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Governor



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NDOC
Brian L. Davie, Vice Chair
LCB
Karen Oliver
GCB
Dr. Carlos Romo
RETIRED
Scott Sisco
NDOT

Carrie L. Parker
Deputy Attorney General

Nevada Public Employees' Deferred Compensation Program

DEFERRED COMPENSATION COMMITTEE MEETING MINUTES FOR Thursday, July 12, 2012, 2:30 PM

The special meeting of the Nevada Deferred Compensation Committee was held on Thursday, July 12, 2012 at 2:30pm in room 2135 of the Legislature Building, 401 S. Carson St., Carson City, NV. A copy of this set of "meeting minutes," the audio recording and other substantive exhibits, is available on the Nevada Deferred Compensation (NDC) website at:

http://defcomp.state.nv.us/NDC_MinutesMeetings.htm. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (telephone: 775.684.6835, email: publications@lcb.state.nv.us).

BOARD and ATTORNEY PRESENT:

Dr. Rex Reed, Chair
Brian Davie, Vice Chair (in Las Vegas)
Karen Oliver, Member
Dr. Carlos Romo, Retired
Scott Sisco, Member
Carrie Parker, Deputy Attorney General

OTHERS PRESENT:

Bill Abramowicz, Hartford
Tim Allison, Tahoe Douglas Fire
Jim Barnes, retired
Bishop Bastien, ING
Janet Corral, Hartford (Las Vegas)
WK Dreyer
Kent Ervin, UNR
Michael Hackett, Hartford
Karl Hausafus, Arnerich Massena (by phone)
Fred Hinners
Jake Honea, Hartford
Harriet Jacobs, Great-West
Mary Keating, retired
Terri Laird, RPEN
Andy MacKay, NTA
Jeff Morrow, Hartford (by phone)
Jake O'Shaughnessy, Arnerich Massena (by phone)
Steve Platt, ING
Ben Sharit, Tahoe Douglas Fire
Todd Theroux, Hartford (by phone)
Robert Trenerry, Hartford
Tom Verducci, Great-West

I. Committee

A. Call to Order/Roll Call

The meeting of the Deferred Compensation Committee was called to order by Chairman Rex Reed at 2:30pm, July 12, 2012 a quorum was present.

Public Comment

Mr. Ben Sharit with Tahoe Douglas Fire District spoke to the Committee in support of item II C regarding suspending the RFP and negotiating contract(s) with the current recordkeeper(s). He noted they had been members since 1988 and have enjoyed the relationship with Hartford and have had no issues.

Mr. Sisco asked if that recommendation would change knowing that Hartford has their retirement business for sale.

Mr. Sharit answered no.

Chair Reed questioned if Mr. Sharit had reviewed the 6 companies who had bid and researched the quality of the proposed bidders.

Mr. Sharit stated they made their decision on the comfort level they have with Hartford and they would not want to go out and re-invest or change rules because of the current fiscal situation.

Chair Reed asked if price points were important to Mr. Sharit and questioned if he had gone out to look at the price points of all the bidders.

Mr. Sharit stated that price points were important but he did not know the price points of the bidders.

Dr. Kent Ervin with UNR believed it was important that the Committee make the decision to go with one or two providers before finalist interviews. He urged the Committee to base their decision on what is best for the participants and the program and not on a particular vendor. Dr. Ervin also suggested if a single provider would provide higher earnings for participants the Committee should choose that. Dr. Ervin commented on 2007 legislative hearings regarding single vendors.

Dr. Romo asked if Dr. Ervin had funds with one or both of the current providers.

Dr. Ervin declined to answer.

Mr. Andy MacKay, former Committee member, asked the Committee what the rush was to suspend the RFP process since presentations were only one week away and he didn't want to see the Committee open itself up to litigation. He did not believe the Committee had the right at this point to cancel the RFP and it would be against state law if they forego the interview process. As a participant he wanted to see what other options were out there and hearing from the investment consultant that costs could go down significantly with a single provider was something the Committee should keep in mind as a fiduciary. Mr. MacKay thanked the Committee members for their hard work and applauded them for their efforts.

Mr. Sisco asked Mr. MacKay if a summary of what he was saying would be "because there would be a violation of the regulations the Committee should be real careful about pulling out of this process."

Mr. MacKay stated that was a correct summary and the fact notwithstanding, potentially action could be taken because regulations were violated. He thought the finalists presenting would seriously consider litigation because taking such action could be deemed arbitrary, capricious and abusive discretion.

Mr. Sisco stated there were issues of conflicts in the RFP and the Committee would be in violation, but had chosen to go forward without changing the wording in the RFP. That was one of the reasons some of the Committee members had wanted to stop the process. The statute says the Committee was supposed to go out to bid every five years, they are not required to change the bid, but just see what is out in the marketplace. He was extremely concerned with the potential violations locked in the RFP.

Dr. Romo asked Mr. MacKay's background and profession and how familiar he was with the NRS and regulations.

Mr. MacKay stated that he was a hearing officer and one of his main duties was to read the law, interpret it, and apply it accordingly.

Dr. Romo questioned if Mr. MacKay had an opinion if they should continue with the process.

Mr. MacKay commented he thought they should go forward. He also addressed one of the issues Mr. Sisco had on the RFP about having one provider versus two.

Mr. Sisco noted that a statute sets the minimum, but regulation can come in later and be more restrictive.

Mr. MacKay remarked that the statute allows the Committee the option to choose one provider or fall back on the regulation and go with two providers.

Mr. Sisco noted the statute was passed which allowed the Committee to change their regulation but the Committee chose not to or did not do so for whatever reason. The current regulation states they should select two providers. Perhaps it was a lapse of the Committee as they had not updated the regulations.

Vice Chair Davie commented that the myth kept coming up that this was a flawed RFP process but the record showed in the past, on this Committee, that it is not flawed and the Committee had followed good procedures. He also thanked Mr. MacKay for his service to the Committee.

Mr. MacKay noted his one concern with respect to The Hartford was they were bidding to provide a service and their company was not going to be around. He questioned who would ultimately be providing that service to him, as a participant.

Chair Reed referred to Mr. Sisco's statement about the Committee seeing what other providers were out there, but the Chair said the Committee had not seen all the information and wouldn't until the bidders made their final presentations. The Chair also

noted for the record that he was in disagreement with Mr. Sisco's interpretation of specific violations in the RFP.

Mr. Bill Abramowicz with The Hartford addressed the Hartford sale, summarizing the events up to this time and quoting some information from press releases and letters noting The Hartford would continue to honor the current contracts. Mr. Abramowicz stated Hartford had and would fulfill all their promises to the State of Nevada and the participants. The name on the statement may be different but the service, people and the Hartford General Account would be behind that promise.

Dr. Romo requested a copy of what Mr. Abramowicz had read and asked for any more information on the sale.

Mr. Abramowicz noted they initially stated it would be a 12-18 month process but it has been moving along quickly and there would probably be an announcement at the end of August or early September.

Dr. Romo commented that the Committee would be selecting one or two providers and questioned if the sale did not take place until after the first of 2013 how would that affect them.

Mr. Abramowicz stated the contract would be honored by the new purchaser and the terms and guarantees including the General Account would be honored.

Vice Chair Davie asked how a purchasing company would legally abide by these contracts because the new company had a right to run their business in a profitable manner to benefit their shareholders. How could The Hartford legally make guarantees that everything in this RFP process would be guaranteed with another company?

Mr. Abramowicz remarked that through the sale process the purchaser had to assume their book of business and the surrounding contracts. It was a bundled agreement taking place and the contracts they had in place or that would be put in place would be honored.

Vice Chair Davie asked if all contracts had a 30 day opt-out clause.

Mr. Abramowicz stated each contract stood on its own, but the Hartford contracts currently in place or that would be in place would be honored by the new purchaser.

Chair Reed questioned Mr. Jake O'Shaughnessy about the 30 day opt-out on contracts and if that was standard procedure.

Mr. Karl Hausafus, legal counsel with Arnerich Massena, stated that generally a contract utilized and enforced would be a form approved through the Attorney General's office and there in would be something about a right to terminate the agreement. The acquiring company could go through and terminate the contracts they did not deem profitable or profitable enough.

Vice Chair Davie commented he was asking these questions to be informed so he could make the best decision for the participants not because of personal opinions. He believed the competition between the providers was good and should be available for observation by the public.

Dr. Romo asked Mr. Abramowicz what he felt was the difference between a record-keeper and a provider/administrator.

Mr. Abramowicz stated they were sometimes used synonymously or separately and depended on how they were defined and how the document was written.

Mr. Sisco commented that throughout this process it had been emphasized that what we were going for was a record-keeper and not a service provider as we have had in the past.

Chair Reed pointed out this bid process had opened up so the Committee could have a distinction between a record-keeper and a provider. A record-keeper would be someone who simply took care of the records while the Committee decided what funds were available and a provider was both a record-keeper and the entity that provided the funds available to the participants.

Chair Reed read the names and opinions of participants who had written or called him about their preferences for the RFP.

Dr. Romo provided a list of individuals he had heard from by telephone, in person and through email with their opinions for the direction of the Plan. ([Participant Feedback](#))

Chair Reed was surprised that they had heard from participants lobbying for specific choices (for provider(s)) when these people did not have any information on the bidders. He cautioned the Committee to remember that they were not a democracy or republic but that they were fiduciaries and trustees, which made them liable to the participants, and they needed to make the best decision based on the information they had.

Vice Chair Davie thanked all the participants for submitting comments and believed it was important to the Committee. He noted that the Committee had no control over the financial market, but they could control the fees participants paid and the investment options which was what the RFP process was about. The Committee was not trying to abandon Hartford but wanted to choose what was best for the participants, which was their statutory charge.

Chair Reed moved to go into closed session noting they had to rule on two items on the agenda that required detailed information from the bidders' proposals that was confidential. The Committee could not proceed further without going over the details with the Deputy Attorney General and investment consultant.

Motion made by Chairman Rex Reed to go into closed meeting, seconded by Vice Chair Davie. Vote passed 4-1, Mr. Sisco voting no.

DAG Parker stated the Open Meeting Law provided for a meeting to be closed if authorized by a specific statute. In this case NRS 333.335(6) provided that "proposals are not to be disclosed until the contract is awarded." DAG Parker advised the Committee to go into closed session for the sole purpose of examining the details of the proposals. She stated that no action should take place and the Committee should keep deliberations to a minimum. The main purpose was to receive detailed information from the investment consultant.

Mr. Sisco questioned the order of items on the agenda and suggested they address item II C first to see if they would need to address II A.

Chair Reed stated Mr. Sisco's comments were noted.

Chair Reed called for the meeting to be closed.

Chair Reed called the meeting back in to open session at 4:12 pm noting they were on item II A.

Public Comment for item II A regarding whether to have a single or dual record-keeper plan.

Ms. Mary Keating had concern with item II A because the regulation under NAC 287.730 2(c) was never changed and still said to select two or more providers. She felt it was not appropriate to change the regulation through an RFP but should be done through rule making.

Mr. Sisco referring to 287.710 asked Ms. Keating, in her opinion, what the intention of an administrator or provider was as compared with that of a record-keeper.

Ms. Keating gave a description of an administrator and provider which were defined in the regulations, but noted there was no definition of record-keeper in the regulations.

A discussion ensued with Mr. Sisco, Ms. Keating and Chairman Reed regarding the terms of provider and record-keeper with regard to the Deferred Compensation Program.

Chair Reed asked Ms. Keating if she received a copy of the sole versus dual provider summary noting the cost savings with choosing a single provider.

Ms. Keating stated she read the chart differently and though it would be more costly with the average bid amount being higher compared to the current pricing.

Mr. O'Shaughnessy explained that the number to focus on was the "Additional Cost above Sole Provider" column which showed a savings of \$288,873 with Open Architecture and \$246,897 with Proprietary Funds. The best comparison would be the Proprietary Fund which showed the current annual charge of \$1,451,821 and the average bid at \$1,202,990 which was a savings of \$248,831 for the sole provider option.

Ms. Keating commented again that this was not the appropriate time to change the regulation about going to one provider. She stated the Committee was trying to change their regulations through an RFP but this should be done through rule making.

Chair Reed and Ms. Keating continued their discussion regarding choosing a single provider.

II. Administration

A. Discussion and possible action regarding whether to have single or dual record-keeper plan

- Discussion and possible action may include presentation and recommendation by Arnerich Massena, Inc.

Motion made by Mr. Scott Sisco to go with two service providers to offer the most options to the participants. No second was made so motion died.

Motion made by Dr. Carlos Romo to go with a single provider, seconded by Ms. Karen Oliver.

Mr. Sisco wanted the record to show that the NAC clearly stated in two places that they could go with two service providers.

DAG Parker noted that NRS 287.330 (3) states:

The Committee and its individual members are not liable for any decision relating to investments if the Committee has:

(d) Selected at least one plan for the use of the participants in the Program, except that if the Committee has selected two or more plans from which the participants in the Program may choose, the Committee has selected the plans from separate and distinct providers.

It was her understanding from Legislative history that the authority to have "at least one" was added in 2007. NAC 287.710 states:

The Committee will select administrators and providers for the Program. One person may be selected to serve in both capacities.

The definitions for Administrator, Provider, Committee, and Program may be found in NAC 287.700 but there is no definition for Record-Keeper. The rest of NAC 287.710 states:

The Committee will contract with more than two providers if it deems it necessary to offer the participants in the Program superior investment options.

NAC 287.730 which Mr. Sisco alluded to dealt with the Chair's authority to appoint a subcommittee to review the proposals. It also stated if subsections (a), (b), and (c) were to occur the Chair shall call a general meeting of the Committee to:

(a) Accept information from appropriate sources pertaining to any applicant
(b) Conduct interviews of the applicants.
(c) Select two or more of the applicants for appointment as administrators and providers.

It was Ms. Parker's opinion this could be interpreted in different ways. NAC 287.710 stated that "one person may be selected to serve in both capacities" which could be interpreted to mean that there could be just one person. As a procedure for adopting regulations the Committee could start that process. DAG Parker believed these were open to interpretation and noted that statutes controlled over regulations and the statutes stated at least one administrator/provider.

Dr. Romo said he had taken legal guidance and investment consultant advice into consideration and stated he wanted to do what was best for participants. If going to a single provider was best to save participants money, then that was what he supported.

Vice Chair Davie pointed out that the Committee was following advice and the recommendation from the investment consultant which showed they would be providing a significant savings to the participants.

Motion passed 4-1 with Mr. Sisco voting against.

B. Public Comment

Dr. Ervin, active participant, had grave concerns with item II C and requested the Committee to let the public observe the finalists' interviews; evaluate costs versus risks; and let the best vendor get the contract.

C. Discussion and possible action regarding whether to suspend the RFP process and direct Arnerich Massena to negotiate contract(s) with current record-keeper(s), The Hartford and/or ING.

Motion made by Dr. Carlos Romo to continue with the RFP process as published, seconded by Vice Chair Davie.

Mr. Sisco noted he had been concerned from the very first day as a member of this Committee regarding this RFP. A decision had been made somewhere along the line to change the program from the services which had been provided for 20 plus years to an open architecture platform. The regulations had not been changed and the process followed had clear problems. This was of concern to him.

Vice Chair Davie asked for the investment consultant to weigh in with their recommendation. There had been planning sessions and meetings and the direction the Committee had been going was not a surprise and had been out in the open.

Mr. O'Shaughnessy noted that Arnerich Massena strongly recommended the Committee go forward with the RFP process and believed there were superior proposals for the participants available to them from some of the finalists.

Mr. Sisco was concerned with Mr. O'Shaughnessy's comment about superior proposals and he did not feel there were any superior offers over what the Hartford had offered with their General Account.

Vice Chair Davie remarked that the finalist presentations allowed the bidders to make better offers or improve their standing and if the Committee did not give them the opportunity, that failure would shut down the whole process. The point of this process was to benefit the participants and as fiduciaries the Committee should allow that to continue.

Mr. Sisco expressed confusion -- if the bidders put their offers in writing and bid one way, how could they come out later with another bid. He was not familiar with that process and asked for clarification.

Mr. O'Shaughnessy, strictly speaking from experience of running RFPs for defined contribution plans, stated it was very common for providers to come in with a "best and final offer" as part of the finalist presentation and that was his expectation for this RFP process. There were frequently additional enhanced services and reduced costs that the Committee and the advisor could achieve on behalf of the participants through that "best

and final offer" process. It was quite common to have only finalists offer enhanced bids as part of the finalist presentation.

Mr. Sisco, Chair Reed and Mr. O'Shaughnessy continued the discussion on the "best and final offer" issue.

Motion passed 4-1 with Mr. Sisco voting against.

D. Discussion and possible action regarding meeting dates.

No discussion or changes were made.

III. Comments/Updates

A. Investment Consultant/Service Providers

Mr. O'Shaughnessy indicated he appreciated that this was a very important matter for everyone and the focus of Arnerich Massena was to achieve the best arrangement for the participants they possibly could. He thanked everyone for the efforts they had put forth.

Mr. Robert Trenerry with the Hartford spoke regarding the concern with the non-spousal beneficiary.

B. Deputy Attorney General

DAG Parker commented on the Tort Claim Fund coverage for the Committee.

C. Committee Members

Mr. Sisco remarked on the statute regarding Tort Claim Fund coverage.

D. Staff

No comment.

IV. Public Comment

No comment.

V. Adjournment

Motion made by Dr. Carlos Romo and seconded by Ms. Karen Oliver to adjourn the meeting. Motion passed unanimously.

The meeting adjourned at 4:52pm.

Respectfully Submitted:

Micah Salerno
Administrative Assistant