



State Administration, Public Retirement, and Veterans' Affairs Interim Committee

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56th Montana Legislature

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GLENN A. ROUSH

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RESEARCH ANALYST
JOHN MacMASTER, ATTORNEY
DAVID NISS, ATTORNEY
JOANN JONES, SECRETARY

MINUTES

January 21, 2000
Lewis & Clark Public Library
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

COMMITTEE MEMBERS PRESENT

Rep. Matt Brainard, Chairman
Sen. Sue Bartlett, Vice Chair

Sen. E.P. "Pete" Ekegren
Sen. Don Hargrove
Sen. Glenn A. Roush

Rep. Edith J. Clark
Rep. Tom Dell
Rep. Carol Williams

STAFF PRESENT

David Bohyer, Director, Office of Research Policy & Analysis
John MacMaster, Attorney
Jo Ann Jones, Secretary

VISITORS

Visitors' list, Attachment #1.

COMMITTEE ACTION

C Approved the minutes of the November 8-9, 1999, meetings

CALL TO ORDER AND ROLL CALL

Sen. Bartlett called the meeting to order at 8:25 a.m. Roll call was noted. See Attachment #2. Sen. Roush moved to adopt the minutes of the November 8-9, 1999, committee meeting and subcommittee meetings; Rep. Clark seconded. The motion was approved through unanimous voice vote.

INTRODUCTION OF PANELISTS

Exhibit #1: Faculty Biographical Sketches

David Bohyer, Director, Office of Research Policy & Analysis, introduced Ellen Bickelman, Deputy Purchasing Director, Commonwealth of Massachusetts, and Dugan Petty, State Purchasing Manager, State of Oregon, and said that a short biography of each had been distributed.

SEMINAR ON OTHER STATES' PURCHASING PROGRAMS

Exhibit #2: Department of Administrative Services, State of Oregon, presentation materials

Exhibit #3: Operational Services Division, Commonwealth of Massachusetts, presentation materials

STATE OF OREGON

Dugan Petty, State Purchasing Manager, State of Oregon, said that Oregon, unlike Montana, is not a Model Procurement Act state. Any public entity is governed by statute for procurement purposes under Chapter 279 of the Oregon code and has its own purchasing authority. He said that there are 40,000 state employees in Oregon. Most of the state's population is along the Interstate 5 corridor. A vendor-collected administrative fee (surcharge) funds the central purchasing organization.

Mr. Petty said the statutes provide broad minimum requirements and are applicable not only to state agencies but also to all other public agencies. Purchasing authority is delegated to the Department of Administrative Services (DAS) or to a local review board. The state achieves competition through a best value system that utilizes Requests for Proposals (RFPs) or the bidding process, recognizing that best value may be achieved through delivery or quality of the goods or services, not just lowest price. If a process other than RFP or bidding is used, the purchasing agency must find that an exemption will result in less cost and is not likely to increase favoritism or discourage competition, and must be preceded by a public hearing.

Mr. Petty said that Oregon utilizes a reciprocal preference system that works against bidders from other states that have an in-state preference in statute. He said that if there is a tie in bidding, the award goes to the local bidder. There is an in-state printing preference for printing services but that was under attack during the last legislative session because the state is increasingly using mail-out ballots.

Mr. Petty said that the authority to issue professional services contracts were transferred to the DAS from the agencies approximately two years ago.

By rule, state contracts with emerging small businesses and minority-owned businesses are encouraged. There is a legislated preference for the purchase of recycled products.

Mr. Petty said a use law requires state or local governments to buy goods from certified non-profit organizations that employ people with disabilities. At least 75 per cent of the employees must be disabled individuals for the organization to qualify.

Oregon has an unusual procedure to create rules. Statute gives both the DAS and the Attorney General, an elected official, the authority to promulgate model procurement

rules. Local agencies may adopt either the DAS rules, the Department of Justice (DOJ) rules, or may develop their own rules.

Rep. Brainard asked if DOJ rules are binding on all entities except the DAS. Mr. Petty said a change in law during the last legislative session stated that DOJ rules are binding unless the local agency develops its own rules. He said that consistency is forced, which is a good thing because, historically, local agencies adopted DAS rules instead of DOJ rules, or a combination of both, if not their own rules, or a combination of all three. He said that the DAS deals with anything not dealt with by DOJ rules.

Rep. Brainard asked how Oregon informs the vendors without incurring great cost. Mr. Petty said the Vendor Information Program (VIP), an electronic bulletin board system, was initiated in 1992, which reduced administrative and mailing costs. The state discussed the system with the vendors and provided them with free software for a dial-up modem connection, if the vendors wished to participate. The agencies were encouraged to participate so they could do business in a more efficient and effective manner. The small vendors stated that the VIP made bidding on state contracts more accessible than ever before. Oregon now has a website connection. The VIP was expensive to initiate and maintain and because of changes in information technology (IT), must now be replaced. Local governments can join the program for a fee, allowing them to access vendor information or make purchases off state contracts. There is an interstate agreement between Washington and Oregon so political subdivisions can purchase from either state's contracts.

Mr. Bohyer asked what the response was from the vendors. Mr. Petty said the response was positive because they now have one contract, they know what the price is, and they know who is participating in the contract. He said that most of the time,

the vendors make a profit and their profit margins increase as the volume of sales rises.

Rep. Brainard asked if purchasing by consortium could create a reverse monopoly. Mr. Petty replied that it could, theoretically. Privatization can eliminate competition if competition is not carefully preserved. He said that consortium buying can stretch the buying power of an entity, it has been done for years in the private sector, and is gaining popularity in the public sector.

Sen. Bartlett said that consortium bidding could close out small in-state businesses that do not have the capacity to participate, and asked for comment. Mr. Petty said that it is not a large concern in Oregon because large business has already replaced many small businesses, and it occurs whether or not the state is a buyer from the consortium. In Alaska [where Mr. Petty had previously been the chief procurement officer], legislative policy statements instructed state agencies to get the best value but to also be aware of the local economy, and there were preferences in place for local businesses. He said the most difficult issues involved how to customize procurement procedures in order to protect the local economy, and the most effective way to provide that protection is by legislating preferences. He said that an outreach program should be in place to teach local businesses how to make bids and do business with the state.

Mr. Petty said that Oregon has five basic types of contracting processes: traditional method for goods and services, public improvement contracts, personal (or professional) services, information technology contracts, and architectural/engineering contracts.

COMMONWEALTH OF MASSACHUSETTS

Ellen Bickelman, Deputy Purchasing Director, Operational Services Division (OSD), Commonwealth of Massachusetts, said that Massachusetts statutes allow for broad latitude to establish rules and regulations to procure goods and services. Regulations and rules provide more detail.

The Massachusetts purchasing statute does not cover horizontal [highway] or vertical [building] construction, real property sales and leasing, or cities and towns. Local governments may purchase off statewide contracts, but the state may not purchase off local contracts. There is no authority for grants and subsidies to public or non-public entities. The statute covers the entire Commonwealth except for the military and legislative branch.

Ms. Bickelman said that there are approximately 90,00 state employees, and the Commonwealth annually purchases approximately \$4 billion in goods in services. OSD is the oversight department. Approximately half of the Commonwealth's annual expenditures consist of delegated procurements for human/social services, which are handled differently than other procurements. The OSD annual budget is approximately \$3.2 million, appropriated by the legislature. Approximately \$10 million in revenue that OSD generates is deposited to the general fund.

The Quality Assurance Agency examines the files of every executive department to ensure that procedures are being followed correctly.

Ms. Bickelman said that, in 1996, procurement reform dramatically changed the way the Commonwealth does business. Prior to 1996, state buyers issued procurements without any input from the users. She said that 100 pages of regulations were reduced to a single document of ten pages, the Prime Vendor system was initiated, contract forms were standardized, procurement teams were started, and an RFR (Request for Response) took the place of RFPs and bids.

Human/social services contracts are handled under a separate set of statutes, regulations, and rules, but still contain the best value principle. Specifically with respect to non-profits, the Commonwealth will not pay for luxury items (such as luxury automobiles for agency directors) and will not pay for lobbying efforts.

Comm-PASS, a system of electronic vendor notification, was developed in 1996. Prior to that, vendor solicitation was achieved through the use of paper lists and notices sent to every vendor. Thirty-two public access sites for Comm-PASS were established, many in public libraries and local Chambers of Commerce. Departments were given a 1-year grace period to convert from paper to electronic notification. All solicitations over \$50,000 are required to be posted electronically, but many agencies post solicitations that are below the threshold. Cities and towns cannot yet use the system.

Sen. Hargrove asked Ms. Bickelman if she foresaw the "control" pendulum beginning to swing back toward more rules and regulations. Ms. Bickelman replied that it has not yet happened, but it could through legislative action if some mistakes are made.

Ms. Bickelman said that provisions to ensure local business participation are written into RFRs through boilerplate language.

Incidental purchases (under \$5,000) do not require contracts. Procurements are not required in emergency situations, but the contract can be issued after the fact, if necessary. Collective purchasing is allowed. Interim contracts may be issued if a contract will expire before the renewal has been completed. Legislative earmarking of funds does not require a procurement.

The types of procurements are: statewide contracts; delegated or designated statewide contracts (such as interpretive services for the deaf); multi-department

limited procurement (not opened statewide); multi-department open usage (other departments can purchase off one agency's contract); and single department procurement (limited only to that department).

A handbook that details the requirements for procurements is issued, and only 10 items are required. The handbook also lists 10 steps in the procurement process.

Mr. Bohyer asked what training is required for the Procurement Management Teams (PMTs). Ms. Bickelman said a 1-year training process was required for anyone who had the authority to issue procurements. Part of the training process includes RFR training for one day a week for eight weeks, and some training for the Comm-PASS system so that items are posted correctly and the system will remain user friendly.

Mr. Bohyer asked who pays for training. Ms. Bickelman said OSD has a training unit and the agencies do not have to reimburse OSD for the cost involved.

Mr. Petty said that individual agencies in Oregon have taken an interest in training as well. Although professional organizations provide some training, agencies also pay for training. The DAS provides some low-cost remedial training because it is in the state's best interest to do so.

Mr. Bohyer asked what constitutes a reasonable span of control for contract officers. Mr. Petty said approximately 1,200 contracts are managed by 12 contract officers. He said the trend is to authorize individuals instead of agencies to manage contracts. Sub-delegation must be to an individual who has documented expertise to manage contracts. He said it's difficult to determine how many contracts one individual can manage because of the diversity in contracts.

Ms. Bickelman said she agreed with Mr. Petty's comments, and added that in the Commonwealth, departments must have staff to manage contracts. If federal money is involved, the department can utilize a percentage of the grant for contract management.

Mr. Bohyer asked how changes in procurement procedures has affected the cost of procurements. Ms. Bickelman said that, generally speaking, the use of PMTs has lowered the cost.

Rep. Brainard asked for comments on overall results. Mr. Petty said the state of Oregon is seeing positive results because agencies are making strong efforts to improve their own processes. Ms. Bickelman said the Commonwealth measures how many contracts are issued to women and minority-owned businesses; performance measures for other types of contracts are being developed.

Ms. Bickelman said the PMTs have the main responsibility for all aspects of contract management, administration, and enforcement. Quality Assurance [a unit within USD] monitors the performance of PMTs. Four individuals in OSD are assigned to quality assurance. Some performance indicators are: RFR review, Comm-PASS review, incidental purchases, financial review, bill paying, and audit finds.

Rep. Brainard asked how often state agencies are involved in litigation. Ms. Bickelman said OSD has been involved in only one case in three years, and that suit involved procurement, not compensation. She said that most issues are probably resolved through negotiation before it reaches litigation.

Marvin Eicholtz, Administrator, Montana Procurement and Printing Division, asked for a description of grievance procedures. Ms. Bickelman said the process differs between the procurement of regular goods and services and the procurements for

human/social services. Generally, for most goods/services contract, a debriefing can be requested by a vendor. The PMT is not bound to grant a debriefing. If the debriefing is unsatisfactory or denied, the next step is for the vendor to pursue litigation. She said this process is based on the assumption that the procurement is solid and that the Commonwealth will prevail if the procurement is challenged. Human/social services procedures are different because most procurements involve non-profit organizations. The appeal process includes an informal debriefing at the purchasing department level, a formal appeal to the department, then an appeal to the OSD. She said that OSD hears 4-6 appeals each year and generally overturns 1 or 2 of them. Departments can proceed with the contract to procure required goods or services even if there is an appeal. If a procurement is overturned, the department is not told how to fix the problem, but rather is told where the flaw is, and is accompanied by options that might offer a remedy.

Mr. Petty said that there is a 10-day window between bid/RFP selection before the award during which a bidder can challenge the specifications. If the challenge is denied, the only recourse for the bidder is litigation. After the intent to award is issued, there is a 10-day window to challenge the award. After that, the only option is litigation. The contract officer has the authority to cancel the bid or give it to another bidder.

Sen. Bartlett asked if the original contractor ever challenges the reversal. Ms. Bickelman said no, because the contractor is usually busy preparing a new bid.

Mr. Petty commented that overturning a contract award put the DAS in a control situation, so the DOJ, by law, had to begin reviewing contracts and the DAS began certification of training.

Rep. Brainard asked if emphasizing and quantifying the contract award process raises the level of professionalism. Mr. Petty said he believes that Oregon is heading in the right direction because people are becoming more competent. Ms. Bickelman said the Commonwealth believes that contract officers are now more skilled and better trained. They know that their actions are being monitored and that raises the level of performance. The establishment of PMTs has had a positive effect because, although there may be weak links in the team, the team itself is strong.

Rep. Brainard asked about the rotation of staff on PMTs. Ms. Bickelman said the team leader is a constant, and subject matter experts make up the rest of the team. Mr. Petty replied that subject matter experts are asked to join the team, but are not permanent team members. He said the procurement expert is the constant.

Sen. Bartlett asked if information technology procurement is handled differently than other types of procurement. Mr. Petty said that Montana's experience is not unique. He said that Oregon handles it differently because acquiring IT is unique. Michigan is having some success by issuing solution-based RFPs, but the deliverables still must be specifically and clearly stated. Ms. Bickelman said the Commonwealth's experience has been similar to that of Oregon and it issues a Request for Information (RFI) before an RFR is issued.

Sen. Bartlett asked if procurement reform in Massachusetts encountered any resistance to change, particularly among top management. Ms. Bickelman said the Secretary of Administration at that time was an enormously popular individual who said that things could be done better, and asked everyone involved in procurement for suggestions. Meetings were conducted over an 18-month period in which everyone could make input. She said that management became involved in reform when they felt that they had a voice in the solution.

Mr. Petty said that reform in Oregon may be on the horizon. In Alaska, reform came after federal law was changed. Alaska laws were changed after an 18-month factfinding and research process involving out-of-state procurement experts was completed. He said Oregon will continue to delegate procurement authority to individual agencies when an agency has developed and demonstrated the capability and expertise.

Ms. Bickelman said the focus is on centralizing high risk, complex procurements, and delegating the low-risk, high volume procurements.

Mr. Petty said the current issues facing Oregon include the examination of current contracting practices and modification of procurement laws by legislative interim committees, the implementation of a new drug testing law for public improvement contracts, the implementation of a new subcontractor disclosure law for public improvement contracts, IT contracting, qualified rehabilitation facility marketshare issues, and contract administration, training and certification.

Ms. Bickelman said the current issues facing the Commonwealth include e-commerce, risk management, and workforce development.

Mr. Petty said that the trends in procurement that he has observed include virtual marketplaces, training and certification programs, web portals, cooperative purchasing, and e-commerce.

Ms. Bickelman said the coming trends include e-mails, Comm-PASS enhancements, plus the trends mentioned by Mr. Petty.

COMMITTEE BUSINESS

Mr. Bohyer distributed a list of suggested items for discussion at the February meeting that was drafted by Sheri Heffelfinger. **See Exhibit #4.**

Rep. Brainard requested that a letter be sent to the Youth ChalleNGe program asking them to report to the Committee at the next meeting.

Rep. Dell suggested the Disability and Health Care Subcommittee be provided information on what other states are doing for disability insurance in a Defined Contribution (DC) retirement plan. Rep. Brainard said that was a good suggestion, but he wasn't sure how many other states actually have operational DC plans yet. He commented that Glenn Leavitt from the University system has expertise in that area and may be a source of information.

Sen. Bartlett said that material provided by the Public Employees Retirement Division (PERD) indicated years of service at onset of disability, but she had requested information indicating the age of the individual at onset. She said that she would like to examine data indicating the age at onset.

PERD UPDATE

Mike O'Connor, Administrator, PERD, said the latest status report was mailed out a couple of days prior to the meeting.

Some items included in the latest report are the issuance of the RFP on December 30, 1999. Vendors have until March 2, 2000, to respond. The Employee Advisory Council had met the week prior and are now reviewing investments in the 457 plan. The PERD has recently hired a new actuarial firm. A ruling about service purchase with tax deferred money has been recently received from the IRS. The ruling was very specific and stated that the deferral must be for less than five years or more than three months. The PERD tax counsel is beginning a review of HB 79.

Sen. Bartlett asked if The Mercer Company provided adequate and effective assistance with the development of the RFP. Mr. O'Connor said that Mercer's work on investment services and what questions to ask in the RFP was invaluable.

Rep. Dell asked if the education process will be pursued in the next couple of months. Mr. O'Connor said that an analysis of the best educational plan will now begin since staff time has been freed by the issuance of the RFP.

ADJOURNMENT

There being no further business to come before the Committee, Sen. Bartlett moved to adjourn. The meeting adjourned at 4:33 p.m. The next meeting will be February 28-29, 2000.

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