STATE USE LAW COMMISSION MEETING

July 19, 2016 MEETING MINUTES

MEMBERS PRESENT: Debbie Harrington (Chair), Chuck Wagner (Member), Valerie Watson (Member, Finance), James "Ty" Case (Member/Teleconference), Michele Mirabella (Member/Teleconference), Dean Stotler (Member/Teleconference), Laura Gerard (DAG/Counsel), Daniel Madrid (DVI/Ex-Officio), Thomas Cook (A.N.D/Ex-Officio)

GUESTS: Cynthia Fairwell (VR), Paul Beane (A.N.D), Kristy Trudel (A.N.D), Lloyd Schmitz (General Public), Amber Mangini (Administrative support)

A quorum was determined and the meeting was **called to order at 2:10 pm.**

I. APPROVAL OF MINUTES

Mr. Cook disputed the statement "Mr. Beane stated that the waste wasn't hazardous and posed no risk". He wanted to clarify on record that A.N.D has acknowledged the need for specialized equipment, and that there could be risk involved if the materials are not handled properly. A question was raised about whether or not *draft* meeting minutes should be posted to the public calendar. Ms. Gerard stated that she would find out and bring this information as an action item to the next meeting. Ms. Watson made a motion to accept the minutes as written, Ms. Mirabella seconded, and the motion carried.

II. OLD BUSINESS

Title 16/Senate Bill 221 – The Senate voted and approved Title 16 (as presented) which is now under legal review until signed by the governor.

At the last meeting Ms. Mirabella asked if those receiving long-term support through DDDS were eligible to benefit from the tax credit. The current language in the statute indicated that the credit is an incentive for employers to hire referrals from VR. However, if an individual receiving long-term care from DDDS were interested in seeking support to obtain employment, they could be referred back to VR for funding and placement services. If a referral back to VR wasn't a possibility, you could appeal to VR to request that the individual be certified as having a disability and eligible for VR services.

2016 Annual Report – A timeline was developed and discussed amongst the Commission to aide in the publication of the 2016 Annual report. The Commissioners also discussed possible content of the report. It was decided that the framework of the report would be similar to past years; however this report would showcase a timeline commemorating the achievements and events that took place throughout this past administration. There was no objection to the proposed content of the report and Madam Chair gave approval to begin developing the report content as presented.

Q & A Commissioner Wagner – Mr. Wagner had several questions for A.N.D regarding Commission business that were unable to be answered at the last meeting due to time constraints. Mr. Wagner listed these questions on a document and it was forwarded to Mr. Cook and Mr. Beane for response. At this time the document was distributed to the Commissioners and Mr. Cook offered his responses. It was also decided that moving forward no communications regarding Commission business should take place via email, telephone, or in person other than at Commission meetings.

III. NEW BUSINESS

Price Adjustment Request for 29 Janitorial Sites – Mr. Cook distributed a spreadsheet with the 31 proposed price adjustment requests. Mr. Beane stated that two modifications were made to the proposed spreadsheet. The price reduction request for the Fernhook Community Health Center was removed, and to make up for that reduction they reduced the increase request for the Thomas Collins building by $5,000 annually.

Mr. Stotler proposed a motion for the Commission to approve the price adjustments as modified by A.N.D. Ms. Watson seconded the motion, Ms. Mirabella recused herself from the vote, and the motion carried.

In the interest of time, Mr. Stotler requested that the price change document that GSS requires to complete the amendment be forwarded in advance of the next SULC meeting. He also asked that A.N.D provide the electronic copy with the discussed modifications to ensure the allocations are done properly. Mr. Cook agreed to forward the electronic copy to Mr. Stotler the following day (7/20/16).

IV. (DIB) REPORT

Mr. Madrid was happy to report that DIB closed their books this fiscal year with only a $3,000 loss- which is the best fiscal year the company has had in 6 years. This was a huge improvement from last year.

V. PUBLIC COMMENT

Lloyd Schmitz requested that the 2016 annual report include a section that explained how new or other community rehabilitation providers could participate in the Set- Aside bidding process. Madam Chair stated that the request would be considered.

Mr. Schmitz also stated that an RFP was advertised that day for school supplies; however the bid was scheduled to close the following day which would not give adequate time for someone to prepare a bid. Mr. Stotler stated that is wasn't an RFP, but a procedural announcement that the state has joined the TCPN cooperative for the purchase of contracts for office supplies and GSS is obligated to advertise it for one day through their site. It was actually a contract that was awarded in 2014 which the state is leveraging the buying power. The public advertisement posted is not actually requesting proposals; it's the administrative movement of the contract onto their system so that individuals can see that the award is available. It is a necessary administrative task to make the actual RFP document and contract physical through their system.

VI. ADJOURNMENT

The meeting was **adjourned at 4:00 pm.**

Respectfully submitted,

Amber M. Mangini
Secretary to the SULC

Responses to Inquiries A.N.D. Received from Commissioner Wagner

Please note, the first set of enumerated questions, below, were sent by Commissioner Wagner to Thomas Cook on July 8, 2016.

Question # 1:
AND presented and the board commission approved the Absalom Jones proposal. As stated in the meeting I know the area well. The picture on the proposal is not the Absalom Jones building. I will go today for another look.
Paul stated that there is no hazardous wastes on the grounds. I have been to Absalom Jones twice since that meeting and have pictures of condoms, drug bags and other contraband. I also found one syringe which I turned in.
Also, the county police have been called to the center 44 times in the month of May for various reasons. This is public information.
If you think this a commission issue then *please ask Paul if he has been there and why he found no hazardous waste.* If not an appropriate question then do not answer it.
Response:
Commissioner Wagner is correct in saying that photo in the proposal is not that of the Absalom Jones facility. It was simply a stock photo of a building and grounds that are well kept, which is the intended outcome of the set-aside.
The grounds are accessible to the public and therefore individuals may discard materials that could pose a risk if they are not handled appropriately (i.e., used condoms, hypodermic needles, etc.). In its presentation to the Commission, A.N.D. stated on more than one occasion that the Absalom Jones grounds do have material on them that requires the use of equipment and supplies to handle them appropriately.
However, we disagree with the characterization of the materials that are found on the grounds of this state facility as "hazardous waste," as defined by the Environmental Protection Agency: https://www.epa.gov/hw/criteria-definition-solid-waste-and-solid-and-hazardous-waste-exclusions.

Question # 2:
Paul stated over a year ago that he was going to reach out to different municipalities for set asides. Has he done this ? I have personally found jobs for people for other non profits in New Castle County and Newark. *Responses to Inquiries A.N.D. Received from Commissioner Wagner*

Response:
Representatives from A.N.D. (formerly DelARF) have met with procurement personnel from municipalities, school districts and other agencies of the state on multiple occasions. In particular, in a number of meetings A.N.D. held with New Castle County's purchasing team, they have expressed support for A.N.D.'s efforts to grow the State Use program.
A.N.D. has also met with purchasing agents from the City of Dover, City of Wilmington, Delaware State Police, University of Delaware, Wilmington University, Delaware Technical and Community College, Delaware State University, among others. A.N.D. has also presented the value of the State Use program to the Delaware Public Purchasing Association that has membership from a large number of municipalities in Delaware.

Question # 3:
The next question is a question which I hope I am totally wrong but need to ask. At the June 21 meeting I read from AND's website about how many members, how many people with disabilities, etc. You also said the state funds these agencies.
Two questions:
What is the source of your information and where can I view it? It should be public knowledge.
You stated in the E mail that the three organizations have operations in Delaware. I did not find this to be the case. NHS has an office on Kirkwood Hwy. Dove Pointe has no offices in Delaware and has residential services in Maryland, which Delaware residents can use and is funded by DDS. Delmarva Community Services has no offices in Delaware and does not service anyone from Delaware.
Also on your membership page "the organization must be offering services in Delaware"
I am still learning but if you could further explain and I know I am wrong!
Response:
This question was raised during the June 21, 2016 Commission meeting, at which point Thomas Cook asked whether the question was relevant to the business of the Commission. He went on to explain that A.N.D. is a membership association that holds set-aside contracts with the purpose of providing important employment opportunities to individuals served by its organizational members. The DelARF bylaws that were shared with Commissioner Wagner during a private meeting held last year specify various classes of membership, one of which is a Community Provider membership. These members must be actively providing services to Delaware's citizens with disabilities or other life challenges.
A.N.D. does not make documents received from our members, i.e., membership applications and data updates, public – they are used for verifying the appropriate membership category and in structuring communications with its members. Each of the Community Providers receives funding from a variety of sources, which include state and federal funds, charitable contributions, *Responses to Inquiries A.N.D. Received from Commissioner Wagner* and entrepreneurial / business activities.

Question # 4:
Background checks.
At the April Commission meeting, Executive Order 42 was discussed. Paul was asked to provide an update on the order and clarify it. I would like an update and possibly other members of the commission.
Response:
A.N.D. has searched the minutes of the April 21, 2015 meeting to determine if a request was made for Mr. Beane to provide the Commission with updates or clarification regarding Executive Order 42, but was unable to find a reference to such a request. A.N.D. did, however, examine the recommendations that were developed as a result of the task force that the Executive Order created. A.N.D. found that the scope of the task force was specific to persons who work with children and youth and did not specifically address the questions related to best practices in screening individuals with disabilities who could be denied the ability to work in a State facility due to criminal backgrounds.
On behalf of A.N.D., Mr. Beane developed a comprehensive set of policy recommendations that were submitted to the Commission and the Joint Sunset Committee.

Question # 5:
At the April 21 Commission meeting, AND stated that they would ask member agencies what might preclude someone from placement from a set aside.
ANDs response "appealing to each agency would be a very time consuming task, therefore AND enlisted the help of Facilities Management and a few other state agencies to help gather the needed information. Once the information was assessed, it would be put into survey form and presented to the commission for their feedback"
Has this been done?
Response:
As stated above, A.N.D. developed extensive policy recommendations that were presented to the Commission and the Joint Sunset Committee earlier this year. These recommendations included the results of the survey of A.N.D.'s subcontractors regarding how many people were denied employment at various stages in the hiring process.

Please note, the second set of enumerated questions, below, were sent by Commissioner Wagner to Thomas Cook on July 10, 2016. *Responses to Inquiries A.N.D. Received from Commissioner Wagner*

Question # 1:
Just a suggestion and this was most notable two times on the Absalom Jones set aside, if it would be possible to put the address on the proposed set aside locations.
The last two times the Absalom Jones set aside was presented to the commission, there is no address. I also noticed the lack of an address on a set aside for a contract for a building in Georgetown a year ago.
Yesterday, I did go to the Absalom Jones Building. As mentioned, I may have the wrong Absalom Jones Building as no address is given.
The picture Paul provided is not one of the building I saw. I took a picture and walked around the grounds and there was more litter than before and condoms and drug items. I do not know if the set aside for this building has taken place yet.
Response:
The set-aside proposal in question relates to an extension of services for an existing set-aside contract. Accordingly, A.N.D. did not feel that an address would be helpful to the Commission or the public, because the information was already on record. If the Commission finds it useful, though, we will make certain to include them in future set aside proposals and we thank Commissioner Wagner for this suggestion.
Again, Commissioner Wagner is correct in saying that photo in the proposal is not that of the Absalom Jones facility. It was simply a stock photo of a building and grounds that are well kept, which is the intended outcome of the set-aside.
Per an agreement with Facilities Management and ServiceSource, the services commenced on 7/11/16. A.N.D.'s Customer Service Representative, Kristy Trudel gave this report on the progress being made in cleaning up the grounds of the facility:
Spoke with Rich Katz from Service Source to see how the first week went. He stated 2 different students cleaned the grounds, 1 cleaned on Monday and 2 cleaned on Thursday one was the same student from Monday. A brunt of the trash was collected on Monday. Mostly firework trash, bottles and NOT mainly liquor bottles, some drug baggies but no needles or condoms, regular trash, lots of cigarette butts. They never touch broken glass, they use gloves, trash pickers and a dust pan and broom. The ages were 20 and 21, and they strictly work with school ages 18-21. Said first week went great!

Question # 2:
As part of my training as a private citizen, I know a $1 million contract was awarded to Fed Cap. Was this a set aside? If so, how many disabled people are employed? *Responses to Inquiries A.N.D. Received from Commissioner Wagner*

Response:
Fedcap was awarded a subcontract to provide cleaning services at the 4 sites that Goodwill surrendered and the 14 sites surrendered by Connections. Fedcap competed for this award through an RFP process developed by A.N.D. They received a subcontract to provide services at 16 of the 18 set-aside sites. The scorecard and notes relating to the proposal review and award are made available to all qualified bidders for their review after award announcement is made.
The 18 sites' aggregated annualized bill rate at the established set-aside pricing to A.N.D., including a 4% administrative fee, is $525,903, not $1 million. As of June 30th, Fedcap had employed 23 persons with disabilities through these contracts. These people worked 7,830.32 labor hours in the reporting quarter and earned an average hourly wage of $11.28. Fedcap may hire additional workers, if they assess a need to do so and if they feel the payments for the janitorial services are sufficient for this purpose.

Responses to Inquiries A.N.D. Received from Commissioner Wagner

Please note, the first set of enumerated questions, below, were sent by Commissioner Wagner to Thomas Cook on July 8, 2016.

Question # 1:

AND presented and the board commission approved the Absalom Jones proposal. As stated in the meeting I know the area well. The picture on the proposal is not the Absalom Jones building. I will go today for another look.

Paul stated that there is no hazardous wastes on the grounds. I have been to Absalom Jones twice since that meeting and have pictures of condoms, drug bags and other contraband. I also found one syringe which I turned in.

Also, the county police have been called to the center 44 times in the month of May for various reasons. This is public information.

If you think this a commission issue then *please ask Paul if he has been there and why he found no hazardous waste.* If not an appropriate question then do not answer it.

Response:

Commissioner Wagner is correct in saying that photo in the proposal is not that of the Absalom Jones facility. It was simply a stock photo of a building and grounds that are well kept, which is the intended outcome of the set-aside.

The grounds are accessible to the public and therefore individuals may discard materials that could pose a risk if they are not handled appropriately (i.e., used condoms, hypodermic needles, etc.). In its presentation to the Commission, A.N.D. stated on more than one occasion that the Absalom Jones grounds do have material on them that requires the use of equipment and supplies to handle them appropriately.

However, we disagree with the characterization of the materials that are found on the grounds of this state facility as "hazardous waste," as defined by the Environmental Protection Agency: https://www.epa.gov/hw/criteria-definition-solid-waste-and-solid-and-hazardous-waste-exclusions.

Question # 2:

Paul stated over a year ago that he was going to reach out to different municipalities for set asides. Has he done this ? I have personally found jobs for people for other non profits in New Castle County and Newark.

Response:

Representatives from A.N.D. (formerly DelARF) have met with procurement personnel from municipalities, school districts and other agencies of the state on multiple occasions. In particular, in a number of meetings A.N.D. held with New Castle County's purchasing team, they have expressed support for A.N.D.'s efforts to grow the State Use program.

A.N.D. has also met with purchasing agents from the City of Dover, City of Wilmington, Delaware State Police, University of Delaware, Wilmington University, Delaware Technical and Community College, Delaware State University, among others. A.N.D. has also presented the value of the State Use program to the Delaware Public Purchasing Association that has membership from a large number of municipalities in Delaware.

Question # 3:

The next question is a question which I hope I am totally wrong but need to ask. At the June 21 meeting I read from AND's website about how many members, how many people with disabilities, etc. You also said the state funds these agencies.

Two questions:

<u>What is the source of your information and where can I view it? It should be public knowledge.</u> You stated in the E mail that the three organizations have operations in Delaware. I did not find this to be the case. NHS has an office on Kirkwood Hwy. Dove Pointe has no offices in Delaware and has residential services in Maryland, which Delaware residents can use and is funded by DDS. Delmarva Community Services has no offices in Delaware and does not service anyone from Delaware.

Also on your membership page "the organization must be offering services in Delaware"
I am still learning but if you could further explain and I know I am wrong!

Response:

This question was raised during the June 21, 2016 Commission meeting, at which point Thomas Cook asked whether the question was relevant to the business of the Commission. He went on to explain that A.N.D. is a membership association that holds set-aside contracts with the purpose of providing important employment opportunities to individuals served by its organizational members. The DelARF bylaws that were shared with Commissioner Wagner during a private meeting held last year specify various classes of membership, one of which is a Community Provider membership. These members must be actively providing services to Delaware's citizens with disabilities or other life challenges.

A.N.D. does not make documents received from our members, i.e., membership applications and data updates, public – they are used for verifying the appropriate membership category and in structuring communications with its members. Each of the Community Providers receives funding from a variety of sources, which include state and federal funds, charitable contributions,

and entrepreneurial / business activities.

Question # 4:

Background checks.

At the April Commission meeting, Executive Order 42 was discussed. Paul was asked to provide an update on the order and clarify it. I would like an update and possibly other members of the commission.

Response:

A.N.D. has searched the minutes of the April 21, 2015 meeting to determine if a request was made for Mr. Beane to provide the Commission with updates or clarification regarding Executive Order 42, but was unable to find a reference to such a request. A.N.D. did, however, examine the recommendations that were developed as a result of the task force that the Executive Order created. A.N.D. found that the scope of the task force was specific to persons who work with children and youth and did not specifically address the questions related to best practices in screening individuals with disabilities who could be denied the ability to work in a State facility due to criminal backgrounds.

On behalf of A.N.D., Mr. Beane developed a comprehensive set of policy recommendations that were submitted to the Commission and the Joint Sunset Committee.

Question # 5:

At the April 21 Commission meeting, AND stated that they would ask member agencies what might preclude someone from placement from a set aside.

ANDs response "appealing to each agency would be a very time consuming task, therefore AND enlisted the help of Facilities Management and a few other state agencies to help gather the needed information. Once the information was assessed, it would be put into survey form and presented to the commission for their feedback"

Has this been done?

Response:

As stated above, A.N.D. developed extensive policy recommendations that were presented to the Commission and the Joint Sunset Committee earlier this year. These recommendations included the results of the survey of A.N.D.'s subcontractors regarding how many people were denied employment at various stages in the hiring process.

Please note, the second set of enumerated questions, below, were sent by Commissioner Wagner to Thomas Cook on July 10, 2016.

Question # 1:

Just a suggestion and this was most notable two times on the Absalom Jones set aside, if it would be possible to put the address on the proposed set aside locations.

The last two times the Absalom Jones set aside was presented to the commission, there is no address. I also noticed the lack of an address on a set aside for a contract for a building in Georgetown a year ago.

Yesterday, I did go to the Absalom Jones Building. As mentioned, I may have the wrong Absalom Jones Building as no address is given.

The picture Paul provided is not one of the building I saw. I took a picture and walked around the grounds and there was more litter than before and condoms and drug items. I do not know if the set aside for this building has taken place yet.

Response:

The set-aside proposal in question relates to an extension of services for an existing set-aside contract. Accordingly, A.N.D. did not feel that an address would be helpful to the Commission or the public, because the information was already on record. If the Commission finds it useful, though, we will make certain to include them in future set aside proposals and we thank Commissioner Wagner for this suggestion.

Again, Commissioner Wagner is correct in saying that photo in the proposal is not that of the Absalom Jones facility. It was simply a stock photo of a building and grounds that are well kept, which is the intended outcome of the set-aside.

Per an agreement with Facilities Management and ServiceSource, the services commenced on 7/11/16. A.N.D.'s Customer Service Representative, Kristy Trudel gave this report on the progress being made in cleaning up the grounds of the facility:

> Spoke with Rich Katz from Service Source to see how the first week went. He stated 2 different students cleaned the grounds, 1 cleaned on Monday and 2 cleaned on Thursday one was the same student from Monday. A brunt of the trash was collected on Monday. Mostly firework trash, bottles and NOT mainly liquor bottles, some drug baggies but no needles or condoms, regular trash, lots of cigarette butts. They never touch broken glass, they use gloves, trash pickers and a dust pan and broom. The ages were 20 and 21, and they strictly work with school ages 18-21. Said first week went great!

Question # 2:

As part of my training as a private citizen, I know a $1 million contract was awarded to Fed Cap. Was this a set aside? If so, how many disabled people are employed?

Response:

Fedcap was awarded a subcontract to provide cleaning services at the 4 sites that Goodwill surrendered and the 14 sites surrendered by Connections. Fedcap competed for this award through an RFP process developed by A.N.D. They received a subcontract to provide services at 16 of the 18 set-aside sites. The scorecard and notes relating to the proposal review and award are made available to all qualified bidders for their review after award announcement is made.

The 18 sites' aggregated annualized bill rate at the established set-aside pricing to A.N.D., including a 4% administrative fee, is $525,903, not $1 million. As of June 30th, Fedcap had employed 23 persons with disabilities through these contracts. These people worked 7,830.32 labor hours in the reporting quarter and earned an average hourly wage of $11.28. Fedcap may hire additional workers, if they assess a need to do so and if they feel the payments for the janitorial services are sufficient for this purpose.