

**ALASKA STATE LEGISLATURE
JOINT MEETING
HOUSE STATE AFFAIRS STANDING COMMITTEE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE**

April 2, 2019

3:04 p.m.

MEMBERS PRESENT

HOUSE STATE AFFAIRS STANDING COMMITTEE

Representative Zack Fields, Co-Chair
Representative Jonathan Kreiss-Tomkins, Co-Chair
Representative Gabrielle LeDoux
Representative Andi Story
Representative Adam Wool
Representative Sarah Vance
Representative Laddie Shaw

HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

Representative Ivy Spohnholz, Co-Chair
Representative Tiffany Zulkosky, Co-Chair
Representative Matt Claman
Representative Harriet Drummond
Representative Geran Tarr
Representative Sharon Jackson
Representative Lance Pruitt

MEMBERS ABSENT

HOUSE STATE AFFAIRS STANDING COMMITTEE

All members present

HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

All members present

OTHER LEGISLATORS PRESENT

Senator Tom Begich
Representative Dan Ortiz

COMMITTEE CALENDAR

PRESENTATION: PROCUREMENT PROCESS & CONTRACTS FOR SERVICES FOR ALASKA PSYCHIATRIC INSTITUTE

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

JASON SOZA, Chief Procurement Officer
Shared Services of Alaska
Department of Administration
Juneau, Alaska

POSITION STATEMENT: Presented a PowerPoint titled "Procurement Overview".

ALBERT WALL, Deputy Commissioner
Office of the Commissioner
Department of Health and Social Services
Juneau, Alaska

POSITION STATEMENT: Testified during discussion regarding procurements.

ACTION NARRATIVE

[3:04:37 PM](#)

CO-CHAIR KREISS-TOMKINS called the joint meeting of the House Health and Social Services Standing Committee and the House State Affairs Standing Committee to order at 3:04 p.m. Representatives Kreiss-Tomkins, Fields, Zulkosky, Spohnholz, Drummond, Jackson, Tarr, Claman, Story, Wool, Shaw, and LeDoux were present at the call to order. Representatives Pruitt and Vance arrived as the meeting was in progress. Also, in attendance were Senator Begich and Representative Ortiz.

PRESENTATION: PROCUREMENT PROCESS & CONTRACTS FOR SERVICES FOR ALASKA PSYCHIATRIC INSTITUTE

[3:06:08 PM](#)

CO-CHAIR KREISS-TOMKINS announced that the first order of business would be a presentation regarding the procurement process and contracts for services for Alaska Psychiatric Institute.

3:07:13 PM

JASON SOZA, Chief Procurement Officer, Shared Services of Alaska, Department of Administration, presented a Power Point titled "Procurement Overview." He shared his background, reporting that he had worked for the State of Alaska for almost 20 years, with more than 18 years in procurement. He noted that he held two professional public procurement certifications. He introduced slides 1 and 2, titled "General Overview," and paraphrased from the slides, which read:

State procurement is governed by law.

- Became effective January 1988.
- Based on the Model Procurement Code.
- Adopted in whole or in part by at least 30 states.

Applies to all expenditures of state money except where exempted by statute.

Various competitive processes exist depending on dollar amount.

Competition is required unless certain conditions exist.

If these conditions are present, alternate procurement processes may be pursued.

MR. SOZA explained that less than \$100,000 was the cut off to be considered a small procurement, which entailed a more straightforward, quicker, and easier to understand process; whereas, everything greater than \$100,000 was a formal procurement with a more complex and rigid process.

3:09:35 PM

MR. SOZA moved on to slides 3 and 4, "Alternate Procurements," and discussed the typical procurement workflow. He explained that the competitive process would start when an agency program manager identified the need for goods or services. The program manager would list the requirements and ensure the funding before submitting the request to the procurement office for review of a procurement strategy and the ensuing path forward. He noted that the procurement officer may assist with market research, benchmarking, and identification of the competitive pool and then put together a solicitation document to be issued

to the public and the vendor community. He added that the procurement officer would act as the liaison between the agency and the vendor community. The vendor community would respond with a proposal or a bid, the procurement officer would evaluate these, make a determination based on the low bid or the most advantageous offer, and then negotiate as necessary. After the award, the contractor would begin.

[3:11:31 PM](#)

MR. SOZA directed attention to slide 4, "Alternate Procurements," which read:

There are five types of alternate procurements:

- Single Source
- Limited Competition
- Unanticipated Amendment
- Emergency
- Innovative

MR. SOZA stated that four of these types of procurement were available under law and one was available under regulations. He stated that the single source and limited competition were closely related, with similar evidentiary requirements. He explained that unanticipated amendment was found in regulations and was intended to prevent performance under small contracts from being grown into a giant contract. He explained that emergency procurements were for the state to purchase the necessary goods or services to treat threats to public health or welfare without the necessity of a competitive process requiring time that may ultimately put the public in danger. He explained the innovative alternate procurement as a means for when the necessary process does not "fit within the box of the procurement code" and allows for a "distinct procurement plan that gets vetted by the Department of Law and my office." He acknowledged that this was not often used.

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MR. SOZA continued with slide 5, "Single Source," which read:

Single source procurements:

- Authorized under AS 36.30.300.
- Requires written evidence supporting:

Why it is not practicable to pursue a competitive process.

Why award to the identified vendor is in the state's best interest.

MR. SOZA explained that the review of a single source procurement, as well as any alternate procurement, was to ensure due diligence by his office and to guarantee the agency was complying with the law. He added that his office wanted to make sure there was written evidence in support.

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MR. SOZA shared slide 6, "Alternate Procurements," which depicted a typical alternate procurement workflow procedure. He said that this procedure would still start with an agency identifying a need, developing a scope of the need and collecting written factual evidence, as necessary. The agency would work with its internal procurement officer to look at the request and help ensure that the evidence complied with the legal requirements, as well as requesting additional evidence, as necessary, before preparing the document for submission to the internal agency leadership. After approval, the document would be forwarded to the statewide contracting office for further review of the evidence supplied for what was required by law. After this approval, it would be forwarded to the chief procurement officer for the ultimate review and approval. If there were still questions or a need for more information, additional evidence could be requested.

[3:16:25 PM](#)

MR. SOZA paraphrased slide 7, "API Procurement", which read:

First contacted about potential API single source on January 25, 2019.

Met with HSS leadership and counsel on January 31, 2019.

Single source request received and approved on February 7, 2019.

MR. SOZA explained that he had first been contacted, by phone, by Deputy Commissioner Wall late in the day on Friday, January 25, at which time the Deputy Commissioner had explained the situation at API and asked for guidance to what might be required under law for a single source procurement. He reported that he was also invited to a meeting with the Department of

Health and Social Services leadership and their counsel on the following Thursday, January 31, to speak about the situation at API and the single source procurement process. He said that they discussed in more detail the types of evidence necessary to meet the statutory requirements, including expert written testimony and other evidence which would substantiate the single source procurement. He reported that his office received the single source request in the following week. It was processed in the normal way with a review by a contracting officer in his office and then forwarded to Mr. Soza for his approval. He acknowledged that, as there had been some confusion for whether this should be an emergency procurement or a single source procurement, the initial request had been for an emergency procurement. He said that when he sought clarification, he found that it was a mistake in terminology. He noted that Deputy Commissioner Wall had labeled this as an "emergent single source," which a procurement officer had taken as an emergency procurement request. He stated that the intent all along had been for a single source procurement, and he directed attention to the e-mails which spoke to this. He said the request was re-submitted as a single source, was reviewed, and was approved. This concluded his "material involvement in the API contract" and this granted the authority to the Department of Health and Social Services to move forward on a contract with Wellpath.

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CO-CHAIR SPOHNHOLZ expressed her confusion between an emergency contract and a single source contract. She asked why it was thought there was only one provider in the United States able to do this as there was not a focus on the emergency. She asked about the research that documented and justified this decision.

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MR. SOZA expressed his agreement that an emergency procurement was for a specific situation. He relayed that the discussions "spoke to the possibility that yes, there was a short-term situation that needed to be addressed." He stated that the Department of Health and Social Services wanted to maintain the possibility that "if the service provider did a good job in that window, or performed within that window, that they wanted the ability to go more long term with that, which leant itself more to a single source procurement." He reported that the evidence provided with the request indicated it was in the state's best interest to award Wellpath as it was the most prepared to respond to the situation.

[3:21:59 PM](#)

CO-CHAIR SPOHNHOLZ asked if there had ever been a multi-year, \$44 million per year, single source contract fast tracked in this way.

MR. SOZA replied that the evidence provided had an emergent quality, as there was risk for decertification and closing at API. He said that, although that applied a sense of urgency to the situation, the level of review and evidence applied to the single source request substantiated the application.

[3:23:00 PM](#)

CO-CHAIR SPOHNHOLZ repeated her request to Mr. Soza asking whether he had ever seen a contract of this size awarded in this manner and in this time frame.

MR. SOZA replied that he could only think of one contract of similar size to a single source, although it was not in the same time frame. In response, he expressed his agreement that this was exceptional.

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CO-CHAIR FIELDS relayed that testimony indicated an incident of immediate jeopardy had been a determining factor in the selection of Wellpath. He pointed out that this incident had happened a week after the Deputy Commissioner had "started going down the road of pursuing a single source contract" on January 22; whereas, the contact with Mr. Soza had occurred on January 25. He asked if it was normal to start the pursuit of a single source procurement before the event that was the stated reason for this pursuit.

MR. SOZA replied that he did not know what had precipitated Mr. Wall to contact him on January 25. He relayed that, at that time, Mr. Wall had explained the situation with API and had asked about the parameters for a single source procurement.

CO-CHAIR FIELDS said that, during testimony in the Senate Health and Social Services Standing Committee, Mr. Wall had stated the reason for the request for a single source request had been for the incident of immediate jeopardy on January 29. He asked if concerns would have been raised if an agency were pursuing a procurement and then subsequently attempted to justify a single

source procurement based on an event after they sought this procurement.

MR. SOZA expressed his agreement that this would have raised concerns but added that nothing dated on January 29 was considered as part of the evidence in the alternate procurement.

[3:26:13 PM](#)

CO-CHAIR FIELDS pointed out that this was the reason Mr. Wall stated for the request, and he asked what the average size for a single source procurement was.

MR. SOZA replied that these procurements ran the gamut for size but that the average would be below \$44 million.

[3:27:04 PM](#)

CO-CHAIR KREISS-TOMKINS, referencing an earlier question by Representative Spohnholz, asked about the one single source contract that had exceeded the size of this single source contract.

MR. SOZA replied it had been a longer-term contract for firefighting related equipment. He said that although two single source procurements typically requested maximum authorization, the actual contract may come in under that amount.

[3:27:48 PM](#)

REPRESENTATIVE LEDOUX offered her understanding that there had been discussions between the Department of Health and Social Services and Providence Alaska Medical Center. She asked if anyone had reached out to Providence Alaska Medical Center for immediate support.

[3:28:21 PM](#)

ALBERT WALL, Deputy Commissioner, Office of the Commissioner, Department of Health and Social Services, in response, said that there had been discussions with several CEOs of hospitals throughout Alaska, including Providence Alaska Medical Center. He added that the department had a good partner relationship with Providence Alaska Medical Center, that he had a conversation with them yesterday about this very issue, although

he could not recall the exact date on which he had spoken with them previously.

[3:29:23 PM](#)

REPRESENTATIVE LEDOUX asked if Providence Alaska Medical Center had said they could not do this in a timely manner.

MR. WALL replied, "not exactly in those words." He stated that he was aware of the capacity at Providence Alaska Medical Center, and that they would continue to work together toward meeting these needs.

REPRESENTATIVE LEDOUX asked what Providence Alaska Medical Center had said.

MR. WALL replied that Providence Alaska Medical Center had offered to do whatever possible within their means to help. He added that Providence Alaska Medical Center had shared two advance nurse practitioners with psychiatric specialty to help with the situation at API.

[3:30:10 PM](#)

REPRESENTATIVE WOOL asked for a distinction between the terms emergent and emergency.

MR. SOZA explained that, as the term emergent did not show up in procurement, this had led to the mistake.

REPRESENTATIVE WOOL expressed his confusion for the relationship of the two terms.

MR. SOZA expressed his agreement that this was an emergency situation.

REPRESENTATIVE WOOL asked when the evidence had been presented to authorize approval for a single source procurement.

MR. SOZA replied that all the evidence was presented along with the request on February 7, and that the initial phone call had been to determine what constituted a single source procurement.

[3:32:52 PM](#)

REPRESENTATIVE WOOL referenced the discussions on January 25 and January 31 for a single source procurement and asked if the

evidence for single source procurement had been supplied on February 7, with approval on that same date.

MR. SOZA said that was correct.

REPRESENTATIVE WOOL asked about the evidence.

MR. SOZA said that the evidence was provided in the single source request, adding that this was on record. He stated that it consisted mainly of testimony in either e-mail or by Commissioner Crum exercising his authority to take over API and "put in a contractor." He noted that, as they had the conversations and he was familiar with the situation at API and the direction that Department of Health and Social Services was moving, the expert written testimony submitted by Mr. Wall became part of the evidence to be considered for whether the request met the statutory requirements.

[3:34:40 PM](#)

REPRESENTATIVE WOOL referenced the other single source procurement situations and asked if it was common to receive the evidence and offer approval on the same day.

MR. SOZA replied that a lot of the evidence gathering, and vetting would take place prior to the submission of the request. He pointed out that, as Department of Health and Social Services had their own procurement staff, as well, there was an assumption that they were putting this together and had it ready on February 7.

[3:35:35 PM](#)

REPRESENTATIVE WOOL asked if he was aware that Providence Alaska Medical Center had approached API prior to this situation with an offer to take over the management.

MR. SOZA said that he was not aware of that.

[3:36:17 PM](#)

REPRESENTATIVE CLAMAN asked whether Mr. Soza believed that the procurement code had a strong bias in favor of competitive bid contracts, and not in support of single source contracts.

MR. SOZA replied, "yes."

REPRESENTATIVE CLAMAN asked if there was agreement that a single source contract was an exception, and not the rule.

MR. SOZA replied, "yes."

REPRESENTATIVE CLAMAN asked whether there had been occasions when an application for a single source contract was rejected with a determination that it would be necessary to "put this out for bid."

MR. SOZA replied, "yes."

REPRESENTATIVE CLAMAN asked how frequently this occurred.

MR. SOZA replied that his office tried to stop any applications that would be rejected prior to submission. He explained that this was often resolved with a preliminary talk.

REPRESENTATIVE CLAMAN asked how often there was a conversation that determined a contract needed "to be bid out and hear from other parties."

MR. SOZA replied that this probably happened 10 times each year.

REPRESENTATIVE CLAMAN asked how often there was approval of a single source contract for more than \$10 million.

MR. SOZA replied that more than \$10 million was "on the higher end of what we see."

REPRESENTATIVE CLAMAN asked why his office had followed the lead of the Department of Health and Social Services and did "not push them to go to bid this out" as it was no longer an emergency. He asked how hard the Department of Health and Social Services had been pushed to contract this out.

MR. SOZA replied that the leadership from the Department of Health and Social Services had made the approach and asked for advice about the single source contract. He stated that there had been discussions and, as there had been a meeting on January 31 with the department's legal counsel, commissioner, and two deputies, the discussion and evidence seemed to support a single source contract per the current statute.

MR. SOZA, in response to Representative Claman, said that the legal counsel had been someone from the Attorney General's Office.

3:40:22 PM

CO-CHAIR ZULKOSKY referenced a memo dated February 15 from Commissioner Crum in which he stated that Wellpath employees arrived in Anchorage on Monday, February 4, and had then assumed the safety protocols from the department. She noted that the request for alternate procurement was not approved until February 7, with the full contract signed on February 8. She asked if this was proper protocol or practice for the Department of Health and Social Services to engage in services with a contractor prior to the authorization for procurement with a signed contract.

MR. SOZA replied that this was not proper protocol, stating that a contract should be signed before services were rendered.

CO-CHAIR ZULKOSKY asked for the reasons to not have an authorized contractor in any state facility before a contract was signed.

MR. SOZA replied that prior to the execution of the contract there was not any protection for the state.

CO-CHAIR ZULKOSKY directed attention to the facility serving the most vulnerable Alaskans and asked whether it was good practice for any state department to invite contractors who had not been fully authorized prior to the date the contract was signed.

MR. SOZA said that he did not know in what capacity the contractors were brought in or if any protocols were violated, but it would not be proper protocol for a vendor to provide billable services to the state prior to the contract being executed.

3:42:39 PM

REPRESENTATIVE TARR asked about an evaluation for a single source contract with conflicting requests. She pointed to the short-term request which presupposed the long-term relationship, even as it appeared this would have allowed sufficient time to go through a procurement process.

MR. SOZA expressed his agreement that the dates kept changing, and that there were some conflicting dates. He shared that the explanation and discussion for Phase 1 was that if a short-term

management service came in, it would be counter-productive to change out the service provider in Phase 2.

3:45:04 PM

REPRESENTATIVE TARR shared her concern for the size of this long-term contract with someone for whom the state had no short-term work experience. She stated that the vendor should prove they were the right operator "for this facility for vulnerable Alaskans." She declared that it did not seem appropriate "to enter into a conversation that seems more long-term in nature." She stated that this was very troubling as it was "getting ahead of ourselves in the process because there's plenty of reasons to be concerned about this particular company." She asked if looking at the "storied past" of this company would have been part of the decision making to enter into a contract.

MR. SOZA offered his understanding of the contract that it was in two distinct phases with the second phase dependent on performance in the first phase. He said that his office would rely heavily on the agency to conduct due diligence and that his staff would also conduct due diligence if something looked askance. He said that there had not been any indicators to his staff to consider a "storied past."

REPRESENTATIVE TARR said that, as quick internet research revealed troubling articles about death and lawsuits, there should have been more research given the sum of money. She acknowledged that she did not know the benchmarks used to determine the agreement.

MR. SOZA replied that he was not sure to what degree his staff would have researched. He pointed out that they were procurement experts and did their best to advise the agencies for procurement laws. He declared that, as they were not experts in a subject area, they would rely heavily on the agency. He noted that written testimony in support of award of a contract draws a lot of deference. He emphasized that his office advised on procurement law and did their best with due diligence to ensure that it was being upheld.

3:49:20 PM

REPRESENTATIVE JACKSON referred to the Ombudsman report detailing the decline of API. She asked why the procurement request was not in the emergency category.

MR. SOZA explained that it was presented that the emergency posed by decertification would be dealt with in Phase 1 of the contract, with the potential to go for a longer term. He added that the emergency procurement rules would only allow for the initial situation to be dealt with.

REPRESENTATIVE JACKSON asked why, if Providence Alaska Medical Center had shown interest before this urgent situation, it was not considered.

MR. SOZA said he was not aware of any interest.

[3:51:11 PM](#)

MR. WALL, in response to Representative Jackson, said that there was record of conversations about the needs of API over the years. He referenced a letter from Providence Alaska Medical Center to the House Health and Social Services Standing Committee which explained their position on API and the speed "at which they could be there to perform the work." He pointed to the significant difference for the type of in-patient psychiatric care of the two institutions, which had a lot to do with the speed of intervention.

REPRESENTATIVE JACKSON asked for clarification that the necessary level of care required more special needs than what Providence Alaska Medical Center could have offered in the time to save API.

MR. WALL stated that it was almost naïve to consider that all in-patient psychiatric care was the same. He detailed three basic types of in-patient psychiatric care: the voluntary psychiatric patient who does not need court intervention or a court order, noting that Providence Alaska Medical Center did a great job providing that level of care; those individuals who need in-patient care but do not want to willingly submit which raises a legal issue for intervention into a person's rights, noting that Providence Alaska Medical Center did not offer this level of care; and finally, those individuals charged with a crime and held until Title 12 for either restorative care for competency to stand trial, or for evaluation for restorative care, pointing out that this was also a very complex population which required a great deal of interaction with the law. He shared that there was a courtroom at API for these cases. It was the level of complexity and legality involved which differentiated these three types.

3:55:02 PM

REPRESENTATIVE VANCE asked if the state was still at risk for the loss of certification and its funding at API.

MR. WALL stated, "absolutely, we are." He shared the timeline of events. The survey team from CMS (Centers for Medicare and Medicaid Services) was at API during the week of January 29, which was to be the last survey. The department was very concerned by the letter threatening decertification from CMS dated February 1. He offered that the reason he contacted the procurement office was to be pro-active for options should certain things occur. He reported that he sent an e-mail which outlined "where exactly we were and how dire the situation was." The survey result was "even worse than I had thought it was, although we did not lose certification because of actions we took." He explained that he had re-sent the original e-mail, adding an amendment paragraph at the bottom which included the findings of the survey team. At that point, he stated, there was a choice to either make immediate change or be de-certified with a threat for the loss of accreditation and licensure. He pointed out that this would mean closure of API with the patients being moved to hospitals in other states. He reiterated that he was being pro-active by exploring all the options up to this point. Upon receiving the findings of the survey team, the department immediately instituted a higher level of safety protocol. The patient involved in the altercation who had been the immediate jeopardy finding was isolated and moved to a different, vacant ward for the protection of all patients and staff. A 24/7 video surveillance of all patients was instituted for all wards and all patients with an hourly accounting until a safety officer was hired. He noted that the safety protocol and the safety officer were in place prior to the arrival of the contractor. He pointed out that they had an informed idea of what could potentially be done in case of an emergency, which resulted in the selection of these options. He offered his belief that the confusion about the emergency language, the emergent language, and the sole source language all "really speaks in my mind about stability at API." He reminded the committee that a contract for \$44 million in perpetuity had not been signed, but that this was a two-phase contract stating that the vendor must meet certain expectations prior to movement to the next phase. He pointed out that the date to move to the next phase had been amended from April 15 to June 15, 2019. He added that, if Wellpath did not meet certain deadlines and outcomes, they would not be the contractor. However, as the department was looking for stability to maintain

the hospital certification and licensure, to open more beds and bring on more providers, and to increase the safety for staff and patients, there was no reason to put the hospital back in chaos in order to find another provider.

[4:02:08 PM](#)

MR. SOZA, in response to Representative Pruitt, said that he had been in his position for about six years.

REPRESENTATIVE PRUITT asked about the terms of the appointment.

MR. SOZA explained that the position of Chief Procurement Officer was created under statute with a six-year term, was appointed, and was "for cause."

REPRESENTATIVE PRUITT asked if four different agency letters of correction had been presented to him as evidence.

MR. SOZA offered his belief that this was part of the written testimony.

REPRESENTATIVE PRUITT asked if it had been presented that there would be a potential loss of \$37 million in annual federal funding.

MR. SOZA offered his belief that this was also part of the evidence.

REPRESENTATIVE PRUITT asked if the necessity of swift action had also been presented.

MR. SOZA said that there was a sense of urgency for certain upcoming dates whereby actions could happen to potentially cause an adverse impact.

REPRESENTATIVE PRUITT asked about the difference in time frame for the regular procurement process instead of this process.

MR. SOZA replied that a formal request for proposals could take between 90 - 120 days.

REPRESENTATIVE PRUITT asked if he had been informed about the 90-day deadline, imposed in July 2018, which had not been met.

MR. SOZA replied that this had been part of the evidence.

REPRESENTATIVE PRUITT asked if it had been reported that on November 26, 2018, there was a potential to revoke the license, but that the earthquake four days later had allowed for an extension.

MR. SOZA replied, "I do recall that."

REPRESENTATIVE PRUITT reiterated that Mr. Soza had been approached on January 22 with the need for a contract as quickly as possible because the third and final chance would expire on February 1; whereas, it would take potentially 90 - 120 days for the regular procurement process to find someone to fill the contract.

MR. SOZA said, "that is correct."

[4:05:47 PM](#)

CO-CHAIR KREISS-TOMKINS asked if the decision for the appropriateness of a single source contract was made solely by Mr. Soza.

MR. SOZA replied, "that is accurate."

CO-CHAIR KREISS-TOMKINS asked if it was typical for a sole source contract proposal to be received and approved on the same day.

MR. SOZA replied "yes," and noted that it was atypical for him to be involved as early in the process as for this proposal.

CO-CHAIR KREISS-TOMKINS asked if the decision to approve the sole source contract in this instance was "yours and yours alone."

MR. SOZA replied, "at the end of the day, it does roll, this responsibility rolls to me as part of statute." In response to Co-Chair Kreiss-Tomkins, he added that this was a "yes."

[4:07:41 PM](#)

CO-CHAIR KREISS-TOMKINS offered Mr. Wall the opportunity to make any comments that would be helpful for how the department had encountered Wellpath and any other important points.

MR. WALL replied that he did not have a prepared statement. He offered his belief that there had been a lot of confusion for

the timeline of events and why, to the different types and levels of care and who could provide these, and to what was at stake. He stated that, as the Department of Health and Social Services was faced with an upcoming event that could have been catastrophic, there were many things to be done in preparation. He said that many eventualities had to be vetted and, as he did not know exactly what was coming, it was necessary to ask many questions of many people, including procurement, other providers, and legal guidance. He stated that the team from CMS was going to be on-site during the week of January 29 and that the department was more than 180 days in arrear of the contractual obligation for the conditions of inclusion with CMS. He expressed his concern that API would be de-certified, if not closed. [Due to technical difficulties, segments of this testimony are not audible.] He listed concerns for many complexities of detail, including knowing which out of state agencies could take patients and under what terms, and would they honor the Alaska Title 12 conditions of competency under the law. He cited that this was what the agency was doing in the weeks prior to the arrival of the team from CMS, emphasizing that "I would be remiss in my duties had I not." He shared that there had been a series of conversations about the upcoming events to ensure the involved staff were aware for how dire the circumstances could be. He relayed that there was a very short period of time after the arrival of the CMS team in which to respond, as the team left on January 29 and the department had until February 1 "to get our ducks in a row and show them that (1) we could meet the danger that we were facing and (2) we could care for patients in an appropriate manner." He expressed his pleasure that the department had done a lot of work in advance, as otherwise they "would have been caught flat-footed." He acknowledged that Wellpath was not the only provider on the planet, "but they were there, and they have done this before. They know CMS and CMS knows them." He reported that the work and the plans of correction by Wellpath had allowed API to remain certified, accredited, and licensed. For the first time in two years, CMS teams had reviewed the department's response to an issue and said, "you did the right thing" and that the plan of correction was working. He declared that this was a sign of improvement at API. He reported that there had been recent success with recruiting providers and a new CEO. He emphasized that the change in culture at API and the stability for providers and patients was extremely important.

[4:13:57 PM](#)

CO-CHAIR SPOHNHOLZ expressed her concern for safety at API, pointing out that the House Health and Social Services Standing Committee had held a hearing in the spring of 2018 about the safety at API, and that the Alaska State Legislature had seen fit to fund additional positions at API to ensure the staffing ratios were appropriate and to increase salaries as well as add hiring bonuses. She expressed her concerns for the contract, pointing out that "how you do something is as important as what you do." She referenced that Mr. Soza had described this as "an exceptional contract" given its scope and size, pointing out that Phase 2 was for five years at \$44 million each year to operate the only in-patient acute psychiatric hospital in Alaska. She asked if it had occurred to separate the two phases of the contract.

MR. SOZA replied that the concept did come up in discussions with the Department of Health and Social Services leadership, and that Mr. Wall had explained why this approach would be in the state's best interest.

CO-CHAIR SPOHNHOLZ questioned some of the logic used to underpin this. She acknowledged that although there were challenges at API, there were other alternatives that had not meaningfully explored. She pointed out that Providence Alaska Medical Center did operate in-patient acute psychiatric hospital care as well as emergency psych care, in Alaska. She asked if Mr. Wall had ever asked Providence Alaska Medical Center if they were willing to operate API.

MR. WALL offered his belief that although they had conversations about it in the past, he had not asked directly. He shared that there was some concern for how fast Providence Alaska Medical Center could have been ready.

CO-CHAIR SPOHNHOLZ asked whether Providence Alaska Medical Center had been asked specifically and under what time constraints they would be able to perform.

MR. WALL replied that they had this general conversation prior to this emergency.

CO-CHAIR SPOHNHOLZ emphasized that this was in contrast with her conversations with Providence Alaska Medical Center, which had stated that they were not asked and were not told that a contract to run API was being undertaken, but that they would have liked to bid on such a contract.

MR. WALL replied that there had been a general conversation prior to this, noting that Providence Alaska Medical Center had sent a letter to the House Health and Social Services Standing Committee sharing the type of care and the time frame they could offer.

[4:18:14 PM](#)

CO-CHAIR SPOHNHOLZ declared that, as Providence Alaska Medical Center was a place committed hospital which provides a similar level of care in the State of Alaska, as well as seven other states, she was perplexed that there had not been a direct conversation as a crisis was looming. She directed attention to the e-mail dated January 22, in which it was stated that decertification of API would mean the loss of \$37 million of federal funding. Subsequently, in testimony to both the Senate and House committees it was stated this loss would be \$23 million in federal funds. Finally, a fiscal note attached to HB 86, regarding the prevention of privatization of API, stated the amount to be \$12 million of federal funds. She asked which figure was true.

MR. WALL stated that this depended on what federal funds and what time period as there were many separate federal funds, not all of them Medicaid, which were directed to API.

CO-CHAIR SPOHNHOLZ asked about the federal funds for fiscal year (FY) 20.

MR. WALL said that he would get those exact numbers.

CO-CHAIR SPOHNHOLZ expressed concern for the wide discrepancy to the numbers presented on the record. She declared that this was a real problem. This was a case statement for an urgent situation, and it was necessary for those supporting documents to be accurate and consistent. She emphasized that it made it difficult to trust the veracity of these statements when the statements changed over time.

MR. WALL offered his belief that the differences for these numbers had already been explained by the Department of Health and Social Services to the House Health and Social Services Standing Committee. In response, he said that he did not have the numbers with him.

CO-CHAIR SPOHNHOLZ, referencing the Wellpath contract, asked who would be doing the medical billing and financial management at API.

MR. WALL said that the billing for patient activity, including Medicaid, would be done by the vendor but those funds would go back to the state.

CO-CHAIR SPOHNHOLZ asked if the financial management would be done by the vendor or the department.

MR. WALL replied that the facility and the structure at API would remain owned by the state but would be run by contract. In response to Co-Chair Spohnholz, he said that the current food service contract was up for renewal and the department would have "that conversation when the time comes."

CO-CHAIR SPOHNHOLZ asked if there would be an additional fiscal note to fund these contracts which were not currently included in the budget.

MR. WALL offered his belief that these were included in the "pass-through cost" and said that he would supply the specific numbers.

[4:22:31 PM](#)

REPRESENTATIVE LEDOUX asked whether the conclusion by the Department of Health and Social Services was regarded as evidence in the discussion for a single source contract request.

MR. SOZA explained that written testimony becomes evidence and part of the file in the single source contract request. In response to Representative LeDoux, he said that the solution presented by Mr. Wall was similar to evidence presented by a witness on the stand in a courtroom trial.

MR. WALL explained that there had been a search for solutions to the API problems which did not include "any sort of takeover." He acknowledged that the problems at API were known prior to the emergency situation, as "beds were closed, there weren't enough providers, there was an unsafe work environment, there were findings from many different organizations, and so we were looking for solutions to those problems in advance of any decision that we made in this procurement." He stated that the procurement was the result of an emergency situation that required immediate response. He acknowledged that the decision

for privatization was not "necessarily done under procurement law. It was done under Title 47.32 which gives the Commissioner of [Department of] Health and Social Services the authority to step into any facility licensed by the state that has patients that in jeopardy of life, limb, or eyesight." He stated that the procurement process had allowed the commissioner to exercise that authority. He noted that, although the department had been looking for solutions to other problems prior to this, this was not a solution that they had planned for ahead.

[4:26:41 PM](#)

REPRESENTATIVE LEDOUX relayed that she was really confused, as testimony for the past one- and one-half hours had been about procurement, and now she "was hearing that this wasn't done under the procurement policy, it was done under something else."

MR. WALL declared that this was done under the procurement law and that the department had followed procurement rules. He said that the decision for the commissioner to step in was an exercise of Title 47, and not an exercise of the procurement, per se.

CO-CHAIR KREISS-TOMKINS shared that the request from Representative LeDoux had been for what constituted evidence when a procurement decision for a sole source contract was being made.

REPRESENTATIVE LEDOUX asked for clarification from Mr. Soza that the decision to approve this was his decision and his decision alone. She pointed out that he had not investigated whether there were any lawsuits, judgements, or litigation against the provider. She asked who was responsible to determine this information.

MR. SOZA expressed his agreement that "part of that does lie with us in procurement to look at vendors capability to perform under a contract, to perform the services that they say they will." In a situation like this, his office would rely on the agency and its procurement staff to have done due diligence on a vendor who was presented as the only capable vendor that could perform the services. He acknowledged that the final determination was his responsibility.

REPRESENTATIVE LEDOUX asked if anyone from the agency discussed these judgements or litigations against the vendor.

MR. SOZA replied, "no."

[4:29:32 PM](#)

CO-CHAIR FIELDS asked if Mr. Soza would have an opportunity to review the 1400 lawsuits and numerous examples of death resulting from negligent care in other facilities and examine the appropriateness of the continuation for a sole source contract for "what is effectively permanent management of API under Wellpath."

MR. SOZA explained that the procurement law stated that an award could only be made to responsive, responsible vendors. If there were questions as to the responsibility of a vendor under contract, there were actions that could be taken to either investigate and remedy, or to terminate the contract.

MR. WALL, in response to Co-Chair Fields, replied that there were currently 26 patients at API.

CO-CHAIR FIELDS offered his understanding that Wellpath was being paid \$43.7 million for available beds, and not necessarily beds that were filled.

MR. WALL asked if this was a reference for Phase 1 or Phase 2 of the contract.

CO-CHAIR FIELDS asked about both as the budget proposal would potentially cross over into both.

MR. WALL explained that Phase 1 was a \$5 million contract to make the deliverables, or the contract would be terminated. He pointed out that in this first phase there was not any payment for beds and there was not any medical service or clinical care. He reported that Phase 2 was paid at a bed rate, which was slightly under the current cost for beds, although inclusion of the pass-through costs brought this "just a little over what our current cost is."

CO-CHAIR FIELDS asked whether Wellpath would draw the full contract value if the number remained about 26 patients.

MR. WALL replied that this was not correct. He stated that it would be failure for the contract if API did not return to full capacity of 80 beds.

CO-CHAIR FIELDS replied that this was not what the contract appeared to say. He asked Mr. Soza whether they would have approved the single source contract or done more investigation had he known about the multiple lawsuits, deaths, and understaffing.

MR. SOZA replied: "it certainly would have become a line of questioning and further information gathering to determine exactly the nature of all of that and how it relates to the responsibility of the contract."

[4:33:38 PM](#)

REPRESENTATIVE CLAMAN asked for an explanation why the second phase of the project was not made a competitive bid given the amount of time available.

MR. SOZA replied that the idea presented had been to maintain stability, as a switch to another vendor could possible jeopardize that.

REPRESENTATIVE CLAMAN asked whether it was a typical process for determination in any open bid contract to factor in how well the party had been performing. He said that this would not prohibit Wellpath from competing for Phase 2 in an open bid process. He declared that he was "at a loss as to why for Phase 2, given the time that you had, that you're not going and having an open bid for Phase 2." He added that the answers so far had not been very compelling.

MR. SOZA offered his belief that, as this contract was about people, he could "relate to instability and it certainly had it in my life." He acknowledged that, although Wellpath may have prevailed in the bid for Phase 2 after 5 months, a change in vendors would have required to "essentially start over."

REPRESENTATIVE CLAMAN asked what the next plan was if Wellpath did not produce the deliverables, as there was not even a bid for an alternative.

MR. SOZA replied that the evidence presented to him described Wellpath as the only vendor capable of performing these services.

MR. WALL said that there were at least three overlapping significant dates and requirements from three separate bodies. He listed CMS for the ongoing plans of correction and the dates

to meet these deadlines, noting that there were roughly 20 plans of correction at API. He reported that the other target dates were set by the joint commission, which was the accreditation body, as they also had findings and plans of correction at API included in those 20 plans. He added that these dates were different or overlapped with the dates from CMS. He shared that, as the state's licensure body had given API a provisional license, June 30 was when many of the requirement dates crossed. He pointed out that it was necessary to do whatever was important to maintain the accreditation and the licensure, and, as the dates were somewhat spread out, the department was attempting to provide continuity over those periods of dates as it moved forward.

[4:38:50 PM](#)

REPRESENTATIVE CLAMAN offered his belief that, as there was a lot of uncertainty, this made a compelling case for another competitive bid effective July 1.

MR. WALL offered his belief that Wellpath were the only ones to do this in a timely fashion. He acknowledged that there were other providers "who could do this over time."

REPRESENTATIVE CLAMAN expressed his understanding for hiring Wellpath in February. He shared his concern that the department had not made any case for Phase 2, as it had been stated that Wellpath could be terminated if they did not deliver. He asked when Wellpath was scheduled to have filled 80 beds.

MR. WALL clarified that Wellpath only needed to have 80 beds prepared to be filled, and that the current amended date was for September 1. He detailed that April 15 was a decision point and that July 1 was the date to meet all the goals and that these were the only two dates in the contract. He added that both had been extended 60 days from the original dates in order to give more time to move forward with the process and complete the update of the feasibility study.

REPRESENTATIVE CLAMAN asked Mr. Soza at what point he could step in and tell the department this would have to be competitively bid as he was hearing more problems and questions for the validity of this method. He pointed out that should Wellpath not meet the qualifications for Phase 1, there would really be issues for Phase 2.

MR. SOZA replied that, under procurement law, he could do that today. In further response to Representative Claman, he explained that he could step in at any point in which it was evident that the vendor was not capable of doing the work. If they were not a responsible party, there was no longer a legal contract and it would have to be terminated. He declared that, based on the information that had come to light, "I don't know where that line in the sand is right now."

[4:42:31 PM](#)

REPRESENTATIVE WOOL asked about the date for the firing of the two API psychiatrists and whether it had contributed to the emergency.

MR. WALL reflected that it might have been the second or third week of December.

REPRESENTATIVE WOOL asked if that would have elevated the state of emergency per the CMS team of examiners.

MR. WALL acknowledged that it would have been a concern; however, he explained that the emergency was the overall situation of dire emergency as well as the immediate jeopardy finding for a single point in time. He stated that emergency could be defined by CMS citation, or by "the state of how things are." He expressed his agreement that CMS was concerned when there were only a certain number of medical prescribers per patient load.

REPRESENTATIVE WOOL asked about the difference between an emergency procurement and a single source procurement.

MR. SOZA explained that the emergency procurement statute had a different set of requirements and that the agency would review the competition practical for the emergency situation. He said that it was "a very loose regulation because it tries to account for any type of emergency situation that might ever exist." He relayed that the single source requirements were more stringent for review and evidentiary requirements. He said that the main limitation to an emergency procurement was that it could only address a specific emergency.

REPRESENTATIVE WOOL asked if an emergency procurement was "more of a short-term fix."

MR. SOZA replied that, in general, it would be shorter term as it could only address the duration of the emergency.

REPRESENTATIVE WOOL reviewed the timeline, noting that Mr. Soza had been contacted on January 25 and that the procurement was approved on February 7, the same day that Mr. Soza received the evidence. He asked if Mr. Soza had been in touch with the department in the intervening time to detail the type of evidence necessary. He offered his belief that there had not been any due diligence for the evidence.

MR. SOZA replied that he took pride in his staff for its integrity in upholding the procurement process, and that they did their due diligence to ensure the necessary evidence was collected to satisfy the statutory requirements. He reported that, with any trigger for concern, his staff would ask for more information. He stated that the proactive approach by the Department of Health and Social Services to learn the necessary evidence required had resulted in a quicker review, even as it went through the same process and was reviewed at the same high level of detail as any other single source request for alternate procurement (RAP). He stated that he and his staff read all the provided evidence.

REPRESENTATIVE WOOL pointed out that this contract was for a large amount of money in a short period of time, which Mr. Soza had stated was unusual because it involved taking care of vulnerable people. He asked if Mr. Soza should have been informed about lawsuits, litigation, and deaths at other facilities run by this contractor.

MR. SOZA replied that this would have been helpful information to have considered.

REPRESENTATIVE WOOL asked when the last time was that API had been at full capacity, noting that the hospital in his district had shared its problem for transferring patients to API for long term care.

MR. WALL replied, "July of 2017."

REPRESENTATIVE WOOL asked why the capacity was going down so quickly and why was there a lack of staffing at API.

MR. WALL replied that the problem resulted from attrition and the difficulty for recruitment and retention of staff. He expressed his appreciation for the efforts by the Alaska State

Legislature in recruitment and increased pay for staff but pointed out that the "net gain in staff is going backwards." He reiterated that it was very difficult to recruit and retain personnel and reported that applicants were either not qualified or not interested after the interview.

REPRESENTATIVE WOOL asked if Providence Alaska Medical Center and other medical hospitals had the same recruitment issues.

MR. WALL, in response, said that API was using travelling nurses. He stated that health care professionals were at a shortage across the state and across the nation. He pointed out that the greatest dearth of care was for psychiatric care, noting that there were very few licensed psychiatrists in Alaska.

REPRESENTATIVE WOOL asked about the plan for hiring more psychiatrists.

MR. WALL offered his belief that one of the providers who left had returned to API, and that two more psychiatrists had been hired. He added that by the end of April there would be more psychiatrist medical doctors in API than were there in December. He shared that "I tend to beg a lot for help," reporting that he had spoken with the Alaska State Hospital and Nursing Home Association and had called the list of licensed psychiatrists in Alaska. He declared that the greatest need was for more qualified, good psychiatric nurses. He pointed to a misunderstanding for the staffing of units, stating that it was necessary for a certain number of staff in some units regardless of the number of patients.

[4:55:41 PM](#)

REPRESENTATIVE WOOL asked whether Mr. Wall had spoken to the other local hospitals, in addition to Providence Alaska Medical Center.

MR. WALL clarified that Providence Alaska Medical Center did not do forensics care, and that was the biggest area of need for API, as there were "people backed up in our prisons right now who have need of evaluation and restorative care and nobody else in the state does it." He pointed out that other hospitals were already doing the evaluation and treatment, but the forensics was unique and very difficult.

REPRESENTATIVE WOOL opined that the bigger problem was that the 80 beds were underutilized, even as the 10 beds designated for forensics were not being utilized.

[4:59:08 PM](#)

REPRESENTATIVE JACKSON stated that "this has been the biggest political theater I've ever witnessed, but, that's okay." She pointed out that funding seemed to be the answer to everything. She asked how much had been spent on "bad behavior last spring on bonuses and all the other things that Representative Co-Chair Spohnholz has mentioned."

MR. WALL asked if she was referring to the sign-on bonuses.

REPRESENTATIVE JACKSON said that she was referring to the money spent last spring on bonuses and other fixes at API.

MR. WALL said that he would provide that. He reflected on a presentation on February 13 [2018] in front of Senate Health and Social Services Standing Committee which "reported on everything that had happened for bonuses and such until then." He added that he would update this to the present.

REPRESENTATIVE JACKSON opined that the questions regarding the contract seemed to be "fear based" in order to undermine it before results were available. She shared her confidence that the contract could be canceled at any time.

MR. WALL expressed his agreement.

[5:01:49 PM](#)

REPRESENTATIVE DRUMMOND reflected on earlier testimony by Mr. Wall and asked about the original means of contact with Wellpath. She asked if CMS had ever stated that February 1 was the last chance for API "to get their ducks in a row or that they would de-certify."

MR. WALL clarified that his first introduction to Wellpath was during a discussion for healthcare at the juvenile justice facilities in December [2018]. He added that there were conversations regarding psychiatric care at a later date. He directed attention to a letter from CMS regarding conditions of participation, the February 1 date, and the loss of "deemed status" or decertification.

REPRESENTATIVE DRUMMOND asked whether there would have been decertification if API did not have a contractor by February 1.

MR. WALL replied: "I am surprised we were not decertified even with the contractor, but the answer to your question is yes."

[5:04:40 PM](#)

CO-CHAIR ZULKOSKY declared that the timelines offered in response by the Department of Health and Social Services had shifted and that she would instead focus on timelines identified from e-mails and time stamps. She expressed concerns about pre-supposed outcomes that had pushed the state in a particular direction. She referenced an e-mail dated January 22 from Mr. Wall to department leadership which indicated that CMS had discovered a series of immediate jeopardy, yet the CMS survey team had not arrived at API for a return visit until January 28 when a violation was discovered which put API in immediate jeopardy on January 29. She referenced additional departmental e-mails with the subject relating to the privatization of state hospitals, and no reference to emergent circumstance at API. She asked if there was an intent by the Department of Health and Social Services throughout this series of events to privatize API, or to resolve accreditation in the related findings.

MR. WALL offered his belief that the clarification of dates on the specific e-mail had already been addressed to the House Health and Social Services Standing Committee. He pointed out that this e-mail originally had an addendum in red at the end, after it had occurred. He declared that privatization "has never been the point to me. This is a matter of patient care, it's a matter of how we are possibly going to solve the problem of an institution that is falling apart, that is failing, and that, in any moment, has patients and staff members that are in danger of being hurt." He suggested that providing continuity and consistency in leadership within that organization was the direction. He stated that privatization was a means to an end if it was necessary. He emphasized that "the state has failed that hospital. It has failed its patients, and I believe it has failed its staff."

CO-CHAIR ZULKOSKY highlighted that the e-mails provided by the department had indicated that an individual from NASMHPD (National Association of State Mental Health Program Directors) had followed up the discussions for privatization of state hospitals. She read: "with whom you've talked about getting information on other states experiences with privatization of

their state hospitals." She pointed out that Providence Alaska Medical Center had reached out to the Department of Health and Social Services several times over the past three years, as recently as February. She asked if the procurement division was aware that local, non-profit, established health care facilities in Alaska had indicated an interest in a partnership with the state on some elements of the operation of API.

MR. SOZA replied "no, we were not."

5:09:20 PM

REPRESENTATIVE PRUITT asked about the Division of Health Care Services and the National Association of State Mental Health Program Directors (NASMHPD) and any information that these organizations had provided for entities that could provide this service.

MR. WALL replied that the department was being proactive in its search for solutions to the problems before they reached "the worst point." He declared that NASMHPD was a tremendous, non-profit organization, the association of all the state mental health directors. He explained that it was a specialty group which helped states with the in-patient psychiatric process and best practice; although they did not specifically offer "this is what you should do," they would report what other states were doing and what had worked. They were able to address things from the clinical milieu to the structure of states and laws regarding competency evaluations. He declared that NASMHPD was a group of experts that did this work on behalf of states.

REPRESENTATIVE PRUITT asked if this had been the initial point of information regarding Wellpath.

MR. WALL offered his belief that Wellpath may have been discussed during a telephone conversation. He reported that he had called NASMHPD almost immediately upon his appointment to his current position, explained the current issues and situation, and asked for recommendations.

REPRESENTATIVE PRUITT asked if this was comparable to the National Conference of State Legislatures and the Council of State Governments, as an equivalent for state mental health operators.

MR. WALL replied that it was a good analogy.

REPRESENTATIVE PRUITT offered his belief that it was Wellpath that had been referenced by NASMHPD in the e-mail dated February 7.

MR. WALL opined that, after the initial introduction to Wellpath, he had asked about Wellpath during his on-going conversations with NASMHPD.

REPRESENTATIVE PRUITT questioned whether Wellpath only worked in mental health hospitals, or if they also worked in correctional facilities.

MR. WALL stated that he was not an authority on the company and pointed out that representatives from Wellpath had testified before the committee. He offered that the majority of lawsuits associated with the parent company were on the corrections side of the business, although he did not know the corporate structure. He stated that the hospitals run by the Wellpath agency, as well as the state officials in those states, had shared glowing recommendations.

REPRESENTATIVE PRUITT reported that previous testimony to the House Health and Social Services Standing Committee from Wellpath had indicated that most of the lawsuits were from the corrections side of the company.

MR. WALL pointed out that API also had lawsuits against it. He declared that this was a litigious field of work, and everything about this field had legal overtones.

REPRESENTATIVE PRUITT offered his belief that CMS had indicated through its investigation that there were instances of immediate jeopardy discovered, and that the provider was so non-compliant that there was a concern for potential harm or impairment to an individual. He asked whether Mr. Wall, in hindsight, still believed that this was the best course of action for the most vulnerable people at API. He stated that his care was for providing "the best thing for those people who happen to be the patients there."

MR. WALL said that he did feel he had made the best decision. He expressed his desire that others could see the challenges to the care providers and advocates, as this group of people had no voice. He pointed out that a lot of treatment was initially against the patient's will although when they "come back into compliance with treatment in their right mind then they know it was the right thing to do." He declared that this was a very

difficult field, and that the decisions were ever changing and made it feel like an ongoing battlefield. He offered his belief that something had to be done in a major way in order to effect safety and ongoing change in the hospital for our patients.

5:18:07 PM

REPRESENTATIVE TARR asked what could have been done differently. She pointed out that the issues at API were a known problem, and that three individuals had resigned in mid-September with an entirely new leadership put in place. She added that the FY 19 budget had included additional funding for salary increases and the hiring of 20 new staff at API. She reiterated that a new administration had been elected, knowing that there was a problem at API. Even though there was new leadership, and the budget had been increased to fill staff positions, instead of identifying the problems to make them a priority, the administration, on November 15, had forced the "resignations from all state employees." She pointed out that this only served to further increase the disruption at API as two of the doctors refused to participate "in what they felt like was a partisan shakedown, like some kind of political allegiance rather than the commitment to their patients." She stated that this action could have been done differently. She continued, noting that the new administration took office on December 3, "fully aware of all these problems, already two weeks into firing people, don't change course." She declared that it would have been possible to go through the proper procurement procedure for a contract. She reported that many API employees had contacted legislators expressing fear for losing their jobs. She acknowledged that, although these problems had been mounting, she was not convinced that this was the only option to address these problems. She addressed Mr. Wall, and pointed out that, as he had a lot of experience in the Department of Health and Social Services, he had full knowledge of the problem. He could have made this a number one priority and immediately entered into a proper procurement procedure without firing some of the most difficult to find professionals in this field. There would not have been the loss of key professionals to help address the problem but would have instead allowed a focus on the necessary staff hiring. She reminded that the problem had already been identified by the funding for 20 new positions. Instead, "all of that was just sort of thrown by the wayside, and it feels very arbitrary that instead this was just plopped in place of everything that had happened before it." She declared that she was aware of "a completely alternative path that could have been taken that maintained safety for patients,

that maintained key professionals at the institution, that gave more support." She added that the staff was very receptive to more training. She pointed to the first document received from Wellpath, dated January 21, which would have required many weeks to prepare. She stated that it was clear that conversations were taking place before there was any e-mail proof, noting that the first report referenced long term privatization. She asked why the alternative path had not been taken.

MR. WALL stated that, in actuality, "that alternative path was being taken." He clarified that he had been gone from the department for three years, and that API had not had full capacity since 2017. He stated that he "was not entirely in the know," that he did not know where things were in the plan of correction process. He added that the 180-day deadline had already been passed when he returned to the department on December 3. He declared that the department had been pro-active by putting things out for procurement and looking at a longer-term process. He declared that everything was on the table in a review for solutions, and that there was not any pre-determined idea or course of action. He shared that the discussions included what had happened in other states, how problems were fixed, how criminal cases were handled, and how the Title 47 process was to be fixed in Alaska. He stated that the department had been seeking information "in order to roll things out in a much more languid pace." That would have been great had they not been forced in early February to make this decision. He acknowledged that, although there were surface appearances that everything had been pre-determined, "man, I wish I was that smart." They were looking for solutions to problems, with nothing off the table, and planning to roll things out methodically to fix those problems. He listed some of the possible actions: contracting out the medical care, contracting with an administrative services organization to do the plans of correction, contracting out other pieces, doing nothing, having an entire privatization, having one expert or a team of experts, and "looking at everything we possibly could do to fix this problem." This had been the plan until the immediate jeopardy occurred. He expressed his understanding for her viewpoint, but declared "our hand was forced, and I wish it hadn't a been that way." He stated his desire to roll things in at a much more languid pace and for API not to be in this situation.

REPRESENTATIVE TARR pointed out that the January 21 proposal from Wellpath proposed the provision of treatment and support services and total facility management for API, which, it

appeared, had been the intention of Wellpath since "the get-go." She declared that this was inconsistent with the testimony by Mr. Wall. She offered her belief that the emergency procurement would have been appropriate for a short duration while a proper procurement procedure could have been presented for a long-term contract. She stated: "I think we did it wrong."

[5:26:23 PM](#)

CO-CHAIR KREISS-TOMKINS, noting that there had been a lot of attention and scrutiny, and he opined that this was a critical juncture for the procurement policy. He offered his belief that the role of chief procurement officer was politically independent. [Mr. Soza indicated that this was an accurate statement.] He asked whether, with additional information, Mr. Soza had the ability in his "present position in this present climate" to "pull the plug" for proceeding with this single source contract. He asked Mr. Soza if, when the proposal had been presented to him on February 7, he had the ability to say "no, there is not sufficient evidence, or this does not seem in the best interest of the State of Alaska."

MR. SOZA replied that, if the evidence had not been there on February 7 that met the statutory requirements, his department could have said "no, this isn't the way to proceed" and "that call could have been made."

CO-CHAIR KREISS-TOMKINS asked if Mr. Soza felt that he had the independence on that day to make that call.

MR. SOZA offered, as an analogy to his position, that he was "Switzerland, we're comparing what's presented to us to the law." He noted that he was engaged with the information [Due to technical difficulties this was not on the recording but reconstructed from the Gavel Alaska recording.] that had been given to him and it went through the review process, at the end of the day it was approved. He shared that, as he had worked with the department leadership and the assistant attorney general, the level of scrutiny that this was getting prior to his reception of the application had felt sufficient. "It felt like a lot of care was being put into ensuring that the evidence being provided was going to meet our statutory requirement." He acknowledged that he had the independence to go back and ask more questions and he had not because he felt what had been given to him had met the statutory requirements.

CO-CHAIR KREISS-TOMKINS asked whether, in yes or no terms, Mr. Soza felt he had the political independence and could have said no had he felt it was warranted.

MR. SOZA agreed that he could have said no, although it would have required a "different set of talks." He added that, if he did not feel that the evidence had met the statutory requirements, he could have and would have gone back for more information "or said no at that point."

[5:31:07 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 5:31 p.m.