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process to proceed as it did. And, Aetna knew the state had dealt exclusively with Premera as the only responsive offeror up to that point. There is basis to conclude the process was "doomed." The state proceeded in good faith under the process agreed to by the parties under Exhibit A.

Finally, an after-the-fact suggestion is made on page 13 of the protest. Aetna alleges the state should have retained a qualified consultant to make sure that a level playing field was created when the missing Aetna binder was found so it could conduct a fair and reliable comparison of the two bids. The day after Aetna's proposal binder was located the state openly developed an evaluation process with an agreed to jointly by Aetna and Premera. The goal was to enable the evaluation process to continue. Aetna was a party to those discussions and signed the final agreement. At no time (until the protest) did Aetna suggest participation of an outside consultant. This protest point is without merit.

V. Allegation: The Division Failed to Separately Evaluate the Splitting-out of Pharmacy Claim Management Services under a Different Contract, with a Different Contractor.

Discussion: Aetna is correct the state did not evaluate proposals submitted under Section 9 of the RFP, Pharmacy Network and Benefit Management only.

On February 27, 2006, in accordance with AS 36.30.350 and 2 AAC 12.860, the state properly rejected all proposals received for RFP 2007-0200-5946, Claims Administration and Pharmacy Benefit Management only, under Section 9 of the RFP (Exhibit B).

Under the RFP, offerors were allowed to submit proposals for each RFP Section under the following scenarios:

Section 7 - All Services, or

Section 8 - All Services except Pharmacy Network and Benefit Management, or

Section 9 - Pharmacy Network and Benefit Management only.

In essence, award could be made to a single offeror for Section 7, all services, or up to two contracts could be awarded for Sections 8 and 9. The RFP stated that each scenario would be evaluated for the best value to the state, considering price and technical factors, and that a PEC would score the proposals according to predetermined criteria.

However, the RFP scoring methodology is flawed. It was not possible to compare a proposal submitted for all services under Section 7 to two proposals submitted under the Section 8 and 9 combination.

The scoring criteria for each of the three RFP sections (Exhibit C) indicates that the total possible score for Section 7 is 5,000. However, the combined scores for Sections 8 and 9 total 10,000. The RFP does not describe how the PEC would reconcile this point difference when comparing a single proposal for Section 7 to separate proposals for Sections 8 and 9.

Further, Sections 8 and 9 contain duplicate scoring criteria for "Management Plan for the Project" and "Essential Administrative Services." Each proposal would have to be scored according to these criteria. Therefore, there would be four separate scores under the multiple award combination (Sections 8 and 9) but only two scores for the single award scenario (Section 7). In addition, the maximum possible score for these two areas is 250 points under Section 7, while the score could reach 1,100 points for the same criteria under Sections 8 and 9.

In addition to the scoring discrepancies cited above, there are multiple instances where the maximum possible scores for the same criteria are not equivalent:

7.07 Usual, Customary and Reasonable (UCR)	100
8.07 Usual, Customary and Reasonable (UCR)	150
7.11 Reporting	100
8.11 Reporting	150
7.12 Location of Work	150
8.12 Location of Work	200
7.13 Performance Standards	100
8.13 Performance Standards	150
7.14 Health Flexible Spending Account (Health FSA)	100
8.14 Health Flexible Spending Account (Health FSA)	150
7.16 Information Technology/Communication	150
8.16 Information Technology/Communication	200

7.18 Pharmacy Benefit Management Services	150
9.05 Pharmacy Benefit Management Services	350
7.19 Clinical Programs	150
9.06 Clinical Programs	500
7.20 Retail Network	100
9.07 Retail Network	150
7.21 Mail Order	100
9.08 Mail Order	450
7.22 High Deductible Health Plan and HSA Experience	50
8.18 High Deductible Health Plan and HSA Experience	150

It was not possible to reconcile these scoring discrepancies and compare these two scenarios without making a material change to the RFP evaluation criteria.

The RFP stated on page ten, "wherever possible, the State seeks to reduce administrative costs by awarding multiple features to a single contractor." In this instance, the award of a single contract would reduce costs when considering the burden of administering two separate contracts, one for Pharmacy Network and Benefit Management and one for all other services required under RFP 2007-0200-5946. This opinion is shared by the state's Benefits Manager.

For the record, the score sheets attached to the protest under Chart 1 are inaccurate. Some minor errors appear to be caused because a different averaging or rounding method was used. However, the second chart titled PREMERA'S FIRST EVALUATIONS SCORES lists an average of 1,379.5 points. That amount should be 1,489.5. It appears the error initially occurred on the following page because Williams' scores were not included in the calculation.

The table attached to the protest titled REBATES INTEGRATED PHARMACY Rx PREMERA - COMPARED TO AETNA INTEGRATED RX REBATES UNDER SECTION 9 is highly speculative at best. The reason is that Premera did not submit a separate proposal for RFP Section 9. In addition, any award under Section 9 would have been combined with an award under Section 8. In Aetna and Premera's initial proposals, both appeared to charge a premium for services provided under Section 8. Because of these discrepancies, the state did not validate the referenced rebates or annual estimates.

The state also did not validate the calculations and estimates used under the "Progression of Premera offer to the State of Alaska" document that was attached to the protest.

One final issue to be addressed is Mr. Wiggins affidavit where he asserts the state "has only provided us with evaluation notes that appear incomplete and confusing." My records show that on March 1, 2006, the state provided Aetna's lobbyist with a complete set of the score sheets and evaluation notes. On March 6th, Mr. Wiggins called and complained that the information provided to Aetna contained errors. The state offered to walk through the alleged errors with Mr. Wiggins in order to identify any discrepancies. Mr. Wiggins replied that he didn't have the copies available because they had been sent to his legal firm and he only had an email from the firm that discussed the errors. It appeared to the state, based on Mr. Wiggins' description of the errors, that Aetna had somehow mixed up the score sheets. In any event, that same day the state provided Mr. Wiggins with another complete and accurate set of the score sheets that had been verified by the state. One more complete and accurate set of the score sheets and evaluation notes are attached to this protest response (Exhibit C).

The Corrective Action Was Agreed To by Aetna; No Prejudice to Aetna; State Acted in Good Faith

The state took appropriate corrective action in this procurement when the error concerning the completeness of Aetna's proposal was discovered. And, it took the corrective action only after coming to an agreement with Aetna and Premera (Exhibit A). Further, the corrective action was performed in a manner that was not prejudicial to Aetna. In fact, Aetna can only be said to have benefited from the corrective action. It had the benefit of knowing Premera's first round of best and final price; a price that was approximately \$13 million less than Aetna's originally proposed offer when it (Aetna) had the chance to make its best and final offer.

What Aetna has "not" argued or shown, is that the state's decision -- after going through the "agreed to" evaluation process and the second round of best and final offers -- had no reasonable basis to support the award to Premera. In order to show that the state's action was arbitrary or capricious or otherwise inconsistent with law, Aetna must show that the state's action was prejudicial to Aetna. *SDS International v. United States*, 48 Fed. Cl. 742 (Feb. 21, 2001). Aetna also fails to note that the state is entitled to broad discretion in evaluating proposals in a "best value" procurement, as here. *Id.*

Also, Aetna has not shown that it would have been awarded the contract if the corrective action had not been taken. To show prejudice, Aetna must demonstrate that there was a reasonable likelihood that, absent the corrective action complained of here, it would have been awarded the contract. *Id.*, citing *Alfa Laval Separation, Inc. v. United States*, 175 F.3d 1365, 1367 (Fed. Cir. 1999).

Aetna's complaint that it would have not participated had it known that Pat Shier's scores of were not part of the final tally of Premera's scores is also without merit. Aetna agreed to a "differentl[ly] constituted" PEC and the state provided two of the original five that evaluated Premera's offer. The third member of the new PEC was entirely new to the process. Aetna has not proven that there was any bias in favor of Premera on the basis of the make-up of the reconstituted PEC. In fact, Aetna has asserted no credible evidence to support even a presumption of bias by the PEC or any individual member. *See Galen Medical Associates, Inc. v. United States*, 769 F.3d 1324, 1331 (2004) (to establish prejudice, protestor must show there was a "substantial chance it would have received the contract but for that error.") (citations omitted). Aetna apparently only wanted to participate in the corrective action process it agreed to (Exhibit A) only "if" it won the contract.

The *Galen* case is relevant to this protest in other respects, as follows: (1) the court held that even though two of the successful bidder's references were on the evaluation panel, that did not support a presumption of bias against the losing bidder (*Id.* at 1335); (2) the court found that the discussions with the winning offeror was allowable because the law provides for the agency to receive clarifying information from offerors during bidding process (*Id.* at 1332-33); and (3) and the court held that best and final offer materials submitted by the successful bidder which might have been received both before and after the BAFO request date did not prove bias on part of agency and late receipt was not necessarily improper (*Id.* at 1339).

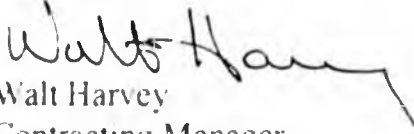
Finally, Aetna has overlooked a basic premise of procurement law -- the presumption that state officials acted in good faith. Absent evidence that the PEC acted in an arbitrary or capricious manner when evaluating the offers, the PFC is presumed to have acted in good faith and in compliance with law. *See Bruno v. Peterson*, 944 P.2d 43, 49 (Alaska 1997) (agency personnel and procedure are presumed to be honest and impartial until a [claimant] makes a showing of actual bias or prejudgment). Aetna has provided no evidence of actual misconduct by the PEC in this case; it only complains (after agreeing to a different make-up of the PEC - Exhibit A), that use of a different PEC is the reason it did not win the contract. However, this is speculation and it does not

overcome the presumption of honesty and impartiality of procurement officials. That presumption can be overcome only "[w]ith convincing evidence that 'a risk of actual bias or prejudice is present'. In other words, any alleged prejudice on the part of the decision maker must be evident from the record and cannot be based on speculation or inference." *Navistar Int'l Transportation Corp. v. United States Environmental Protection Agency*, 941 F.2d 1339, 1360 (6th Cir. 1989)(citation omitted).

Conclusion

For the reasons set forth above, Aetna's protest and its request for a stay of award under AS 36.30.575 are denied in total. Aetna may file an appeal of this decision to the Commissioner of Administration within 10 days of receipt of this decision. AS 36.30.590. If an appeal is filed, a copy must be provided to the undersigned. Further, the appeal must contain the information required under AS 36.30.560 and include a copy of this decision and identify the factual and/or legal errors in the decision that form the basis of the appeal.

Sincerely,


Walt Harvey
Contracting Manager

cc: Margie Vandor
Assistant Attorney General

Exhibit A



Fax Cover Sheet

TO: Vern Jones, Chief Procurement Officer
 State of Alaska

FAX: (907) 465-5684
 2189

DATE: February 23, 2006

PAGES: 2 + cover

Message:

Vern,
 Per your request, I have reviewed and signed the process overview. Please call me with any questions.

Michael T. Robinson
 Vice President
 National Accounts - West
 2526 Shadelands Dr.
 Walnut Creek, CA. 94596
 (925) 948-4205
 (925) 948-4902

2006 FEB 23 PM 4 52
 DIVISION OF GENERAL
 SERVICES & SUPPLY

Exhibit A

RRP No. 2007-0200-5948

Agreed upon process by State of Alaska (State), offeror Premiera Blue Cross Blue Shield of Alaska (Premera), and offeror Aetna, per teleconference calls held between the parties' representatives on February 22 and 23, 2006:

Modified Evaluation Process Steps:

1. Thursday, February 23, 2006, Aetna proposal evaluation and scoring process is underway, and is anticipated to be completed by the reconstituted Procurement Evaluation Committee (PEC) which consists of three members, two of whom were on the original PEC that scored Premiera's proposal in the initial evaluation process. All PEC members are State employees.
2. If, after Step 1, it is determined by the State that Aetna's proposal is both responsive and reasonably susceptible for award, the following will occur as to disclosure of Aetna's original price and Premiera's price upon which the original notice of intent to award was based (now rescinded) so that the State may proceed to conducting discussions with both offerors under AS 36.30.240:
 - a. Prior to release of Aetna's price, the State will ensure agreement with Aetna officials as to the accuracy of its offer (total figure) provided. Only the exact three-year price total provided in Aetna's proposal will be disclosed to Premiera after confirmation from Aetna; and
 - b. The State will obtain confirmation from Premiera as to their exact three-year price total upon which the original notice of intent to award was based, and provide that figure to Aetna.
3. Discussions under AS 36.30.240 with Aetna and Premiera will occur Friday, February 24. During discussions, a date and time will be set for receipt of best and final offers from both offerors (tentatively set for Tuesday, February 28, noon Alaska Time).
4. After receipt of best and final offers from Aetna and Premiera, both proposals will be scored and a new notice of intent to award will be issued. The State anticipates the notice of intent to award will be issued on or before March 2, 2006.
5. The normal protest and appeal process will be available after the new Notice of Intent to Award is issued as set out in Step. 4.

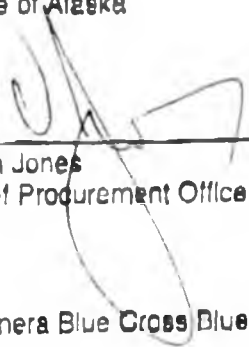
2006 FEB 23 PM 4 52

DIVISION OF GENERAL
SERVICES & SUPPLY

Exhibit A

The undersigned parties agree, and to take no exception to the process as set forth in Steps 1 through 5 above:

State of Alaska

By: 

Vern Jones
Chief Procurement Officer


2/24/06
Date

Prmera Blue Cross Blue Shield of Alaska

By: _____
Yori Miio
Chief Legal Officer

Date

Aetna

By: 

Mike Robinson
Western Regional Head
National Accounts

2-23-2006
Date

MEMORANDUM
STATE OF ALASKA
Department of Administration
Division of General Services

Phone Number: 465-2250
FAX Number: 465-2189
TDD Number: 465-2205

TO: Vern Jones
Chief Procurement Officer

DATE: February 27, 2006

FROM: Walt Harvey
Contracting Manager

SUBJECT: Rejection of a Single
Proposals for RFP 2007-
0200-5946, Section 9

In accordance with AS 36 30 350 and 2 AAC 12 860, I recommend the rejection of all proposals received for RFP 2007-0200-5946, Claims Administration and Pharmacy Benefit Management, Section 9, "Pharmacy Network and Benefit Management only". By rejecting proposals submitted under Section 9, award can only be made to a single offeror under Section 7.

You and I previously discussed this issue on February 22, 2006.

Offerors were allowed to submit proposals for each section under the following scenarios

- Section 7 - All Services, or
- Section 8 - All Services except Pharmacy Network and Benefit Management, or
- Section 9 - Pharmacy Network and Benefit Management only

In essence, award could be made to a single offeror for Section 7, all services, or two contracts could be awarded for Sections 8 & 9. The RFP stated that each scenario would be evaluated for the best value to the state, considering price and technical factors, and that a proposal evaluation committee (PEC) would score the proposals according to predetermined criteria. The PEC score sheets were contained in three RFP attachments, one for each section.

Two offerors responded to Section 9, Aetna and Walgreens. However, Walgreens proposal was determined to be nonresponsive as they did not possess a valid Alaska Business License at the time designated for opening of the proposals. The single remaining proposal submitted by Aetna for Section 9 has not been evaluated by the PEC.

It must also be noted that the rejection of a single proposal is permitted under 2 AAC 12 270. There are various reasons why it's in the state's best interest to reject the single proposal for Section 9.

• **The RFP scoring methodology is flawed**

- The scoring criteria for each of the three RFP sections (see attached criteria) indicates that the total possible score for Section 7 is 5,000. However, the combined scores for Sections 8 & 9 total 10,000. The RFP does not describe how the PEC would reconcile this point difference when comparing a single proposal for Section 7 to separate proposals for Sections 8 & 9.
- Sections 8 & 9 contain duplicate scoring criteria for "Management Plan for the Project" and "Essential Administrative Services." Each proposal would be scored according to this criteria. Therefore, there would be four separate scores under the multiple award combination (Sections 8 & 9), but only two scores for the single award scenario (Section 7). In addition, the maximum possible score for these two areas is 250 points under Section 7, while the score could reach 1,100 points for the same criteria under Sections 8 & 9.
- In addition to the scoring discrepancies cited above, there are multiple instances where the maximum possible scores for the same criteria are not equivalent.

7 07 Usual, Customary and Reasonable (UCR)	100
8 07 Usual, Customary and Reasonable (UCR)	150
7 11 Reporting	100
8 11 Reporting	150
7 12 Location of Work	150
8 12 Location of Work	200
7 13 Performance Standards	100
8 13 Performance Standards	150
7 14 Health Flexible Spending Account (Health FSA)	100
8 14 Health Flexible Spending Account (Health FSA)	150
7 16 Information Technology/Communication	150
8 16 Information Technology/Communication	200
7 18 Pharmacy Benefit Management Services	150
9 05 Pharmacy Benefit Management Services	350
7 19 Clinical Programs	150
9 06 Clinical Programs	500
7 20 Retail Network	100
9 07 Retail Network	450
7 21 Mail Order	100
9 08 Mail Order	450
7 22 High Deductible Health Plan and HSA Experience	50
8 18 High Deductible Health Plan and HSA Experience	150

It would not be possible to reconcile these scoring discrepancies and ensure a fair and equal comparison of the two scenarios without making a material change to the RFP evaluation criteria.

- **Single Award**

The RFP stated, "wherever possible, the State seeks to reduce administrative costs by awarding multiple features to a single contractor." In this instance, I believe the award of a single contract would reduce costs when considering the burden of administering two separate contracts, one for Pharmacy Network and Benefit Management and one for all other services required under RFP 2007-0200-5946. This opinion is shared by the state's Benefits Manager.

- **Time Constraints**

For various reasons, the award of a contract did not occur on February 1, 2006 as stated in RFP amendment #6. Considering that significant transition must occur if a company other than the current contractor is awarded the contract, coupled with the fact that implementation must occur on July 1, 2006 for both active and retirees, there is insufficient time to:


- evaluate and score the two proposals submitted under Section 7 (including discussions/best and final proposals) and determine a winner,
- evaluate and score the proposals submitted under Sections 8 & 9 (including discussions/best and final proposals if warranted) and determine the winner(s),
- attempt to compare the two scenarios to determine best value (which as previously stated is not possible), and
- potentially negotiate and award two separate contracts under the Sections 8 & 9 scenario

- **Increased Costs**

Cost was only one of the evaluation factors and proposals submitted for Sections 8 & 9 were not evaluated. However, it appears that the actual cost to the state could be greater under a combined Section 8 & 9 scenario than a single award under Section 7.

If approved, I will reject the single proposal submitted under Section 9 of the RFP.

Approved Disapproved


 Vern Jones
 Chief Procurement Officer

2/27/06
 Date

Section 7 - All Services

7 03 Management Plan for the Project	100
7 04 Essential Administrative Services	150
7 05 Appeals Procedure	50
7 06 Vision Services	50
7 07 Usual Customary and Reasonable (UCR)	100
7 08 Coordination of Benefits (COB)	150
7 09 Utilization Review	200
7 10 Employee Assistance Program and MMH	150
7 11 Reporting	100
7 12 Location of Work	150
7 13 Performance Standards	100
7 14 Health Flexible Spending Account (Health FSA)	100
7 15 Provider Discounts	250
7 16 Information Technology/Communication	150
7 17 Client Service/Experience	150
7 18 Pharmacy Benefit Management Services	150
7 19 Clinical Programs	150
7 20 Retail Network	100
7 21 Mail Order	100
7 22 High Deductible Health Plan and HSA Experience	50
7 23 Cost Proposal	2,000
7 24 Alaska Offeror's Preference	<u>500</u>
	5,000

Section 8 - All Services except Pharmacy Network and Benefit Management

8 03 Management Plan for the Project	150
8 04 Essential Administrative Services	200
8 05 Appeals Procedure	50
8 06 Vision Services	50
8 07 Usual Customary and Reasonable (UCR)	150
8 08 Coordination of Benefits (COB)	150
8 09 Utilization Review	200
8 10 Employee Assistance Program and MMH	150
8 11 Reporting	150
8 12 Location of Work	200
8 13 Performance Standards	150
8 14 Health Flexible Spending Account (Health FSA)	150
8 15 Provider Discounts	250
8 16 Information Technology/Communication	200
8 17 Client Service/Experience	150
8 18 High Deductible Health Plan and HSA Experience	150
8 19 Cost Proposal	2,000
8 20 Alaska Offeror's Preference	<u>500</u>
	5,000

Section 9 - Pharmacy Network and Benefit Management only

9 03 Management Plan for the Project	250
9 04 Essential Administrative Services	500
9 05 Pharmacy Benefit Management Services	350
9 06 Clinical Programs	500
9 07 Retail Network	450
9 08 Mail Order	450
9 09 Cost Proposal	2,000
9 10 Alaska Offeror's Preference	<u>100</u>
	5,000

LAW OFFICES
SIMPSON, TILLINGHAST & SORENSEN, P.C.

ONE SEALASKA PLAZA, SUITE 300
TELEPHONE 907-586-1400

JUNEAU, ALASKA 99801
FAX 907-586-3065

HAND DELIVERED

March 10, 2006

Mr. Walt Harvey
Procurement Officer
Alaska Department of Administration
Procurement Officer
P O Box 110210
Juneau, Alaska 99811-0210

Re. Protest and Request for Stay of Award in RFP No.
2007-0200-5946
OUR FILE NO: 14671

Dear Mr. Harvey:

This firm represents Aetna and Aetna Life Insurance Company ("Aetna"). The purpose of this letter is to respectfully file a protest by Aetna, under AS 36.30.560, of the Division of General Service's ("Division's") February 28, 2006 Final Notice of Intent to Award a Contract under the above-referenced RFP to Premier Blue Cross. The protest is supported by this letter, a Protest Memorandum dated this date, an affidavit and supplemental affidavit of Mr. Michael Wiggins, and attachments, exhibits and charts appended to those materials.

Request for Stay of Contract Award. Aetna also respectfully requests pursuant to AS 36.30.575, that any award of a contract under the above-referenced RFP be staying pending the outcome of this protest and any appeal on a protest under AS 36.30.590. The bases for this request are as follows:

1. **The Merits of the Protest.** Aetna's claims are that the Division violated basic principles of competitive bidding by assigning different evaluators to award discretionary points to two different bidders; treating the two bidders with substantial inequality in soliciting clarifications and improvements to the two bidders, and apparently summarily rejecting the solicited option of awarding a stand-alone pharmaceutical claim management contract. These are the type of errors that courts (and independent hearing officers) tend to find destructive of the competitive bidding process, and are therefore also the kind of errors that can and do lead to compelled cancellation of any contract that may be let to

Premiera in the interim. Ignoring these claims, and executing a contract with Premiera would represent a high-risk gamble with the public's money, because if Aetna ultimately prevails, and contract cancellation is ordered, it will be the Division, and the general fund, that will be saddled with sorting out the resultant mess. A prudent administrator would not award a long-term contract under the RFP under these circumstances, and Aetna is hopeful that prudence will prevail here. The protest and appeal procedures are not lengthy ones. Balancing that short delay against the consequence of a ruling adverse to the Division counsels for granting the stay; and

2. **The Best Interest of the State.** This is not a case where a contract needs to be let to complete a public improvement that is currently non-existent, or for which there is a pressing public need that is currently not being fulfilled. To the contrary, all of the services covered by the RFP are today being provided efficiently and reliably by Aetna. *Wiggins Aff.* ¶30. Aetna is prepared to continue to provide those services under an amendment to its existing contract at the same prices that it is currently charging. *Id.* at ¶31. We understand the requirement of AS 39.30.090(a)(5) that the State's group insurance specifications must be made available every five years. But the State has satisfied that requirement with the RFP, there is no deadline on completion of the RFP process; and, as a factual matter, the state has already extended its Life/Disability Contract with Unum, and its current contract with its benefit consultants, beyond the 5-year period. *Id.* at ¶32. The State, then, is free to extend its contract with Aetna (if need be) to continue to provide services beyond June 30, 2006.

Additionally, in assessing the state's best interest, the Division must consider the hardship and disruption that will attend the near-immediate cessation of Aetna services. The State's existing clientele has been accustomed to relying on Aetna to promptly service claims, conversely, and particularly given the extraordinary number of retirees served by the State's system, substitution of managers will cause confusion; delay and loss of prescriptions and other medical services, and mental distress among both employees and retirees. This coupled with the disruption attended the transition to a new manager promises a sustained period of hardship on State employees and retirees if and when the transition is made. *See Wiggins Aff.* ¶¶31-41. In the long run, these are not reasons to avoid a transition; but they are definitely reasons not to hurry to judgment, when time and some studied thought may prove the transition unnecessary, if not illegal.

For the foregoing reasons, Aetna respectfully requests that the award of any contract under the RFP be stayed pending disposition of the protest and any appeal.

Sincerely,

SIMPSON, TILLINGHAST & SORENSEN



Jon K. Tillinghast

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BEFORE THE ALASKA DEPARTMENT OF ADMINISTRATION

*In the Matter of Protest of Final
Notice of Intent to Award a
Contract, RFP 2007-0200-5946*

PROTEST BY AETNA LIFE
INSURANCE COMPANY
AND AETNA

I. Introduction

Pursuant to AS 36.30.560, Aetna and Aetna Life Insurance Company ("Aetna") respectfully protests the Department of Administration's, Division of General Service's (the "Division") February 28, 2006 Final Notice of Intent to Award a Contract pursuant to the above-referenced Request for Proposal ("RFP") to Premera Blue Cross.

II. Overview

On December 22, 2005, Aetna submitted a complete, responsive and responsible proposal to provide medical and pharmaceutical claim management services to the State of Alaska pursuant to the above-referenced RFP. *Wiggins Aff.*, ¶11. Having heard nothing in response for nearly two months, Aetna finally received a form Notice of Intent to Award the contract to Premera on February 18, 2006. *Id.* at ¶13. A phone call to the Division disclosed that the Division had lost the meat of Aetna's proposal, consisting of some four boxes of binders in which were contained a critical portion of Aetna's overall proposal. *Id.* Rather than asking Aetna, who, through itself and its

¹ Aetna is an "interested party" in the RFP. See 2.AAC 12.990(a)(7). Aetna submitted a timely, responsive and responsible bid. *Wiggins Aff.*, ¶11. Aetna and its affiliates have been the provider of the services covered by the RFP for 24 consecutive years, and the economic impact on Aetna of the loss of this long-standing business will be severe. *Id.* at ¶¶40-41.

1 affiliates, had been providing these services to the State for the past 24 years, why there
2 was such a gaping omission in its bid, the Division simply declared Aetna
3 "nonresponsive" for failure to submit a complete bid. *Id.* After considerable pleading
4 by Aetna that these boxes most definitely were delivered on time, the Division looked
5 again, and found them in a store room after a mere hour's search. *Id.* at ¶14.

6 The State promptly rescinded the Notice of Intent, and commenced another
7 evaluation process that is the subject of this protest. *Id.* at ¶17.

8 This protest is filed because, following the lost-bid episode, the Division
9 committed three errors that made it impossible for the Division, or anyone else, to
10 compare Aetna's response to Premera's response.^{7/} When comparability becomes
11 impossible, there is simply no way for the State (or anyone else) to intelligently decide
12 which proposal is better for Alaska and its taxpayers. That is what happened here.

13 The services for which the RFP solicited proposals—*i.e.* to provide a wide range
14 of medical and pharmacy insurance management services to the State—have been
15 provided economically and efficiently by Aetna itself, or through its affiliates, for some
16 24 years. *Wiggins Aff.*, ¶4. Because many factors other than cost bore on the State's
17 choice of suppliers (factors such as expertise, system compatibility, ability to serve
18 clientele, and the like), a "Request for Proposal" format was utilized, rather than a
19 Request for Sealed Bids. Under the RFP, cost accounted for only 40% of the total bid
20 evaluation; all the other relevant factors (loosely called "Non-Cost Factors") were
21 including in the remaining 60%. As to those Non-Cost Factors, each individual

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^{7/} There were, in fact, four bidders in response to the RFP, including Coresource and Walgreens. Neither of these latter two bids, however, were responsive (*see Attachment 8*), and this Protest will accordingly focus on the RFP's failure to provide a means of comparing Premera and Aetna.

1 evaluator awarded points based upon that evaluator's personal judgment as to how the
2 proposer dealt with each Non-Cost Factor

3 When final proposals were opened, the cost of the two responsive proposals was
4 virtually identical. On the cost side, Premera was awarded 2000 points for having the
5 lowest cost bid, while Aetna was awarded 1930 points for having a cost bid that was only
6 marginally higher than Premera's. *Attachments 5B and 5D*. The outcome of the bidding
7 process would thus depend on the point-evaluation process for the Non-Cost Factors.
8 Unfortunately, it was there that all three errors occurred. Those errors were these:

9 **III. The Division Rendered Its Non-Cost Evaluation Useless by Assigning one**
10 **Evaluation Team to Grade Aetna, and then a Different Evaluation Team**
11 **to Grade Premera.**

12 The ultimate goal of the competitive bidding process—the one on which its
13 “integrity” turns—is to provide “the opportunity to compare multiple responsible bids.”
14 *Laidlaw Transit Inc. v. Anchorage School District*, 118 P.3^d 1018 (Alaska 2005),
15 *emphasis added*. Any error that undermines the State's ability to meaningfully compare
16 competing proposals injures the unsuccessful bidder, to be sure, but more importantly, it
17 deprives the public, the courts, and the legislature of any basis to assess the propriety of
18 the agency's choice, and it renders the agency's action intrinsically arbitrary.

19 In this case, the points for Non-Cost Factors were awarded based on an evaluation
20 of largely qualitative (as opposed to quantitative) factors, ranging from the suitability of
21 appeals procedures to transition and training concerns. *Wiggins Aff.*, ¶43. Points were
22 awarded based on how individual evaluators liked, or disliked, the proposer's approach
23 to a host of issues. The Division assigned one 3-person evaluation team to evaluate
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1 Aetna's bid, and then assigned a separate 3-person evaluation team to evaluate Premera's
 2 bid. The two teams had only one member in common (that is, only one evaluator out of
 3 a total of five actually evaluated both proposers), the other two members of each team
 4 evaluated only the proposer who was assigned to that team. Each individual on these
 5 separate teams then awarded point grades to a long list of subjective standards—
 6 standards that would translate into very different point totals, depending on the
 7 evaluators' individual background, grading policies and priorities.

8 The evaluators' separate scores for the subjective, 60% Non-Cost Evaluation
 9 illustrate how idiosyncratic the Division's criteria really were.

10 Evaluator	11 Evaluated	12 Score
13 Miller	Aetna	2440
	Premera	2160
14 Gray	Premera Only	2207
15 Porter	Aetna Only	2120
16 Williams	Premera Only	1990
17 Siner	Aetna Only	1585

18
 19
 20 *Wiggins Aff., Attachments 5B and 5D.* The Division then took the average of each
 21 evaluator's scores (i.e., Aetna's score was based on the average of Miller's, Porter's and
 22 Siner's evaluation, while, Premera's was based on the average of Miller's, Gray's and
 23
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Williams' evaluation), and (because of the near-identity of the cost score), the proposer with the highest average evaluation won.³⁷

It is also apparent that compromising the rating process by using non-comparable, idiosyncratic scoring affected the outcome. For example, the only evaluator who evaluated both applications, Ms. Miller, rated Aetna significantly higher than Premera.

Aetna, it needs to be stressed, never consented to such a procedure. Once the Division discovered the missing boxes of Aetna bid materials, it knew that it must give Aetna a fair opportunity to compete for the contract. And so it agreed, first, to make a threshold call as to whether Aetna's proposal was "reasonably susceptible for award." *Wiggins Aff.*, ¶17, Attachment 2. If Aetna passed that first test (which it did), a subsequent evaluation of new "best and final offers" would be made.

Because one of the evaluators who had evaluated Premera's first bid was absent, the State needed to substitute one evaluator who had been on Premera's original three person team in order to have three persons available to make the threshold "susceptibility for award" review. *Id.* Aetna agreed to this process, for two obvious reasons: (1) the evaluation did not involve direct comparability of scores between Aetna and Premera, but only passage of a "susceptibility" threshold, and (2) only one evaluator was being substituted, not two.⁴⁷

Aetna's assumption was that, once the new substitute evaluator was chosen, that same team (*i.e.* two original Premera evaluators and the one substitute) would be available to evaluate the "best and final offers" of both offerors—Premera as well as

³⁷ Attachment 5B at 2 (Aetna "best and final" summary sheet), Attachment 5D at 2 (Premera "best and final" summary sheet).

1 Aetna No further substitutions would be necessary. This is why paragraph 4 of the
2 Agreement letter (*Attachment 2*), which deals with the final evaluation of best and final
3 offers, says nothing about different contestants having different teams of evaluators

4 The fact of the matter was that no bidder in his or her right mind would agree to
5 be scored by a team, a majority of which were different individuals from those who
6 scored the bidder's competitor. A suggestion that Aetna agreed to such an approach is
7 inherently not credible.

8 In a nutshell, it is of no probative value that Mr. Shier awarded Aetna 1585 points
9 for certain bidding variables, while one Mr. Mike Williams awarded Premera 1990 points
10 for those same variables. It is a rule of the most obvious and fundamental nature that an
11 RFP cannot succeed unless the grades being compared came from the same judge. The
12 Division's decision to use two different evaluators for each proposer is remarkable.

13
14 **IV. The Division Created the Appearance of Coaching Premera to Improve**
15 **its Score, but it did not Extend Similar Courtesies to Aetna.**

16 Under AS 36 30 240 and 2 AAC 12 290, the Division may discuss proposals with
17 proposers "reasonably susceptible of being selected for award" in order to flush out
18 proposal details, and, those discussions can lead to changes in the proposer's so-called
19 "best and final offer."

20 This authority, however, is subject to a caveat—that all such proposers "shall be
21 accorded fair and equal treatment with respect to any opportunity for discussion and
22 revision of proposals" (AS 36 30 240(a)), and that "[t]he opportunity for confidential

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"/ As events would have it, the Division substituted two new evaluators even for the threshold "suitability" evaluation. But Aetna never agreed to this, and was not informed at that time that the Division was substituting two evaluators.

discussions, if held, must be extended to all offerors submitting proposals deemed reasonably susceptible for award." 2 AAC 12 290(a)

The Division held extensive discussions with Premera which had the effect of giving Premera detailed advice on how to:

- retract portions of their proposal which, absent a retraction, would leave Premera's proposal unresponsive to the RFP;
- insert items required to be included in the RFP, but originally omitted by Premera; or
- suggest available contract administration measures that could result in lower cost, or increased evaluator attractiveness, and hence higher point scores

Wiggins Aff. ¶¶ 21-28a. Attachments 4A and 4B Not surprisingly, Premera accepted virtually every suggestion, and the gross point total from its Non-Cost factor evaluation resultantly rose by 629 points from its original proposal. *Compare Attachments 5C and 5D*

Aetna was offered no similar opportunity. The Division took 62 pages to suggest and elicit specific changes to Premera's original proposal, conversely, the Division made only three pages of minor, technical suggestions to Aetna (*Wiggins Aff. ¶ 19, Attachment 3*). Further, email messages document at least three private conversations between the procurement officer and Premera officials (on February 7, 9 and 15). See *Attachments 4A and 4B*

The raw page difference in communications between offerors yielded commensurate differences in the final point awards. And so, while Premera benefited by

629 additional points from the Division's extensive communications, Aetna's perfunctory dialogue with the Division yielded it only 21 additional points. Compare Attachments 5A and 5B with Attachment 5C and 5D

The relative impact of those questions on the scoring process was as follows:

COMPANY	EXTENT OF BIDDER QUESTIONING	ADDITIONAL POINTS FROM ANSWERS
Premera	62 pages of questions and answers, several private conversations	629
Aetna	3 pages	18

The extra points granted to Premera were doubly significant

- o First, in the initial grading of the two proposers (the grading of the initial proposals, before the Division's extensive assistance to Premera), Aetna won the Non-Cost Scoring (i.e. the 60% of the bid that reflects proposal quality) by 541 points. Compare Attachments 5A and 5C; while
- o Second, even after its extensive assistance from the Division, Premera was able to beat Aetna's Non Cost score by only 71 points. Compare Attachments 5B and 5D. It is apparent, then, that without these extensive suggestions from the Division, Premera would not have won the Non-Cost Scoring on the final "best and final" round, and, since the cost component of those bids was essentially equally for Aetna and Premera Premera therefore would not have won the competition as a whole. The

summary of all of these scores is contained in *Chart 1* that is appended to this protest

Unlike a request for bids, a request of proposals (or "RFP") allows the bidding agency to ask follow-up questions for the purpose of curing proposed deficiencies in the bid. *Gunderson v University of Alaska, Fairbanks*, 922 P 2nd 229 (Alaska 1996). However, because of the potential for abuse in private bidder/agency conversations, courts are insistent on all bidders being given the "same opportunity" in curing bid shortcomings. *Id.* at 235, AS 46.30.240 (all qualified bidders shall be "accorded fair and equal treatment", 2 AAC 12.290(a) (the same opportunity "must be extended to all offerors")

"Fair" contract bidding, and ensuring that no bidder "has received an unfair competitive advantage," is critical in order to ensure the best possible offer emerges from the bidding process. *McBirney & Associates v State*, 753 P 2nd 1132, 1135 (Alaska 1988)

As the Division found, Aetna was an offeror whose offer was reasonably susceptible of award. As such, it was entitled to equal treatment in post-opening discussions with the Division. Courts are historically wary of inequality in Request for Proposal communications, because of the obvious potential for abuse in giving bidding agencies discretion to engage in private conversations with bidders. As a result, courts have been especially alert in demanding equality in substance, and not just in form, in an agency's treatment of competing proposers.

Here, the danger of apparent inequality emerges from the Division's own wording in its questions to Premera. Time-and-time again, the Division asks Premera to "clarify"

1 a point that needed no clarification. In one class of cases, for example, Premera's
2 original offer unequivocally rejected a condition of the RFP. The Division, instead of
3 simply asking Premera to reverse its position, asked it to "clarify" that it would accept the
4 condition, despite the fact that its original proposal made it clear that it would not.
5 Capable of taking a hint, Premera routinely agreed to "clarify" that it would, after all,
6 abide by the RFP.

7 Mr. Mike Wiggins offers several examples of this in his affidavit (*id.* at ¶¶21-
8 28A), including the following:

9 *The RFP asks the offeror to agree that it will answer 85% of all*
10 *telephone calls within 30 seconds in any given month, or face penalties.*
11 *RFP, §10 11(a)(1). In its original proposal, Premera "disagreed" with this*
12 *element of the RFP. This caused Premera to lose points on this issue in*
13 *its first proposal, receiving only 2 points from one evaluator (Gray) and 0*
14 *from another (Williams) out of a possible 5 points. To raise Premera's*
15 *point total, the Department asked Premera to "clarify" that it would answer*
16 *85% of all calls on a monthly basis, despite what it said in its proposal. In*
17 *response to the State's suggestion that Premera change its position, Premera*
18 *agreed to the State's demand. As a result, Premera received 3.5 added*
19 *points from one evaluator (Gray) and additional points on this particular*
20 *Performance Standard issue and additional points from another (Miller) in*
21 *its "best and final" proposal.*

22 *Id.* at ¶21. In a similar vein: (1) Premera clearly declined to offer direct deposit in its
23 original offer, but was convinced by the Division to change its mind (*id.* at ¶22); (2) the
24 Division asked Premera to "agree" to a service that it had unequivocally not agreed to
25 provide in its proposal. *Id.* at ¶23; and (3) at the last minute, the Division suggested some
26 re-packaging of nearly \$6 million of "network access fees" as some other kind of charge.
Id. at ¶28A. By agreeing to not call these charges "access fees," Premera was able to
lower the cost side of its bid by \$6 million (since "access fees" are counted in computing
proposal costs), and then recapture those same funds as "claim charges," which are not

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1 included in the so-called "cost" of the bid. *Id.* The net result was to make Premier's bid
2 look \$6 million more attractive, without offering any overall cost savings at all

3 *Supplemental Affidavit of Mike Wiggins*

4 Additional "clarifications" that in fact resulted in significant point increases are
5 given as examples at ¶¶ 23-28 of Mr. Wiggins' affidavit, and *Attachments 4D and 4E* are
6 rife with them.

7 In *Dynacs Engineering Company v. United States*, 48 Fed Cl 124 (2000), the
8 government made a disproportionate effort to enhance one RFP proposer's bid, offering it
9 multiple opportunities to cure deficiencies and working with the favored bidder to cure
10 nine shortcomings while point out only two deficiencies in the other bidder's proposal.
11 The government tried to justify this substantive inequality by claiming that it had made
12 some effort to work with both bidders. The court disagreed, holding that, in RFP
13 discussions, the equality of treatment among proposers must be "meaningful," and both
14 sides must be given the "same opportunity" to address weaknesses. A bidding agency
15 cannot get by with "not telling [one bidder] about its continuing weaknesses, [while
16 continuing to inform the other bidder] about each of [its] weaknesses until [that other
17 bidder] got it right." 48 Fed Cl at 130. The disparity in both the frequency and
18 substance of the communications among the two bidders in our case, and the vastly
19 different results that the two sets of "discussions" achieved, proved that precisely the
20 same inequity occurred here.

21 To the same effect is *Dubinsky v. United States*, 43 Fed Cl 243 (1999), *appeal*
22 *dismissed* 215 F.3d 1350 (Fed. Cir. 1999), where the government also used the device of
23 common discussions with potentially successful proposers to improve one bidder's
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1 proposal, while giving *pro forma* attention to the other. Without substantive equality in
2 the discussions between proposers, the court held, "discussions with offerors readily
3 would be subject to abuse, merely becoming a cover for an agency's discussions with the
4 offeror it has selected to receive the contract prior to the formal selection decision." *Id.* at
5 263-4, *see also Paramax Systems Corp v CAE-Link Corp*, 1993 WL 485205 (Com
6 Gen.) (October 27, 1993), (where bidders "were not treated equally since they were not
7 given the same opportunity to participate in discussions and to amend their cost/price
8 proposals after BAFO." Comptroller General recommended a new round of BAFO's and,
9 if necessary, cancellation of the originally-successful contract)

10 So, once again, the Division has frustrated competition here, by refusing to put the
11 two bidders on the same playing field. Could the Division have gotten the best deal for
12 Alaskans by engaging in the same discussions with Aetna that it had undertaken with
13 Premera? We've no idea, because equality of treatment never occurred, and we are
14 therefore left, again, to compare Premera's apple to Aetna's orange

15
16 It may be that the evaluation was doomed to inequality from the outset, when the
17 Division first concluded that Aetna had failed to file the bulk of its bid. From that point,
18 and until the mistake was discovered, the Division considered Premera the only qualified
19 bidder, and one might expect a government agency to communicate exclusively with the
20 only bidder who (as the Division thought at the time) was qualified for the contract. That
21 spin gives the Division every benefit of the doubt. But even if that were the case, the
22 Division's ultimate failure came in its refusal to give Aetna's proposal the same
23 individual assistance once the Division learned that Aetna was a qualified bidder whose
24 bid was "susceptible for award." Once that happened, it was incumbent on the Division
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1 to level the playing field, by helping Aetna improve its proposal to the same extent as it
2 already had with Premera. The Division, in a word, cannot excuse such clear inequality
3 of treatment by its own mistake, particularly when the Division later had every
4 opportunity to rectify that mistake. As part of rectifying its error, the Division should
5 have retained a qualified consultant, as it has customarily done in the past, to make sure
6 that a level playing field was created at the end of the process, and that the State could
7 therefore conduct a fair and reliable comparison of the two bids.

8 **V. The Division Failed to Separately Evaluate the Splitting-out of**
9 **Pharmacy Claim Management Services under a Different Contract,**
10 **with a Different Contractor.**

11 Pharmacy claim management services are included within the scope of work of
12 the RFP, however, the Division recognized, in the RFP, that the State might benefit by
13 breaking out pharmacy services on a stand-alone basis, and award a contract for those
14 services separate from the main body of the work. *RFP at 9-10*. To that end, offerors
15 were invited to submit stand-alone bids for pharmacy claim management, and the State,
16 in turn, committed to separately evaluate stand-alone proposals. *Id.*

17 Aetna, in fact, timely submitted a stand-alone proposal to manage pharmacy
18 services in conformity with the RFP. *Wiggins Aff.*, 142. But the Division never
19 evaluated that proposal as part of the overall cost of the project. From the February 28,
20 2006 Final Notice of Intent (*Attachment 8*), it appears that that Aetna's proposal was
21 simply "rejected" out of hand.

22 _____
23 ²⁷ Since the RFP is in the possession of the Division, a separate copy of that document is not
24 being appended as an Attachment. Aetna respectfully requests that the RFP and all amendments
25 thereto be made a part of the record of this protest.
26

1 The three phase rating system in the RFP—that is, a separate scoring system for
2 comprehensive, comprehensive-less-pharmacy, and pharmacy-stand-alone programs (*id*
3 at *Sections 10-12*) recognizes the State's uncertainty as to the most cost-efficient means
4 of providing these services, and likewise recognizes the value of a three-part scoring
5 system to resolve that uncertainty. As the RFP recognized, it may be more economical
6 for the State to award one contract, to one contractor, for the all contract services except
7 pharmacy, and another contract for pharmaceutical claims management only to a second
8 contractor.

9 Indeed, as Mr. Wiggins explains in his affidavit (¶42 and *Exhibit 1*), publicly-
10 available information now demonstrates that the Division would have saved
11 approximately \$3 million if it had awarded the pharmaceutical claim management portion
12 of the contract to Aetna, and the remainder of the contract to Premera. This is precisely
13 the scenario that the Division thought might happen in the RFP, and it was an arbitrary
14 departure of the RFP for the Division to ignore that scenario in the final bid evaluation.

16 VI. Relief Requested

17 For the foregoing reasons, Aetna respectfully requests that

- 18 (1) The State rescind the Notice of Award for the RFP to Premera, and the
19 services envisioned by the RFP continue to be provided by Aetna under
20 Aetna's existing contract, as extended, with the Division for a period of not
21 less than six months.
- 22 (2) if a contract with Premera is executed before this relief is granted, the
23 contract with Premera be cancelled.

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- (3) the Division utilize the intervening six months as a necessary cooling off period;
 - (4) at the close of the cooling-off period, the State solicit new Best and Final Offers from Aetna and Premera;
 - (5) the new Best and Final Offers be evaluated by a qualified evaluation team that includes one consultant with demonstrated expertise in medical claim benefit management and acceptable to the Division, Premera and Aetna, and
 - (6) during any period of continued provision of service by Aetna under paragraph (2), Aetna will provide that service at current contract costs with the Division

DATED March 18 2006

SIMPSON, TILLINGHAST & SORENSEN
Attorneys for Aetna



By: Jon K. Tillinghast
Alaska Bar Assn. No. 7410109

AETNA'S FIRST EVALUATION SCORES

Evaluators:	Miller	Shier	Porter	Average
Total Evaluator Scores From Aetna's First Evaluation	2415	1570	2105	2030.0

PREMERA'S FIRST EVALUATION SCORES

Evaluators:	Gray	Jarrell	Miller	Williams	Average
Total Evaluator Scores From Premera's First Evaluation	1692	1290.5	1156	1810	1379.5

AETNA'S SECOND EVALUATION SCORES

Evaluators:	Miller	Shier	Porter	Average
Total Evaluator Scores From Aetna's Second Evaluation	2440	1585	2120	2048.3

PREMERA'S SECOND EVALUATION SCORES

Evaluators:	Gray	Miller	Williams	Average
Total Evaluator Scores From Premera's Second Evaluation	2207	2160	1990	2119.0

CHART 1

PREMERA'S FIRST EVALUATION SCORES

Technical Proposal	Gray	Jarrell	Miller	Williams	Average
10.01	40	55	25	75	40.0
10.02	81	67.5	83.5	80	77.3
10.03	50	25	25	45	33.3
10.04	26.5	14	4	20	14.8
10.05	40	55	40	60	45.0
10.06	62	85	51	125	66.0
10.07	66.5	91	127	190	128.2
10.08	127.5	85	87	120	99.8
10.09	80	32.5	11	90	41.2
10.10	67	60	50	100	59.0
10.11	75	42.5	63.5	75	60.3
10.12	84	45	54	85	61.0
10.13	191	155	171	200	172.3
10.14	135	90	72	125	99.0
10.15	104	50	62.5	65	72.2
10.16	79	90	40	100	69.7
10.17	91	85	51	70	75.7
10.18	69	70	46.5	90	61.8
10.19	80.5	65	67	70	70.8
10.20	43	28	25	25	32.0
Total	1692	1290.5	1156	1810	1379.5

AETNA'S FIRST EVALUATION SCORES

Technical Proposal	Miller	Shier	Porter	Average
10.01	100	55	100	85.0
10.02	125	80	75	93.3
10.03	50	30	50	43.3
10.04	35	25	40	33.3
10.05	100	70	75	81.7
10.06	150	85	150	128.3
10.07	200	120	165	161.7
10.08	150	85	140	125.0
10.09	100	70	100	90.0
10.10	150	75	120	115.0
10.11	90	50	95	78.3
10.12	100	70	90	86.7
10.13	225	200	225	216.7
10.14	140	85	120	115.0
10.15	150	90	90	110.0
10.16	150	95	135	126.7
10.17	150	120	135	135.0
10.18	100	60	60	73.3
10.19	100	80	90	90.0
10.20	50	25	50	41.7
Total	2415	1570	2105	2030.0

PREMERA'S SECOND EVALUATION SCORES

Technical Proposal	Gray	Miller	Williams	Average
10.01	80	75	75	76.7
10.02	128	125	100	117.7
10.03	50	45	45	46.7
10.04	50	45	35	43.3
10.05	90	100	70	86.7
10.06	122	125	125	124.0
10.07	176.5	200	190	188.8
10.08	142.5	125	120	129.2
10.09	92	100	90	94.0
10.10	150	100	100	116.7
10.11	88.5	80	80	82.8
10.12	86	100	90	92.0
10.13	207	225	200	210.7
10.14	145	100	130	125.0
10.15	133.5	100	130	121.2
10.16	150	125	100	125.0
10.17	115	140	90	115.0
10.18	75	100	90	88.3
10.19	83	100	90	91.0
10.20	43	50	40	44.3
Total	2207	2160	1990	2119.0

AETNA'S SECOND EVALUATION SCORES

Technical Proposal	Miller	Shier	Porter	Average
10.01	100	55	100	85.0
10.02	125	80	75	93.3
10.03	50	30	50	43.3
10.04	50	35	40	41.7
10.05	100	70	75	81.7
10.06	150	85	150	128.3
10.07	200	120	165	161.7
10.08	150	85	140	125.0
10.09	100	70	100	90.0
10.10	150	75	120	115.0
10.11	90	50	100	80.0
10.12	100	70	90	86.7
10.13	225	200	225	216.7
10.14	150	95	130	125.0
10.15	150	90	90	110.0
10.16	150	95	135	126.7
10.17	150	120	135	135.0
10.18	100	60	60	73.3
10.19	100	75	90	88.3
10.20	50	25	50	41.7
Total	2440	1585	2120	2048.3

AFFIDAVIT OF MIKE WIGGINS

STATE OF ALASKA)
) ss:
FIRST JUDICIAL DISTRICT)

1. I, MIKE WIGGINS, being first duly sworn, to depose and say that

2. I am 51 years old. My home address is 6628 138th PL SW, Edmonds, WA 98026

3. My current position for Aetna is Vice President National Account, Seattle, Washington. I have worked for Aetna for 8 years

4. The RFP that is the subject of this protest is to provide medical and/or pharmacy benefit management claim services for the State of Alaska. Aetna and its affiliates have held this contract for these services for 24 years

5. My own job experience in this field involves 25 years – directly related to the pricing, operational monitoring, and consulting on health insurance related matters.

6. In terms of involvement with health management related RFPs, I have had, in addition to the current RFP in question, involvement with the prior (2) five year bids, one with NYLCare, another with Aetna, and (1) prior State of Alaska RFP with Blue Cross of Washington and Alaska.

7. My previous past job titles have included, Manager of Actuarial and Underwriting – Medical Service Corporation of Eastern Washington, now a subsidiary of Blue Cross of Washington and Alaska, Manager of Experience Underwriting, Vice President of Underwriting, Vice President Large Group Consulting and Product Development, (All positions with Blue Cross of Washington and Alaska), Senior Benefit Consultant, William M. Mercer, Solo Consulting Practice – Health Care Tactical Partners, Director of Public Programs - NYLCare, a subsidiary of New York Life

8. My current job function includes overall account management responsibility for government entities with more than 3,000 employees in part of

Aetna's West region. This includes several entities, as the State of Utah, State of Idaho, State of Nevada, King County, and the City of Seattle. Job functions include working with entities such as the State of Alaska in a consultative capacity, to help them design health care programs to meet the financial challenges they face in delivering benefits to their active and retired employees. In my current role, I also act as the point person in negotiating future administrative fees, responding to Requests for Proposals, and service related issues.

9. Specifically for the State of Alaska proposal at issue in this protest, I coordinated the responses to the bid questions and the response that crossed all my different disciplines within Aetna. At least 10 Aetna staff members were committed to insuring Aetna's bid response was complete and reflected answers to the questions raised by the State.

10. By virtue of this experience, I have personal knowledge and am competent to testify regarding the subject matter of this affidavit.

Aetna's bid response to RFP 2007-200-5943 - Issued
November 30th 2005

11. On December 22, 2005, AETNA submitted a timely, complete, responsive and responsible proposal on the above referenced RFP. The cover page of Aetna's submission is attached as *Attachment 1*. Aetna's bid response contained separate responses to Section 7 (Medical, Dental, LTC and Pharmacy Services), Section 8 (Mental, Dental and LTC Services) and Section 9 (Pharmacy Benefit Management Services). The separate requested responses to the RFP were submitted because one of the stated purposes of the RFP was to allow the State to determine whether it was more economical to award all services on one contractor, or award a stand-alone Pharmacy Benefit Management Services contract to a second contractor.

12. Prior to Jan. 20, 2006, the first scheduled award date of any parts of the RFP in question; I contacted Victor Lemur, who was then the initial procurement officer, asking if there were any problems with the Aetna RFP response. This was due to the fact that Aetna had heard nothing to date about our response to the RFP. His response was no comment and that the bid evaluation would take longer than the original stated date of Jan. 20th.

13. On Saturday, February 18th, 2006, AETNA was notified that its proposal to RFP 2007-0200-5946 was being rejected as being non-responsive. This came in the form of a faxed Notice of Intent to Award the contract to Premera which Aetna received on that Saturday. Subsequently, I was informed via a telephone call with Mr. Walt Harvey, who was now the procurement officer, that Aetna's bid response was being rejected as non-responsive because it was missing key requested information that was part of the RFP. In the course of this conversation I informed Mr. Harvey that he was mistaken. Together, we confirmed what Aetna material he had in his hands and what materials he should have had. Based upon this conversation, it became obvious that Mr. Harvey was missing a 6 inch binder which contained the meat of Aetna's responses to which Aetna sent multiple copies to the State. Again I stated I had confirmation that the State received our RFP bid materials. At this point Walt said he would get back to me within an hour.

14. One hour later, Aetna's multi-copied bid responses were found in their boxes in a storeroom. No explanation was given as to how or why the boxes were lost, just an apology. Also, no explanation was given as to why they didn't call Aetna sooner.

15. Upon discovering the State's mistake, Mr. Harvey immediately withdrew the State's Notice of Intent previously given to Premera.

16. Mr. Harvey also stated that he needed to speak with the Attorney General to determine what steps needed to be taken.

17. Following internal dialog, a scheduled meeting was held. The meeting included Aetna, Premera and State Representatives at which time the State laid out its next steps in the procurement process which included: (1) Aetna's newly discovered RFP response would receive a threshold evaluation to see if it was "reasonably susceptible to award"; (2) since one of the evaluators who had evaluated Premera's first offer was absent, we agreed that the State could substitute one reviewer on our reviewer panel for the purpose of determining whether we met the threshold of "reasonably susceptible to award"; (3) if we met that threshold, the State would share with Premera, Aetna's original offer because the State had shared with Aetna, Premera's unsolicited original "best final and final offer"; and (4) Aetna and Premera would then be allowed submit another "best and final offer" that would be subject to comparative evaluation and the best offer would receive the contract. It was always our understanding that this second evaluation, in which

Aetna and Premiera would be directly compared, would be evaluated by the same individuals. That agreement is reflected in the letter appended as *Attachment 2*. Note that this agreement only permits one different reviewer to review the threshold question of whether Aetna's proposal was "reasonably susceptible to award" (Aetna was not told, and was not made aware at the time, that the Division substituted two evaluators for even the first "reasonably susceptible to award" evaluation). Nowhere in that agreement did Aetna agree to multiple different reviews in comparing the final "best and final offers" that would be submitted by both sides, and under no circumstances would Aetna have agreed to such an arrangement.

18. Aetna's initial responses were deemed "reasonably susceptible of award," and therefore, thereafter, both Aetna and Premiera submitted best and final offers.

19. The Division advised both proposers that they would submit certain questions to both proposers to clarify or improve both parties' proposals. However, the letter to Aetna only posed three pages of very limited clarifications. These clarifications questions appended as *Attachment 3*.

20. On the other hand, the Division served 62 pages of detailed questions on Premiera over the course of apparently several weeks. The questions submitted to Premiera are appended as *Attachment 4*.

21. The RFP asks the offeror to agree that it will answer 85% of all telephone calls within 30 seconds in any given month, or face penalties. RFP § 10.11(a)(1). In its original proposal, Premiera "disagreed" with this element of the RFP. See *Attachment 5C* at Miller's Evaluation Notes. See *Attachment 5C* at Gray's Evaluation Notes. This caused Premiera to lose point on this issue in its first proposal, receiving only 2 points from one evaluator (Gray) and 0 from another (Miller) out of a possible 5.5 points. See *Attachment 5C* at Miller's Evaluation Notes. See *Attachment 5C* at Gray's Evaluation Notes. To raise Premiera's point total, the Department asked Premiera to "clarify" that it would answer 85% of all calls on a monthly basis, despite what it said in its proposal. *Premiera Response* at pg 27. In response to the State's suggestion that Premiera change its position, Premiera agreed to the State's demand. Id. As a result, Premiera received 3.5 added points from one evaluator (Gray) on this particular Performance Standard issue and additional points from another (Miller) on this particular Performance Standard section in its "best and final" proposal. See

Attachment 5D at Miller's Evaluation Notes. *See Attachment 5D* at Gray's Evaluation Notes.

22. The RFP asked whether the offeror is prepared to offer direct deposit of participant benefit reimbursement. RFP § 10.14(c). In its original proposal, Premiera answered "no" to this question in the RFP. *See Attachment 5C* at Miller's Evaluation Notes; *See Attachment 5C* at Gray's Evaluation Notes. This caused Premiera to lose points on this issue in its first proposal, receiving only 16 points from one evaluator (Gray) and 0 points from another (Miller) out of a possible 25 points. *See Attachment 5C* at Miller's Evaluation Notes; *See Attachment 5C* at Gray's Evaluation Notes. To raise Premiera's point total, the Department asked Premiera, when it had already clearly answered "no" in its original proposal, to describe how Premiera would meet the need for direct deposit. *Premiera Response* at pg 33. In response to the State's suggestion that Premiera change its position, Premiera agreed that it would offer this service. *Id.* As a result, Premiera received 9 added points from one evaluator (Gray) on this particular Performance Standard issue and additional points from another (Miller) on this particular Performance Standard section in its "best and final" proposal. *See Attachment 5D* at Miller's Evaluation Notes; *See Attachment 5D* at Gray's Evaluation Notes.

23. The RFP asks the "offeror whether it agrees to allow fees within the greater of 10% or \$10 of UCR without reduction" RFP § 10.05(e). In its original proposal, Premiera answered "no" to this section of the RFP. *See Attachment 5C* at Miller's Evaluation Notes; *See Attachment 5C* at Gray's Evaluation Notes. This caused Premiera to lose points on this issue in its first proposal, receiving 0 points from two of the evaluators (Gray and Miller) out of a possible 20 points. *See Attachment 5C* at Miller's Evaluation Notes; *See Attachment 5C* at Gray's Evaluation Notes. To raise Premiera's point total, the Department explained to Premiera that "the RFP required offerors' to agree to the UCR procedures" and asked Premiera whether it could agree to this procedure although it originally answered that it could not. *Premiera Response* at pg 12. In response to the State's explanation and question Premiera changed its position, Premiera agreed to the State's demand. *Id.* As a result, Premiera received 20 added points from evaluators (Gray and Miller) on this particular Performance Standard issue in its "best and final" proposal. *See Attachment 5D* at Miller's Evaluation Notes; *See Attachment 5D* at Gray's Evaluation Notes.

24. The RFP asks to the offeror "[t]o what degree does the offeror agree that they shall reimburse the State for any overpayment error in excess of \$50?"

RFP § 10.11(g)(i). In its original proposal, Premera "disagreed" with this element of the RFP. *See Attachment 5C* at Miller's Evaluation Notes; *See Attachment 5C* at Gray's Evaluation Notes. This caused Premera to lose points on this issue in its first proposal, receiving only 3 points from one evaluator (Gray) and 0 from another (Miller) out of a possible 5.5 points. *See Attachment 5C* at Miller's Evaluation Notes; *See Attachment 5C* at Gray's Evaluation Notes. To raise Premera's point total, the Department asked the question a second time when Premera clearly "disagreed" with this element of the RFP. *Premera Response* at pg 27. In response to the State's suggestion that Premera change its position, Premera agreed to the State's demand. *Id.* As a result, Premera received 2.5 added points from one evaluator (Gray) on this particular Performance Standard issue and additional points from another (Miller) on this particular Performance Standard section in its "best and final" proposal. *See Attachment 5D* at Miller's Evaluation Notes; *See Attachment 5D* at Gray's Evaluation Notes.

25. The RFP asks whether "the offeror agrees to use a data processing system that is compatible with the State's system and that can produce [reports containing key statistics] . . . in a timely fashion?" RFP § 10.02(A)(e). In its original proposal, Premera could only produce annual reports containing key statistics. *See Attachment 5C* at Miller's Evaluation Notes. This caused Premera to lose points on this issue in its first proposal, receiving only 6 points from one evaluator (Gray) and 0 points from another (Miller) out of a possible 12 points. *See Attachment 5C* at Miller's Evaluation Notes; *See Attachment 5C* at Gray's Evaluation Notes. To raise Premera's point total, the Department asked Premera to "clarify" that it could produce monthly reports that included key statistics. *Premera Response* at pg 2. In response to the State's suggestion that Premera change its position, Premera agreed to the State's demand. *Id.* As a result, Premera received 6 added points from one evaluator (Gray) on this particular Performance Standard issue and additional points from another (Miller) on this particular Performance Standard section in its "best and final" proposal. *See Attachment 5D* at Miller's Evaluation Notes; *See Attachment 5D* at Gray's Evaluation Notes.

26. The RFP asks:

To what extent did the offeror agree that some or all of the work associated with this RFP would be performed in Alaska within six months of contract implementation?

How well did the offeror adequately describe which functions Alaskans will perform and list the approximate number of positions? Did they also note where these positions would be located?

RFP § 10.10(a) & (b). In its original proposal, Premiera answered "Yes" without an explanation to the first question and gave an inadequate answer to the second question. *See Attachment 5C* at Miller's Evaluation Notes; *See Attachment 5C* at Gray's Evaluation Notes. This caused Premiera to lose points on this issue in its original proposal, receiving only 67 points from one evaluator (Gray) and 70 from another (Miller) out of a possible 150 points. *See Attachment 5C* at Miller's Evaluation Notes; *See Attachment 5C* at Gray's Evaluation Notes. One evaluator (Miller) noted that Premiera's answer was inadequate. *See Attachment 5C* at Miller's Evaluation Notes. To raise Premiera's point total, the Department told Premiera to "define the number of dedicated full time employees that will compose the team, defined by function and listed by location." *Premiera Response* at pg 24. In response to the state's suggestion Premiera added a chart describing (1) the functions Alaskans will perform, (2) the number of positions, and (3) where positions would be located. *Id.* As a result, Premiera received 50 additional points from one evaluator (Miller) and 83 from another (Gray) on this particular Performance Standard section in its "best and final" proposal. *See Attachment 5D* at Miller's Evaluation Notes; *See Attachment 5D* at Gray's Evaluation Notes.

27. The RFP asks "[t]o what extent are third party subcontractors being used to satisfy parts of this RFP?" RFP § 10.01(a). In its original proposal, Premiera did not include in its answer discussions regarding subcontractors PointShare, Subimo and CareMark. *Premiera Response* at pg 1. This caused Premiera to lose points on this issue in its original proposal, receiving 5 points from one evaluator (Gray) and 0 points from another (Miller) out of a possible 20 points. *See Attachment 5C* at Miller's Evaluation Notes; *See Attachment 5C* at Gray's Evaluation Notes. To raise Premiera's point total, the Department told Premiera to discuss its relationship with subcontractors: PointShare, Subimo and CareMark. *Premiera Response* at pg 1. In response to the State's suggestion, Premiera filled in the issue. *Id.* at 1-2. As a result, Premiera received 15 added points from one evaluator (Gray) on this particular Performance Standard issue and additional points from another (Miller) on this particular Performance Standard section in its "best and final" proposal. *See Attachment 5D* at Miller's Evaluation Notes; *See Attachment 5D* at Gray's Evaluation Notes.

28. The RFP asks "[t]o what extent did the offeror offer other dedicated or customized services to the State?" RFP § 19-15.2(b)(1). In its original proposal, Premiera did not offer any other services. See *Attachment 5C* at Miller's Evaluation Notes. One evaluator noted that "customization not addressed" and "no other services offered." See *Attachment 5C* at Miller's Evaluation Notes. This caused Premiera to lose points on this issue in its first proposal, receiving 0 points from one evaluator (Miller) and 6 from another (Gray) out of a possible 12.5 points. See *Attachment 5C* at Miller's Evaluation Notes; See *Attachment 5C* at Gray's Evaluation Notes. To raise Premiera's point total, the Department asked Premiera, when it clearly did not offer any other services, to re-answer this question. *Premiera Response* at pg 36. In response to the State's suggestion, Premiera filled in the issue. *Id.* As a result, Premiera received 6.5 added points from one evaluator (Gray) on this particular Performance Standard issue and additional points from another (Miller) on this particular Performance Standard section in its "best and final" proposal. See *Attachment 5D* at Miller's Evaluation Notes; See *Attachment 5D* at Gray's Evaluation Notes.

28A. In their original response, Premiera indicated that they would be charging a \$5.51/person network access fee--a fee that would total about \$6 million over the three-year contract period. On February 24, just four days before Premiera was due to file its "best and final offer," the Division suggested to Premiera that they find some way to categorize this cost other than as a "fee." Per-person charges tend to be very visible in cost calculations. Premiera took the Division's cosmetic suggestion, eliminating all network access fees. As a result, Premiera received 16 additional points from one evaluator (Gray) and 54 from another (Miller) on this particular Performance Standard section in its "best and final" proposal. See *Attachment 5D* at Miller's Evaluation Notes; See *Attachment 5D* at Gray's Evaluation Notes.

29. We also repeatedly requested that the State provide us with the evaluation notes of all evaluations. However, the State has only provided us with evaluation notes that appear incomplete and confusing. The evaluator notes that the state did provide us are appended as *Attachment 5(A)-(D)*.

30. These are the services that Actna is currently providing to the State under the existing medical claims administrative contract.

- * Medical
- * Dental
- * Vision - Managed and Indemnity
- * Pharmacy - Retail Card, Mail Order, Specialty, Paper Transaction
- * Cobra Administration
- * Individual Billing Administration
- * Employee Assistance Programs (EAP)
- * Flexible Spending Account Administration
- * Managed Behavioral Health
- * Long Term Care
- * Preferred Provider Arrangements
- * Centers of Excellence
- * Medicare D Administration

31. Aetna is the nation's third largest medical carrier with 11.8 million medical lives, 13.1 million dental lives and has a significant presence in the nation's top 500 largest companies. Aetna is ready, willing and able to perform all current services without interruption if it is allowed to continue to perform under its existing contract pending the outcome of this protest and appeal.

32. As a company, Aetna is committed to insuring that the State's employees have uninterrupted services during the protest and appeal period. Should the ultimate outcome of the protest process be a re-bid or an extension of the existing Aetna contract, we will work with the State to develop a process to continue our existing fees and administration until the protest and appeal is resolved. Although the State by statute is required to re-bid some services every (5) years there is precedence to extend a contract for a period of time beyond (5) years if it is in the best interest of the State and its employees. For example, the current extension of the State's Life Disability contract with Unum went beyond the statutorily (5) years and the present (11) year extension of its current contract with its benefit consultants beyond (5) years.

33. On the other hand, if Aetna is not allowed to continue to perform under its existing contract pending the outcome of this appeal and protest, a significant amount of short-term harm will occur. The following is based upon an intimate knowledge of the State of Alaska's employee population and observations of 2 transitions by this population to new carrier platforms in the last 10 years - (Aetna to NYLCARE and NYLCARE to Aetna). In addition, it is also based upon

recent discussions with Municipal clients and potential new clients who were determining lead times of when to go to bid and the appropriate transition period. Lead times averaged 10 to 12 months.

34. The State of Alaska has a total membership of approximately 68,500, of this number 14,500 are active members and 54,000 are retired members residing in all 50 states and several foreign countries. Due to the high number of retirees many State members are undergoing care for chronic diseases which involves constant interaction with the medical community and any change of benefit administrators must include intensive communication with the effected parties to insure that disruption of service to these ill State of Alaska members who are in course of treatment does not occur.

35. Additionally, because of the high retiree population, the State has almost 1,000,000 prescriptions filled annually. This significant utilization of prescription drugs requires by law some interaction with medical providers to obtain a prescription. The State must acknowledge that in many cases a new prescription and a subsequent office call and in some cases multiple office calls will be required to obtain a new prescription to be submitted to the new Administrator.

36. Presently, the State is undertaking a positive open enrollment process for its retiree population to insure that only eligible dependents are covered by the State's benefit plans. At present this is an un-completed task that will require huge man power commitment to complete. This process must be completed so that only truly eligible retiree members receive Identification Cards from a new Administrator.

37. The State has only limited ability to communicate to its retiree populations on the complexity of any transition to a new administrator. In a short period of time the State will be challenged to communicate significant number of changes and by the sheer volume of information it will appear confusing to this population.

38. Presently, it is also on State's docket to draft new benefit booklets for its retiree population. Again this will be significant manpower commitment by the State as it is planning a transition to a new Administrator. Significant questions will be asked of the State of Alaska by retirees who are mailed these booklets.

39. Lastly, the State's Retirement and Benefits is also scheduled to bring a new retirement system online this summer. Even without a transition to a new carrier the division's resources have been stretched to the maximum.

40. There will also be hardship caused to Aetna from immediate closure, including the following:

Closure of the Aetna Juneau Office

Closure of the Aetna Anchorage Office

Loss of Alaska jobs by both Aetna and Magellan

Overall potential loss of 40 jobs in just Aetna - some of these staff have 20 tenures in servicing the State of Alaska employees, many have at least 10 year tenures.

41. It has been difficult to get qualified individuals to reside in Alaska and we don't want to lose the one's we have. Today there is also significant walk in traffic to both Aetna Alaska offices by retirees by virtue of the complexity of their bills and by legislative staff during session. Over time many deep personal relationships have been established between Aetna staff and the members who they have served diligently. This transition will be very difficult for all involved, and close personal ties to Alaska Care staff both in Juneau, Anchorage, and Seattle.

42. Aetna submitted a separate proposal for providing only pharmaceutical benefit management services. This type of stand-alone proposal was specifically requested in the RFP and was therefore responsive to the RFP. Although the RFP promised that these stand-alone proposals would be evaluated in the overall cost evaluation of providing the services covered by the RFP, the State never conducted such an overall evaluation, and therefore had no basis for determining whether it would have been more economical to split the contract between one contractor for medical and other non-pharmaceutical services, and another contractor for pharmaceutical services. Based on public information now available to us, and set out in Exhibit I to this Affidavit, it is apparent that the State would have saved approximately \$3 million over the course of the contract by selecting Aetna's stand-alone pharmacy offer (the numbers in Exhibit I show higher pharmacy numbers for Aetna than for Premiera). However, it is important to note that pharmacy numbers are reported as rebate numbers refundable to the state, so that the higher the rebate number, the lower the cost to the State.

43. It must be noted that a significant part of the RFP in question can have a great deal of variability in scoring by individual scorers for the non-cost 60% portion they reviewed. This variability or statistical bias can be observed by the different scorers totals. For this reason the need to have the same reviewers is statistically important so that all scores reflect the same bias in their totals. It is also important that all bids have the same number of reviewers, if not, the weighting of a different number of scores will distort the outcome of the scoring process.

Further your affiant sayeth naught.

Dated this 8 day of March, 2006, at Juneau, Alaska.

Mike Wiggins
Mike Wiggins

SUBSCRIBED AND SWORN to before me this 8th day of March, 2006



Bonnie K. W. Hansen
Notary Public in and for Alaska
My commission expires 9-11-2007

Rebates Integrated Pharmacy Rx Premera - Compared to Aetna Integrated RX Rebates Under Section 9

Aetna proposed rebates	Year 1	Year 2	Year 3	Note information contained in Aetna Section 9 Response
	<u>2006</u>	<u>2007</u>	<u>2008</u>	
Retail rebate g'tee	\$ 4.53	\$ 5.03	\$ 4.77	
MOD rebate g'tee	\$ 15.05	\$ 16.70	\$ 15.86	
Basis	Per valid Script	Per rebateable Script	Per rebateable Script	
Estimated annual retail scripts	770,418	707,871	707,871	
Estimated annual MOD scripts	95,220	87,490	87,490	
Estimated annual retail rebates	\$ 3,489,994	\$ 3,560,591	\$ 3,376,545	\$ 10,427,129
Estimated annual MOD rebates	\$ 1,433,061	\$ 1,461,083	\$ 1,387,591	\$ 4,281,735
Estimated total rebates	\$ 4,923,055	\$ 5,021,674	\$ 4,764,136	\$ 14,708,865

Premera proposed rebates	Year 1	Year 2	Year 3	Note information contained in Premera's Integrated Medical Response
	<u>2006</u>	<u>2007</u>	<u>2008</u>	
Retail rebate g'tee	\$ 3.08	\$ 3.40	\$ 3.50	
MOD rebate g'tee	\$ 9.77	\$ 10.66	\$ 10.98	
Basis	Per Script	Per Script	Per Script	
Estimated annual retail scripts	854,400	854,400	854,400	
Estimated annual MOD scripts	105,600	105,600	105,600	
Estimated annual retail rebates	\$ 2,631,552	\$ 2,904,960	\$ 2,990,400	\$ 8,526,912
Estimated annual MOD rebates	\$ 1,031,712	\$ 1,125,696	\$ 1,159,488	\$ 3,316,896
Estimated total rebates	\$ 3,663,264	\$ 4,030,656	\$ 4,149,888	\$ 11,843,808

SUPPLEMENTAL AFFIDAVIT OF MIKE WIGGINS

STATE OF Washington

COUNTY OF King

I, MIKE WIGGINS, being first duly sworn, do depose and say that:

1. This affidavit supplements the information contained in paragraph 28 of my March 8, 2006 affidavit;

2. The network access fees discussed in that paragraph totaled approximately \$6 million over the course of the contract;

3. At the Division's request, Premera stopped referring to these charges as "network access fees," and labeled them instead as claim charges. Because network access fees are included in the reported "cost" of the project, while claim charges are not, this had the effect of appearing to reduce Premera's bid by \$6 million, when, in reality, that \$6 million had actually just been moved to another category where it would not show up as a project cost;

4. The methodology and information I used to reach this conclusion is appended to this Supplemental Affidavit as Attachment 1

Further your affiant sayeth not.

DATED this 10th day of March, 2006 at 10:57 AM, Seattle, WA

Mike Wiggins
Mike Wiggins

SUBSCRIBED AND SWORN to before me this 10th day of March, 2006

Carole L. [Signature]
Notary Public in and for Washington
My commission expires January 21, 2007

The following network savings guarantee replaces the answer provided for Section 10.11, page 25 in the Best and Final Offer Clarification Questions – State of Alaska submitted on February 13, 2006.

Please explain the network discount guarantee arrangement as mentioned on page 37 of Premera's proposal.

Premera Blue Cross Blue Shield of Alaska will guarantee network savings of \$100.00 per employee per month resulting from the use of Premera's Alaska and Washington networks and the national Blue Cross Blue Shield BlueCard network program. The following table represents aggregate network savings outside of the state of Alaska.

Aggregate Network Discounts (outside of Alaska)			
Arizona	California	Oregon	Washington
57%	52%	39%	39%

Network savings in excess of \$100.00 per employee per month will be shared between the State of Alaska and Premera Blue Cross Blue Shield of Alaska. The State of Alaska will retain 70% of the amounts over \$100.00 per employee per month. Premera Blue Cross Blue Shield of Alaska will retain 30%. In the event that the savings are less than \$100.00 per employee per month, Premera Blue Cross Blue Shield of Alaska will reimburse the State of Alaska 30% of the difference between the savings amount per employee per month and \$100.00 per employee per month.

Approach

Premera Blue Cross Blue Shield of Alaska will produce a quarterly report identifying billed charges for in-network medical claims compared to the in-network provider allowable charges. The difference between these two charges is savings. The savings are turned into per employee per month savings over the quarter by dividing by the number of employees covered over the three-month period. The report will be produced 30 days after the end of each quarter and the quarterly results will be settled 45 days after the quarter ends. The final amounts due, if any, will be reconciled and due 50 days after the close of the policy year.

PREMERA

ONE COLOR WIDE DIGITAL PRINTING

Please itemize the following components of your service fee for year 1
(This is for informational purposes only)

	For Self	For Spouse
Pre-certification and Utilization Review	\$5.16	\$3.78
Large Case Management	Included in Pre-certification	Included in Pre-certification
COBRA/Continuation Administration	\$0.39	\$0.26
High Risk Maternity	Included in Pre-certification	Included in Pre-certification
Wellness/Patient Education	Included in Pre-certification	Included in Pre-certification
EAP/Managed Mental Health	\$3.20	\$2.09
Pharmacy Network/Administration	No charge	No charge
Vision Network/Administration	No charge	Not applicable

Note (1): In the event of termination of administration services, an administration fee of 4% of claim paid after the date of termination will be made.

Note (2): A \$12 per month billing fee will be applied to bill any self-paying returns.

included in fees?

02/27/2006 2:10 FAX 1330169268

PREMERA

001 023



February 27, 2006

Mr. Walt Harvey
 Contracting Manager
 Department of Administration
 Division of General Services
 303 Willoughby Avenue, 7th Floor State Office Building
 Juneau, AK 99811-0203

Dear Mr. Harvey:

Thank you again for the opportunity to provide additional clarification and our "Best and Final" offer. I am personally pleased to reaffirm our commitment to the State of Alaska. I believe Premera Blue Cross Blue Shield of Alaska is uniquely qualified to deliver the lowest net cost while providing outstanding service to the State of Alaska and its members.

The highlights of Premera Blue Cross Blue Shield of Alaska's proposal to the State include:

- **Significant Claims Savings:**

The State of Alaska will achieve at least \$45 million in net additional claims savings in the next three years (before health cost inflation) through the use of the Blue Cross Blue Shield networks. These savings are over and above savings now achieved using your current administrator's network, and after sharing any upside performance with Premera. To support this claim, we have reduced our administrative fees by 10%, eliminated our pharmacy fees and network access fees, plus placed additional amounts at risk for claims discount performance. In other words, the State will not pay unless Premera Blue Cross Blue Shield of Alaska delivers the network claims savings. Meeting our savings commitments was a big element to our success with Microsoft and Weyerhaeuser; both clients will be happy to validate this achievement.

- **No Surprises:**

The State of Alaska will have the security of an all-inclusive fee arrangement, other than for clearly identified optional services. This includes removal of the pharmacy administration fee proposed when the State requested receipt of full pharmacy rebates, as well as removal of the separately billed charge for use of the national BlueCard network. Additionally, we have now included 65 hours of training provided by Compsych, the EAP vendor partner.

- **Guaranteed Results:**

In addition to waiving our pharmacy administration fee, we are now guaranteeing a minimum of \$3 million in annual pharmacy rebates. Moreover, the State can also share our confidence in our ability to meet our commitments as we are doubling the dollars at risk in our other Performance Guarantees in each category.

dedicated customer service representatives, these representatives serve current Premera Blue Cross Blue Shield of Alaska members.

The original bid noted a customer service staff of five located in Alaska. The five included the two marketing liaisons and one customer service representative noted above, in addition to the two new Marketing Liaisons dedicated to the State of Alaska. These three staff were noted because they can provide back-up to the dedicated State of Alaska staff.

All other State of Alaska customer service and claims staff will be located in Mountlake Terrace, WA. However, if customer service volumes in Anchorage or Juneau indicate a need for additional staff, Premera Blue Cross Blue Shield of Alaska will add appropriate staff to meet the volume.

3) Pages 30 and 31 of 47; answer to 10.13 d);

Provide in dollars the BlueCard access fees and administration fees expected to be charged annually by the State of Alaska for use of the Blues network for our population? Is there a cap on these fees?

As outlined in the Performance Guarantee section of the RFP, there is an access fee charge for the use of the BlueCard network. The access fee is charged as a claim charge. The guaranteed access fee is \$5.51 per employee per month. As the fee is guaranteed as a per employee per month charge, the cap is \$5.51 times the number of employees per month times 12 months.

The access fee works with the network savings guarantee as follows:

Premera Blue Cross Blue Shield of Alaska will guarantee network savings of \$100.00 per employee per month resulting from the use of Premera's Alaska and Washington networks and the national Blue Cross Blue Shield BlueCard network program. The following table represents aggregate network savings outside of the state of Alaska.

Network savings in excess of \$100.00 per employee per month will be shared between the State of Alaska and Premera Blue Cross Blue Shield of Alaska. The State of Alaska will retain 88% of the amounts over \$100.00 per employee per month, Premera Blue Cross Blue Shield of Alaska will retain 12%. In the event that the savings are less than \$100.00 per employee per month, Premera Blue Cross Blue Shield of Alaska will reimburse the State of Alaska 24% of the difference between the savings amount per employee per month and 100.00 per employee per month.



Approach

Premiera Blue Cross Blue Shield of Alaska will produce a quarterly report identifying billed charges for in-network medical claims compared to the in-network provider allowable charges. The difference between these two charges, minus the BlueCard access fees, is savings. The savings are turned into per employee per month savings over the quarter by dividing by the number of employees covered over the 3 month period. The report will be produced 30 days after the end of each quarter and the quarterly results will be settled 45 days after the quarter ends. The final amounts due, if any, will be reconciled and due 90 days after the close of the policy year.

4) Page 33 of 47; answer to 10.14 a);

The State of Alaska plans produce over 100,000 claims per month, not including pharmacy. PBC reflects that 90% of claims from our population will be auto adjudicated. Currently, based on December 2005 volume: 116,119 claims; the actual auto adjudication rate experienced was 40%, with 60% of claims manually processed, which is the typical percentage experienced over time. Please describe the rationale that PBC used to conclude that 90% of all State of Alaska claims per month will be auto adjudicated. PBC must confirm that it can process in excess of 100,000 claims per month regardless of the adjudication ratio.

Premiera Blue Cross Blue Shield of Alaska is very confident that it can process in excess of 100,000 claims per month regardless of the adjudication rate.

The following definitions and calculations provide further clarification as to the process for determining the appropriate number of claims processors for the State of Alaska.

Assume 100,000 claims per month received for processing

- 10,000 claims will require manual entry and adjudication
- 90,000 claims will be electronically entered into the system – either through EDI or Optical Character Recognition (OCR)
 - 45,000 of those claims will be pending for manual review and adjudication
 - 45,000 of those claims will be paid through the system with no manual intervention

Constance Hartle

From: Englehart, Tom J. [TJEnglehart@magellanhealth.com]
Sent: Tuesday, March 21 2006 11:06 AM
To: Sen. Con Bunde
Subject: Aetna protest of State Employees & Retirees Medical Plan Administration award

Hello, Senator Bunde:

I represent a 26 year old Alaskan company, Magellan Health Services, based in Anchorage, which currently provides employee assistance and managed mental health services to State of Alaska employees and retirees. We have served the State for the past thirteen years as a subcontractor to Aetna Healthcare which currently administers the overall benefit plan (medical, dental, vision, etc.).

As you are aware, in the recent bidding process for the State's health plan administration contract that goes into effect 7/1/2006, there were substantial inequities and "irregularities". As a result of this seriously flawed process, the State signed a contract with Premera Blue Cross/Blue Shield in the past week, replacing Aetna. I am writing to respectfully request that you question the Department of Administration about the details of this flawed RFP process and support Aetna's effort to have the contract with Premera cancelled.

Aetna is exercising its right to protest this award on the following bases:

- Two different teams of evaluators graded the Aetna and Premera non-cost proposals
- The State appeared to coach Premera to improve its evaluation score without offering the same opportunity to Aetna
- The State failed to evaluate at all Aetna's separate Pharmacy Claims Management proposal that could save the State \$3M

A number of other anomalies also occurred in the RFP process, including the "misplacement" of a major portion of Aetna's original proposal that led to an initial rejection of the Aetna proposal as "non-responsive" to the RFP. These portions of Aetna's proposal were later "found" and evaluated by the aforementioned different teams.

I understand that the State's award and Aetna's protest will be addressed at your Thursday Labor and Commerce Committee meeting. A proposed fair resolution to the situation is to extend the current Aetna contract and seek a re-bid at a later date under a more equitable process for evaluation of the proposals.

If the current decision stands, we at Magellan stand to lose a number of jobs in our Anchorage and Wasilla offices. We are fully aware that business is won and lost through competitive processes, but we do not feel that the process in this case was equitable to all the bidding parties. The Premera package includes employee assistance services from a company based in Chicago that has no physical presence in Alaska or Alaskan employees.

I will call your office in the next day or so to respond to any questions you may have about this issue. Thank you for your consideration.

Tom Englehart
General Manager
Magellan Health Services
Alaska Care Management Center
907-273-9232 Direct
907-563-6340 Fax
800-478-2812, Ext 9232
tjenglehart@magellanhealth.com

3/21/2006

SB

2



ALASKA STATE LEGISLATURE
SENATOR GRETCHEN GUESS

Committee Substitute Senate Bill 2

The committee substitute contains one change.

Page 2, Line 15-19

contract; [or]

(2) a court order establishing the existence of a contract; or

(3) in the case of a claim of lien filed by the Department of Labor and Workforce Development on behalf of a claimant, a copy of the claimant's wage claim or wage assignment.

The Department of Labor and Workforce Development requested we add this provision to protect their ability to file a lien against employers after the Department has investigated claims of non-payment in wages.

need to adopt for discussion purposes.

24-LS0028\Y
Kurtz
1/26/05

CS FOR SENATE BILL NO. 2()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): SENATORS GUESS, Davis

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to prerequisites for obtaining and recording a lien for payment of the**
2 **contract price for labor or materials supplied for the construction, alteration, or repair**
3 **of a building or improvement."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 34.35.050 is amended to read:

6 **Sec. 34.35.050. Lien for labor or materials furnished.** A person has a lien,
7 only to the extent provided under this chapter, to secure the payment of the contract
8 price if the person

9 (1) performs labor upon real property under a contract with [AT
10 THE REQUEST OF] the owner or the agent of the owner for the construction,
11 alteration, or repair of a building or improvement;

12 (2) is a trustee of an employee benefit trust for the benefit of
13 individuals performing labor on the building or improvement and has a direct contract
14 with the owner or the agent of the owner for direct payments into the trust;

1 (3) furnishes materials that are delivered to real property under a
2 contract with the owner or the agent of the owner that are incorporated in the
3 construction, alteration, or repair of a building or improvement;

4 (4) furnishes equipment that is delivered to and used upon real
5 property under a contract with the owner or the agent of the owner for the
6 construction, alteration, or repair of a building or improvement;

7 (5) performs services under a contract with the owner or the agent of
8 the owner in connection with the preparation of plans, surveys, or architectural or
9 engineering plans or drawings for the construction, alteration, or repair of a building or
10 improvement, whether or not actually implemented on that property; or

11 (6) is a general contractor.

12 * Sec. 2. AS 34.35.070 is amended by adding a new subsection to read:

13 (g) The claim of lien must include a copy of

14 (1) the contract or other document demonstrating the existence of the
15 contract;

16 (2) a court order establishing the existence of a contract; or

17 (3) the claimant's wage claim or wage assignment, in the case of a
18 claim of lien filed by the Department of Labor and Workforce Development on behalf
19 of a claimant.

20 * Sec. 3. AS 34.35.120(13) is amended to read:

21 (13) "owner" means a person who owns real property or a possessory
22 interest in real property and who enters into an express [A] contract [, EXPRESS OR
23 IMPLIED,] for a project on that property;

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB002-DNR-Rec-03-23-C
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title: Lien Requirements RDU: Resource Development
 Component: Recorder's Office
 Sponsor: Sen. Guess
 Requester: S L&C Component No. 802

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact for the Recorder's Office associated with implementation of this legislation.

Prepared by: Vicky Backus, State Recorder Phone 269-8882
 Division: Recorder's Office Date/Time 3/23/2005
 Approved by: Tom Irwin, Commissioner Date 3/23/2005
 Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB002-LAW-C&FB-1/26/
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to prerequisites for obtaining RDU CIVIL
and recording a lien for payment..." Component Commercial & Fair Business
 Sponsor Senator Guess
 Requester Senate Labor and Commerce Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill makes changes to AS 34.35.050, .070, and .120 requiring a contract between a real property owner or owner's agent and a mechanic or materialman who performs labor upon real property for the construction, alteration, or repair of a building or improvement, as a condition of a lien for labor or materials furnished. Under current legislation, a request by an owner or agent can give rise to a lien. The intent of this legislation appears to be a facilitation of dispute resolution between private parties. Passage of this legislation will have no foreseeable impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 1/27/05 8:21 AM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/27/2005
 Agency: Department of Law



ALASKA STATE LEGISLATURE
SENATOR GRETCHEN GUESS

Committee Substitute Senate Bill 2

The committee substitute contains one change.

Page 2, Line 15-19

contract; [or]

(2) a court order establishing the existence of a contract; or

(3) in the case of a claim of lien filed by the Department of Labor and Workforce Development on behalf of a claimant, a copy of the claimant's wage claim or wage assignment.

The Department of Labor and Workforce Development requested we add this provision to protect their ability to file a lien against employers after the Department has investigated claims of non-payment in wages.

24-LS0028\Y
Kurtz
1/26/05

CS FOR SENATE BILL NO. 2()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): SENATORS GUESS, Davis

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to prerequisites for obtaining and recording a lien for payment of the**
2 **contract price for labor or materials supplied for the construction, alteration, or repair**
3 **of a building or improvement."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 34.35.050 is amended to read:

6 **Sec. 34.35.050. Lien for labor or materials furnished.** A person has a lien,
7 only to the extent provided under this chapter, to secure the payment of the contract
8 price if the person

9 (1) performs labor upon real property under a contract with [AT
10 THE REQUEST OF] the owner or the agent of the owner for the construction,
11 alteration, or repair of a building or improvement;

12 (2) is a trustee of an employee benefit trust for the benefit of
13 individuals performing labor on the building or improvement and has a direct contract
14 with the owner or the agent of the owner for direct payments into the trust;

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(3) furnishes materials that are delivered to real property under a contract with the owner or the agent of the owner that are incorporated in the construction, alteration, or repair of a building or improvement;

(4) furnishes equipment that is delivered to and used upon real property under a contract with the owner or the agent of the owner for the construction, alteration, or repair of a building or improvement;

(5) performs services under a contract with the owner or the agent of the owner in connection with the preparation of plans, surveys, or architectural or engineering plans or drawings for the construction, alteration, or repair of a building or improvement, whether or not actually implemented on that property; or

(6) is a general contractor.

* Sec. 2. AS 34.35.070 is amended by adding a new subsection to read:

(g) The claim of lien must include a copy of

(1) the contract or other document demonstrating the existence of the contract;

(2) a court order establishing the existence of a contract; or

(3) the claimant's wage claim or wage assignment, in the case of a claim of lien filed by the Department of Labor and Workforce Development on behalf of a claimant.

* Sec. 3. AS 34.35.120(13) is amended to read:

(13) "owner" means a person who owns real property or a possessory interest in real property and who enters into an express [A] contract [, EXPRESS OR IMPLIED,] for a project on that property;

Zero Fiscal Note coming from Dept. of Law

Committee Substitute coming from sponsor



ALASKA STATE LEGISLATURE
SENATOR GRETCHEN GUESS

Sponsor Statement

Senate Bill 2:

"An Act relating to prerequisites for obtaining and recording a lien for payment of the contract price for labor or materials supplied for construction, alteration, or repair of a building or improvement."

The intent of SB 2 is to reduce the abuse of Mechanics and Materialmen (M&M) liens while protecting property owners and laborers.

M&M liens serve the valuable function of providing recourse in the event of breach of contract. For example, if someone hires you to do work on their home and they do not pay you, you may place a lien against the property for what you are owed. Unfortunately, the current law allows such liens to be placed based on the filer's word with no evidence of the contract. As a result, abuse of these liens occurs and property owners must spend their resources to resolve the issue in court.

SB 2 aims to reduce this abuse by requiring proof of contract before a M&M lien may be filed. If a contract is not available, the laborer may go to court and show evidence of an agreement.

The bill continues to protect laborers via liens from the risk of breach of contract and no payment, while also protecting against abuse of liens with the simple requirement for some proof of contract to record an M&M lien.

Thank you for your consideration.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB002-DOLWD-WH-1-20-05
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Lien Requirements RDU: Labor Standards and Safety
 Component: Wage and Hour
 Sponsor: Senator Guess
 Requester: Senate Labor and Commerce Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Worker Safety Account)						
Other (Worker Safety Account)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: None
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This legislative proposal is not expected to have a significant fiscal impact. However, it may limit the ability of the Wage and Hour component to resolve wage claims filed by employees who perform work on real property when the work is performed under an informal request, rather than "under a contract" with the owner or agent. Without the clear authority to file a lien against the real property, these wage claims may take longer to resolve.

Prepared by: Grey Mitchell, Director Phone: 465-4855
 Division: Labor Standards and Safety Date/Time: 1/20/05 1:44 PM
 Approved by: Greg O'Clary, Commissioner Date: 1/20/2005
 Agency: Department of Labor and Workforce Development

SB

25

SENATE COMMITTEE REPORT
First Committee of Referral

TE: 1/11/05

FURTHER: Resources

te of 5-Day Notice: _____
 accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: _____

ior and Commerce Committee considered SENATE BILL NO. 25

SB 25 GENETICALLY MODIFIED FISH

Act relating to labeling and identification of genetically modified fish and fish products."

Committee recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
CHAIR: <i>[Signature]</i>			<input checked="" type="checkbox"/>	

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB025-LAW-NR-2-1-05
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to labeling and identification of RDU CIVIL
genetically modified fish and fish products." Component: Environmental
 Sponsor: Senator Elton
 Requester: Senate Resources Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type - Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends the Alaska Food, Drug, and Cosmetic Act, AS 17.20.040 by adding genetically modified fish or fish product to the list of misbranded food, unless conspicuously labeled or identified as such. Legislation at the federal level already prohibits the sale of any genetically modified foods.

 Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone: 465-3673
 Division: Administrative Services Division Date/Time: 2/2/05 3:07 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date: 2/2/2005
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 25
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
 Title: Genetically modified fish RDU: Environmental Health
 Component: Food Safety and Sanitation
 Sponsor: Senator Elton
 Requester: (S) Labor & Commerce Component No.: 2343

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Comms	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Under current federal rules, genetically modified fish and fish products cannot be used or sold in the United States. Under the current FDA rules, this bill will have no fiscal impact on the department. Should the FDA allow the sale and use of genetically modified fish and fish products in the future, increased inspection and compliance resources will be required to comply with the provision of this bill.

Prepared by: Kristin Ryan, Director Phone: (907) 269-7644
 Division: Environmental Health Date/Time: 1/28/05 4:04 PM
 Approved by: Kurt Fredriksson Date: _____
 Agency: Department of Environmental Conservation

Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway
Juneau, AK 99801



Phone 907-586-6652

Fax 907-523-1168

E-mail: seafa@gci.net

January 31, 2005

Senate Labor & Commerce Committee
Senator Con Bunde, Chair
Alaska State Legislature, State Capitol
Juneau, AK 99801-1182

RE: Support for SB 25

The Southeast Alaska Fishermen's Alliance supports SB 25, which would require genetically modified fish or fish products to be labeled. The Joint Legislative Salmon Industry Task Force offered unanimous support for this legislation last year although it failed to make it through the process.

It is important that Alaska have this type of labeling law in place prior to the advent of genetically modified fish or fish products make it into the marketplace. Aqua Bounty has already applied to the United States FDA and Canadian officials for the permits to grow genetically modified fish in fish farms. By being proactive on labeling requirements you help differentiation between genetically altered fish or fish products and our natural wild Alaskan fish in the marketplace. This allows us the use of an important marketing tool.

The Southeast Alaska Fishermen's Alliance is a non-profit membership organization located in Juneau representing our members involved in salmon, crab, shrimp and longline fisheries of Southeast Alaska.

Respectfully,

A handwritten signature in cursive script that reads "Kathy Hansen".

Kathy Hansen
Executive Director



United Southeast Alaska Gillnetters

P.O. Box 23378, Ketchikan, AK 99901 Phone & Fax (907) 247 2471 Email: usa_gillnetters@att.net

January 29, 2005

The Honorable Gary Stevens
The State Senate
State Capitol, Room 103
Juneau, Alaska 99801

Send Via Fax to: 465-3517

Dear Senator Stevens,

The United Southeast Alaska Gillnetters (USAG) is an association of about 150 small business owners who catch salmon by drift gillnetting in Southeast Alaska and market salmon throughout the United States. Many of our members also participate in other fisheries such as crab, shrimp, longline, and dive fisheries. USAG strongly supports SB 25 which requires the labeling of genetically modified (GM) fish and fish products sold in the State of Alaska. We believe the Alaskan consumer wants to know and has the right to know if the fish and seafood products they are considering buying for their families have been genetically modified. This is in part a marketing issue as we believe that Alaska wild-caught seafood is the best and most healthy in the world and the Alaska consumer will choose it over a genetically modified product if they are given that information about the respective products. More than that, some GM fish may have attributes that allow those fish to be raised and brought to market at a price point with which quality wild fish cannot compete. If these GM fish are not labeled, the cost conscious consumer may choose the GM product on the basis of price, whereas if that consumer knew it was a GM product, they may not purchase it.

Thank you for introducing this legislation and for your continuing support for our seafood industry.

Yours truly,

A handwritten signature in black ink, appearing to read "Kenneth Duckett".

Kenneth Duckett
Executive Director

cc: Senator Elton Via Fax to: 465-2108
Senator Bunde, Chair Senate Labor & Commerce Via Fax to: 465-3871



THE CENTER FOR
FOOD SAFETY

660 PENNSYLVANIA AVE., SE, SUITE 302, WASHINGTON, DC 20003

(202) 547-9359 ☎ FAX (202) 547-9429

1009 GENERAL KENNEDY AVE., #2, SAN FRANCISCO, CA 94129

(+15) 561-2524 ☎ FAX (415) 561-7651

WWW.CENTERFORFOODSAFETY.ORG

January 31, 2005

Senator Kim Elton
State Capitol, Room 115
Juneau, AK 99801-1182

Dear Senator Elton:

The Center for Food Safety is pleased to endorse Senate Bill No. 25 and your efforts for a mandatory labeling requirement to identify genetically engineered (GE) fish and shellfish. Because GE fish are being developed for commercial use, the potential release into the environment and the use of these fish as food is imminent. Therefore, Senate Bill No. 25 would give Alaskan consumers the right-to know whether their seafood is genetically altered.

GE fish present a host of serious risks to humans and the environment. Human health effects include the potential for toxicity, allergenicity, and antibiotic resistance. As for the environmental impacts, the risk of biological contamination from GE fish is particularly acute, since GE fish may be raised in net pens from which they can easily escape and breed with native strains. The harm of such interbreeding would be severe. A Purdue University study concluded that the release of GE fish could cause the extinction of an entire fish species in a matter of a few generations. The National Academy of Sciences also issued a report warning that GE fish that escape could wreck havoc on the environment.

Despite these potentially irreversible human health and environmental risks, there is a profoundly disturbing lack of federal regulation of marine biotechnology. As such, we applaud your leadership on this issue and hope the Alaskan legislature can step into the void by ensuring that consumers are aware of genetically engineered seafood products through a mandatory labeling requirement.

Sincerely,

Tracie Letterman

Tracie Letterman
Fish Program Director

Alaska State Legislature

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SB 25 Sponsor Statement

"An Act relating to labeling and identification of genetically modified fish and fish products."

Transgenic foods are those in which the genetic structure has been altered at the molecular level by means that are not possible under natural conditions or processes. There has been widespread concern throughout the world over the largely unknown effects of transgenic, or genetically modified (GM) products on human and environmental health.

In an effort to address concerns raised by consumer, environmental, health, and Alaska fish marketing groups, SB 5 requires Alaska retailers to identify and label foods containing fish and shellfish, or fish and shellfish products that have been genetically modified.

The message that Alaska seafood is more natural than seafood that has been engineered or bred is a highly important marketing tool. This bill, by requiring a differentiation between GM and wild seafood helps highlight Alaska seafood as distinct from GM seafood, thereby doing away with any vagueness that may exist to the consumer when purchasing seafood without labeling, and reinforcing the natural message.

Many GM agricultural products are currently allowed on the U.S. market, and an application submitted by an aquaculture company for the use of a GM, growth-enhanced salmon is pending before the Food and Drug Administration's Center For Veterinary Medicine. The Pacific Fisheries Legislative Task Force *Fish Review* dated December 2004 reports that Aqua Bounty, a biotechnology company with offices in the United States and Canada, is planning to ask Canadian authorities for approval to use GM fish in Canada's fish farms.

Currently, legislation in the European Union, Japan, New Zealand, and Australia requires labeling on foods made from, or containing GM products. SB 5 is similar to legislation introduced in other states, such as Oregon and California, and it comes with the unanimous support of the Joint Legislative Salmon Industry Task Force, a committee comprised of legislators, seafood harvesters and seafood processors.

Sponsor Statement

Backup Information