

Chairman: David Vaught

Members: Michael Bass, Ed Bedore, Ricardo Morales

Minutes – January 13, 2011 Meeting

Present in Springfield: David Vaught
Ed Bedore
Mike Bass

Present in Chicago: Diego Ferrer

Absent: Rick Morales

The Board started the meeting by confirming attendance at 11:08 a.m.

Member Bedore made a motion to change the order of the agenda to move item number VI up to item II on the agenda order. The motion was unanimously approved.

Member Bedore made a motion to approve the minutes of October 5, 2010. The motion was seconded by Member Bass. The motion was unanimously approved.

Next on the agenda was the Vendor Assistance Program. In attendance was Ms. Lynn Carter, Legal Counsel for CMS and Malcolm Weems with the Office of Management and Budget. Ms. Carter stated that she didn't want to get into the severe hardships that have been facing the vendors of the State of Illinois due to the lagging payments of vouchers. This is a well documented problem and everyone is concerned about this hurting small and minority businesses. CMS has been working with OMB and with the Comptroller's Office to try and come up with some programs that could help the vendors in the short term until the State finances are able to pay the bills in a timelier manner. Ms. Carter stated that Mr. Malcolm Weems has taken the lead in working with potential lenders who are willing to loan the money to vendors under certain circumstances against their invoices. CMS attempted to put together a program that would allow vendors to get 100% of their initial invoice paid in return for the assignment of the prompt payment interest to the vendor. This requires a rule change because the current rule states that the prompt payment interest cannot be assigned. CMS filed an emergency rule which would allow the prompt payment interest to be assigned pursuant to this program only. CMS is working with JCAR, who has asked CMS to provide more detail in the rule and CMS is in the process of doing that.

Mr. Malcolm Weems stated that he just wanted to provide some of the specifics and any clarifications to Board members if needed. There is no loan – this is not a loan program. It is actually a purchase of vendor vouchers or invoices. The idea of the program is to make sure that State vendors receive 100% payment on their vouchers to the State. There was a market out there for buying the receivables of our vendors for about a 30% reduction of the value of those vendors. Mr. Weems stated that what they have is a purchase program where vouchers would be purchased at 100% of their value over time. Mr. Weems wanted to stress that there is no change

in the State's liability in terms of whatever vouchers are not paid in the Prompt Payment Act, which establishes a cost for that and this program does not increase the cost to the State. That liability remains the same. Mr. Weems continued that, in essence, after 61 days any voucher that is eligible for prompt payment is eligible to participate in the program. It is a voluntary program so vendors do not have to participate if they would rather wait for payment themselves or receive prompt payment. The purchase or assignment of that voucher's cost to the vendor is the interest that they would receive themselves is what is turned over to the purchaser in return for the voucher. CMS currently has a pilot program with only one purchaser involved, but plan on having many more once people have heard about the program. CMS has also been contacted by many lenders who would like to participate. CMS wants to allow the vendors to choose whichever purchaser they would like so that the State will not dictate who they would go to as long as these purchasers/investors agree to our terms of the program. A vendor would go onto their website, find a purchaser for their voucher, send over their voucher as it is with the Comptroller and then the purchaser would then investigate through the State agency to make sure that the voucher was indeed real and then make sure that the agency knows that the voucher was in this program. After getting a confirmation from the agency, the purchaser would then contact the vendor and tell them that they are eligible and take their information and give them an assignment, which is a contract that will assign the right to payment on that voucher to the investor/purchaser. At that point cash would exchange hands. About 90% of that voucher would go to the vendor. 10% would be held in an account that is to offset any payment offsets that the Comptroller may have against that vendor. This is just a protection to make sure there are not physical obligations by the vendor. The 10% will remain in an account until the prompt payment was paid. The interest would go to the investor and the remaining 10% would go to the vendor. This program does not fix any of the State's fiscal problems, but it does take some of the pressure off of our vendors.

Member Bedore asked if the payment went directly to the person holding the voucher. Mr. Weems replied that the first payment would go directly to the vendor and when the State pays it would go directly to the investor. That is what the assignment is for, which is to alert the State agency and the Comptroller that the vendor is not going to receive the check any more that it will go to this bank/investor. Member Bass asked, in regards to the terms, if they were through GOMB or a partnership with the Comptroller's office. Mr. Weems replied that because of the way the rules are, and have to be set up it, might have to be through CMS with the help of GOMB. It would be a joint partnership with CMS, GOMB and the Comptroller's office.

Chairman Vaught asked when the rules would be filed. Ms. Carter replied that CMS is going to be filing the revised rules with JCAR as soon as they can sit down with the new Comptroller, which they hope to be real soon and will have a revised draft of the program that they can share with the Board within the next week.

Next on the agenda were CMS Facilities and Facilities Rules. In attendance were Mr. Nick Kanellopoulos, Acting Director of Property Management and Mr. Matt Brown, Chief Procurement Officer with the Executive Ethics Commission. Mr. Kanellopoulos gave a brief update. Mr. Kanellopoulos stated that since October 2010 CMS has entered into 18 transactions for new leases. Since July 1, 2009, through rebid and re-negotiation, CMS has reduced cost of those leases by a total of \$9.9 million and has eliminated 396,000 square feet. The average reduction in total cost of re-bid and re-negotiation since then has been 14.75%. Since the Governor has taken office CMS has consolidated 102 leases and has eliminated just over 1 million square feet of leased space and the total cost of those 102 leases that were consolidated is

just over \$16 million. CMS continues to make progress on security reductions. No questions were asked.

Mr. Matt Brown gave a brief synopsis on the rules. Mr. Brown stated that the revision of rule making for leasing has been on the Board's agenda for some time. Circumstances for that revision have changed slightly since the implementation of SB51 and a transition a portion of those rules to the Chief Procurement Office. In regards to that transition, the Secretary of State's office indicated that they received no public comment from affected agencies who were receiving or being relieved of rule making jurisdiction and the transfers will begin that process with the Secretary of State is now under way to develop new codifications schemes for what portion of the rules transfer. Mr. Brown stated that he has had some communications with Mr. Kanellopoulos about which portions of those rules that are related to acquisition, solicitation effectiveness of the procurement from under the CPO's jurisdiction and those portions that will remain operational rules for administrating State facilities. Mr. Brown stated that from the reviews that they have taken under advisement so far, about 30% of the existing rules need significant revisions, 50% need some level of adjustment and 20% could stand as they are. There is not complete concurrence yet on what needs parts of those will openly change and Mr. Brown and Mr. Kanellopoulos will continue this process. As far as implementation goes, it will be effective immediately as soon as the Secretary of State changes the schematic and the CMS revisions will take the standard JCAR process of 45 days for the first notice period for comment and then second notice period to adopt them. There have been multiple meetings with CMS in regard to changes to the specifications that the CPOs office requires in order for those solicitations to be consistent and transparent as well as supported with significant basis for making a procurement decision. Those meetings will continue on a regular basis and will for sometime while the procurements are being re-established. Member Bass asked who owns space standards. Mr. Brown replied that the assignment of square footage per capita will be under the jurisdiction of CMS.

Member Bedore stated that space standards have been discussed at several meetings and CMS has had since October 5, 2010 to come up with something and nothing has been done. Member Bedore wanted to know when the Board will see results. Mr. Kanellopoulos replied that CMS initially filed rules just on space standards. There were questions by JCAR and by this Board regarding that and it is difficult to deal with those rules without knowing if other rules have been changed or affected. In the CMS rules there is a lot more than just the space standards section. CMS decided to update all of the rules that applied to leased procurements. SB51 occurred and a large percentage of those rules now come under the CPO and until Mr. Brown and Mr. Kanellopoulos need to decide what rules comes under each other's jurisdiction. Then CMS will file updated rules on all the sections that will come under CMS jurisdiction. Member Bedore stated that he is not happy that in three months that Mr. Kanellopoulos and Mr. Brown have not been able to meet and work on this. Member Bedore asked if the Board should be a facilitator and bring Mr. Brown and Mr. Kanellopoulos together and have the Board make their own recommendations about space standards. Mr. Kanellopoulos replied that he would welcome the Board's recommendations on space and will take it under consideration. Member Bedore asked what position they would be in for recommending a rule. Mr. Kanellopoulos replied as for recommending a rule for CMS to adopt he could not answer. Member Bedore stated that he is just trying to get the process moving. Mr. Kanellopoulos stated that CMS has their space standards ready, but want to file a complete updated set of rules. Mr. Kanellopoulos stated that the space standards have been filed once before. Member Bedore asked if the Board agreed with them. Mr. Kanellopoulos replied he did not know. Chairman Vaught asked the members of the Board what their thoughts were on this. Member Bedore stated that in the Illinois Procurement

Code it states “the authority and duties of this Board – the Board shall have the authority responsibility to review, comment upon, and recommend rules and practices governing the procurement, etc”.

Chairman Vaught wanted to know what Member Bedore was suggesting. Member Bedore replied that he is suggesting that some entity, whether it is the Executive Director, with the Members of the Board or by themselves to get the two entities together and sit down to work on this. No further questions were asked.

Next on the agenda was the contract review of Motorola STARCOM21. In attendance was CMS Deputy Chief Operating Officer, Roger Nondorf. Mr. Nondorf stated that the STARCOM21 radio system is an important public safety tool for the State of Illinois. It provides a statewide platform for the daily operations of State agencies, federal agencies and for local units of government to communicate seamlessly throughout the State for both routine and emergency operations, as well as for interoperability needs. The network provides the two-way radio communication with 6,000 State agencies subscribers as well as 8,500 public safety and public service providers from various governmental and non-governmental entities. It also provides the emergency communications capability for over 3,300 subscribers to enable an enhanced interoperability response to disaster and emergency situations that may and do occur within the State. In accordance with the requirements under the Illinois Procurement Code, a sole source procurement was publicly posted on the Illinois Public Bulletin on September 10, 2010, reference number 22020110, for both network services and for an equipment component (primarily radios) associated with the system. Shortly thereafter it was identified that errors occurred within the sole source justification form that was attached to the posting. One question was inadvertently not answered and a mechanical failure miss-feed occurred when the justification form was scanned. This mechanical error resulted in one of the pages being cut off. As a result an incomplete justification was mistakenly posted. The sole source hearing occurred on September 28, 2010. Following the hearing and in agreement with the CPO, CMS formed a sole source advisory panel comprised of two subject matter experts, a procurement attorney and a contract attorney familiar with the contract and a panel chair to review the various aspects of the sole source to supply diligence to determine its merits and consider and recommend go forward actions to both the agency and the CPO.

That panels finding were delivered to both Director Sledge and CPO Brown on December 17, 2010. The findings of the committee had been discussed between the agency and the CPO and both the agency and the CPO have agreed to proceed in a manner in accordance with the committee’s recommendations. These recommendations were as followed. 1. To proceed with the revised sole source procurement to provide the network service, management and administration associated with the STARCOM21 network. 2. To issue a competitive solicitation for the STARCOM21 equipment with the associated warranty, equipment, repair, replacement, maintenance and training for the use of the STARCOM21 network.

One misconception that has existed, the written and oral testimony provided through the public process has inferred that the vendor held an exclusive right to sell both equipment and associated services. This is incorrect. The vendor does not and did not have an exclusive contract for this equipment and these services. Should a sole source contract for the network services ultimately be finalized, the vendor will not have an exclusive contract for this equipment and these services. The next step included: 1. The CPO rejecting the former and the flawed sole source posting. 2. The agency completing a revision to the sole source justification form to reflect the panel’s findings and recommendations. 3. Lastly, with the CPO agreement and approval posting a

revised sole source and proceeding in accordance with the sole source process as defined under the Illinois Procurement Code and in accordance with the associated practices defined for sole source as a procurement approach by the Executive Ethics Commission. Mr. Nondorf stated that he would be happy to answer any questions the Board might have.

Member Bass asked if the intent was to come up through the competitive selection with one equipment and service firm or not. Mr. Brown replied that the intent that he is seeking is to have a multiple equipment opportunity. He thinks that the joint partners that CMS does business with in the local government jurisdictions have not only invested in alternatives to the one product that Motorola supports and manufactures and it may intend to be pursuing those products to put on the network and it would be incumbent upon us to make sure those constituents are served in that regard.

Member Bedore stated that it is roughly \$67 million and that does not include maintenance. Roughly what is the maintenance going to cost? Mr. Nondorf replied that the procurement was in excess of \$200 million for a 10 year period. That included not only the State's estimated spend, but the estimated spend that would occur through the local entities. As to a break between service versus maintenance or equipment he could not provide that information at that time, but would be happy to provide to the Board at their request. No further questions were asked.

Next on the agenda was the BEP presentation. In attendance was General Counsel with CMS Nadine Lacombe, Carlos Gutierrez, Senior Management and staff. Ms. Lacombe gave a brief overview defining BEP and DBE. Ms. Lacombe stated that one of the easiest ways to separate the two is BEP is State and DBE is Federal. BEP has to do with all kinds of State contracts, whereas DBE has to do with transportation related procurements. Illinois policy is to encourage the economic development of business owned by disabled people, minorities and women. They serve as a part of the economic engine of the State and so it is our State policy to ensure that they are doing well economically. It is also policy to remedy past discrimination and level the playing field that is competing for State contracts. Those policies are stated within the statute and within the Business Enterprise for Minorities, Females and Persons with Disability Act and within the Illinois Procurement Code. Those are the statutes that set up the parameters for the entire BEP program. The BEP program is about the certification of vendors, which takes up most of their time. This is people who want to be formally recognized as BEP vendors. They have to be women owned, minority owned or disabled owned and the person filling out the application has to be within one of those categories and has to be 51% owner and a controller of that business. Time is also spent on waivers, which are also confused with exemptions, and also spend time helping agencies set up their goals.

Ms. Lacombe stated that there are two types of exemptions. Agencies can either ask that a particular contract be exempt from the requirements to set a goal on that contract or they can also ask that an entire category of a contract be exempt from having a BEP goal. Individual agencies set goals on individual contracts. This can be confusing to people because the BEP Act has certain minimum goals that the State is expected to reach. Those goals are statewide goals and those goals are no way related to the goals that are set for individual contracts. At the end of the year they hope that the tally that is reached in terms of goals set on individual contracts are met by the statewide statutory goals, but are no way related. So there is no statutory minimum or maximum for individual contract goals.

Ms. Lacombe wanted to clarify a little more on the no cure provision and what it means and why it is posing problems for vendors and for the State. In the past if a utilization plan was flawed in

some way, an example is if a vendor was only going to meet 8% of the 10% but failed to request a waiver on the other 2% or they listed a BEP vendor who use to be certified, but is not longer certified and didn't realize that during the time they were submitting their utilization plan. CMS would go back to the vendor, the apparent low bidder or successful bidder, and let them know that there is a problem with their utilization plan and they didn't meet their goal. Now depending on the interpretation of the law CMS does not have the power to ask them to cure their faulty utilization plan. It is believed that the purpose of the utilization plan was to prevent bid shopping and while it may or may not achieve that goal it has set some kind of hurdles that are difficult to overcome for the agencies and vendors. CMS is trying to work through their interpretation of what it means to cure versus not cure a defective utilization plan. This process is a little complicated, but she would be happy to explain more if needed.

In the next section the presentation addresses the Business Enterprise counsel, which is an advisory counsel to the Governor that comprises a number of different representatives from both the community and from within the Executive Branch of the Government. There was a piece of legislation to extend the BEP Act. That legislation was approved and will be extended until June 30, 2012. Ms. Lacombe stated that she would be happy to answer any questions the Board might have.

Member Bedore wanted to know what they do to certify minority business. What do you require for proof that they are a minority firm? Ms. Lacombe replied that there are a few statutory requirements that they have to have. They have to have an annual income of under \$75,000 per year and an extensive application that needs to be completed. Mr. Carlos Gutierrez also stated that one of the requirements is that they have to provide a birth certificate. They also use other elements to certify. For example when they look at an application and the applicant has applied through a previous entity they do have agreements the other organizations such as the City of Chicago, Metra, IDOT, PAC, etc. Mr. Gutierrez stated that this helps verify that information and give a better certification to determine that individual is in fact a minority. Member Bedore wanted to know what penalties that are invoked in law when you find an individual is not truthful. Ms. Lacombe replied that if CMS believes that a crime has been committed it will be referred to the Attorney General's office. Often people do make mistakes and are denied on that, but it is very rare that a crime has been committed. Member Bass wanted to know the time period for the application to be analyzed and processed. Mr. Gutierrez replied if they have an ideal application complete that is not missing any documentation it would take about 60-90 days to process that application. Member Bass wanted to know that if there was a low bid situation, non-construction procurement and it comes in and didn't meet the utilization goals. Can you deny that award? Ms. Lacombe replied, in theory, yes. Member Ferrer asked if an agency puts out an RFP it is up to the agency to see if they met DBE goals or not. Ms. Lacombe replied that over a certain amount. CMS does have that over \$500,000 it is required that they have a goal on the contract or a reason why they don't, but below \$500,000 they do not at this time and are looking into changing that figure. No further questions were asked.

Next on the agenda was the Board Resolution for the BEP/DBE Award Notice Requirements. Director Aaron Carter stated that the Board passed the resolution on the BEP requirement September 1, 2010 and in the October 5, 2010 meeting there was some discussions on if it was relevant to repeal it. Member Bass asked to hear more information before repealing it or putting it into action. Mr. Todd Turner, Legal Counsel for the Board stated that after hearing the presentation and all other due diligence being done he recommends adoption of the repeal. Mr. Turner agrees that the original resolution was not in conformance to practice. Member Bedore

made a motion to repeal the original resolution and approve the substitute resolution and both motions were seconded by Member Bass.

Next on the agenda was the Rules Review on Ex Parte Communication. Chairman Vaught stated that a draft of those rules have been submitted to the Board for review. Executive Director for the Executive Ethics Commission Chad Fornoff was in attendance. Mr. Fornoff stated that the EEC Rule with respect to procurement communications was published in the December 27, 2010 Illinois Register. They are currently in the middle of the first notice period, a 45-day public comment period. Mr. Fornoff stated that the EEC welcomes any comments from the Board and public about the rule. Member Bedore made a comment about the EEC being invited to attend several meeting and trainings on the communication reporting site and did not show. Mr. Fornoff stated that the EEC has attended several meetings about the communication reporting site. Member Bedore stated that he attended a communication reporting site training session and the EEC did not attend. Member Bedore stated that there are agencies out there trying to comply with the law and wanted to know the reason why they were not at the meetings. Mr. Fornoff replied he has attended many meetings, have answered many phone calls and e-mails about requests for interpretations and is available anytime. Chairman Vaught asked if the EEC should be responsible for the training and explain to agencies this new law. Mr. Fornoff replied that the EEC is coordinating with the Inspector General's Office as part of their annual training. Chairman Vaught stated that he is talking about a training schedule for agencies so that all employees have been fully informed and able to any questions asked. Mr. Fornoff replied that there was not a schedule at this time, but would be happy to create one. No further questions were asked.

Next on the agenda was Legislation. Director Aaron Carter stated that the only updates were on HB1457, which extended the time frame on the capitol HVAC upgrade from 5-11 year after 11/29/05, and HB1450, which amends Board review of proposed leases of real property of 10,000 or more square footage or any proposed lease of real property with an annual rent payment of \$100,000 or more.

The next scheduled meeting for the Procurement Policy Board will be set for Thursday, February 3, 2011 pending Board confirmation.

With no further business to discuss a motion to adjourn into executive session to discuss personnel was made by Member Bedore made a seconded by Member Bass and unanimously approved and the meeting was adjourned at 1:10 p.m.

Following executive session the Board moved to return to open session for the following motions.

Return to open session. Chairman Vaught stated that the board was glad for the job Director Carter was doing and they planned to raise his pay. Member Bedore added that the board would like to raise the Directors pay to 85,000 with another review at the conclusion of Fiscal year 11. Member Bedore added they had reached a conclusion to raise Will Blount's salary to 65,000 and change his title reflecting his new responsibilities to "Senior Procurement Analyst". The Board would also like to continue as planned and review the new hires at the six month employment date in May and include Deanna Rossetto in that same review period. Chairman Vaught stated that was a rather brief summary and asked Director Carter if he wanted the board to go into more detail. Director Carter stated that he would like to address any shortcomings in his performance. Chairman Vaught Stated there were two significant challenges to face, SB 51 implementation

and personal that the Board felt the Director navigated pretty well. Chairman Vaught added the position the Director held is a position that required continued learning and growth and the board felt the Director was showing both. Member Bedore made a motion to increase Director Carter's pay to 85,000 effective February 1 and to increase Will Blount's salary to 65,000 including a title change to "senior Procurement Analyst" effective February 1 as well. Member Bass Seconded the motion and it was unanimously approved. Member Bedore made a motion to review two new hires as well as Deanna Rossetto at the six month tenure. Motion was seconded by Member Bass and unanimously approved.

Member Bedore made a motion to adjourn and was seconded by Member Bass. The motion was unanimously approved.