

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 23, 2006

2:34 p.m.

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Johnny Ellis
Senator Bettye Davis

MEMBERS ABSENT

Senator Ralph Seekins, Vice Chair
Senator Ben Stevens

OTHER LEGISLATORS PRESENT

Representative Peggy Wilson
Representative David Guttenberg

COMMITTEE CALENDAR

Premera Blue Cross: Overview of State Insurance Contract Award Process

PREVIOUS COMMITTEE ACTION

None to report

WITNESS REGISTER

Scott Nordstrand, Commissioner
Department of Administration
PO Box 110200
Juneau, AK 99811-0200

POSITION STATEMENT: Delivered overview and answered questions regarding the state insurance contract award process

Vern Jones, Chief Procurement Officer
Department of Administration
PO Box 110200
Juneau, AK 99811-0200

POSITION STATEMENT: Responded to questions regarding the state insurance contract award process

ACTION NARRATIVE

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at [2:34:20 PM](#). Present were Senators Bettye Davis, Johnny Ellis and Chair Con Bunde.

[2:35:25 PM](#)

CHAIR CON BUNDE announced that the committee would hear an overview of the recent contract award process of the state's healthcare provider to Premera Blue Cross. There have been many questions regarding what might have been unusual procedures in the awarding of the contract, he said.

SCOTT NORDSTRAND, Commissioner, Department of Administration (DOA), and VERN JONES, Chief Procurement Officer, Department of Administration, introduced themselves for the record.

CHAIR BUNDE noted that the award was under protest and that Mr. Nordstrand would be limited in some of the things he was allowed to disclose.

MR. NORDSTRAND explained to the committee that the state has two health plans that the DOA administers directly, one is the active employee plan and the other is the retiree plan. The two plans cover approximately 68,000 people. The state is self-insured and they pay claims out of both the retiree health trust plan and the active health trust plan. The state hires a third party administrator to process, pay and work those claims. Periodically the DOA requests proposals from vendors to let contracts in a competitive way. The current contract with Aetna was up for expiration on June 30, 2006 and all options to renew had expired. The DOA began the process at the end of the 2005 calendar year to obtain proposals for a third party administrator.

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CHAIR BUNDE asked Mr. Nordstrand the length of time since Aetna had been awarded the most recent contract.

COMMISSIONER NORDSTRAND said approximately five years. However, Aetna has been either the insurance provider or the third party administrator for the State of Alaska since the early 1990s. There was a time when the contract went to another party but then Aetna purchased that organization so became the third party administrator. Aetna has been the administrator in one form or another for approximately 24 years.

CHAIR BUNDE asked the bidding cycle for the contracts.

COMMISSIONER NORDSTRAND deferred the question to Mr. Jones.

MR. JONES responded there is no set amount of time for a contract; it depends on what the RFP (request for proposal) calls for each time. The contract that the state is currently entering into is a three-year contract with four 1-year renewals for a total of seven years.

CHAIR BUNDE asked the occasion of the current RFP.

COMMISSIONER NORDSTRAND said the contract on its very terms ran out of options and concluded. He referred the committee to a cheat sheet in the packet highlighting the chain of events. The DOA's position on the issue is accurately represented by his protest response in the committee packets.

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COMMISSIONER NORDSTRAND described the chain of events and said the chief procurement officer (Mr. Jones) advised him that four proposals were submitted and reviewed. Two were for pharmacy-only and two were submitted for the entire healthcare plan. Mr. Jones expressed concern that Aetna's proposal had been deemed to be incomplete. At that time the procurement officer looked for the missing materials and did not find them and so it was determined that the bid was non-responsive. The regulations don't allow the state to accept supplemental materials.

The regulations then state that if there is one responsive bidder they can do one of three things. They can:

1. Decide to hold the entire bid process over
2. Do a limited procurement and invite only those who were deemed likely to be responsive
3. Enter into discussions with the one successful bidder

The DOA decided to enter into discussions with Premera Blue Cross to determine whether or not a contract could be reached.

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CHAIR BUNDE interrupted Mr. Nordstrand to ask whether incomplete bids occur frequently.

MR. NORDSTRAND deferred the question to Mr. Jones.

MR. JONES could not recall it ever happening before.

CHAIR BUNDE pointed out that the situation was an anomaly. He asked whether it occurred to anyone to call Aetna and question the incomplete bid.

MR. JONES said the process does not allow for that type of communication. The statutes allow for discussion only with those that are deemed responsive.

SENATOR BETTYE DAVIS asked Mr. Jones to clarify.

MR. JONES responded the statute allows for discussions with those that are responsive and with responsible offers. There is no provision for any other type of communication. There are allowances for communications for clarification, however it appeared at that time that Aetna was non-responsive.

SENATOR DAVIS maintained that there is nothing in the statutes to prohibit the DOA from calling Aetna.

MR. JONES said there is not an explicit prohibition but it is not common practice.

CHAIR BUNDE asked the name of the person who made the decision that Aetna was non-responsive.

MR. JONES said at the time there were two procurement officers. The original one was Victor Leamer and the other was Walter Harvey.

CHAIR BUNDE asked whether it was Mr. Leamer that determined Aetna to be non-responsive.

MR. JONES said that is correct.

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REPRESENTATIVE DAVID GUTTENBERG joined the committee meeting.

CHAIR BUNDE asked the procedures that the DOA has put into place to prevent the same thing from occurring again.

MR. JONES responded they have not addressed the issue yet.

CHAIR BUNDE asked whether a \$30 million dollar RFP was of average size.

MR. JONES advised it was one of the bigger RFPs that the DOA handles.

CHAIR BUNDE expressed concern over the lack of oversight and procedures involved with such a large RFP and suggested there was a measure of incompetence involved.

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COMMISSIONER NORDSTRAND said it was no question there was a screw-up in not locating the fourth notebook at the appropriate time.

REPRESENTATIVE WILSON said she understood Mr. Jones to say there is normally only one procurement officer working on an RFP but due to his extensive workload the department added a new person on board and the new person was given one of the bigger RFPs that the state deals with.

COMMISSIONER NORDSTRAND stated the second procurement officer was one of the most experienced procurement officers in the state.

REPRESENTATIVE WILSON asked for clarification of how the mix-up happened.

MR. JONES advised the procurement officer at the time, Mr. Leamer, had numerous other projects and was reviewing two major RFPs for the Division of Finance. Recognizing that his workload was unusually heavy, the DOA offered the services of Mr. Harvey, who is one of the most experienced contracting officers in Alaska. He manages the contracting officers in the central procurement section.

CHAIR BUNDE asked the name of the person who physically receives, files and retrieves the materials for the RFPs.

MR. JONES responded the RFP is submitted to the attention of the procurement officer. The procurement officer is responsible for receiving them and storing them in a secured area.

CHAIR BUNDE noted in this case, the original procurement officer would have received the binders from Aetna, stored them, and then made the decision that Aetna was non-responsive.

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MR. JONES said in this case the bid sent by Aetna was so voluminous that it had to be stored in another area of the

building. Unfortunately when the procurement officer retrieved it to present to the proposal evaluation committee (PEC), he simply overlooked one box. Essentially the evaluation committee was given three of the four binders.

CHAIR BUNDE interjected the procurement officer must have signed for the four boxes. He asked Mr. Nordstrand to continue with his explanation of the chain of events.

COMMISSIONER NORDSTRAND advised the next step was that the procurement officer entered into discussions with Premera Blue Cross with the normal process of flushing out the details and ensuring that it met all the state's criteria. Ultimately it was the decision of the procurement officer in consultation with the PEC.

CHAIR BUNDE asked who the individuals were on the committee.

COMMISSIONER NORDSTRAND did not know. He said they were named in the committee packet. The statute provides that RFPs can be reviewed and scored by either a procurement officer alone or a PEC consisting of not less than three people.

CHAIR BUNDE asked whether the Premera Blue Cross bid came in binders similar to Aetna's.

COMMISSIONER NORDSTRAND did not know. He said he has never seen the bids in their original form.

MR. JONES advised the Premera proposals were contained in 1 four-inch binder.

CHAIR BUNDE said he understood that in complex RFPs that there have been occasions where the department hires experts to assist in evaluating proposals. He asked whether that happened in this instance.

MR. JONES said it did not.

CHAIR BUNDE asked the reason they did not hire an expert.

COMMISSIONER NORDSTRAND responded that the administrative code requires that a PEC consists of three state employees or public officials. In terms of the content of the PEC itself he said he did not know that an expert could be a member of the PEC.

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MR. JONES said occasionally they have hired consultants to serve in an advisory role but in this instance there didn't seem to be a need.

COMMISSIONER NORDSTRAND returned to the chain of events and said it was ultimately determined by the second procurement officer (Walter Harvey) that it was in the state's best interest to issue a notice of intent to award the contract to Premera Blue Cross. He then went into discussions with Premera and asked them to make a best and final offer. Premera did that on February 15, 2006 and at that time Aetna learned they had been deemed non-responsive. Aetna contacted the Mr. Harvey and was adamant that they submitted a complete bid. Aetna suggested that the DOA research and find the missing notebook.

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COMMISSIONER NORDSTRAND said at that point, Mr. Jones advised him of the situation and the two of them began to research how to resolve the issue fairly. The two of them asked to have a teleconference between representatives of both companies where they explained the problem. Backing up a step, Mr. Nordstrand noted, when Aetna contacted the procurement officer about the incomplete bid, they also asked to know the price that Premera bid. The procurement officer advised them of Premera's approximate bid, which at that point was public information.

They realized that Aetna did submit a responsive bid and could be acceptable to award based on their best and final offer. The problem was that Aetna now knew Premera's best and final number and so the competitive nature of the process was lost. He suggested to the parties that they could go through the process to determine whether or not Aetna's proposal was responsive and susceptible to award. If so, they could enter into discussions with Aetna and then have both parties do another best and final offer so that the number would be secret again.

One other caveat was that the Department would tell Premera what Aetna's original number was so that they would be on a fairly level playing field. Ultimately the parties agreed to the modified process.

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REPRESENTATIVE WILSON referred to the last two paragraphs on page 10 of Mr. Nordstrand's response to Aetna's Protest and Request for Stay of Award of RFP 2007-0200-5946. Since Aetna submitted four times the volume of material than Premera there should have been as much, if not more, discussion with Aetna

than Premera yet that wasn't the case. She said it was hard to understand the reason for such an apparent difference in the handling of the two bids.

CHAIR BUNDE said many people think that the process was flawed and that it will be a great inconvenience to possibly 68,000 people.

REPRESENTATIVE WILSON noted many people across the state have recently been through a "Medicaid D fiasco", which caused much frustration. She did not want to see another healthcare hassle.

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MR. JONES referred to the topic regarding the amount of discussion with Aetna and Premera and said was not fair to suggest a discrepancy in the process. It stands to reason that the PEC would have different questions for the different companies based on the difference in their proposals. The process is intended to clarify things and to get the best and final offer submitted to the state.

CHAIR BUNDE said he had some empathy over the complexity of the situation. He asked what the bottom line number in the best and final offer indicates.

COMMISSIONER NORDSTRAND said the request for proposals is designed to elicit a per-member, per-month charge. There are other financial elements, such as the pharmacy rebate guarantee.

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CHAIR BUNDE said in previous conversations Mr. Nordstrand mentioned that 40 percent of the evaluation was based on price while the other 60 percent was based on a variety of other things. He asked Mr. Nordstrand to expand on what the 60 percent is based on.

COMMISSIONER NORDSTRAND said the elements were on page 4 of his response.

CHAIR BUNDE noted part of the bid includes a pharmacy rebate and some pharmacies have expressed concern that it would either cost them money or be difficult to administer. He asked Mr. Nordstrand whether he has had inquiries from any pharmacies.

COMMISSIONER NORDSTRAND said no. The fundamental process would not be any different, he claimed.

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CHAIR BUNDE asked for clarification whether the best and final numbers included the pharmacy rebate.

COMMISSIONER NORDSTRAND indicated no. The best and final was based on a per-member, per-month healthcare charge. The pharmacy rebate is considered a technical component, which is another aspect of the evaluation.

REPRESENTATIVE DAVID GUTTENBERG asked whether the DOA considered the base prices of pharmaceuticals. He said prices at one plant could be much higher than another and the company with the smaller rebate number could still end up being the greater savings.

COMMISSIONER NORDSTRAND said he did not evaluate the proposals and neither did the chief procurement officer and so he did not know whether that was an aspect of the evaluation.

SENATOR BUNDE asked Mr. Nordstrand to explain the component "network savings share."

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COMMISSIONER NORDSTRAND said large insurance companies and third party administrators, in order to achieve cost savings, enter into agreements with other healthcare providers around the country where there is a deal to obtain a lower price than retail for various services. Both companies have that network.

CHAIR BUNDE said he saw numbers that indicated there would be \$1.5 million dollars in network savings for Aetna and \$12 million for Premera. He asked whether that meant Premera would provide more "discount doctors."

COMMISSIONER NORDSTRAND said he did not know. When he met with Premera they were confident that they could equal the kind of savings that Aetna had been providing.

CHAIR BUNDE asked whether the PEC contacted the new Alaska Retirement Management Board (ARM) to discuss the changes with the proposals.

COMMISSIONER NORDSTRAND said the Board knew about the process but nothing substantive regarding the issue at hand.

CHAIR BUNDE said the reason he was asking is that in the past the Board has been consulted, yet this time they were not.

COMMISSIONER NORDSTRAND said the ARM Board is new. SB 141 changed a number of things. He said the ARM Board's role is simply to manage the assets of the retirement plans to maximize their ability to deal with the liabilities.

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CHAIR BUNDE referred to a letter from Tom Englehart of Magellan Health Services. He pointed out that they are an Alaska company and are very concerned about a loss of business that the change in providers will bring them. In the letter they identified three areas of concern regarding the process used to determine who was awarded the contract. He asked Mr. Nordstrand to address those concerns.

COMMISSIONER NORDSTRAND said he already responded to those concerns in his brief.

SENATOR JOHNNY ELLIS expressed concern over the transition. He asked the timeline and mechanics of the switchover.

COMMISSIONER NORDSTRAND said he did not know the exact details. People in the Department of Retirement and Benefits are actively pursuing the transition now. Premera Blue Cross has successfully transitioned major companies from another plan administrator. The transition will happen July 1, 2006 and there will be a period of time to run the remaining claims for Aetna.

CHAIR BUNDE asked him to speculate what would happen if the appeal by Aetna is successful.

COMMISSIONER NORDSTRAND explained the protest process is under way currently and a response was done yesterday. There is now an opportunity to appeal the decision of the procurement officer to the commissioner of the DOA, which he acknowledged is he. There is a process of evaluation wherein he would delegate the final determination to the Office of Administrative Hearings. The case would be assigned to the Office of Administrative Hearings where they have a period of 120 days to reach a decision. There could be a hearing or it could be decided on the briefs. At the time of their final decision there is a 30-day timeline to appeal that opinion to the Superior Court. That could take up to a year depending on the complexity of the case and on the Superior Court caseload. After that, there could be an appeal to the Alaska Supreme Court, which could take two years or more.

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CHAIR BUNDE noted the new contract was for three years. He asked whether there was an automatic renewal.

COMMISSIONER NORDSTRAND said no, there are four 1-year options.

CHAIR BUNDE said by the time the appeals process runs its course; the contract could be up for renewal.

COMMISSIONER NORDSTRAND agreed.

CHAIR BUNDE asked whether he considered extending Aetna's current contract until the DOA could issue a new RFP.

COMMISSIONER NORDSTRAND said they are not allowed to.

CHAIR BUNDE advised Mr. Nordstrand that awarding Premera the contract now gives them an 80 percent share of the healthcare insurance market in Alaska. The Division of Insurance has been working diligently to expand the competitive market and this situation works against that goal. He asked the Commissioner whether any of that was considered.

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COMMISSIONER NORDSTRAND said he did not know. The only matters that should be evaluated are those that are listed in the proposal itself.

CHAIR BUNDE said he expected changes in the Department's procedures and advised the Commissioner and the committee that he would work to revoke the contract and start the process over.

There being no further business to come before the committee, Chair Bunde adjourned the meeting at [3:31:25 PM](#).