

MINUTES
STATE BUILDING COMMISSION
Executive Subcommittee
December 13, 2012

The State Building Commission Executive Subcommittee met this day at 2:00 p.m. in House Hearing Room 30, Legislative Plaza, Nashville, Tennessee, and was called to order by Chairman Emkes.

STATE BUILDING COMMISSION SUB-COMMITTEE MEMBERS PRESENT

Chairman Mark Emkes, Commissioner, Department of Finance and Administration
David Lillard, State Treasurer
Justin Wilson, Comptroller of the Treasury

STATE BUILDING COMMISSION SUB-COMMITTEE MEMBERS ABSENT

Tre Hargett, Secretary of State

OTHERS PRESENT

Bob Oglesby, State Architect
Georgia Martin, Office of the State Architect
Martha Nichols, Department of Finance and Administration
Joy Harris, Treasurer's Office
Melinda Parton, Comptroller's Office
Bruce Davis, Legislative Budget Office
Jonathan Rummel, Secretary of State's Office
Janie Porter, Attorney General's Office
Genie Whitesell, Attorney General's Office
Chloe Shafer, Department of General Services
Heather Iverson, Department of General Services
Steve Berry, Department of General Services
Anthony Hawkes, Black Box Network Services
Terry Blakemore, Black Box Network Services
Jim Murphy, Bradley Arant Boult Cummings
Rick Nunn, Institutional Network
Mike Morrow, Department of Finance and Administration
Christy Allen, Treasury Department
Courtney Holliday, Treasury Department
Steven Andress, Department of Finance and Administration
Thad Watkins, Department of General Services
Dick Lodge, Bass Berry Sims
Jeff Yarbrow, Bass Berry Sims

DEPARTMENT OF FINANCE AND ADMINISTRATION

Statewide

Requested Action: Ruling on Protest Appeal

Project Title: Premise Wiring Installation

Project Description: To procure statewide services from a selected low-voltage wiring contractor for the installation and maintenance of telecommunication wiring statewide

SBC Number: 529/000-12-2010

Total Project Budget: \$18,000,000.00

Source of Funding: \$18,000,000.00 Various Agency & Project Funds (A)

Comment: Contract is for a three (3) year term with two (2) one-year extensions from November 1, 2012 through October 31, 2015.

The current contract is with Black Box Network Services who protested the award to INC. Their protest was denied by the State Architect and they are appealing that decision.

Previous Action: 10/14/2010 SBC Approved issuance of RFP
10/11/2012 SBC Approved contract award to INC Group

Minutes: 12/13/2012 ESC Commissioner Emkes called the meeting to order and identified the meeting's sequence of events. He recognized Martha Nichols, General Counsel to the Department of Finance and Administration, who provided a summary of the procedural history and protest issues. Ms. Nichols listed Black Box's four protest issues that INC: (1) failed to provide sufficient information regarding their proposed joint venture (2) provided incomplete information relating to its management team personnel and office locations in Tennessee (3) failed to include all line item rates and mark up items (4) effectively maneuvered the RFP process to obtain the highest evaluation score. Ms. Nichols requested that the materials distributed before the meeting, as well as the two letters dated December 12, 2012 from INC and the Department of General Services, be included as part of the record and marked as Exhibit 1.

Dick Lodge, attorney representing Black Box Network Services, was recognized. Comptroller Wilson asked Mr. Lodge if he agreed with the procedural history as given, and was told "yes". Mr. Lodge stated that their position was that an award to INC would be detrimental and more costly to the State due to there being a flaw in the RFP. He further communicated his

arguments in a power point presentation. Comptroller Wilson asked why the ACI percentage issue wasn't raised during the process since how it was evaluated was set forth in the RFP. Mr. Lodge responded that the scoring differential that came with the RFP did not look out weighted and was not apparent on the sample document. Black Box elaborated on their four points of contention which were discussed in further detail. Their three handouts were marked as Exhibits 2, 3 and 4.

Chloe Shafer, Real Estate Compliance Director for the Department of General Services, was recognized. She stated that they found Black Box's protest to be without merit and further believed that what Black Box was asking of the Subcommittee was illegal, would damage the RFP process with the State, and would drive up the cost. She stated that pent-up demand, projects they know will be undertaken, and changing technology will require using ACI more heavily. After providing responses to Black Box's other arguments, Ms. Shafer asked that the Subcommittee find that the Department of General Services acted reasonably in its review of the evaluation, in its preparation of the RFP, and in its decision that INC be awarded the contract as best-evaluated proposer. She stated that these decisions were all supported by the terms of the RFP, by Tennessee State case law and by good business judgment.

Jim Murphy, attorney for INC, was recognized. He stated that after review of the appeal and the response by the Department of General Services, it was apparent that the appeal had no merit and should be denied. He said that the RFP was clear that if a proposer objected to terms of the RFP, they had to identify those deficiencies at the end of the comment period, which was the appropriate point in the RFP process.

Comptroller Wilson stated that he had heard the arguments and read all the briefs. He commented on the first three issues as follows: (1) he didn't believe there was a joint venture to disclose; (2) he didn't find their decision for the incomplete information on the personnel part to be arbitrary, capricious or unreasonable; (3) it is within the power and authority of the Department to treat it as immaterial variation. He moved to reject the first three items and support the Department's decision, and to discuss further the 4th issue. Commissioner Emkes agreed with and supported the Comptroller's logic on the first three items. Treasurer Lillard commended all parties, saying they were well presented and prepared, and agreed with Comptroller Wilson's statements on the first three items.

Regarding the 4th issue, Comptroller Wilson stated that everyone had the opportunity to comment and was scored correctly on the way the RFP was sent out, and he didn't see any reason to reverse the Department's decision. He said that the Department of General Services may expect 50% to be ACI items and, if that is the case, then the decision is correct, and his initial reaction was to uphold the decision.

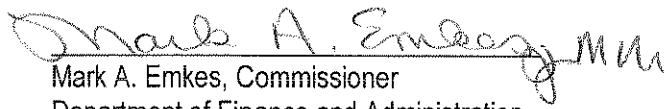
Commissioner Emkes said he certainly appreciated the presentation of Black Box and the spirit at which it was presented in that 'let's find a way to help the State save money'. He said that the methodology which was brought into question wasn't the first time it had been used and since all parties appeared to understand the methodology, and to preserve the integrity of future RFPs, he would be concerned of not upholding the decision of the State Architect and Department of General Services as presented.

Treasurer Lillard stated that it was up to the Department to set up the RFP within reasonable bounds. He said he didn't believe there was any "dramatic manipulation" of the RFP and that what was done was reasonable. Treasurer Lillard made a motion to sustain the original award and deny the appeal of the protest by Black Box. The motion was properly seconded and passed without objection.

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The meeting adjourned at 3:32 p.m.

Approved:


Mark A. Emkes, Commissioner
Department of Finance and Administration