

STATE USE COMMITTEE MEETING MINUTES
Library for the Blind and Physically Handicapped
300 NE 18th Street
Oklahoma City, OK 73105

Tuesday, September 29, 2009

ORDER OF BUSINESS

Call to Order:

Committee Vice Chairman David Oliver called the meeting to order at 1:05 p.m. The agenda and meeting were posted Monday, September 28, 2009.

Roll Call:

Members Present: David Oliver, Committee Vice Chair, Effie Ballard, Committee Member, Judy Goodwin designee for William Smith, Committee Chair and Randy Ross, designee for John Richard, Committee Member.

Members Absent: Jane Nelson, Committee Member

Quorum declared with four members present.

Introductions:

Mr. Oliver asked for introductions, present were: Paula Click, Judy Atkins, Sandy Rosier, Tammy Loyd, Scott Schlotthauer, Jerry Weddington, Mark Claunch, Steve Clay, James Hill, Melissa Walker, Regina Chace, Elizabeth Mincher, Connie Blanchard, Julie Grigsba, Cathy Cash, Chip Pearson, Tom Bogdanowicz, Larry Smith, Steve Hagar, Leanna Edmonds and Kym Humphrey.

Approval of Minutes:

Mr. Oliver asked for discussion or a motion to approve the minutes of August 26, 2009 State Use Committee meeting. Ms. Ballard requested two revisions. Page two, under Presentation, Discussion and Possible Action on Fair Market Pricing, SW306/PS # 1572- Hoses for Oklahoma League for the Blind.

Revision 1: The sentence "The Fair Market Review Sub-Committee reviewed the prices submitted by Garvin County Community Living Center." shall be changed to read, "The Fair Market Review Sub-Committee reviewed the prices submitted by Oklahoma League for the Blind."

Revision 2: The sentence including the phrase "shipping will be charged as a separate line item on all orders." is misleading because the Committee did not and does not approve fair markets for shipping charges. It was mentioned that the motion in the minutes did not include shipping charges and only approved the hoses. The sentence "There was a question regarding shipping charges." shall be changed to read, "During discussion, there was a question regarding shipping charges." Ms. Ballard's intention is to make certain it is clear the fair market established did not include shipping charges. The State Use staff made the following revision to the minutes for clarification purposes. "A motion was made by Ms. Nelson and seconded by Mr. Oliver that the fair market prices for hoses be approved as submitted by Oklahoma League for the Blind (and does not include shipping charges.)"

TERRI EGNER, DESIGNEE FOR COMMITTEE MEMBER JANE NELSON ARRIVES; ALL COMMITTEE MEMBERS PRESENT. Mr. Oliver asked for additional introductions: Evelyn Bays, Heather Rennebohm and Assistant Attorney General Gretchen Harris are present.

A motion was made by Ms. Ballard and seconded by Mr. Ross that the minutes be approved as amended. Upon roll call the vote was as follows:

YEAS: Mr. Ross, Ms. Ballard, Mr. Oliver and Ms. Goodwin
NAYS: None
ABSTAIN: Ms. Egner
Motion passed.

1% Levy Report and Financial Information:

The Allotment Budget and Available Cash Report were discussed. Allocation budget is \$300,170.00, \$183,741.85 has been encumbered. Current year expenses are \$35,351.09; the allotment budget is \$81,077.06. The available cash is \$277,715.70.

State Use Year-to-Date Budget vs Expenses & Encumbrances. The budget for August was \$23,979.00, expenditures for the month of August were \$15,421.61, and there was one encumbrance of \$450.00 for the Oklahoma Municipal League Trade Show.

The Deposit Report reflected \$24,782.29 received for the month of August, the year to date receipts is \$55,052.08. The estimated income was \$43,644.00, therefore year to date receipts have exceeded the estimate.

The FY2010 Operating Budget Comparison Report was discussed; it included all data previously provided in addition to the \$25,000.00 pre-encumbered for the Economic Benefits Study. The total of the expenses, encumbrances and pre-encumbrances are \$244,092.94 which leaves an annual variance of \$56,077.06. The graph of receipts for the last three years was produced but not included in the Committee packets; this will be provided at the next meeting.

Presentation concerning Attorney General Opinion 09-22 procurement schedule issues by Assistant Attorney General and possible action concerning the procurement schedule including but not limited to contents and formatting:

Gretchen Harris, Assistant Attorney General discussed her conclusion of the Attorney General Opinion. She had several conversations with Richard Olderbak, the author of the opinion and the State Use staff prior to developing her conclusion. The process of how an opinion is written was briefly explained. The opinion was issued August 19, 2009 in response to three questions posed by State Representative Jabar Shumate and State Senator Jim Wilson.

The first question of the opinion is:

Under the laws governing the Oklahoma State Use Committee, does the fair market price of each product or service on the procurement schedule have to be determined before the product or service is procured?

Ms. Harris addressed the procurement schedule. The procurement schedule is a list of products and services that are to be provided by Qualified Organizations or individuals. The State Use Rules were provided to the Committee to refer to with the opinion. The Committee needs to establish what is contained on the procurement schedule. The master procurement schedule should only list the products and services whether they have an approved fair market or not. The procurement schedule should not contain vendor names. Ms. Harris stated the staff should create the document and place it on the October 14 State Use Committee meeting agenda for approval.

The second part of the procurement schedule is a list of all products and services that have established fair market prices for the entire state. Ms. Harris referred to this list as sub-schedule one. This sub-schedule would not contain vendor names.

Ms. Harris referred to the State Use Rules, Title 304:10-1-3 which discusses Qualified Organizations or individuals through State Use and indicated this would be a separate list. These items should be on the web site, procurement schedule, names of vendors, fair market price.

Ms. Harris referred to Title 304:10-1-5 (2)

Products and services that are suitable to procure, but for which fair market has not been established. For these products and services, the Committee will establish a fair market price in accordance with 304:10-1-1

The products and services that are suitable to procure is the master procurement schedule. An item that does not have an approved fair market would be those products and services that the specifications vary by quantity, location or agency. An example of a green cleaning standard for a state building was used to explain that the green cleaning supplies could be the product that varies or the green cleaning janitorial service could be the variance. State Use provides both cleaning products and janitorial services. It is

then the Contracting Officer's responsibility to do a market analysis, obtain approval of the Central Purchasing Director of DCS to enter into a contract with a State Use Vendor and present the information to the State Use Committee for ratification at the next scheduled meeting. The Contracting Officer is Larry Smith, who was appointed on July 29, 2009 and he has specific statutory and rule duties. This item would then be listed on the procurement schedule as green cleaning supplies or green cleaning services with a notation of the vendor, the location and the price.

For products and service where there is a fair market price established, but it is not on a mandatory statewide contract, for example janitorial services. The Qualified Organizations should be listed to provide the service to allow agencies to contact them. Qualified Organizations can present products and services to the Contracting Officer and State Use Committee for approval if it is an item that can be offered at one price for the state, the product or service would then be added to the procurement schedule.

If an agency wants a product or service and there is not one set price for the state, it is the state agency, county office, municipality that is to identify the need to the State Use Committee. According to Title 304:10-1-5 the Contracting Officer shall maintain and publish a current list of all products and services offered by Qualified Organizations. The master list, the products and services with fair market prices, the names of the Qualified Organizations all information must be accurate and on the web site.

For products and services that have not had a fair market price established (sub-schedule two), the Committee will establish a fair market in accordance with Title 304:10-1-4 (7) which explains the process. The Contracting Officer awards a contract in accordance with the State Use Fair Market Policy to a qualified organization and must be approved by the Central Purchasing Director, then at the next regular meeting the fair market must be ratified by the Committee. Ratification by the Committee should be noted on sub-schedule two. If the Committee does not ratify the price, the rules will need to be reviewed to determine what can be done. Ms. Harris stated contracts can be used until the fair market is ratified by the Committee. The Committee needs to set fair market prices for products and services that do not vary by agency, specification or location prior to award, which is the vast majority of the products and services on the list. The State Use staff needs to clean this up in the next two weeks. The procurement schedule needs to be developed correctly in order to allow the state agencies to use it and be in compliance.

Ms. Harris recommended the Committee pass a motion that the Administrator/Contracting Officer create a master procurement schedule that lists all products and services and place fair market prices where possible and present it for approval at the October 14 Committee meeting if possible. Mr. Oliver stated he did not see any difference in what Ms. Harris explained and the procurement schedule that was adopted by the Committee previously. Ms. Harris said the Committee should make sure the procurement schedule that has been adopted is what she has explained; she mentioned that she has heard different stories. The Committee has the power to establish the procurement schedule. The last procurement schedule presented to the Committee was not voted on due to the Attorney General's opinion being released shortly before the August 26 Committee meeting. There was discussion regarding the previous procurement schedule presented. Ms. Harris stated the products and services provided should be the focus of the procurement schedule, not the vendors. The current list of items on the DCS web site was discussed, the vendor should not be limited to provide services only in the city they are located.

The master procurement schedule will contain all State Use items that can be provided. Sub-schedule one contains all items that have a fair market established and the Qualified Organizations. Sub-schedule two is to be the products and services that do not have a fair market established and are determined by the Contracting Officer before the approval of the Committee. The vendor names need to be included on sub-schedule two where the product or service varies. Ms. Goodwin verified that the items on sub-schedule two would only be awarded by the Contracting Officer to Qualified Organizations until the Committee approves the price. State agencies can request products and services they need be considered for addition to the master procurement schedule if a Qualified Organization can provide it. Qualified Organizations can propose a new product or service to be added to the procurement schedule as well. The Contracting Officer is responsible for obtaining and distributing information to the Qualified Organizations, agencies, counties and cities.

Ms. Ballard asked a question about solid waste trash service that a Qualified Organization has had for twenty years and the service has been on the procurement schedule, the levy has been paid. This year, the Qualified Organization is left off the procurement schedule and extensions of the contract have been

made. This service will be sent to the open market when the contract expires. Ms. Ballard asked why levy had to be paid on products and services that have previously been on the procurement schedule and now are not. Ms. Harris said the question could not be addressed because it was very specific and was not on the agenda. She mentioned there are grievances that can be filed but Ms. Ballard would need to meet with the Contracting Officer and then the State Use Attorney even if there is not a formal process. Ms. Ballard said she had requested the item be on the agenda but it was not added.

Mr. Oliver asked if each individual printer cartridge would need to be put on the procurement schedule or if the word "printer cartridges" would suffice. Ms. Harris said it would be up to the Committee to decide how items will be described. Mr. Oliver stated it would depend on how the procurement schedule is to be used; if the procurement schedule is the only document Buyers will see, he thought it would need to be specific. Ms. Harris said the Committee would need to decide how specific the procurement schedule should be. Mr. Oliver stated the existing procurement schedule has most of the information being requested, but the format needs to be revised.

Ms. Goodwin asked if she had missed the area in the rules, statutes or Attorney General's opinion on how Qualified Organizations and products or services are removed from the procurement schedule. Ms. Harris said it would be up to the Committee to determine if a product or service is no longer listed.

Mr. Oliver asked why the fair market price would need to be listed since that price is not necessarily the price being charged for the product or service. Ms. Harris referred to:

Title 74 Section 3005 The Committee shall determine the fair market price for all products and services included in the procurement schedule and shall revise such prices in accordance with changing market conditions; provided, however, a change in price shall not be effective prior to the expiration of fifteen (15) days from the date on which such change is made by the Committee.

Ms. Harris asked how agencies are to find out the change in the fair market, then stated this could be addressed at the next meeting. Mr. Oliver stated it should be clear to the agencies that the Qualified Organizations can sell the product or service for a price below the established fair market.

Mr. Oliver stated that regardless of the process a product or service went through to be presented to the Committee, if the product or service is approved the contract would establish the fair market price. Ms. Harris said if it would if it was a specialty item (sub-schedule two) and was with one vendor. All items that would be the same throughout the State of Oklahoma, regardless of location, specification, etc., need to be presented by the Contracting Officer and approved by the Committee before it's listed on the web site. A contract does not need to be in place before a fair market is established for the state. If an existing contract has not been done correctly, the product or service is either not on the procurement schedule or there has not been a fair market price established or ratified by the Committee, there's a problem. Mr. Oliver said that if there is a contract in place, a fair market has been established at some point in time. Ms. Harris asked if the Committee approved every contract. The response was that the Committee had previously approved each contract but it had not been done in some time. Ms. Harris said she would review the rules and statutes to find out. Mr. Harris said the fair market price is established in specialty situations (sub-schedule two) by contract. Existing contracts should have a fair market price that have been approved for the entire state or should have a fair market price that has been established by contract (the specialty items or sub-schedule two.)

Mr. Ross explained that some agencies enter into contracts with State Use Vendors for products and services that do not have a fair market established; therefore the Committee never has the opportunity to approve the fair market price. Ms. Harris said it should not happen that way, it needs to be fixed.

Ms. Goodwin said there were a lot of products and services provided by the Qualified Organizations that are custom, landscaping for example. Ms. Harris said a fair market price may need to be established for the different levels of landscaping. The Committee must determine what is listed; the products and services drive the program, not the vendors.

The function of the Department of Central Services (DCS) is for the Central Purchasing Director to be involved in the specialty items. DCS also appoints the Contracting Officer to the State Use Committee. The review of the Attorney General's opinion continued.

Question two of the opinion:

May the Director of the Department of Central Services adopt, without the approval of the State

Use Committee, rules and/or policies which govern the process for determining the fair market price of products and services on the procurement schedule?

Ms. Harris referred to Title 304:10-1-4 and the Attorney General's opinion, Section II-B. "The Director of DCS does not have the authority to adopt rules and/or policies governing the State Use program without the approval of the State Use Committee." Ms. Harris added that anything DCS wanted to do whether it is organizational work or how something is posted, approval must be obtained by the Committee. She stated that the Committee did not need to obtain approval from DCS.

Question three of the opinion:

Must any of the products or services on the State Use Committee's procurement schedule be subject to an open market bid process prior to the determination of a fair market price?

Ms. Harris stated that procurements are not subject to competitive bid requirements. She recommended the Committee review all statutes, rules and the Attorney General's opinion for further information.

Ms. Goodwin asked if the Attorney General's opinion could be superseded or overwritten by a state agency and how the opinion is challenged. Ms. Harris explained that Attorney General Opinions are the law for state agencies until overturned by a court of jurisdiction. A declaratory judgment action must be filed in state court. Some individuals take the Attorney General opinion to court. If it is not a question of constitutionality, the Legislature can change it.

Leanna Edmonds from the State Use office asked for clarification on what should be on the DCS web site for the procurement schedule at the present time. Mr. Ross stated that what was posted is correct. Ms. Edmonds said it is not the procurement schedule the Committee approved. Mr. Oliver argued that there is a Committee approved procurement schedule that shows all capabilities and that is the procurement schedule that should be on the web site until the new list is created. Mr. Ross disagreed stating that what is on the web site is a list of the fair market prices and the staff needs to present a comprehensive list for Committee approval. Ms. Harris said that if there is an approved procurement schedule, even if it is not in the correct format, it should be listed out on the web site. Mr. Ross said there was no record of an approved format. Ms. Harris said she would speak to the DCS attorney's regarding the matter. Mr. Oliver stated that even if the previously approved procurement schedule and what is currently on the web site are not the correct format, the list on the web site limits the potential business of State Use; he prefers to have the Committee approved schedule on the web site until the new one is approved. Ms. Harris said the list did not need to have vendor names. Ms. Edmonds explained that the procurement schedule the Committee approved had both vendor names and the products and services. Ms. Harris said there was an action item on the agenda if the Committee desired to take action.

Kym Humphrey from the State Use office asked for clarification on the staff that would be compiling the new procurement schedule and how agencies would know which vendors to contact if their names were not listed. Mr. Ross said the Central Purchasing Director will assign staff, which may be State Use staff or others in conjunction with Mr. Smith. Mr. Oliver stated on behalf of the Committee, State Use staff must be involved in the process because they report to the Committee and they have the knowledge of how the schedule should work based on the previous schedules. Ms. Harris said that the State Use Committee staff are designated to State Use, Larry Smith is the Contracting Officer and should do the procurement schedule.

Scott Schlotthauer, Director of Central Purchasing clarified that the products and services on the schedule can be offered today by Qualified Organizations today and not items that could be provided in the future. Mr. Oliver said he was still unclear about when it can be provided. Mr. Ross asked if the procurement schedule is only products and services for which a fair market price has been established, the answer was no. Ms. Harris referred to O.S. 74, Section 3004 which states it does not have to have a fair market established. Ms. Harris said the items did not necessarily have to be available today. There was further discussion regarding the master procurement schedule, sub-schedule one and sub-schedule two. Mr. Schlotthauer explained that his sense of the procurement schedule and the items that did not have a fair market established was that the vendor could do it and that list could be extensive. Mr. Oliver stated that each vendor was asked to provide a list of what they can provide, not what product and services they want to provide. He used a packaging contract as an example. Ms. Harris referred to O.S. 74, Section 3004 for the definition of the procurement schedule and said that she did not see that the product or service would need to be offered at any specific time.

Mr. Ross indicated the need to reduce the maverick spend within the State of Oklahoma. Ms. Harris reiterated that whether a product or service has an approved fair market or not, state agencies must purchase them from a Qualified Organization if it is on the procurement schedule. Mr. Ross discussed auditing and the products and services on the procurement schedules that do not have an approved fair market price. Ms. Harris stated all items would need to either be pre-approved by the Committee for a fair market price prior to be added to the procurement schedule, or the fair market price is ratified by the Committee if it is a specialty item. There are many products and services on the schedule that do not have an approved fair market price. Ms. Harris stated that if the auditors gave the list of products and services to the Contracting Officer, the items could be ratified. The Contracting Officer will need to obtain fair market data for everything that does not vary by agency, location or specification. The State Use Committee staff decides on the master procurement schedule.

Larry Smith, State Use Contracting Officer referred to a document he knew to be the procurement schedule, there was discussion regarding approving the procurement schedule that was tabled at the August 26 Committee meeting.

Paula Click from South Central Industries, Inc. said all items listed on the procurement schedule for her organization are items she has provided to the State of Oklahoma and either currently or previously held contracts for them. The problems with agencies accessing and buying from the procurement schedule began approximately six months ago. Items that have been on the procurement schedule are not being purchased through State Use. Ms. Harris said there should not be problems once the procurement schedule is formatted correctly.

Connie Blanchard from Galt Foundation asked about promotional items. Ms. Harris said the specialty item would be listed with the date and price for that item. The Committee will need to determine if the term "promotional item" is appropriate for the procurement schedule or if it will need to be more specific.

Jerry Weddington from Dale Rogers Training Center discussed using commodity codes to develop the procurement schedule. Ms. Harris said again it would be up to the Committee to determine how the procurement schedule is developed.

Steve Clay from Oklahoma Production Center discussed solid waste trash service and how the services vary, Ms. Harris said it could be listed similar to the landscaping services.

Mr. Oliver recommended the State Use Committee staff develop a draft procurement schedule for the next Committee meeting.

Review State Use Statutes dealing with O.S. 74, Section 3009 and reporting requirements:

Mr. Smith discussed O.S. 74, Section 3009 (c) which reads "The Committee shall report any violations of the intent of the laws to the Attorney General's office within thirty (30) days of their determination of such violations." Ms. Harris indicated this would need to be used in accordance with Title 304:10-1-8 which indicates there must be a hearing first. If a vendor finds a violation they must report it to the State Use Committee within fifteen days, the Committee has a hearing and then if the Committee determines there is a violation, they have thirty days to report it to the Attorney General's office.

Discussion and Possible Action to Approve Revised Economic Benefits Study:

Mr. Smith said there were changes to the Economic Benefits Study proposal after the Committee approved it, therefore the document is being presented again. Mr. Oliver asked what was changed and why. Mr. Schlotthauer discussed the changes: the Request for Proposal (RFP) was changed from two variables (janitorial and office supplies) to all products and services. This would allow for a more accurate study which would not be limited to two items. Office supplies and janitorial are a small portion of what the State Use Program is about and would probably underestimate the benefits derived from the state. The RFP can be solicited and if the responses exceed the budget, the variables can then be limited and the price can be negotiated.

Ms. Ballard asked why the RFP was not sent out as it was approved. The response was that there were a lot of changes within DCS. Mr. Oliver explained that cost is the reason janitorial and office supplies were used identified in the study approved by the Committee. Mr. Oliver is concerned that the questions posed in the RFP can only be answered by making assumptions because each person working is not

going to be studied. Mr. Oliver questioned whether the study is a good use of the one percent levy paid by State Use Vendors. Ms. Harris asked what the legal authority of the Committee is for purchasing products and services. The authority is in the State Use statutes; it states the levy can be used to promote the goods and services provided by qualified organizations. Mr. Ross explained the need to inform the legislature of the benefits of State Use with updated data. Ms. Harris said she did not see where the Committee had authority to do an RFP. Mr. Oliver referred to page nine of the Attorney General opinion, which states "This office previously concluded that the State Use Committee does not have authority to issue requests for proposals and that contracts with State Use vendors for items on the procurement schedule are not awarded through a Request for Proposal process." Mr. Oliver asked that Ms. Harris research the statement in the opinion and report to the Committee. Mr. Oliver asked for a motion. A motion was made by Mr. Ross and seconded by Ms. Ballard to table the Economic Benefits Study. Upon roll call the vote was as follows:

YEAS:, Mr. Ross, Ms. Ballard, Mr. Oliver, Ms. Egner and Ms. Goodwin

NAYS: None

ABSTAIN: None

Motion passed.

Public Comments and Announcements:

Steve Clay from Oklahoma Production Center spoke about his solid waste trash service contracts and requested the item be placed on the next meeting agenda for discussion.

Judy Atkins from Galt Foundation spoke about commodity codes and identifying them within a commodity class.

A motion was made by Ms. Ballard and seconded by Ms. Egner to adjourn. Unanimous vote to adjourn by Committee.

Meeting Adjourned: 3:15 p.m.