ALASKA STATE LEGISLATURE
LEGISLATIVE BUDGET AND AUDIT COMMITTEE
January 29, 2016
7:30 a.m.

MEMBERS PRESENT

Representative Mike Hawker, Chair
Representative Kurt Olson
Representative Lance Pruitt
Representative Steve Thompson
Representative Sam Kito

Senator Anna MacKinnon, Vice Chair
Senator Lyman Hoffman
Senator Cathy Giessel
Senator Bert Stedman
Senator Click Bishop

MEMBERS ABSENT

Representative Mark Neuman (alternate)

Senator Pete Kelly (alternate)

COMMITTEE CALENDAR

APPROVAL OF MINUTES
ENALYTICA~ INC. CONTRACT RENEWAL
OTHER COMMITTEE BUSINESS

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

RENA DELBRIDGE, Staff
Representative Mike Hawker
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Offered details for the proposed renewal of the contract with enalytica, Inc.

ACTION NARRATIVE

7:30:45 AM

CHAIR MIKE HAWKER called the Legislative Budget and Audit Committee meeting to order at 7:30 a.m. Representatives Hawker, Thompson, and Kito and Senators MacKinnon, Giessel, Bishop, and Stedman were present at the call to order. Representatives Olson and Pruitt and Senator Hoffman arrived as the meeting was in progress.

Approval of Minutes

7:31:53 AM

CHAIR HAWKER announced that the first order of business would be approval of the minutes.

SENATOR MACKINNON made a motion to approve the minutes of November 17, 2015, and December 7, 2015. There being no objection, the minutes from the meetings of November 17, 2015, and December 7, 2015, were approved.

enalytica, Inc. Contract Renewal

7:32:45 AM

CHAIR HAWKER announced that the next order of business would be discussion regarding the renewal of the contract with enalytica, Inc.

7:34:41 AM

RENA DELBRIDGE, Staff, Representative Mike Hawker, Alaska State Legislature, shared that she had discussed a contract renewal with both Mr. Mayer and Mr. Tsafos from enalytica, Inc. She explained that the past contracts had been with each individual, but, since formation of the corporation, enalytica, Inc., a new contract had now been negotiated with enalytica, Inc. She reported that the new contract was "essentially on the same terms" and the current dollar amount reflected a doubling up of the two individual contracts into one contract. She detailed that the services of both men would be available for the upcoming year, at a retainer of $20,000 per month for 10 days of work each month.

7:36:31 AM

CHAIR HAWKER asked whether the retainer services had been utilized in the last billing cycles.

MS. DELBRIDGE, in response, said that there were only one or two months during the past year in which enalytica, Inc. did not have work from the Alaska State Legislature to fill those five days of contractual work from each individual. She reported that in the other months the requests for reports to help with policy decisions or the presentations in Juneau for specific analysis resulted in full use of the retainer. She relayed that the retainer contract had been slightly restructured, and would now allow for the rollover of any unused days to the next month, which would be capped quarterly. She noted that this [rollover structure] was a negotiated benefit to the state. She shared that the only other changes were technical word choices.

7:38:29 AM

REPRESENTATIVE KITO asked if enalytica, Inc. was paid regardless, or was work required in order to be paid.

MS. DELBRIDGE replied that the retainer would be paid as agreed in the contract, regardless of whether the Legislature has specific work requests for them. She detailed that the monthly retainer included ten days of work product, not charged in addition to the retainer. She opined that the framework seemed to be working fairly well, and had allowed for enalytica to maintain a work readiness for any special items that arose, including educational symposiums. She shared that there was a risk with a no retainer relationship as without a retainer they may need to pursue other clients.

CHAIR HAWKER stated that there was nothing about this retainer relationship that was, in any way, unusual or not in ordinary business practice. He explained that enalytica. Inc. would make the commitment of time and be on call with this retainer.

7:40:11 AM

SENATOR STEDMAN offered his belief of a need for more consultants, noting that historically there had been "a few more." He mentioned past contracts with Roger Marks. He opined that the Legislature needed "to be careful with our tool box, we don't end up with no tools in it." He pointed out that it would take any consultant time to come up to speed for the mechanisms, the complexity, and the history of the structure, as it was not clear cut. He suggested that it was a good practice to keep people on retainer, instead of a two to three month wait while they built a model of cash flow and tax structure.

CHAIR HAWKER expressed his agreement with those concerns, and asked that this be addressed during a discussion later in the meeting for additional resources that were necessary and appropriate, an "essential spend for the State of Alaska." He reiterated his agreement:

> We're looking at one of the world's largest mega projects, in the gas line, and we're looking at the lifeblood of the State of Alaska in our oil and gas tax system. These are critical issues, and I firmly believe we owe it to the public of the State of Alaska that adequate, qualified resources [are] available to us as we need them.

7:42:10 AM

SENATOR BISHOP asked for clarification that the unused days of consultation could be carried forward.

MS. DELBRIDGE replied that Representative Hawker had requested this in order to make full use of every retainer day possible, and enalytica, Inc. was accommodating and agreeable. She pointed out that this was capped quarterly in order to avoid too much of an accrual of days.

CHAIR HAWKER explained that, although this agreement paid enalytica, Inc. monthly, the hours in the contract would be reconciled quarterly. He allowed that, although future projections were dangerous, consistency with the previous use patterns, minimized the "risk of leaving any money laying on the table with the quarterly retainer." He acknowledged that enalytica, Inc. had rolled some unused hours forward in the past.

SENATOR BISHOP expressed his appreciation for this negotiation. He concurred with the earlier comments by Senator Stedman. He noted that enalytica, Inc. was being quoted in other oil and gas publications, and that "they're a known commodity, I like 'em personally. I think they're good." He further stated: "I like a big tent with all the knowledge I can get."

7:45:32 AM

SENATOR GIESSEL acknowledged that the two consultants from enalytica, Inc. had been consulting with the Alaska State Legislature for "a long time, so getting up to speed isn't a

problem with them." She expressed her concern to the possible need for more consulting days, and she asked about the likelihood of exceeding the contracted number of days.

MS. DELBRIDGE replied that "the not to exceed contract amount of $400,000, based on our past use history, should be more than adequate to take care of that." She explained that any extra days would be billed at a daily rate of $3000 per day [for each of Tsafos/Mayer].

7:46:46 AM

SENATOR GIESSEL expressed her concern that she did not have a copy of the contract.

CHAIR HAWKER replied that the long standing process [in the Legislative Budget and Audit Committee] was for the committee chair to be authorized to negotiate a contract "with the not to exceeds." He stated that this specific contract was not yet completed, as the ministerial aspects were still being negotiated between the attorneys for enalytica, Inc. and the Alaska State Legislature.

7:47:28 AM

MS. DELBRIDGE acknowledged that nearly all the contract was complete, and there was nothing material left to be negotiated. She stated that there was only a "fairly immaterial change."

7:48:00 AM

SENATOR GIESSEL expressed her desire to read the contract prior to her agreement.

CHAIR HAWKER offered the option for Senator Giessel to vote against the motion to approve the contract. He stated that, in his 14 years on the Legislative Budget and Audit Committee, he had "never seen this committee get into the specifics of contract negotiations."

7:48:35 AM

REPRESENTATIVE THOMPSON offered his belief that enalytica, Inc. was "some of the best in the world." He stated that, although he did not have a need to review the contract, he wanted clarification on some specifics. He asked if the agreed upon

payment of $3000 per day was for each consultant, to total $6000 per day.

MS. DELBRIDGE replied that the terms were the same as prior contracts, and the payment of $3000 per day was per person. She added that "travel was at half of that." In response to Representative Thompson, she relayed that the necessity for the services of both men was dependent "on the nature of the specific request."

REPRESENTATIVE THOMPSON asked if expenses above the contract price were included.

MS. DELBRIDGE replied that reasonable travel expenses, including airfare, lodging, and per diem for meals, were also reimbursed. She noted that these were included in the overall not to exceed cap on the contract, but were not included in the daily rate. In response, she relayed that the "not to exceed cap" was $400,000.

CHAIR HAWKER reiterated that "there is no change in the not to exceed number." He reminded the committee that it was necessary for the Legislative Budget and Audit Committee to continue or extend a contract.

7:50:33 AM

REPRESENTATIVE KITO acknowledged that enalytica, Inc. had provided good advice, and asked if enalytica, Inc. had any clients other than the State of Alaska.

MS. DELBRIDGE replied "not to my knowledge," suggesting that enalytica, Inc. would be better able to answer that for themselves.

REPRESENTATIVE KITO asked for clarification that, although the contract was for five days each month, was enalytica, Inc. expected to be available full time to the Alaska State Legislature.

MS. DELBRIDGE stated, "Not exactly." She explained that the contract kept enalytica, Inc. under contract to the Alaska State Legislature, and they had been very responsive to these needs. She declared that enalytica, Inc. had "made themselves available absolutely."

CHAIR HAWKER explained that this was the reason for the requests to other committee chairs for advance notice to their needs, so the consultants could maintain availability. He stated that enalytica, Inc. had always adjusted their schedule to meet committee requirements.

7:52:41 AM

SENATOR STEDMAN suggested that a review of the history of the consultants in the international arena for mega projects and gas proposals would be beneficial to the committee. In response to Chair Hawker, he explained that, as this consultancy was a very small marketplace, many of the firms had conflicts, often having preexisting contracts with the major oil companies involved in Alaska. He relayed that this created a challenge, and, as it was a competitive market place, many companies would tie up the consultants so their competitors would not have the necessary analytical help. He emphasized that this put Alaska at a disadvantage, as the state's sole existence was not oil and gas. Consequently, "we don't have a smorgasbord of consultants we can just dial up and have 'em beat down our door." He relayed that the two aforementioned consultants came from the firm with which the committee had previously contracted, which had subsequently merged with another company so that they had started their own consultancy.

CHAIR HAWKER interjected that this previous consulting contract had been with PFC Consultants, one of the few firms that did not have conflicts. However, after the PFC merger with a second firm, this reorganization had resulted in a conflict, so Mr. Mayer and Mr. Tsafos formed enalytica, Inc. He offered that this was fortunate for Alaska, as they had been the two consultants from PFC working with Alaska.

7:55:29 AM

SENATOR MACKINNON explained that she had been Chair of the Legislative Budget and Audit Committee at that time of transition. She offered some background to this contract, noting that the newly merged company had decided to retain its contracts with the large oil companies. She relayed that the committee had reached out to a variety of consultants, and ultimately, enalytica, Inc. had approached the committee. She stated that the consultants had been very professional and had provided information which was as political free as possible. She acknowledged the challenge and the difficulty of relaying pending contracts to individual committee members, especially as

the contracts were usually negotiated in early January. She stated her support for the pending contract, and offered her belief that these contracts would be available to all the committee members. She reported that the amounts were within the standard parameters of what had previously been issued. She noted the value of Senator Stedman's comment for the need of additional contracts.

7:58:27 AM

CHAIR HAWKER explained that procurement of these specialized contractors in a very specialized environment came from a very limited field. The committee, after discussion and research for alternatives, had determined that it was an appropriate contract without the formal RFP (Request For Proposals) solicitation and award process, because of the "unique services, the unique knowledge of theirs with the State of Alaska." He declared that the priority was a search for quality, noting that the contract was exempt from the solicitation and contract award requirements of legislative procurement, even as it was in compliance with those provisions.

7:59:48 AM

REPRESENTATIVE THOMPSON expressed his support for the contract but asked to clarify the total numbers.

MS. DELBRIDGE, in response to Representative Thompson, clarified that the contract was for a monthly payment of $20,000 to enalytica, Inc. She explained that the "not to exceed amount" would cover the reimbursable travel expenses, which had been agreed upon with the Legislative Audit Division, as well as any additional days that may become necessary. She pointed out that this was reflective of the amount in the previous contract, which had served well as a dollar value over the past few years.

CHAIR HAWKER reiterated that the two former contracts had been $10,000 each, but these two contracts had now been merged, which became $20,000 for the firm, enalytica, Inc. He stated that the committee vote was to authorize a contract that could, if all the money was used, spend $400,000.

REPRESENTATIVE THOMPSON observed that the $400,000 included all the extra expenses.

8:01:59 AM

REPRESENTATIVE KITO expressed his agreement that enalytica, Inc. provided a valuable service to the state; however, noting the constraints to the current proposed budget, he suggested that the committee be careful moving forward, while asking the rest of the state to scale back. He asked if there had been an effort to negotiate a lower fee with enalytica, Inc. especially as the State of Alaska was its only contract. He asked if there was concern for enalytica, Inc. working with other companies. He offered his belief that the limited monthly time obligation to the State of Alaska would offer the opportunity for enalytica, Inc. to search for other contracts. He suggested that this was the chance to negotiate a lower fee.

8:03:02 AM

SENATOR MACKINNON, in response, offered her belief that the State of Alaska was not the only contract held by enalytica, Inc. She relayed that enalytica, Inc. had been in business for more than one year, and that they were soliciting other work. She stated that this proposed contract was a better agreement than the original, as that original did not include rolling the days forward. She expressed agreement with the need to be judicious in any spending. She offered to research whether enalytica, Inc. had other contracts.

CHAIR HAWKER affirmed that it was his understanding that the State of Alaska was not their only client. He stated: "by committing to the State of Alaska, they do commit to us to be available." He said that this was a criteria asked of all consultants. He added that the country of Greece was a client of enalytica, Inc., adding "these guys are truly internationally recognized consultants." He assured the committee that the legislature of the State of Alaska was "one of the most demanding clients there is," pointing out that some consultants did not want to work with the legislature because of the unique time demands. "We ask a lot, we demand a lot of the people that provide these services to us," he emphasized. He suggested that a review of the contracts signed by the administration would indicate that the Alaska State Legislature was receiving a "fair, market driven transaction with these folks."

8:05:35 AM

SENATOR STEDMAN opined that there had been some problems, some competitive disadvantages embedded in Alaska's Clear and Equitable Share (ACES), which had needed to be reviewed, and possibly restructured. When the Legislative Budget and Audit

Committee set out to deal with this, and tried to find consultants, they kept coming up with "firms that were conflicted out." He shared that he and the Chair had identified some mechanical problems within ACES. He allowed that there could be discussion for the politics and policy, but he underscored that there were "some issues embedded in there that needed to be rectified." He shared that they had difficulty finding a consulting firm because the major oil companies and the administration had already contracted with them, before they located PFC Energy and started the review of the ACES structure. He continued with this history of the involvement with consultants and pointed out that, although Mr. Tsafos and Mr. Mayer had been doing the background work for the state, they were not the initial interface people with whom Senator Stedman and Chair Hawker met. He expressed his concern with the cost of the contracts, but declared that this was a pittance compared to "what we could face if we walked into these negotiations at all." He stated that the administration had hired consultants away from the legislature through "politically tactful maneuvers, sometimes induced by our own members of this committee." He declared a need to be protective of the consultants and to build a consultant team to help the committee make the best policy decision. He suggested the need for a discussion to broaden the team with less expensive consultants who did not require the global market positioning and international viewpoint of a gas structure, but understood the mechanics "of what we're dealing with."

8:09:07 AM

SENATOR HOFFMAN asked if there were any renewal or extension options in this contract.

MS. DELBRIDGE opined that this was simply a yearlong contract, for which the Alaska State Legislature could discuss a renewal at its end.

CHAIR HAWKER explained that there were not any renewal options in the first contract, and there were not any in the current contract. He stated that this was a one year contract extension that will, necessarily, be renewed if needed in a year.

8:10:13 AM

SENATOR GIESSEL commented that she had enjoyed working with enalytica, Inc. and she expressed her full support for re-engaging and working with them. She expressed her full

understanding that there were historical procedures, but, as there were still questions about the contract and as it was her responsibility to read the contract before voting its approval, she would not vote for the contract until she had read it.

8:11:03 AM

SENATOR MACKINNON moved and asked unanimous consent that the Chair of the Legislative Budget and Audit Committee be authorized to enter into a contract with enalytica, Inc. at a cost not to exceed $400,000. The contract will be exempt from the solicitation and contract award requirements of the Legislative Procurement Procedures.

8:11:47 AM

SENATOR HOFFMAN asked for the term of the contract.

SENATOR MACKINNON objected for discussion.

8:12:08 AM

MS. DELBRIDGE explained that the time frame of the contract would begin on February 1, 2016, through January 31, 2017.

8:12:25 AM

SENATOR MACKINNON removed her objection.

SENATOR GIESSEL objected.

8:12:38 AM

A roll call vote was taken. Representatives Hawker, Pruitt, Thompson, Olson, and Kito, and Senators MacKinnon, Hoffman, Bishop, and Stedman voted in favor of renewal of the contract with enalytica, Inc. Senator Giessel voted against it. Therefore, the contract proposal with enalytica, Inc. was adopted by a vote of 9 to 1.

CHAIR HAWKER said the contract, as soon as completed, would be available as a public document and that he would provide a copy of the contract to Senator Giessel.

8:13:54 AM

SENATOR MACKINNON offered some background to her early time as the Chair of Legislative Budget and Audit Committee. She expressed her hope that the committee would enter into a contract at the end of 2016 if it was decided to retain consultants. She acknowledged that the contract process had been completed prior to her chairmanship, and she now better understood the difficulty of having all the necessary information at a particular point in time, and why it had not been left for her to complete.

CHAIR HAWKER agreed that this would be reviewed during the upcoming fall.

SENATOR MACKINNON recognized that this was a great help to an incoming new chair.

Other Committee Business

8:16:44 AM

CHAIR HAWKER announced that the next order of business would be to begin a dialogue for what additional resources might be essential to the Alaska State Legislature as it moved forward with legislation regarding oil and gas fiscal systems. He pointed out that the governor was going to insist that the entire Alaska LNG Project be "papered and those papers be delivered to the legislature by the end of the 90 day session and we are to be acting upon them and in an immediately called special session."

CHAIR HAWKER allowed that Senator Stedman had discussed the need for "other resources that are on call, that are not as expensive, but they can satisfy our needs for modeling and technical work." He shared that typically this level of procurement had been done on the chair's authority with the concurrence and knowledge of the committee. He offered Roger Marks, a former state petroleum economist, as an example. He solicited suggestions from Senator Stedman for resources to engage for these more routine matters, who could be on call to individual legislators with deference to committee chairs, especially those who had bills in their jurisdiction. He offered his belief that a more challenging end was that the legislature was facing a decision by the end of the 90 day session, which would be based on the entire document package for the Alaska LNG Project and could be feet thick. He declared the necessity to be prepared, and opined that none of the individual legislators had the experience in the complete value chain of

"one of the largest economic projects in the history of the world, in a very competitive environment." He offered his belief that it was necessary for an additional high level resource of someone with successful practice and experience with consultation to a sovereign for the development of a complete value chain and the accompanying business transaction. He declared that it was necessary to consider a significant contract by the committee.

8:20:39 AM

SENATOR STEDMAN, in response to Chair Hawker, reflected that, for any new members to the committee, there was a substantial learning curve, as it was a complicated system. He allowed that the price of the contract was significant and he would prefer not to use enalytica, Inc. for the mechanical process of day to day operations. He reflected that the committee had used Dan Dickinson in past years. He offered an example of policy, dealing with credits, and noted that these were confidential, although they were co-mingled for a total. He shared that a policy with a cost needed to be reviewed for its effectiveness, and this became a problem when it was dealing with confidential information that was not available. He offered his belief that the increased complexity of the system would create a new fiscal structure to embed in the current structure, and that it was important for legislators to understand the mechanical process. He expressed his concern for statutes and processes that hindered themselves. He reiterated that it was beneficial for new members to understand at least "a rough layout" of the tax structure, noting that sometimes a policy change was made without an anticipation of the outcome until years later upon review.

8:24:21 AM

CHAIR HAWKER offered to discuss this further and suggested that consultants could be available on standby contracts.

8:25:03 AM

REPRESENTATIVE KITO opined that it was important to note that the largest proposed engineering project in the world was "sitting at our doorstep and it may be worthwhile to have a little bit of due diligence on the technical aspects of the engineering of the project" to ensure that the proposed cost of the project, $45-$65 billion, was similar to the cost proposed by the staff.

8:25:55 AM

SENATOR MACKINNON suggested that, as many areas needed to be reviewed, engineering may be a lower priority for her because the three partners were pushing for lower costs, as well. She expressed a greater concern with the gas sales agreement, pointing out that the legislature may not have any expertise. She added that the financing realm was also a priority. She suggested that the committee look at categories as the needed expertise would be for more than one field. She offered to reach out to former members of the Alaska LNG Project board of directors who had worked on successful projects for their recommendations to expert consultants.

CHAIR HAWKER agreed that everyone recognized these needs, and his staff had anticipated the conversation. He reported that his search had found there were very few qualified resources who did not already work with Exxon Mobil.

8:28:54 AM

MS. DELBRIDGE, in response to Chair Hawker, offered a matrix of the 24 different current agreements that would comprise the Alaska LNG Project package which the state had shared with the legislature after the recent special session. These ranged from the commercial and governance agreements to payments in lieu of taxes (PILT), all of which raised concerns. She expressed her understanding that it would be critical for the legislature to look at the terms and to fully understand the interface of all the associated agreements, as well as the cumulative effect on the project. She pointed out the importance for retaining the full value proposition which drove the state to participation in the project. She reported that she was tasked with assessing professional firms for consulting services to review this suite of project enabling agreements. She allowed that there could be little time before a special session when due diligence would be expected of the legislature to review and understand the package even though the contracts would already have been negotiated.

8:30:58 AM

CHAIR HAWKER observed that it was critical to keep in mind that, although the legislature was not a negotiator in this transaction, its role was to understand the transaction and approve the critical documents to move it forward. He pointed out that there was a big difference between negotiation and

structure of the agreements as opposed to understanding, reviewing, and passing judgement on those agreements.

8:31:25 AM

MS. DELBRIDGE shared her research of contractors with the necessary integrated project experience, and had resources to bear on the entire value chain, from upstream supply agreements, marketing structure, new infrastructure agreements, fiscal and governance agreements, and financing proposals. She pointed out that this contract would be for a review of due diligence without any negotiation of the contracts. She noted that these would need to be firms willing to work in the public realm to provide written and verbal testimony within the public arena, and were also free of the aforementioned conflicts. She added that this was a small field, and she had narrowed this to an in-depth look at 12 firms, although most lacked some of the entire value chain expertise. She had identified two strong candidates, with a third candidate that had a potential conflict that could not be navigated.

CHAIR HAWKER expressed his desire to reconvene the committee to continue this conversation, in executive session, to discuss the specific candidates in more depth and determine the will of the committee for procuring additional support for the project. He suggested a review of the contracts the administration had signed. He declared that he was not suggesting spending millions of dollars to redo everything done by the administration. He acknowledged that it would be expensive to hire someone to "take that capstone view from our due diligence perspective on the work that is being done" by the shared project sponsors.

8:35:23 AM

ADJOURNMENT

There being no further business before the committee, the Legislative Budget and Audit Committee meeting was adjourned at 8:35 a.m.