitation and award when CMS does not have the current standards by which it makes leasing decisions. Administrative rules that date to 1982 and no rules or guidelines appear to exist for making award determinations in non competitive environments. Director Carter also stated some items to note is lease 5239 was presented to the PPB on March 17, 2010 and that meeting showed consolidation totals of 36 and 12,425 sq. ft. Lease 6277 as presented as a result of an RFI process shows consolidation totals of 25 employees and 10,000 sq. ft. Lease 6277 gives the option to expand the square footage by 3,000 sq. ft. after lease execution.

Chairman Vaught asked if CMS had any rules or guidelines on being competitive in a non-competitive leasing environment. Mr. Kanellopoulos replied no, that the Procurement Code is clear; all leases should be RFI unless you use one of the exceptions. In this case CMS posted an RFI and the boundaries were the service area of the Union Capitol Development Office in Marion. There were three proposals – two from one landlord and one from the incumbent. One of the proposals from the other landlord was deemed unresponsive for various reasons and when the two responsive proposals were judged the incumbent landlord was slightly lower and that lease was chosen. There is no update to rules that are going to change CMS choosing the lowest proposer when a lease has been competitively bid.

Mr. Kanellopoulos replied that this lease was originally an RFI in February 2009. Four proposals were received. Eventually this lease, through negotiations with the incumbent landlord, was the lowest proposer and due to the fact that CMS negotiated a lease that varied from the RFI that was issued this lease was posted to the Procurement Bulletin and required the Board's approval. It was presented to the Board in February 2010 and at the time the Board rejected the lease. CMS then published another RFI in April 2010. Again, three proposals were received from two landlords and again the incumbent was chosen for the lowest cost option. The lease was negotiated in order to get the lowest price from the current landlord and CMS did execute a five year firm lease that allowed CMS to eliminate a tax clause that the incumbent landlord put in his bid. The landlord will update the carpeting and paint. The base rent is \$11.90 flat for the first five years of the lease. This will also replace a lease that was 12,425 sq. ft. and will have a 20% reduction in the area. There is a 42% increase in rent over the term of this lease, but there is a 17% reduction in total cost overall, which is due to the elimination of the one security guard at that location.

Member Bedore stated that the papers that were submitted to the Board state that the security guard has been eliminated in March 2010. Director Carter and Will Blount conducted a site visit and were greeted by a security guard. Member Bedore wanted to know what was going on since it was stated that the security guard was eliminated in March 2010 and that there is 520 sq. ft per employee. How can that be justified? Mr. Kanellopoulos replied that the specifications were drawn up on the basis of the office having 35 employees and the 10,000 sq. ft. was programmed

for the file space and waiting room that was needed for that office. At the time CMS published the white paper there was some confusion of the number of employees and there are 32 employees at that location, which bring the square footage per person to 312. Chairman Vaught wanted to know why the 3,000 sq. ft. option was put into the specifications. Mr. Kanellopoulos replied that CMS put in the option just in case the office grows. With not knowing what the future holds CMS wanted the option there if the office would grow and take on more employees. Right now there is no intention to execute the option for the extra 3,000 sq. ft. of space. Member Bass stated that CMS has a lot of history with this building and it is less than optimal with the landlord, which gave promises that have not been taken care of. Are the only clients at his facility in Williamson County? Mr. Henry Johnson representing DHS replied that no there are more clients outside of Williamson County. Member Bass wanted to know that when the rules are finally in place will they help eliminate some of the issues that are raised in this type of lease. If they don't then the rules are not good enough. Mr. Kanellopoulos replied that rules talk about it and are updated is correct, but in the end it is the job of CMS to work with the agency to determine the most expansive boundaries possible for the office. Member Bass stated that in the end the rules should be able to provide and overall guide to move through this process and it needs to become more efficient.

Member Bedore stated that CMS has set this 10,000 with the 3,000 so it is 520 sq. ft. per employee. So CMS could have had a building and there was a bidder with a lower rate with less square footage because he was deemed non-responsive because he did not meet 10,000 sq. ft. Chairman Vaught asked Member Bedore if this was what the protest was about. Member Bedore replied affirmatively. Chairman Vaught asked why the Board didn't get a copy of this protest when there is a contract review. Mr. Kanellopoulos replied that he was told to provide the protest in their response. PPB requested a copy of the CMS response and we have not given a response to the lessor yet. Mr. Kanellopoulos stated that they will provide the Board with a copy of the protest for their review. Member Bedore stated that he does not know the landlord, but looking at this building and the square footage that he has this agency and our people looking at it says you could move into it tomorrow with less rate per square foot, and 4,000 less square feet. This would save \$1.32 million. Member Bedore stated that 520 sq. ft. per employee is unacceptable. Member Bedore talked with one of the area Directors who stated that he didn't know how they are going to cut 2,400 sq. ft. out of this office. Member Bedore believes that this was a PR thing to get the square footage down and put the 3,000 sq. ft option back in then they are back to where we started from and doesn't know how the Board can accept this lease. Member Bedore wanted to know why it had to be 10,000 sq. ft. Just because the current building has 10,000 sq. ft. Member Bedore said that it appears like CMS is directing the RFI right to this owner. Assistant Director of CMS Steve McCurdy stated that he resented that. Mr. McCurdy stated that if he believes that anyone is implying that CMS is directing their leasing to potential bidder to formally open up an investigation. Chairman Vaught stated that there has been some vigorous debate here. This has been a controversial lease when it was here before and still is. Chairman Vaught stated that his concern is that there is a protest from a bidder and in a contract review in which the Board has not seen a copy of and not sure when the response of that is due. Mr. McCurdy stated that CMS will go back and take the Board's comments into consideration. Chairman Vaught stated that moving forward that any protest documents should be provided to the Board prior to the contract review at the Board meeting. Mr. McCurdy stated again that if this Board thinks that CMS or this administration has conducted their activities by directing their leasing activities to anyone he would encourage anyone to formally ask for an investigation with the US District Attorney. Mr. McCurdy stated that he is at room 715 of the Stratton Building and would look forward to talking to them. Chairman Vaught stated that they will have to continue

the review of this lease once they receive the protest document. No further questions or comments were made.

Next on the agenda was Board Resolution on Filing of Financial Disclosures with the Procurement Policy Board and BEP/DBE Award Notice Requirements. Director Carter stated that the PPB office drafted these resolutions after initial work with the CPO's. These were drafted to get the Board's consensus of where the Board's position is on it. This first resolution relates to the filing of financial disclosures with the PPB. Member Bass asked if the CPO's have seen this. Director Carter replied no it came to the Board first. Chairman Vaught stated that at the bottom of the second page it states that the Board finds that the disclosure of financial interest should apply to all contracts procured under the Illinois Procurement Code, whether competitively selected or not and instead selected based on the small purchase, emergency or sole source provision of the Procurement Code. He believes that this is an important definition and not just talking about those that goes through the procurement process providing the statute but the exceptions and would suggest the Board indicates the purchase of care exception, which is a substantial exception than the three that are indicated in terms of dollars. This should be referred to as well. Chairman Vaught asked for Director Carter to share this with the CPO's and bring it back to the Board at the next meeting.

The next resolution pertains to the filing for BEP/DBE participation and goals with contracts with the Procurement Policy Board. Mr. Todd Turner, the Board legal counsel wanted to clarify the resolution. Mr. Turner stated that the first page of the resolution and the block indented language is how the current law reads and provides for and the intent of the resolution with below items one and two is to clarify when that information should be submitted and the information that is required under the statute in numeral 1- 4 that are shown. That information should be supplied even if 1-3 apply, but not 4. It is counsel's understanding that there was some discrepancy about what information had to be supplied and when. The intent of the resolution is for the Board to give its position on the statute as written. The intent is encompassed in one and two.

Member Bass wanted to clarify that this is based off of a law that went into effect as of July 16, 2010. Mr. Turner replied affirmatively. Member Bass stated that where the Board handled transactions in 51 where they were able to grandfather solicitations that had occurred before the effective date of the law. Were there specific languages that allow that? Mr. Turner replied affirmatively. Now this law that came in on July 16, 2010 it is saying even if the solicitation occurred prior to that the contract award is beholden into this new law. Mr. Turner replied that is what this new resolution says and that is what is before the Board for consideration. Member Bass asked to have this reviewed by the CPOs and come back or have this on the agenda at the next Board meeting to give their opinions on these resolutions. Member Bass personally thinks that this law was less than eloquently made and because of that it allows more interpretation latitude.

Mr. Matt Brown stated that with not having the opportunity to review the resolutions yet that all of the CPO's would be happy to return and comment on them at the next Board meeting. Mr. Brown had one request on the interim. At this time, in absence of this information, from a Board that is not providing waivers on transactions across the board where this information is excluded. Many agencies are trying to provide this information as it can be provided with ease. This is not about convenience it is more about can we do it appropriately and easily. The line item bid is a question where the CPO's are just now hearing some guidance on whether it needs to be by line or by vendor. However, environments do exist where there are multiple award opportunities

where they are not just using one vendor and 500 lines. They are scanning and deciding how to best basket the bid and the response from each vendor. Mr. Brown continued that the CPO's want to do it appropriately and genuinely within the intent of the law. They would like to work out some solution in the interim that provide waivers and allows business to transact so there is not a big hold up. Member Bass stated that Mr. Brown is going to go by what is stated in these resolutions and if he wishes the Board to pass this resolution they can, but stated that the Board could always come back with a revision as you and the other CPO's look at the interpretations out there. If the CPO's believe that is more critical to get the ability to get waivers and his interpretation of these resolutions is that they are conservative resolutions, meaning broad in terms of the law. Member Bass stated that he didn't want to hold up procurements in the meantime and there is not an effective way to do it other than pass each resolution and have continuing discussion on how to refine them. They are pretty onerous on which they will have numerous interpretations and will have an effect on how the Board does business in the short term, but would put on the CPO's to work with the Board on their interpretive valleys because of the way the language is written. Mr. Brown replied that they would like time to review and collaborate with the Board. Member Bass stated that he is willing to make a motion to accept the resolution on the financial disclosures. Chairman Vaught asked if Member Bass would amend his motion to include his earlier suggestion from the bottom of page two of the resolution to include persons of care in the exceptions. Member Bass agreed. Chairman Vaught seconded the motion. Member Bass wanted to clarify that what he is proposing is an order to have certainty for the CPO's to know the rules of the game to in order to achieve waivers on financial disclosure and the BEP/DBE when the Board gets to it. This resolution will be passed today so they can move forward and have the PPB staff know where the Board is on that. Member Bass stated that he wants to have further discussion with the CPO's and may come back and revise the resolution. Member Bedore wanted to have the CPO's come back to the Board at next month's meeting. The Board agreed. The motion to approve the Financial Disclosure resolution was unanimously approved with a 5-0 vote. Chairman Vaught asked if there was a motion to approve the resolution for the BEP/DBE Award Notice Requirements. Member Bass made a motion to approve this resolution and was seconded by Member Bedore. The motion was unanimously approved with a 5-0 vote.

Next on the agenda was Procurement Code Violations Referral to the Office of Executive Inspector General. Mr. Turner stated that this is about how the Board will refer violation of the Code to the Office of the Inspector General in addition to or instead of a recommendation to void a contract. The new law provides that the Board can do either and the issue that the Board might want to discuss on what circumstances the Board might make a referral to the OEIG as opposed to or in addition to making a recommendation to void a contract. Member Bedore wanted to know why the violation needed to be passed on to the OIEG if the violation has been remedied. If it has not then it should be passed on. Chairman Vaught stated that the key language is whether or not there is an alleged violation of the Code or not and if it is something that the Board deals with in all a course of business and correct or deal with then therefore create no allege violation of Code. Then the rest of the clause is not triggered. Mr. Turner replied that legal counsel concurs. Director Carter wanted to add that on occasion there would be a time when a direct violation would be the answer to the procurement. With no further questions the Board broke for a five minutes recess.

After returning from the five minute break Member Morales left the meeting.

Next on the agenda was the contract review for AASHTO Software Maintenance for FY11. Director Carter stated that the contract is for AASHTO Software Maintenance for FY11. On

August 16, 2010 the PPB put this contract under review. The PPB is concerned with the policy of engaging for goods or services in a sole source environment without first proceeding through posting, protest, and sole source hearing requirements. The history provided indicates that the need should have been anticipated well in advance of the previous contract expiring. State Purchasing Officer for DOT Mr. Michael Drea stated that software that is procured for the things such as bridge software that is put together by the American Association of State Highway Transportation Officials. AASHTO is a non-for-profit association that receives funds from various States and do research, have software developed and so on. Most of the States that are covered by AASHTO agreements sign the agreement that is put out. State of Illinois has refused to do that, so there are often conflicts with terms of conditions in the language of the contracts. DOT did solicit both procurements prior to July 1, 2010, which would have been grandfathered in under the previous rule. CMS did decide they wanted DOT to hold a sole source hearing, which delayed the process of moving forward with this procurement. DOT did hold a sole source hearing on both procurements, which was held yesterday. No one attended to object and there were no witnesses. Mr. Drea stated that DOT needs these contracts to begin July 1 because they are updates to the system software that both Bentley and AASHTO provide to DOT effective July 1, 2010. DOT has not paid any bills or received any services since July 1 for either of them, but do need them back dated to July 1. Mr. Drea stated that DOT does adhere to the Procurement Code in all cases. In this situation it happens there was a decision by CMS that a sole source hearing needed to be done even though these procurements were prior to July 1, 2010. Chairman Vaught stated that the only comment was that the Board would like to see more anticipation on these types of contracts. Mr. Drea stated they agreed and would do so moving forward.

Next on the agenda was Legislation. Director Carter stated that there has not been a great deal in change in that area. Director Carter stated that the PPB would be happy to look into or be aware of any legislation for the Board. Member Bedore stated that he would like to see what happened to Senator Bomke's bill regarding leases and discuss it more in a future Board meeting.

The next meeting for the Procurement Policy Board is to be on October 5th at 11:00 a.m. in Chicago.

With no other business to discuss Member Bedore made a motion to adjourn and go into executive session on the discussion of personnel and was seconded by Member Bass at 12:06 p.m. The motion was unanimously approved.

At 12:35 p.m. Member Bedore made a motion that we return to open session following executive session and was seconded by member Bass and unanimously approved by the board minus member Morales. Chairman Vaught introduced the reason for open session was two matter's concerning personnel discussed in the Executive session.

Member Bedore made a motion to ratify the hiring of executive Director Aaron Carter with a review in Six months and the Raise for Acting Director and current Procurement Analyst Will Blount in the amount of 15% both discussed in Executive Session. Member Bass seconded the Motion and the motion was unanimously approved by a vote of 4-0 with Member Morales unable to attend.

Member Bedore then made a motion to place employee Jennifer Rapp on administrative leave effective today, September 1, 2010 and that she be available for any questions concerning her work station until September 15, 2010 at which time her employment with the Illinois

Procurement Policy Board will be terminated. Member Bass seconded the motion and the motion was unanimously approved by a vote of 4-0 with member Morales unable to attend.

Chairman Vaught asked for other matters or discussion and with no further business asked the board for a motion to adjourn that was given by member Bedore and seconded by Member Bass and unanimously approved and the meeting was adjourned.