

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISCAL POLICY**

February 21, 2012

12:05 p.m.

MEMBERS PRESENT

Representative Anna Fairclough, Chair
Representative Alan Austerman
Representative Bob Herron
Representative Lance Pruitt
Representative Tammie Wilson
Representative Scott Kawasaki
Representative Chris Tuck
Representative Craig Johnson (alternate)

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Bill Thomas
Representative Mike Chenault

COMMITTEE CALENDAR

RFP PROCESS

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

LAURA PIERRE, Staff
Representative Anna Fairclough
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: explained the RFP process, specifically RFP 540, "Public Policy and Management Consultant."

TINA STRONG, Procurement Officer
Supply
Legislative Administrative Services

Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Testified during discussion on the RFP process.

DOUG GARDNER, Director
Office of the Director
Legislative Legal and Research Services
Juneau, Alaska

POSITION STATEMENT: Testified during discussion of the rules for committee meetings.

ACTION NARRATIVE

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CHAIR ANNA FAIRCLOUGH called the House Special Committee on Fiscal Policy meeting to order at 12:05 p.m. Representatives Fairclough, Johnson, Tuck, T. Wilson, and Austerman were present at the call to order. Representatives Pruitt, Herron, and Kawasaki arrived as the meeting was in progress. Also in attendance were Representatives Thomas and Chenault.

RFP Process

CHAIR FAIRCLOUGH announced that the only order of business would be a discussion about the RFP process.

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LAURA PIERRE, Staff, Representative Anna Fairclough, Alaska State Legislature, reported that, in July 2011, the House Special Committee on Fiscal Policy (HFPY) brought forward RFP 540, "Public Policy and Management Consultant," to allow the public to better understand the gathering of state government revenues and its distribution to local governments. She shared that RFP 540 requested the bidding consultants to provide current and historical information to the public, to include the sources and dispersal of state revenue, to suggest a process for the development of a local budget, and to recommend a procedure to pursue appropriations from the legislature for funding the budget. She listed the five requested topics: identify key individuals and sources in both the legislature and executive branch of state government for the development of a current and historical perspective about state revenue; create a library of policy-neutral documents that include current and historical

information on state revenue and spending; develop a web site and publish this library on the site; prepare a presentation for public meetings which summarized the process; and, prepare a survey to gauge public understanding of state government.

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CHAIR FAIRCLOUGH confirmed that she had recently granted a free-lance reporter an interview regarding allegations being raised about the RFP process. She directed attention to the three letters her office had received questioning the openness and fairness of the process for RFP 540. She established that Joyce Anderson [Ethics Committee Administrator, Select Committee on Legislative Ethics] and the leadership of the Alaska House of Representatives were copied on each letter, with her response. She denied any contact with the intent of influence toward the questions raised in the letters. She declared her acceptance, as the Chair of HFPY, for "full responsibility for the notification of meetings and the process that we followed." She stated that she had sought guidance from the procurement officers and legal counsel after receiving the first letter on January 25, 2012. She declared that two distinct issues were now necessary for discussion: (1) had there been a violation of the open meeting statute and, (2) had there been a fair process offering for RFP 540. She acknowledged that all discussion would be "on the record" but that, in the event a question was raised "that would create an unfair or a harmful event for the awardee of this contract, we'll need to move into Executive Session."

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MS. PIERRE, in response to Chair Fairclough, reported that HFPY had conducted four meetings, the first [April 21, 2011] being an organizational meeting to discuss the direction of the committee. She observed that she had then contacted the procurement staff for guidance in writing an RFP, and Legislative Legal and Research Services for guidance with the technicality and legality to the RFP process. She reported that when she had asked about the necessity for public notice of the committee meetings, the response had been that notice was not necessary as these committee meetings were "confidential meetings and specifically on an RFP."

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MS. PIERRE directed attention to the July 11, 2011 committee meeting, featuring discussion for the language and direction of the RFP.

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MS. PIERRE referred to the July 27, 2011 committee meeting, which had included a representative from Legislative Legal and Research Services, as well as the Procurement Officer. She established that the language of RFP 540 had been "fine-tuned."

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MS. PIERRE reported on the October 26, 2011 meeting, during which RFP 540 was evaluated, scored, and awarded to the winning contractor. She reiterated that a letter received in January 2012 had alleged possible violations, and that the Ethics Committee Administrator had been contacted.

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CHAIR FAIRCLOUGH asked if the HFPY committee members had any questions about the time frame. She reminded that during the initial HFPY meeting, she had asked committee members to provide a definition for deficit spending. She called attention to the July 11 meeting, at which time each committee member had been given a fiscal policy binder containing the previous two years' recommendations by the former fiscal policy working group, with directions to its website. She listed some of the other documents on that website.

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MS. PIERRE relayed that Representative Doogan had initially been a HFPY committee member, but that health issues during the interim had required he be replaced by Representative Kawasaki.

CHAIR FAIRCLOUGH asked if there were any questions about the composition of the committee.

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REPRESENTATIVE TUCK, referencing the first committee meeting [April 11, 2001], asked if it was allowable to publicly speak about that meeting, as the committee had been in executive session.

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CHAIR FAIRCLOUGH clarified that, as the first meeting was an organizational meeting, anything from that meeting could be discussed. She pointed out that none of the meetings had been in executive session, but were, instead, confidential meetings.

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REPRESENTATIVE TUCK agreed that there had been deliberation about the organization of the committee, as well as future fiscal policy, which had included an acknowledgment that there was not a preparedness to publicly handle any fiscal emergencies. Referring to the discussion of ways to educate the public on the revenues and expenditures of the State of Alaska, he shared that these discussions had led to the conditions for RFP 540. He reflected that other discussions that day included the funding of Alaska's government, setting priorities for state spending, priorities for education, public safety, and public health and welfare as listed in the Alaska State Constitution, and the history for the formation of HFPY.

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CHAIR FAIRCLOUGH expressed her agreement with Representative Tuck. She referenced the two aforementioned issues, (1) had there been a violation of the open meeting statute and (2) had there been a fair process with the offering of RFP 540.

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TINA STRONG, Procurement Officer, Supply, Legislative Administrative Services, Legislative Affairs Agency, described the RFP process, referring to a handout entitled, "Request for Proposals (RFP) Process." [Included in members' packets.] She called attention to the check list for the RFP process and read from the pre-RFP activities list: identify need, perform initial study, estimate budget, secure approval for solicitation of the project, and secure approval for funding not to exceed a certain dollar amount. She stated that once all approvals were received, the RFP activities would begin. This was all confidential until an award had been made to prevent any unfair advantage for any bidder. She listed the RFP Activities: identify an RFP team to ascertain the project overview and the project schedule, develop evaluation criteria, write the RFP specifications, review the finished RFP, and approve the RFP to be issued. She explained that, also during the RFP Activities,

a Proposal Evaluation Committee (PEC) would be selected, and the RFP would be advertised. She specified that the RFP was issued for a 21 day period, during which time the proposals were submitted. At the end of this period, the proposals were evaluated by the PEC, requests for clarifications were issued to the offerors, the evaluation criteria was used by the PEC for a rating, and an award was extended to the winning offeror. She noted that an approval for necessary funding would be requested at this time. She stated that a Notice of Intent to Award would be issued, along with a 10 day protest period. If there were not any protests, a contract would be drafted, a Notice to Proceed would be issued, the contract would be executed, and contract work would begin.

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REPRESENTATIVE T. WILSON asked if committee meetings for the RFP process had to be publicly noticed.

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MS. STRONG, in response, explained that, as her expertise was in the RFP procurement, most of her work was with a RFP drafting team and that process was confidential.

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REPRESENTATIVE KAWASAKI asked when the process for RFP 540 had begun.

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MS. STRONG, in response to Representative Kawasaki, said that after the House Finance Committee had approved the project on April 17, 2011, she was contacted by Ms. Pierre to discuss initiation of the RFP process. She relayed that she had worked with the offices of Representatives Austerman and Fairclough, as well as Legislative Legal Counsel, to draft the RFP, and that it was offered for 21 days beginning on September 14, 2011 and closing on October 6. After closing, the committee had evaluated the proposals for 28 days before making its selection, and then followed this with the 10 day protest period. She declared that the entire process had extended over an eight month span.

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CHAIR FAIRCLOUGH opened discussion to the committee. She declared that Doug Gardner, Director of Legislative Legal and Research Services, had been present during conversations after receipt of the first letter regarding violations, and had expressed his agreement that the process had been followed and that RFPs were confidential. She relayed that Mr. Gardner had declared there to be ambiguity in [Legislative] Uniform [Rule] 23, and had suggested that she review this rule regarding the open meetings act. She stated that after reviewing the rule, she had contacted the house leadership sharing her belief that an ambiguity existed for scheduling subcommittee meetings during the interim. She explained that she had then sent a letter to the Chair of the House Rules Standing Committee [Representative Johnson] outlining her finding for this ambiguity and her subsequent actions.

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REPRESENTATIVE TUCK, clarifying that the House Special Committee on Fiscal Policy was not a subcommittee, opined that, as there were different [Legislative Uniform] Rules for a special committee and a subcommittee, this had caused the confusion. He proposed that a clarification for HFPY as a special committee would resolve this.

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CHAIR FAIRCLOUGH returned attention to the letters that she had received. She stated that the first letter had been received on January 25, 2012, and was followed by two more letters. She stipulated that it was the third letter which had instigated this meeting. She offered her belief that, as the Select Committee on Legislative Ethics had been notified of questions regarding RFP 540, the process had become confidential and she should not contact the other committee members. She detailed that should there be any violation of the RFP process or the [Legislative Uniform Rules], the Select Committee on Legislative Ethics would review the project, interview each person involved, and determine if there was a violation. She confirmed that, as the reporter who had contacted her was in possession of a document labeled confidential, this had precipitated her agreement to an interview with the reporter, and her subsequent contact with Ms. Anderson, Ethics Committee Administrator. She shared that she had asked if she would be in violation if she disclosed any formal documents that she currently possessed, and that Ms. Anderson had responded that, as no formal complaint had been filed, there was not any violation. She declared the

process for RFP 540 to be complete, intact, and valid, with no unfair practice, and no outside development. She confirmed that she had nothing to hide regarding the process, and she accepted responsibility for any violation.

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REPRESENTATIVE KAWASAKI asked if a representative from Legislative Legal and Research Services was available to answer questions. He asked for an opinion, pertaining to the allegation of a violation for the scheduling of open meetings, whether there was "exposure ... from a person who is not awarded that particular RFP, under these circumstances."

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CHAIR FAIRCLOUGH cited that any legal advice would necessitate a motion to move to Executive Session in order to protect the process for RFPs. She declared her desire "to stay in the open and on the record on this issue."

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DOUG GARDNER, Director, Office of the Director, Legislative Legal and Research Services, offered a hypothetical, general response to allow this discussion to be conducted outside of Executive Session. He declared that "the open meeting statute, per se, doesn't apply to the legislature anymore, there were changes made..." He offered his belief that these changes had occurred in 2004-5 with a change to the statute applicable to open meetings for the executive branch with relationship to the legislature. He declared this to be an important point, as it was assumed that the Select Committee on Legislative Ethics would provide guidance for "what types of notice would be required." He opined that this did not happen, and subsequently, changes were made to AS 24.60.037, and this "left somewhat of a vacuum as far as what notice is required during the interim." He affirmed that the requirement for the timelines of notification was waived occasionally during the session. He referred to Legislative Uniform Rules 23(e)(3), "Committee Meetings," which declared that the session rules as outlined in Legislative Uniform Rules 23(a)-(d) did not apply during the interim. He offered his belief that his office had advised, since 2006, that "notice should be reasonable under the circumstances." He paraphrased AS 24.60.037(a): "meetings of a legislative body need to be open to the public in accordance with the open meetings guidelines established in this section."

He pointed out that, as this section referenced the Legislative Uniform Rules, it created an ambiguity. He confirmed that a legislator was not required to participate in a meeting which was in violation of these guidelines, and could feel an ethical obligation to not participate. He offered his belief that a person could read Legislative Uniform Rule 23(e), and, depending on their experience and awareness of the issue, decide that it was not necessary to provide notice of an interim meeting. He concluded that there was an ambiguity between the duty to provide notice to a meeting during the interim, and the duty of an individual legislator to attend a meeting of a legislative body which was not noticed. He offered a definition for open notice during the interim to be "some reasonable notice under the circumstances in the interim."

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REPRESENTATIVE KAWASAKI asked which prevailed if there was a conflict between Legislative Uniform Rule 23(e) and AS 24.60.037(a).

MR. GARDNER replied that AS 24.60.037(e) declared that the Legislative Uniform Rules would prevail in any conflict. He offered his belief that there would be a benefit to clarify the requirements for notice to a meeting during the interim. He shared that Legislative Legal and Research Services had offered the guideline of "reasonable under the circumstances."

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REPRESENTATIVE TUCK, directing attention to Legislative Uniform Rules 23(a)-(d), stated that this referred to "how to notice, that's not what gets noticed." He asked for direction as to what should be noticed.

MR. GARDNER, in response, directed attention to AS 24.60.037(b), and paraphrased: "that a meeting occurs when a majority of the members of the legislative body are present and action, including voting, is or could be taken or if a primary purpose of the meeting is discussion of legislation or state policy." He assessed that this statute dictated that Legislative Uniform Rule 23 takes effect for any meeting open to the public and other members of the legislature.

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REPRESENTATIVE TUCK, stating that Legislative Uniform Rules 23(a)-(d) expressly demonstrated how a meeting would be noticed and that 23(e) determines special conditions for how to notice, asked to clarify that 23(e) did not eliminate the necessity to notice.

MR. GARDNER agreed that Legislative Uniform Rules 23(a)-(d) were a mechanism, and that 23(e) stated that the mechanism was not applicable during the interim. He conveyed that 23(e) did not provide any more clarity for notice during interim.

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REPRESENTATIVE TUCK questioned whether 23(e) eliminated the responsibility for any committee to notify the public during the interim.

MR. GARDNER, in response, confirmed that 23(e) stated that 23(a)-(d) did not apply during the interim, but that 23(e) did not eliminate a notice requirement during the interim because of the requirements in AS 24.60.037(b).

REPRESENTATIVE TUCK asked to clarify that notification was required during interim, although 23(a)-(d) were not obligatory.

MR. GARDNER declared that this was now an interpretation for what was reasonable notice under the circumstances.

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CHAIR FAIRCLOUGH declared this to be "a perfect demonstration of the ambiguity that remains." She asked if there were any further questions regarding the process or the fairness for RFP 540.

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REPRESENTATIVE TUCK expressed a concern for his perception of HFPY as a subcommittee of the House Finance Committee.

CHAIR FAIRCLOUGH pointed out that HFPY had been established as a special committee, and then became a RFP team. She determined that this allowed other members of the public to be present. She said: "if I wouldn't have included all of you, I wouldn't be here today. I was trying to be inclusive so that everyone here, around the table, would have skin in the game to want to see a fiscal policy conversation go forward, but because that

happened, there was a majority ... of the special committee of the House Fiscal Policy that created the problem and the ambiguity in Rule 23." She asked Mr. Gardner for any clarification.

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MR. GARDNER, in response, stated that the rules were clear:

when you have more than a majority of a committee, that you're in that situation. I also would point out however, the rules do cover subcommittees, and if this body had, this committee had created a subcommittee, it still would have had to have been reasonable notice under the circumstances. Nevertheless, you're correct, the rule makes it clear that when the majority of a committee meets, that the notice requirement, the open meeting requirement is there.

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REPRESENTATIVE TUCK declared that his questions were intended to "help us all in knowing how to move forward." He confirmed his desire to ensure that the public perception was also correct. He admitted that two of the aforementioned letters had initiated his concern about the need to publicly notice a meeting, even if this was for an executive session. He questioned the difference between a confidential meeting and an executive session. He pointed out that other legislative members could be included in an executive session. He opined that although the committee would have had the same results, he had concerns for the public perception of the HFPY meetings. He established that these answers to the committee questions would now allow the committee to move forward.

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REPRESENTATIVE T. WILSON, in reference to the fairness of the RFP, stated that the process was clear and the committee had specifically discussed its role in grading the RFP. She observed that the committee had acted as a team during the RFP process, and she expressed her agreement with Representative Tuck that the results would have been the same.

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CHAIR FAIRCLOUGH asked if there were any other comments.

12:45:48 PM

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fiscal Policy meeting was adjourned at 12:45 p.m.