

MINUTES

MEETING OF THE BOARD OF EXAMINERS

November 12, 2014

The Board of Examiners met on November 12, 2014, in the Guinn Room on the second floor of the Capitol Building, 101 N. Carson St., Carson City, Nevada, at 10:00 a.m. Present were:

Members:

Governor Brian Sandoval
Attorney General Catherine Cortez Masto
Secretary of State Ross Miller
Julia Teska, Clerk

Others Present:

Jim Flegal, Member of the Public
Kent Ervin, Member of the Public
Trudy Stanford, Member of the Public
Marie Barnes, Member of the Public
Robert Chernari, MassMutual, Relationship Manager
Bill Abramowitz, MassMutual, Governmental Vice President
Jim Barnes, MassMutual, Attorney
Ilya Zaliapin, University of Nevada
Justice James Hardesty
Bill Hoffman, Deputy Director, Nevada Department of Transportation
Dennis Gallagher, Chief Deputy Attorney General
Mr. Nicks
Wayne Klomp, Nevada Attorney General's Office
Val King, Division of Environmental Protection
Steve Fisher, Administrator, Division of Welfare and Supportive Services
Naomi Lewis, Deputy Administrator
Scott Sisco, Deputy Director for Department of Corrections
Shane Chesney, Senior Deputy Attorney General
Jeff Menicucci
Greg Smith, Purchasing Administrator
Kim Perondi, State Purchasing
Keith Wells, Fleet Services Administrator

1. PUBLIC COMMENTS

Comments:

Governor: Good morning, ladies and gentlemen. I will call the Board of Examiners' meeting to order. All members are present. Agenda Item No. 1 is Public Comment. I'm going to ask that those who are going to present public comment limit their comments to three minutes. And I understand that most of these public comments have to do with Contract No. 30 within the Agenda. And I will assure you that I have many questions myself with regard to that contract and will be asking those. For those of you that are going to be providing public comment on that item, I'd ask that you not present with regard to whether one is better than the other. I think the question is going to be with regard to the process that led us here. So in any event, let's commence with public comment. Do I have a sign-in sheet for public comment?

Clerk: At this time, Governor, I'd also like to make mention of the fact that we did receive two written comments for the meeting. Those were included in the Board members' packets. And they were both related to Contract No. 30. One was from Mr. Kent Ervin, and the other was from the members of the Retired Public Employees of Nevada. And those were included in your packet.

Governor: I think all members have received extensive submissions from interested parties with regard to Contract No. 30. And I will just say that I've read all of those. And I have a packet from Voya Financial. I also have a packet that was authored by Mr. Barnes and from the Offices of Charles Zay. (Inaudible).

Unidentified Female Speaker: So you want an actual list of commenters?

Governor: I mean, do we have people that are signed in for public comment?

Unidentified Female Speaker: Yeah, and if they (inaudible) then I put a list right there.

Governor: Okay. All right then. Let's commence public comment. I'll begin in Las Vegas. Is there anyone present in Las Vegas that would like to present public comment to the Board? So hearing none, we'll move to Carson City.

Unidentified Female Speaker: I don't think anyone here is (inaudible).

Governor: Thank you. Carson City, is there anyone present who'd like to present public comment to the Board? Yes, sir. We'll begin with this gentleman.

Jim Flegal: Can I comment on anything?

Governor: Yes, sir. If you would come forward, sir, so we can have you on the microphone. And if you would identify yourself for the record, please.

Jim Flegal: Is this close enough? I wonder if they can hear me.

Governor: Yes, they can hear you, sir.

Jim Flegal: Governor, I'd like to see Mass Mutual stay on as Mass Mutual.

Governor: Okay. And...

Jim Flegal: And my name is Jim Flegal by the way.

Governor: And will you spell your last name, please?

Jim Flegal: F-L-E-G-A-L.

Governor: All right.

Jim Flegal: And that's the only public comment, I'd just like to see Mass Mutual stay as Mass Mutual.

Governor: Thank you, sir. Thank you for coming forward.

Jim Flegal: Thank you.

Governor: Sir. Well, there was another lady who had stood up before. Okay.

Kent Ervin: Governor, thank you very much. My name is Kent Ervin E-R-V-I-N with comments for the record about Contract No. 30. Since I have submitted written comments, and also a longer draft of my oral comments, I'll greatly abbreviate that. Thank you very much. As a UNR faculty member--oh, and I'm representing only myself as a participant in the NDC program. As a UNR faculty member, I will have no social security and no PERS pension when I retire. Rather, I will depend solely on my defined contribution retirement accounts. That's why I'm so passionate about the health of our retirement programs, including the Nevada Deferred Compensation program. A substantial part of my retirement savings are invested in the NDC 457 plan and I cannot make withdrawals or change providers until I retire.

The NDC's failed request for proposal process in 2012 has cost participants significantly higher fees and lower earnings over the past two years. However, I'm happy to observe that this year the NDC program conducted a thorough and defensible RFP process. It was led by the state purchasing office as required by statute, and also wisely chose an open meeting last spring to go to a single record keeper to leverage higher services at lower cost, both for the recording keeping and for future administrative and auditing costs for the program.

Mass Mutual has presented to you a highly complex statistical analysis of the RFP scoring from one of my accomplished colleagues. This is based on the false premise, however, that the individual scores are expected to satisfy any particular statistical test. All the evaluators had the same instructions and the same opportunity to adjust their scores based on the original proposals.

Mass Mutual's suggestion for a different mechanism now is simply asking for different rules in their favor after the fact. But even if it were a majority decision by the end of the committee, three of the committee's five members scored (inaudible) higher than Mass Mutual in the scoring process.

I'm skipping three paragraphs. The future health of the Nevada Deferred Compensation program depends on successful RFP process and award of the contract now. Interference with the process based on an appeal from one vendor would be a breach of the state's fiduciary duty to act in the best interest of participants as would be determined by an independent expert and following a prudent process. If the Board of Examiners chooses a different course now, then you effectively become the fiduciary decision makers and you should be held accountable as fiduciaries.

In conclusion, the Board of Examiners should formally approve NDC's new very (inaudible) contract with the legitimate winner of the RFP, namely Voya Financial, formerly ING, and should inform Mass Mutual that they are expected to abide by the normal procurement procedures, just like any other vendor for the state. Thank you very much for the opportunity to provide my comments. I would be happy to answer any questions.

Governor: Thank you, Mr. Ervin.

Trudy Stanford: I'm Trudy Stanford, a retired state employee. In May of 2013, being the beneficiary of my ex-husband's account, Mass Mutual, henceforth MM, transferred his account to me after his death. He had told me about a month before he retired in 1999, that he had left me as his beneficiary. Meanwhile, his Texas live-in girlfriend's attorney wrote to MM alleging that they lost documents which made her beneficiary in the late 1980s. We were still married at the time. Later alleged to be 1995. A subsequent letter was sent enclosing a copy of the girlfriend's application for letters of administration to the Texas probate court, her application, and included an application to determine heir-ship with listings of all assets, including his MM account, with a notation that its distribution was unknown. Deferred comp is a non-probate asset. The account had already been transferred to me according to the governing instrument.

And in August 2013 MM illegally froze my account, seizing control from me claiming they feared a possibility of being required to make duplicate distributions, even though they're protected by Nevada law as follows. NRS 111.781, subsection 6, a payer or other third party is not liable for having made a payment or transferred an item of property, or any other benefit to a beneficiary designated in a governing instrument affected by the provisions of this section, or for having taken other action in good faith reliance on the validity of the government instrument before the payer or other third party revised--received written or actual notice of any event affecting beneficiary designation, and so on. MM's responsibility to me is defined as follows. NRS 111.757, transfer to designated beneficiary according to beneficiary designation or other directions.

When a transferring entity accepts a beneficiary designation, or beneficiary assignment, or registers in beneficiary form certain property, the acceptance or registration constitutes the agreement of the owner and the transferring entity that, unless the beneficiary designates or revokes or changes before the death of the owner, on proof of the death of the owner, and

compliance with the transferring entity's requirements for showing proof of entitlement, the property will be transferred to and placed in the name and control of the beneficiary in accordance with the beneficiary designation or transfer on death directions and agreement of parties.

I requested the assistance of NDC in this matter. After investigation, I was told MM had taken the action of seizing control of my account, in response to a court order. That is clearly not true. However, that explanation was accepted by NDC without evidence and caused NDC to drop the matter. I believe if MM had truthfully disclosed what had occurred, NDC could have, and I would hope they would have, intervened to resolve the matter. But because MM misrepresented to NDC the documents received, I had no recourse but to file suit against MM, which I did in October 2013. An unnecessary legal expense.

Their initial disclosures revealed later that they had not received a court order. MM had then counter-filed against the girlfriend. MM has petitioned the court three times to be allowed to transfer my account to the court against my will, which would cost me an exorbitant income tax obligation for a lump sum distribution without funds to pay, cost 3% interest, and the free stock market investment benefits and other services, which could not be restored. MM requests the court to render them harmless from future court action in this matter. This would be (inaudible) amount to confiscation of my account, taking my account out of my name, they already seized control, and placing in the name and control of the court, and using the court to shield them from legal remedy for their illegal confiscation of my account.

MM's third such request is currently pending with the court for the court's decision. In the litigation of my inherited \$370,000 account, I stand to lose half or more in court costs and attorney's fees if resolved on the September 2015 hearing date. Meanwhile, I'm being ordered to a settlement hearing as though the legal beneficiary were in question. This could happen to you or any participant at NDC, because of the failure of MM to carry out their fiduciary contract responsibilities to first, NDC who contracted with them to administer account in accordance with the planned document and Nevada law; number two, to the participant who made beneficiary designation with full expectation, his designation would be honored; and three, to the legal beneficiary in whose name and control the property should have and was initially placed.

Because MM failed to adhere to Nevada's laws and the planned document, it's necessary for me to litigate in order to retain what is mine. This could happen to anyone having an account with them. Nevada state employees should not be subjected to such arbitrary, illegal, and costly misdeeds. It appears to me, MM contracted--their contract, which they got from Hartford ends 12/31/14, and I believe it would be prudent to take this matter into consideration when contemplating their renewal. I have some other sites here, one is NDC's website, the frequently asked questions. What happens to my account when I die? Answer: Your designated beneficiary or ficiaries [sic] will receive the remaining value of your account, if any. Your beneficiary must contact a MassMutual (inaudible) financial representative to request a distribution. Thank you.

Governor: Thank you, ma'am. And do you have a copy of that so that we can have it for the record, we do?

Stanford: Yes.

Governor: Okay. Thank you very much.

Barnes: My name is Marie Barnes. My husband just recently died, and I just acquired my MassMutual account. And I would like to suggest to this committee that you just carefully analyze the stability of the company, the overhead, and the fees that are going to be paid into this company. And I hope that you will all use the interest of the state instead of your own, or just do a good job because we need the money.

Governor: Thank you. Sir.

Chernari: Good morning, Board of Examiners. My name is Robert Chernari. I'm with MassMutual. I am the Relationship Manager for the State of Nevada's plan. I was contacted this morning by Barbara Jewett, retired State of Nevada employee. She was planning on attending, could not due to sickness, and she asked me to read her statement, which I agreed to do.

"My name is Barbara Jewett. I am a retired officer from the Department of Public Safety, and I have approximately \$190,000 in the general account of MassMutual. It is my understanding that this fund makes up a large percentage of all of the money that employees have contributed to the deferred compensation savings. Consequently, when I heard that one of our savings were going to be transferred to Voya, and that there would no longer be a choice between two plans, I became very concerned and began doing my research.

I learned two very significant things. The first of which is the history of Voya. Voya is not ING. ING is a huge, multinational banking conglomerate owned by the Dutch. It got into financial trouble in 2008, and was eventually ordered by the European union to divest itself of assets in the United States. As a result, ING is in the U.S., is no longer owned by the Dutch and is now (inaudible) new publicly owned company, A.K.A., Voya. The selling of stock began in May of 2013 and will be completed by December of 2016. Voya is not a new name of an old company. It is in all respects a brand-new institution.

The second thing I learned is the difference between a publicly owned institution and a mutual insurance company, such as MassMutual. A publicly owned company, such as Voya, is responsible to its stockholders. This means it is risk oriented and driven by short term profits. A mutual insurance company is responsible to its policyholders, which means it is focused on long-term gain, so by its very nature it must consider safety and security, and not be short sided.

The difference between Voya and MassMutual is a big deal because of everything that is going on in the world right now. This is not just my concern. In fact, the economic crisis in Europe and the unrest in the Middle East, are listed as a factor in the filing that Voya had to submit to the Security and Exchange Commission when it began selling stock. Furthermore, Voya has been around for a year and a half. MassMutual has been in business for over 150 years. The bottom line is that the state needs to offer us a choice between plans. I do not want the number of

available funds reduced because it would be easier to manage or because the committee believes too many funds are confusing for participants.

More confusion will be generated if a fledgling institution becomes insolvent. If we are not going to be offered a choice between plans, then it is incumbent upon the committee to safeguard our savings, and go with a solid, stable institution with a proven track record. One that can survive an economic crisis similar to worse than the crash in 2008. It is unacceptable to jeopardize the life savings of hundreds of employees by going with a company that has only been around for 18 months. This is a preventable risk. I would urge the committee to not be bogged down in logistics and remain focused on the big picture. Thank you, Barb Jewett, Sparks, Nevada."

Governor: Thank you, Sir. Good morning.

Abramowitz: Good morning. Board of Examiners, thank you very much for the opportunity to be in front of you this morning. On behalf of our entire MassMutual team, we'd like to thank you for that. My name is Bill Abramowitz, and I'm the Governmental Vice President responsible for our government business nationally, as well as here in Nevada. I flew in yesterday from Chicago. Joining me in Las Vegas is our Southern Nevada team. Amy Humphrey is our area vice president. She flew in from Connecticut. Also with her is our Southern Nevada team of education specialists also that are down there as well.

Here in the room today I have--you just met Bob Chernari. Bob Chernari is our relationship manager, and Bob has been servicing the state employees for the last 18 years. Also joining me today is Tom Verducci. Tom is one of our educational representatives that services your employees on a daily basis. Tom has been servicing your employees for the last 27 years. Also joining me is James Barnes. James is our attorney that's been helping us through this process. And last but not least is Dr. Zaliapin, and the doctor is available also. He's going to make some comments regarding his analysis, after my comments.

For 27 years, we've had the privilege and honor to serve your employees of Nevada. Today, over 9,000 employees participate with MassMutual. Out of those 9,000 in the total assets today, approximately 80% of the overall plan is MassMutual. I think that's evidence of some of the services that we have provided these last 27 years, and the choice that the employees have had to choose between ING, who is now Voya, or MassMutual.

Today we would respectfully like to request that the Board of Examiners consider not approving the deferred compensation contract based on the facts that the best interest of participants in the plan, your employees, will not be served. On three separate occasions, our attorney, James Barnes, either met face-to-face, or through a conference call with a deputy attorney, with purchasing, the ING attorney, and it was decided between the three attorneys to submit the issue to the hearing officer. On September 10, 2014, the issue was submitted but subsequently decided that--the hearing officer, that is, did not have jurisdiction to hear the issue.

Governor: Say that again.

Abramowitz: Sure. On September 10, 2014, the issue was submitted, but subsequently decided that she, being the hearing officer, did not have jurisdiction to hear the issues MassMutual raised in the notice of appeal.

Governor: And was that a joint decision, or was that a unilateral decision by the hearing officer, or the...

Abramowitz: I think it was...

Governor: In other words, did you agree?

Abramowitz: Right. Right. I think it was a collective decision between the three people, where it came to at that point. The decision was solely that of the hearing officer and not MassMutual. Again, I have our attorney here in case he wants to weigh in on this as well.

Governor: And that's contradictory.

Abramowitz: Yeah. Yep.

Governor: So that's important for me to know this, as I consider this...

Abramowitz: Sure. Sure.

Governor: ...whether you agreed that the hearing officer didn't have jurisdiction, because you just said that, but then you just said that the hearing officer decided...

Abramowitz: Yes, sir.

Governor: ...by herself.

Barnes: I'm Jim Barnes, and I think I can answer that. The three attorneys agreed among themselves to submit the issue to the hearing officer, and the hearing officer said she had no jurisdiction. It was a joint decision to submit it to her, but it was her unilateral decision.

Governor: Okay.

Barnes: Yeah.

Governor: Okay. Important for me to know. Thank you.

Barnes: Right.

Abramowitz: Thank you, Jim.

Barnes: You're welcome.

Abramowitz: Excuse me on that, Governor. There was never a dispute or ruling on the merit of our appeal. So we stand behind the merit of our appeal today. In our letter dated October 30 of 2014, in addition to the issues we raised to the hearing officer, which included the lack of transparency, the cost comparison, and the violation of conflict of interest provisions, we also included an analysis with Dr. Zaliapin's associate professor, Department of Mathematics and Statistics, confirming our suspicions that evaluator number three single-handedly determined the outcome of this scoring process.

The scoring by evaluator three was so out of line, he skewed the entire process towards his favored applicant. An example of that is the financial stability section where he ranked MassMutual 6 out of 10. Top score was 10, he ranked us number six, and gave Voya a 9 out of 10. MassMutual's ratings are significantly higher than ING-Voya, along with our capital surplus. This scoring method also occurred in other sections where the evaluator three gave MassMutual 6 out of 10 scores in four categories, and ING a perfect 10 in four categories. This alone accounted for a total of 16-point difference in favor of ING. While the overall total score was less than 1% difference between ING and MassMutual, ING 868, MassMutual 861, a seven-point difference, his scores alone determined the outcome. Again, Dr. Zaliapin is here to comment on that as well.

MassMutual feels that the score of evaluator three reflects a longstanding bias against us. For example, an issue or Agenda has been part of the past of public records on at least three separate occasions over the last few years with this same individual. On two of those occasions, the issue of bias or Agenda against us, was raised by the current chairman today, Scott Sisco, and that happened a couple of times over the last couple of years as well. That's out there on public record.

In regards to our overall fees, we do not believe the committee was properly informed about the cost difference. For example, in ING's letter, they specifically stated that MassMutual is less expensive than ING, but yet through the process and through the analysis with the help of their consultant, that information wasn't clearly defined for the committee. For example, MassMutual's fees were \$398,277, and ING's fees were \$484,502. There is an annual difference of approximately \$87,000, over that five-year period is close to \$500,000 of difference. So there is in fact, a cost differential.

So in closing, we appreciate the opportunity that you're giving us. We appreciate being of service to you and your employees all of these years. And we once again, ask for you not to vote in favor of the ING contract. Thank you.

Governor: And I don't think it's necessary, unless the other members need it, to have the presentation with regard to the math and the outcome from the university.

Abramowitz: Yeah. He just had a few comments, but he wasn't going to go through the whole analysis. But you're...

Governor: (Inaudible).

Cortez Masto: Yeah. I don't need to hear it.

Governor: We're good.

Cortez Masto: Thank you.

Abramowitz: Thank you very much.

Zaliapin: Good morning to everyone. My name is Ilya Zaliapin, and I'm Associate Professor of Statistics at the University of Nevada. I will make just brief comments about the report that I submitted before.

Governor: And I don't have any questions on that report.

Cortez Masto: I don't either. I'm aware of the report.

Governor: It speaks for itself.

Zaliapin: Okay. So...

Governor: Yeah. We're good. Thank you.

Zaliapin: Thank you.

Governor: Are there any other members of the public that would like to provide public comment to the Board? All right then. We'll move on. I'm going to go out of order. I understand that Justice Hardesty is here and has another commitment that he needs to make. He's appearing here on behalf of the Supreme Court of Nevada, my understanding, on Agenda Item 5B, with regard to the new appellate court.

***2. FOR POSSIBLE ACTION – APPROVAL OF THE OCTOBER 14, 2014 BOARD OF EXAMINERS' MEETING MINUTES**

Governor: Have the members had an opportunity to review them?

Teska: Actually, you don't have the minutes. I apologize. I wanted to say that we're withdrawing that item. We had some issues trying to get those completed. We will have both the October and November minutes at the December meeting.

Governor: Okay.

Teska: Apologies for that.

Governor: Then, that makes that easy. We'll move on to Agenda Item No. 3, state vehicle purchase.

Clerk's Recommendation: I recommend approval.

Motion By:

Seconded By:

Vote:

Comments:

***3. FOR POSSIBLE ACTION – STATE VEHICLE PURCHASE**

Pursuant to NRS 334.010, no automobile may be purchased by any department, office, bureau, officer or employee of the State without prior written consent of the State Board of Examiners.

AGENCY NAME	# OF VEHICLES	NOT TO EXCEED:
Department of Administration – Purchasing Division	1	\$2,352
Department of Conservation and Natural Resources – Environmental Protection – Mining Regulation	1	\$33,500
Department of Wildlife – Fisheries Management	2	\$73,664
Total	4	\$109,516

Teska: Thank you, Governor. There are requests from three agencies on the Agenda today. They are all replacement vehicles. In the case of the Department of Administration purchasing division, this was an item that was actually going to be included in their 2015-17 budget request and instead, they have the opportunity to purchase it now, and as you can see, it's a pretty favorable price. So that is coming out of their reserves, and that was the reason for that item being included now.

There's an item from the Department of Conservation Natural Resources and two vehicles for the Department of Wildlife Fisheries Management. These are all replacement vehicles, and were included in the agencies' (inaudible) budgets.

Governor: I have no questions. Board members?

Cortez Masto: I have none. I will move for approval of Agenda Item No. 3.

Miller: Second.

Governor: Attorney General has moved for approval of the state vehicle purchase described in Agenda Item No. 3. The Secretary of State has seconded the motion. Any questions or discussion on the motion? Hearing none. All in favor say, aye.

Group: Aye.

Governor: Motion passes, 3-0. We will move on to Agenda Item No. 4.

Clerk's Recommendation: I recommend approval.

Motion By:

Seconded By:

Vote:

Comments:

***4. FOR POSSIBLE ACTION – AUTHORIZATION TO CONTRACT WITH A CURRENT OR FORMER EMPLOYEE**

A. Department of Health and Human Services – Aging and Disability Services Division

Pursuant to NRS 333.705, Aging and Disability Services Division requests retroactive authorization to contract with Preston Bass Interpreting Services, LLC who uses the services of one Nevada System of Higher Education employee. This employee is owner of Preston Bass Interpreting Services and provides sign language interpreting services, answers phones, and schedules interpreting services.

Governor: Ms. Teska.

Teska: Thank you, Governor. There are, I believe, five items today under Item 4 for authorization to contract the current or former employee. Do you want to take these one at a time, or should we just go through the whole list?

Governor: Let's go through the whole list, please.

Teska: Okay. For Health and Human Services, Aging and Disability Services Division, this is one that we've actually seen from another division in HHS in the past, is they're contracting with a company for sign language and interpreting services. And it's the Preston Bass Company. And it has come to light that, that company is owned by a current employee of the System of Higher Education. And so we've been working with the department to get it cleaned up, and get authorization for all of the contracts that they already have in place essentially.

The second one for the Department of Health and Human Services is public and behavioral health. This is a request to contract with three former employees in the health care quality compliance area. And really, this has to do with some staffing turnover that they've had. And this is to provide training, and make sure that they are in compliance with requirements for Centers for Medicare and Medicaid Services.

The fourth request is from the Department--or the third request, I apologize, is from the Department of Taxation to contract with a former employee. This has to do with specialty services and the net proceeds of minerals tax. I don't think I need to belabor the point that that's been a little bit of an issue for us in terms of--it's a very complicated tax, so this is to help in that area.

The fourth request is from the Department of Transportation. Theirs is a little more complicated, as the former employee is actually going to be a subcontractor of one of the contractors for projects. The employee has specialized knowledge that's helpful for this, the former employee, for them to work as a subcontractor. They were not involved in the RFPs for these contracts.

And the final request is actually from the Department of Administration, Division of Human Resource Management, and I just want to make a couple of comments on this. We're asking to

contract with two former employees on a very short-term basis. This has to do with doing some review related to the preparation of our executive budget in terms of, we had an unusual number of requests for changes to salaries for either unclassified employees or reclassification of classified employees. It's also come to our attention that we really had not done any kind of an evaluation of unclassified employees since 2005. And over the course of 10 years, new positions have been added, and they haven't necessarily--they haven't been reviewed in the context of the tier structure that was established back in 2005.

And so, given the tight timelines and the volume that we're talking about in terms of the review, we in the budget office asked the HR folks for their involvement in this process, and in order to do that, they needed to have some additional resources because we're on very tight timelines, as you know. So, any other questions there? I believe there are agency representatives if you have any questions on any of those.

Governor: I don't. The material (inaudible) covered the need. I don't think it's so much in any of these instances, but I always get concerned when we're not training people up, and then we bring somebody in. So as long as--and as I said, most of these don't involve that, that there's an awareness amongst the state agencies that when they're anticipating the retirement or departure of an employee that has a specialized knowledge, that we are making sure that we are training somebody to step in when that person departs.

Teska: We are trying to put a greater focus on succession planning.

Governor: Mm-hmm. All right. So, I have no questions. Board members?

Cortez Masto: No, Governor. I'd move for approval of Agenda Item No. 4.

Miller: Second.

Governor: The Attorney General has moved for approval of Agenda Item No. 4, authorization to contract with a current or former employee, as described in A, B, C, D, and E. The Secretary of State has seconded the motion. Are there any questions or discussion on the motion? All in favor say aye.

Group: Aye.

Governor: Motion passes 3-0. We will move on to Agenda Item 5A. We've completed 5B.

Clerk's Recommendation: I recommend approval.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Comments:

B. Department of Health and Human Services – Division of Public and Behavioral Health

Pursuant to NRS 333.705, the Division of Public and Behavioral Health requests authorization to contract with three former state employees to assist the Bureau of Health Care Quality and Compliance to meet federal Centers for Medicare and Medicaid Services grant requirements and to assist with training new medical facility inspectors.

Clerk's Recommendation: I recommend approval.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Comments:

C. Department of Taxation

Pursuant to NRS 333.705, the Department of Taxation requests authority to contract with a former employee to provide services for the Net Proceeds of Mineral Tax, by establishing certified values, defend appealed values to the State Board of Equalization and staff training. The contract period is upon approval until April 30, 2015.

Clerk's Recommendation: I recommend approval.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Comments:

D. Department of Transportation (NDOT) – Administration

Pursuant to NRS 333.705, NDOT seeks approval to contract with the prime consulting firm of C.A. Group, Inc., who in turn will contract with a sub-consultant who is a former state employee, for the following three agreements between NDOT and the C.A. Group, Inc.:

1. P429-13-015 – I-15/Tropicana Interchange Feasibility Study;
2. P294-11-015 – Environmental phase and preliminary engineering on SR 160 from SR 159 to 1.24 miles west of Mountain Springs; and
3. P466-14-816 – Safety Management Plan projects

Clerk's Recommendation: I recommend approval.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Comments:

E. Department of Administration – Division of Human Resource Management

Pursuant to NRS 333.705, subsection 1, the Division of Human Resource Management seeks approval to contract with two former employees, for approximately one month, to conduct a classification study of current and proposed unclassified positions and make salary tier adjustments.

Clerk's Recommendation: I recommend approval.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Comments:

Governor:

***5. FOR POSSIBLE ACTION – REQUEST FOR GENERAL FUND ALLOCATION FROM THE INTERIM FINANCE COMMITTEE**

CONTINGENCY ACCOUNT

A. Department of Administration – Board of Examiners – Statutory Contingency Account – \$1,500,000

Pursuant to NRS 353.268, the Department of Administration is requesting a \$1,500,000 allocation from the Interim Finance Committee Contingency Account to replenish the Reserve for Statutory Contingency Account.

Teska: Thank you, Governor. Actually. This is another request from the Department of Administration. This is a request from the interim finance committee contingency account to restore the balance in the Board of Examiners' statutory contingency fund. This is largely related to the ongoing litigation with, I believe it's the city of San Francisco.

Governor: Yes.

Teska: And so we're needing about--we believe we need another \$1.5 million to get us through to this year on those legal expenses. We're bringing this forward now because there are limited opportunities to access the contingency fund, and we don't believe that a supplemental would meet the timelines to make appropriate timely payments to the--to our outside counsel.

Governor: So does this bring us just simply current, and is there any cushion in case something else happens?

Teska: We have done our best to estimate what we believe the expenses are going to be for the rest of this year. I will say that there are a couple of other contributing factors, not just the litigation in this case. There are also issues with post conviction relief in the public defender's budget. We believe that that's also been a significantly high dollar amount. It's been--I believe it was over \$600,000 in 2014. We're anticipating a similar amount needed from the statutory fund in 2015. We're going to hedge our bet on this, and also submit a supplemental appropriation for them to be able to get additional funds directly into their account, which will give us a little bit of wiggle room. We're trying to be cognizant of the fact that there isn't a lot of money available in the IFC contingency account.

Governor: Understood. And then my next question, I don't know if it's for you or for the Attorney General, but before we pay these, these fees seem really high, and I'm hoping that we're going through the line item bill that we're received from this law firm, to ensure that we're not getting billed for four partners and three junior partners and three associates and four paralegals and those kind of things. So hopefully, we will make sure that all that billing is fair.

Teska: Yes. And Linda Anderson, who is overseeing the litigation, is in the South, but I can tell you this. As you know, it's litigation in California. We've been dragged into a California court. We need California attorneys who are barred in California to represent us there. Because it is a class action and we are challenging jurisdiction, in California, unlike in Nevada, when there's a jurisdictional issue, there's pre-discovery.

Governor: Mm-hmm.

Teska: So there was a lot of discovery that took place at the front end of this litigation that normally you would not see in Nevada. The good news is, the discovery is done, so it doesn't have to be repeated again. So those are some of the issues that we're dealing with. We did negotiate with this law firm to get them to come down off of their normal California market price. We are negotiating with them again to try to get some firm commitments from them on maybe putting a cap on a monthly amount. And then we are absolutely overseeing and looking at the bills to ensure--I will say this, this firm has been amenable to working with us to address the fees and try to address the cost with that. As you know, Governor, you never know where the litigation is going to take you.

Governor: Mm-hmm.

Teska: This is a unique one because again, it's Nevada being challenged in a California court and California forum. We want to take every effort we can to protect Nevada and our interests. To the extent that we can work with them and work through settlement, that's always going to be on the table. We'll always try to do that as well.

Governor: Yeah. And I shouldn't suggest that there is something improper in those bills. I just--given all of the money that we pay to outside counsel through the Board of Transportation and other areas, I just want to make sure that we're looking at these bills, and that we're being billed fairly. And as I said, I'm not trying to attribute anything onto this law firm. It's a good law firm. And as we move forward I think it is a good idea to either have a monthly budget, or at least get some idea of a budget because we didn't anticipate that it would be...

Teska: Right.

Governor: ...this high. And I get also that California is different, and when you have that discovery, you have depositions and such, and so it tends to run things up. But moving forward, I think we've got it under wraps.

Teska: Sure. No, I appreciate that.

Cortez Masto: The only question that I do have is, Julia, on the item itself, there was an attachment supposed to be with it, a summary of the current fiscal year's activity and the reserve (inaudible) contingency account. Projected claims is attached. There was nothing attached, so I wasn't sure if there was supposed to be something for not only us, but the public to maybe look at.

Teska: I apologize if that did not get attached. We will get that information...

Cortez Masto: Okay.

Teska: ...to all of you, and make it part of the minutes for the meeting.

Cortez Masto: Appreciate that. Thank you.

Governor: Any other questions with regard to Agenda Item 5A? There are none. The chair will accept a motion for approval of \$1.5 million to replenish the reserve for the statutory contingency account.

Cortez Masto: I'll move for approval.

Miller: Second.

Governor: Attorney General has moved for approval. The Secretary of State has seconded the motion. Any questions or discussion? All in favor say aye.

Group: Aye.

Governor: Motion passes 3-0. We will move on to Agenda Item No. 6, which is approval to pay cash settlement and NDOT.

Clerk's Recommendation: I recommend approval.

Motion By:

Seconded By:

Vote:

Comments:

B. Judicial Branch – Administrative Office of the Courts – \$782,500

Pursuant to NRS 353.268, the Administrative Office of the Courts requests an allocation of \$782,500 from the Interim Finance Committee Contingency Account for implementation of a Court of Appeals that will be effective January 1, 2015, should Question 1 on the November General Election Ballot be approved and ratified by the voters.

Governor: Justice Hardesty.

Hardesty: Governor, Attorney General, Secretary. The Supreme Court has presented to the Board of Examiners our budget for the first six months of the (inaudible) of approved Court of Appeals. This budget was vetted extensively by the 2013 Legislature, and includes our operating costs for the first six months of operation. I'm happy to answer any questions you may have. It is for a total of \$782,500, which includes the judicial selection costs for the process that is currently taking place for the selection of the new judges, filing of which closes at 5:00 today, coincidentally. So I appreciate the Board's consideration, and I'm happy to answer any questions you may have concerning the operating budget.

Governor: Thank you, Justice Hardesty. Ms. Teska.

Teska: Thank you. In terms of this particular item, since this was a ballot question and was going through the process dating back to the last legislative session, we have accounted for, in the updates that we've given you all along on the status of the contingency fund, these funds were being held aside, and we were accounting for them as essentially expended in the event that the

measure passed, so that we would not be obligating these funds when they've essentially already been obligated under the ballot question.

Governor: And Justice Hardesty, there will be a separate submission during the legislative session for the remaining 18 months of that budget period.

Hardesty: Actually, it will be for the next biennium.

Governor: Yes.

Hardesty: For two years. And yes, that has been already prepared and we're refining it. It'll be-- have to make some revisions depending upon who is appointed, but by in large, the projections that we've currently put together are similar to those that were used for the first six months of operation.

Cortez Masto: And Justice Hardesty, that's starting January 2015...

Hardesty: January 5th, yes.

Cortez Masto: ...six months of operation? That's what the money that you're asking for today?

Hardesty: Yes.

Cortez Masto: Okay.

Hardesty: Correct.

Governor: And that would take you through June 30, 2015.

Hardesty: Correct. And the budget for then the next two years would be--has been prepared by our budget office, submitted to the division, and has been also submitted to the legislature for their review and comment.

Governor: Any other questions from Board members? All right then. Chair, we'll accept a motion with regard to Agenda Item 7B, to approve the amount of \$782,500 for the new Nevada Court of Appeals.

Cortez Masto: Governor, I have it as 5B. Do I have it wrong?

Governor: Then I remembered it wrong. You've got it right.

Cortez Masto: Is it? Okay.

Governor: It's 5B. Excuse me.

Cortez Masto: Okay. Yes, I will move for approval of Agenda Item No. 5B.

Miller: I'll move to second.

Governor: Okay. The Attorney General has moved for approval. Secretary of State has seconded the motion. Any questions or discussion on the motion? Hearing none, all in favor say, aye.

Group: Aye.

Governor: Motion passes 3-0. Thank you, Justice Hardesty.

Hardesty: Thank you very much. And thanks to all three of your for your effort on behalf (inaudible) appeals. This is really going to be a historic moment, I think, for the judiciary in our state. Thank you.

Governor: Thank you, Justice. Okay. We'll move back to Agenda Item No. 2, which is the approval of the October 14, 2014 Board of Examiner meeting minutes.

Clerk's Recommendation: I recommend approval.

Motion By:

Seconded By:

Vote:

Comments:

***6. FOR POSSIBLE ACTION – APPROVAL TO PAY A CASH SETTLEMENT**

Pursuant to NRS 41.037, the State Board of Examiners may approve, settle or deny any claim or action against the State, any of its agencies or any of its present or former officers, employees, immune contractors or State Legislators.

Governor: Ms. Teska.

Teska: Thank you, Governor. We have requests from--two requests from the Department of Transportation, and I believe the Director and their attorney Mr. Gallagher are here to speak to that. Although it looks like Mr. Malfabon is (inaudible).

Governor: Mr. Gallagher, Mr. Hoffman, good morning.

Hoffman: Good morning, Board members.

Gallagher: Good morning.

Hoffman: As Julia mentioned, I'm Bill Hoffman. I'm the Deputy Director for Nevada Department of Transportation. We're seeking approval this morning for a proposed settlement. This is Item 6A, the claim for lost goodwill in the Wireless Toyz versus State of Nevada case.

This is a property acquisition case for Project NEON, and if I could at this time turn it over to Chief Deputy Attorney General, Dennis Gallagher.

Gallagher: Thank you. For the record, Dennis Gallagher. As Mr. Hoffman mentioned, the first request is the settled claim from Wireless Toyz who is a tenant in a property that's being affected by Project NEON down in Clark County. Their claim for loss of goodwill was approximately \$285,000. If we were to go to trial on this and they were to prevail, they'd be entitled to costs and attorney's fees, which would probably take it well over a half a million dollars. We believe that by settling this for \$50,000, we're benefiting the State of Nevada and its taxpayers and certainly NDOT. This settlement, too, will be eligible for federal reimbursement, along with other right-of-way acquisitions related to Project NEON.

Governor: Does this settlement resolve all claims?

Gallagher: It resolves all claims, Governor. I should point out that this company had a franchise agreement with Wireless Toyz that had a territorial restriction on it, and part of their claim was that the franchisor would not allow them to relocate anywhere else in the Las Vegas valley. So in essence, we're putting them out of business.

Governor: Although it was a business that wasn't making money.

Gallagher: No. This is a business model that has suffered the changes in the telecommunications industry.

Governor: Did we submit an offer judgment in this case?

Gallagher: We did not.

Governor: Okay. And you've said that half a million dollars would be our exposure--potential exposure I should say, but we also have our attorney's fees that we don't include in that amount as well.

Gallagher: That is correct, Governor. All in, if we were to go to a trial on this matter, the state's expenses would be closer to \$600,000, in my opinion.

Governor: Okay. And you feel that this settlement is in the best interest of the state?

Gallagher: Yes, I do, Governor.

Governor: Questions from other Board members? I'm going to take both of these together, so why don't we go on with the second item.

Gallagher: The second item is also a proposed settlement for a property that's being impacted by Project NEON. This would be a total take. It's a piece of property that owned by the Smith Family Trust. On the property the trust operates a business under the name of Times Printing. NDOT's initial appraisal for the property, the real property and the building, was about \$570,000.

The land owner's appraisal came in at about \$1.1 million. What NDOT is requesting, it had already deposited the \$570,000 into the court. NDOT is requesting authority for an additional \$900,000, which would take it up to a little over \$1.4 million.

That would encompass both the acquisition of the real property, and building, and any relocation claims that the property owner would make. This particular property owner has alleged that the department has, in essence, inversely condemned her property going back to 2006, which if she was able to convince a jury of that, she would be entitled to damages plus interest from 2006. In addition, she has an estimate that it'll cost her approximately \$1.2 million to move the equipment, and find a suitable replacement property. As this is a printing company, it has special needs for electrical and air conditioning in order to keep the equipment and the building at a certain temperature.

We believe that that is excessive, but all in, we believe her claim would be well over \$3 million should she prevail in front of a jury. Given that we estimate that this would be a five-to-eight day jury trial, this would be another case that should the plaintiff prevail, including state's costs and attorney's fees, we would be looking at probably \$3 million to \$3.5 million. So we believe that...

Governor: On top of the \$3 million...

Gallagher: No. No. All in, Governor.

Governor: Okay.

Gallagher: I'm sorry. So we believe that this additional \$900,000 will benefit the taxpayers by resolving any uncertainties associated with this claim, and get the property now for Project NEON, and allow this individual to move their business operation elsewhere in Clark County.

Governor: And just doing really rough math, that's about \$2 million less than what the potential exposure could be. And then how long of a delay would it be if we were going to go to trial on this case?

Gallagher: Trial court would--we had a trial date, I believe for this, Governor, late in 2015. And then of course, if anybody appeals it, recognizing Justice Hardesty was here earlier and we now have a court of appeals, our current experience with appeals pending before the Supreme Court, two and a half to three years.

Governor: And what does that do to the certainty with regard to the completion of Project NEON?

Gallagher: Well, we would acquire possession of the property. We just wouldn't know how much ultimately we would pay. And I should also point out to the Board that the acquisition of this property will also be eligible for federal reimbursement for right-of-way acquisition in conjunction with Project NEON.

Governor: But that interest clock continues to run (inaudible).

Gallagher: It continues to run, and costs continue on both sides.

Governor: And you believe that this settlement is in the best interest of the state?

Gallagher: Both NDOT and the Attorney General's Office believe that, Governor.

Governor: Thank you. Questions from other Board members? Anything further, Mr. Gallagher or Mr. Hoffman?

Hoffman: No, sir.

Gallagher: Thank you for your time and consideration.

Governor: Thank you very much.

Hoffman: Thank you.

Governor: No--and I do want to compliment you on the materials that you've provided. They're very thorough, so it's very helpful. And I know some of my questions are redundant, but I think it's important for purposes of the record to...

Gallagher: Absolutely, Governor.

Governor: ...put that out there. So, in any event, hearing no further questions, the chair will accept a motion to approve the cash settlement as described in Agenda Item 6A and B, the first in the sum of \$50,000, the second in the sum of \$900,000.

Cortez Masto: Move for approval.

Miller: Second.

Governor: Attorney General has moved for approval. The Secretary of State has seconded the motion. Any questions or discussion on the motion? Hearing none. All those in favor please say aye.

Group: Aye.

Governor: Motion passes 3-0. Thank you, gentlemen.

Hoffman: Thank you.

Gallagher: Thank you.

A. Department of Transportation (NDOT) – Administration – \$50,000

The department requests settlement approval in the amount of \$50,000 to resolve a claim for lost goodwill as a result of NDOT purchasing property located at 1505 W. Charleston Boulevard through a negotiated settlement with the landowner for Project NEON. One of the tenants on that property was JYTYJK, LLC, dba Wireless Toyz (“Wireless”). NDOT contacted the principals of Wireless and attempted to work with them to find an appropriate relocation site. Wireless Toyz is a franchise and their agreement with the franchisor was specific to that location. Due to changes in the business, the franchisor refused to enter into a new license with the franchisee in a different location. Therefore, the business could not be relocated and Wireless eventually stopped paying rent to NDOT and filed a Complaint in Inverse Condemnation alleging loss of business goodwill. NDOT counter-claimed to recover the unpaid rent. NDOT requests settlement approval of \$50,000 and dismissal of the counter-claim to fully resolve the lawsuit.

Clerk’s Recommendation: I recommend approval.

Motion By:

Seconded By:

Vote:

Comments:

B. Department of Transportation (NDOT) – Administration – \$900,000

The department requests settlement approval in the amount of \$900,000 to resolve an eminent domain action to acquire commercial real property owned by Smith Family Trust, et al., and is located at 1224 Western Avenue, Lase Vegas, 89102. The Subject Property houses a two-building commercial facility used for the Landowner’s printing business and is needed for the widening and reconstruction of the I-15 freeway from Sahara Avenue to the US 95/I-15 interchange for Project NEON. NDOT previously deposited \$570,000 with the Court for a right of occupancy. NDOT now requests an additional \$900,000 to resolve the action. Approval of the additional amount of \$900,000 would bring the total to \$1,470,000.

Clerk’s Recommendation: I recommend approval.

Motion By:

Seconded By:

Vote:

Comments:

Governor:

***7. FOR POSSIBLE ACTION – APPROVAL OF LAND EXCHANGE**

Pursuant to NRS 323.100, The State Land Registrar may, with the approval of the State Board of Examiners and the Interim Finance Committee, exchange state lands or interests in land for any other lands or interests of land.

A. Land Exchange Agreement between the Department of Corrections and Nevada citizens Mr. and Mrs. Porada.

The Division of State Lands, acting as the State Land Registrar, requests approval of a land exchange agreement between the Nevada Department of Corrections (NDOC) and Nevada citizens Mr. and Mrs. Porada. The two parcels of land have been appraised and a net change in value has been determined for each parcel. The Porada’s have agreed to pay all costs associated with the proposed exchange, including survey, appraisal, title, and lot line adjustment processing

with Carson City. NDOC had concurred with the exchange and has no objections to the terms of the agreement.

Governor: Agenda Item No. 7, approval of land exchange. Ms. Teska.

Teska: Thank you, Governor. This is an item we don't have on the Agenda necessarily every meeting, the proposal for a land exchange between some private Nevada citizens and the Department of Corrections with (inaudible) State Lands acting as our agent in that. And I believe Mr. Donohue is here if you have any questions.

Governor: I don't. It's pretty straightforward, and it works well for both parties. Any questions from Board members? All right.

Cortez Masto: I move for approval.

Miller: Second.

Governor: Attorney General has moved for approval of the land exchange that is described in Agenda Item No. 7. The Secretary of State has seconded the motion. All in favor please say aye.

Group: Aye.

Governor: Motion passes 3-0. We'll move on to Agenda Item No. 8, extension of a Victims of Crime claim.

Clerk's Recommendation: I recommend approval.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Comments:

***8. FOR POSSIBLE ACTION – EXTENSION OF A VICTIMS OF CRIME CLAIM**

A. Department of Administration – Victims of Crime Program

Pursuant to NRS 217.200, the Department of Administration, Victims of Crime Program requests approval for the extension of a catastrophic claim to the maximum allowable amount of \$150,000.

Governor: Ms. Teska.

Teska: Thank you, Governor. This was a request to extend the dollar amount for a catastrophic claim under the Victims of Crime Program to the maximum allowable amount. And I believe Mr. Nicks is down in Vegas if you have any specific questions.

Governor: Mr. Nicks, you're welcome to provide any comments. I don't know if I've seen a more justifiable case that we need to approve, but if you have any comments, please feel free to share them.

Nicks: Well, I think your comment really shortens the amount of comments I have. This is clearly a serious, catastrophic injury. The legislature allowed us to cap claims at up to \$150,000. We've paid close to \$100,000 on the daily care for Aldon who requires 24-hour care. We need your consent to extend that an additional \$50,000. That money will be paid in weekly increments to pay for the 24-hour care for Aldon until those funds are exhausted.

Governor: Thank you. Questions from Board members?

Cortez Masto: Nope.

Governor: Okay. Chair will accept a motion to approve the payment of an additional \$50,000, as described in Agenda Item No. 8.

Cortez Masto: Move for approval.

Miller: Second.

Governor: Okay. The Attorney General has moved for approval. The Secretary of State has seconded the motion. Any questions or discussion? All in favor say aye.

Group: Aye.

Governor: Motion passes 3-0. Thank you, Mr. Nicks.

Nicks: Thank you.

Unidentified Male: This is (inaudible) right there for the motion. Thank you.

Governor: Thank you, sir.

Unidentified Male: Appreciate you time.

Governor: And thank you for being here.

Clerk's Recommendation: I recommend approval.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Comments:

Governor:

***9. FOR POSSIBLE ACTION – LEASES**

Two statewide leases were submitted to the Board for review and approval.

Governor: Agenda Item No. 9, leases. Ms. Teska.

Teska: Thank you, Governor. There are (inaudible) leases. There are two on the agenda for your consideration, both with the Department of Employment, Training, and Rehabilitation in the Employment Security Division. We'll take any questions if you have any.

Governor: I have none.

Cortez Masto: I have none. I'll move for approval.

Miller: Second.

Governor: The Attorney General has moved for approval of leases number one and two, as described in Agenda Item No. 9. The Secretary of State has seconded the motion. All in favor please say aye.

Group: Aye.

Governor: Motion passes 3-0.

Clerk's Recommendation: I recommend approval.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Comments:

Governor:

***10. FOR POSSIBLE ACTION – CONTRACTS**

Thirty independent contracts were submitted to the Board for review and approval.

Governor: Ms. Teska, we'll move on to contracts.

Teska: Thank you, Governor. There are 30 contracts for action by the Board today. Among those, I believe, we would like to hear testimony on contract number one, which is the Attorney General's office, contract number 10, which is Department of Health and Human Services, Welfare, and Support Services, and contract 30, which is the Deferred Compensation Committee. Any other items?

Governor: I'd like 29 as well, please, which is NDOT. Board members, do you have any other contracts you would like...

Cortez Masto: No contracts, but a question on a contract...

Governor: All right.

Cortez Masto: ...which is Item No. 30. I do have deferred compensation, want to declare that. So how does that affect my ability to rule on that particular Agenda item?

Unidentified Female: Thank you, Attorney General. This is something you're going to have to decide, but the rule, the test that we look at is whether it's a gift or a loan or you have a pecuniary interest, or have interest to a person to whom you have a commitment in a private capacity. So if you determine one of those, then you can determine if you want to actually abstain or just disclose that pecuniary interest or...

Cortez Masto: Which, by saying that I have deferred compensation, that discloses it, but I'm still able to vote?

Unidentified Female: Yes, if you don't feel you'll be biased in making the decision today, you can just disclose rather than abstain.

Cortez Masto: Okay. Thank you. That's the only question I had.

Governor: All right. So let's commence with Agenda Item No. 1, which is a contingency with Lewis and Rocha. And I'm just looking for--is this--I've not seen one of these before come to the Board of Examiners.

Teska: They rarely do.

Governor: Mm-hmm.

Teska: We do bring them to the Board, but very few of them. And this is--I know in our--here he is. Thank you. So this is what we call a contingency fee agreement, and the goal here is we have support from outside counsel to support us in this particular litigation. Outside counsel will only receive fees and costs if we are successful in that litigation. For purposes of our office and because this is a unique situation, my office and my attorneys, and they can talk to this, were very specific about the contract and what goes into this particular contract and the oversight the office has with these attorneys and the terms in this particular contract.

Klomp: That's correct. Part of the issues with the contingency fee is whether or not...

Governor: And if you would just identify yourself.

Klomp: I'm sorry. Wayne Klomp with the Nevada Attorney General's Office. And with me is Val King from the Division of Environmental Protection.

King: Good morning.

Klomp: Part of the issues with the contingency fee agreement are whether the Attorney General's Office retains complete control of the litigation, and this agreement, the Attorney General retains complete control of the litigation, as well as whether to settle and what that

settlement would look like, including injunctive relief. And if that were the case, then the contractor would not receive payment unless there is a monetary award received.

Governor: And what's the nature of the litigation?

Klomp: Basically, the state has a petroleum fund, which allows service stations to recover a portion of their costs if there is an oil spill or if they have a leaky underground storage tank, they can petition the fund for payment. The state believes, and the contractor believes that some of the service stations are receiving recovery from their insurance carriers, as well as from the petroleum fund. So any action would be to recover the petroleum funds where insurance proceeds were already paid.

Governor: So was this a case that you've been looking to do, and there was an outside counsel with this expertise to be able to accomplish it?

Klomp: I am not familiar with how the state came to know about this. I believe, actually, the outside contractor came to the state with that information.

Governor: Okay.

Unidentified Female: Yes. I can tell you, Governor, this is a case that--this type of litigation we've been aware of, and we've been working with the client on our concerns. And because of the nature of it, and there is expertise by outside counsel in this particular case who is very familiar with this type of litigation, we thought it would be prudent, in the best interest of the state, to bring them in as support with our litigation.

Governor: What is your estimated amount controversy? Do you know?

Klomp: I don't know the amount. In fact, there's going to be an initial, I guess, research project to determine what the defendants would be, as well as the potential amount. I could put a number on there, but it would be really just a guess.

Governor: Yeah. And I don't want you to guess. You've negotiated a contingency fee of 17%.

Klomp: That's correct.

Governor: I wish we could do that on a lot of other contracts. That sounds like a favorable amount for contingency fee. So I have no further questions. Thank you. That takes us to number 10, right Ms. Teska?

Teska: Yes.

Governor: Okay. Good morning, Mr. Fisher.

Fisher: Good morning, Governor, members of the Board. For the record, Steve Fisher, administrator for the Division of Welfare and Supportive Services. I have with me this morning,

Deputy Administrator, Naomi Lewis. This contract you have before you is a contract amendment to the (inaudible) Consulting, LLC contract for the eligibility engine project. If we go back to May, there was a decision made back in May to transition from a state based marketplace to a supported state based marketplace. And what that really means was a lot of heavy lifting on the welfare side with regards to system changes and so on and so forth, to make that happen.

So we had a short window of opportunity to get that completed--all of that work completed. As we were going through that work, we identified some additional work that needed to be done with regards to improving productivity for our workers. So these are change orders that we could not get done in that time frame and still meet the open enrollment beginning this weekend, so we push...

Governor: Well, I'm going to ask about that.

Fisher: So we pushed them off into a phase two. So there's two worker productivity improvements, and then there's one major one, which is we had a security assessment done that identified critical security issues that needed to be resolved. We've resolved all those critical issues so we can stay connected to the federal hub. However, there are some non-critical issue that still need to be resolved in order to continue to be connected to the federal hub. So that's also in this change request, or the amendment to this contract.

Governor: Okay. Can you translate for me what improved worker productivity means and how that...

Fisher: Well like, for example, one productivity gain would be as a requirement of the Affordable Care Act is you have to have a call center. The call center has to take applications over the phone, for example. Well, it would nice to have a tool for those on the phone in our call center to be able to electronically enter that right into the system. So, to start with we're not going to have that available, but we will have that available to them soon thereafter. So that's just one example of the productivity gain.

Governor: And what is soon thereafter mean, week, months?

Fisher: We're looking at--we're looking at months. So we're looking at the end of January to have that rolled out.

Governor: Okay. And then while you're here, Mr. Fisher...

Fisher: Yes.

Governor: ...perhaps you're not--I know you're not running the exchange anymore, but Saturday is the big day, correct? And are we...

Fisher: Saturday is the big day. We've hit three major mile--we have three major milestones, two of which we have hit already, one is November 3rd. We rolled out the Nevada Health Link new landing page. Monday, we rolled out Access Nevada, which is the web application that

individuals can use or will use going forward to apply for Medicaid. So that rolled out Monday, going very well. We have over 2,400 people who have created new logins, and we have over 650 applications that have been submitted. So, that's working well. Friday is when we push the remaining stuff out to a production environment so we're ready for Saturday's open enrollment, and we are ready.

Governor: Mm-hmm. So it looks good? I mean...

Fisher: Looks good.

Governor: Anything we should know?

Fisher: Nothing you should know about.

Governor: A lot different than last year?

Fisher: A lot different than last year.

Governor: A lot better than last year?

Fisher: A lot better than last year, yes.

Governor: All right. Well, that's good news. That's what I wanted to hear, and I appreciate all of your hard work on this. I know being a little bit flip here today, but there's a lot of time and effort by a lot of people that have gone into this since the close of enrollment earlier this year and today. And I know I've pushed really hard to get this done, but it's not just for me, it's, you know, for the people of the state to be able to have access to a system that works, that will serve them well. I was hopeful that we've learned a lot of lessons from what happened last year and this year, and that we have. I know that you've really put your heart and soul into this and everyone involved. Please pass on my thanks for you doing that.

Fisher: I will. Yes, I will. Thank you, Governor.

Governor: Any questions from Board members? Thank you very much. 29, Ms. Teska?

Teska: 29. Yes. Department of Transportation.

Hoffman: Good morning again. For the record, Bill Hoffman, Deputy Director for NDOT. Number 29. As I'm sure you're aware, the Board of Examiners approves all NDOT agreements that deal with railways or urban transit projects, and this one in particular is a continuation of services that Washoe County provides within Washoe County. Essentially, it's a pass-through program, so it's 95% federally funded. To my knowledge, there are no state gas tax funds involved in this. The match is being provided by the local agency, but NDOT serves in a stewardship capacity. So the federal funds flow through NDOT to the local agency, and then, of course, we need a cooperative agreement to track all of that, so.

Governor: No, and I'm not questioning the contract whatsoever. I was just curious as I went through this, how is the utilization? Do you have any idea?

Hoffman: Governor, I don't, but I would be more than happy to collect that information from Washoe County RTC and give you statistics and data. I'd be more than happy to come back and share that with this Board or the Nevada Transportation Board.

Governor: You don't need to come back. If you could just submit it.

Hoffman: Sure.

Governor: I was just curious if folks are actually taking advantage of it because it's a great service.

Hoffman: Right. Well, I'd be more than happy to do that, Governor.

Governor: All right. Thank you.

Hoffman: Okay. All right. Thank you.

Governor: Let's move on to number 30, Ms. Teska.

Teska: Thank you, Governor. I believe Mr. Sisco who is chair of the Deferred Compensation Committee is also here to address this issue. We have Greg Smith from the purchasing division-- administrator of the purchasing division is here for any questions on the process. This is the contract (inaudible) to become the record keeper for our deferred compensation plan.

Governor: All right. So, you've heard the public comments. There are many questions with regard to the process that has brought us to this point. So I'm not sure if it's Mr. Smith or Mr. Sisco who can basically walk us through what happened because I want it clear for the record what has gotten us here.

Sisco: Do you mind if I start?

Unidentified Male: No, please.

Sisco: Okay. Governor, members of the Board of Examiners, for the record, my name is Scott Sisco, and you all know me in my day job as the Deputy Director for the Department of Corrections over fiscal support services. But I'm also an appointee to the Deferred Compensation Committee, and currently, I am the elected chairman of the committee. As you all will recall, a couple of years back we had an RFP out on the street at the time that a major change took place within the committee. That law had kicked in that said a person can't serve on two different boards or committees at the same time. So three of the five members exited the committee, and three new members came onto the committee.

The three new members, I being one of them, were immediately bombarded with lobbying and concerns from participants that the RFP that was put out on the street did not reflect what their concerns were, and what their preferences were, and things like that. Unfortunately, it takes a little while to get up to speed on this type of a program, and the RFP was released. As the months went by and we got up to speed, we had more and more concerns about it. At that particular time, we had a brand-new DAG assigned to the committee that was somewhat inexperienced and I think also struggling with a committee that was in turmoil.

Ultimately, on the day of the actual decision, if you will, there was what's called a Best and Finals Presentation. These particular RFPs go down in two pieces. The first one is where we meet behind closed doors and we score the services to be offered and the fees, and then we bring back the finalists to what's called a Best and Finalists Presentation where they give us their best offer, usually a sweetened offer on both services and everything.

My understanding of what occurred at that particular meeting, and I have to say it that way because I was tied up with some Department of Transportation work at the time and I didn't get in until the very end, my understanding of what occurred at that particular time was the scores went up on the screen in the public meeting. At that point in time, what we've come to know as evaluator number three looked up, saw the scores, said, "oh, that reminds me, I meant to adjust my score and I meant to make this change." The chairman at that time said, "oh, that reminds me, I meant to do the same thing," and it flipped. And MassMutual who had been first became second and ING became first. The first vote to...

Governor: Let me stop you.

Cortez Masto: Which meeting are we talking about, the (inaudible) or a previous one?

[Crosstalk]

Unidentified Male: Keep in mind, this is the first RFP. (Inaudible).

Sisco: Right. And I'm just trying to bring you up to speed.

Governor: Mr. Smith, you'll get your chance. So, Mr. Sisco, let's take us through slowly what happened there. You are the fastest talker on the planet. So someone's got to record this, by the way, so slow down a little bit and take us through, suddenly the numbers appeared, and two of the individuals said, "oh, I've got to..."

Sisco: "Got to change mine."

Governor: ...change mine."

Sisco: And again, I wasn't at this actual one, but I've gone back to different--or I didn't make it until right after that happened. I've gone back to numerous participants, and that's what I've been told happened is that the scores...

Cortez Masto: And would you cite the year? That might help us keep this all in perspective, that we're not talking about the most current...

Sisco: 2012.

Cortez Masto: 2012.

Sisco: 2012. So the first vote then at that time was made by--or the motion was made by, again, the person that we've come to know as evaluator number three, made the motion then to adopt a contract with ING. The chair at that time seconded the motion. The vote failed on a two-to-two vote. At that particular time, it happened to be that I just walked into the room because I had finished accompanying the department--or my transportation duties at that day. I walked into the room, the chairman asked me to come up to the table, and discussion ensued. Ultimately, another motion was made to go with MassMutual. The motion was seconded, a vote was taken, and the vote passed three to two.

However, it was immediately clear, and even though I was part of that motion, it was immediately clear that we had problems, that the vote--the RFP, it was not in accordance with the RFPs that we had on the street at the time. We had some very--or I'm sorry, the regulations that we had on the street at the time.

Governor: Let me back up. Was that discussion on the record that you had when you walked in the room?

Sisco: Yes, it is.

Governor: Okay.

Sisco: Yes, it is. As a matter-of-fact, I tried not to go up there, and the chairman dragged me up to the front anyway because I hadn't been there for the Best and Finalists Presentations. But it was at that time that your office provided us with a more experienced Deputy Attorney General, (inaudible). We met, and it actually took two more votes after that time to repeal that RFP. And again, the primary concern was that RFP for one vendor was in direct conflict with our regulations that said, we will choose two or more vendors. So we were able to pull that RFP. We then...

Governor: And let me just--I want to stop you so that I have this. So, I apologize for interrupting. So the sole reason for pulling that was because you only chose one entity rather than two?

Sisco: I can't say that's the sole reason. No, I cannot. That was one of the primary reasons that--there was no question that it was in conflict with our own regulations, the program (inaudible) regulations.

Governor: Was there any issue associated with the evaluator seeing those scores up on the screen before they...

Sisco: I do not believe so, but there were certainly issues regarding whether there was bias or there wasn't bias. And, you know, I have to admit, from my standpoint, as a brand-new member, I was very concerned because I was hearing from participants that the RFP didn't reflect what was most important to them. So I would say that probably all five members of the committee, at that point in time, probably over compensated in regards to trying to take care of everybody's concerns. The other thing that happened...

Governor: What do you mean by saying they over-compensated by taking everybody's concerns?

Sisco: You end up in a bid like this with seven or eight measurable things that you can give points to, well, you have this thing, the general account in particular, that you know that's important to the participants, but doesn't fit into these categories. So you try to adjust your scores to make sure that it's compensated for. It's not right because it shouldn't have been done, but it wasn't out there in the first place.

The other problem with it--and the other issue that we had, and I mentioned that we had a fairly brand new DAG at that time, during these discussions that led up to this evaluation, the three new members kept raising this concern, well, we don't understand, how are we going to fit in this account that seems to be so important to these new participants. And her response over and over again was, "Don't worry, at the end you can vote for who is ever in the best interests of the participants. You just have to have a reason." Well, again, ultimately that was determined not to be true.

So ultimately, we did get it polled. I think that's about the first time I came before you for the comp committee. We polled--during the past year, we've gone in, and we've cleaned up the regulations. The regulations now say that we will choose one or more vendors. The regulations now say that we will use state purchasing.

Governor: And when were those changes to the regs made?

Sisco: This last summer...

Governor: 2013.

Sisco: Yeah, the 2013 summer. And we had public hearings. And I do have to say, during the public hearings and during the planning meetings for that, all of the parties that you've heard from were in support of going in that direction, so.

Governor: Going in what direction?

Sisco: Using state purchasing, the regulation changes that we're making, all of those different things. So...

Governor: And when you say, all of the parties we've heard from, are you talking about Voya and MassMutual?

Sisco: Yes.

Governor: Okay.

Sisco: Yeah. So Governor, if I could make a statement about the contract, and then I think there's still some information you need, and I'd like to provide that. So if I can go to my statement here...

Governor: So now essentially, and if I characterize this wrong, correct me, but you've got, for lack of a better term, very unartful term, but a do over in terms of who you're going to choose for this. It's going to come back before the committee under a new reconstituted set of regulations.

Sisco: That is correct.

Governor: Okay.

Sisco: Okay. Okay. Let me give you the official--there's two parts--I'm struggling here today because I have two roles to play. One is I have a role as the chairman of the committee to fulfill the committee's direction, and the other one is making sure you get enough information to make your decision.

First, as chairman of the Deferred Compensation Committee, the contract you have before you, as moved forward by the committee, improves upon the current level of services and fees for participants in the program. The fees paid have been lowered as a result of this latest bid. Interest rates to be paid on the general account provides a guaranteed minimum rate in each year of the contract at a rate that's greater than any local bank is currently paying on standard savings accounts, while at the same time protecting the principle, an aspect extremely important to the retirees and/or about to be retirees. Voya has provided additional guarantees of service levels, guarantees that provide for direct payment to the program if those levels are not met, including a guarantee of overall participation growth, which increases the book value of the business for future RFPs released by the program.

Voya/ING has included in their bid to plan for a new branding of the program, an enthusiasm that Voya brings to growing the program, seems to back their promise. You've received information about this contract resulting in loss of choice for participants. The fact of the matter is, today's record keepers for deferred compensation programs are pretty much just that. Their primary responsibilities are to receive payroll deferrals, place those dollars into the funds or accounts offered by the program, and selected by the respective participant, provide the participant quarterly reports of their accounts, and ultimately provide disbursement to the participants when they reach that phase of their life.

The record keeper is specifically prohibited from a relationship which provides counseling participants as to how to invest their funds. The committee retains an investment consultant that

provides for fund selection. Programs across the country have found that they get a better bid, meaning lower fees and higher guaranteed interest rates, when the entire book of business, all of the participant accounts, are bid out to a single record keeper. And the fact is, this bid did just that and substantially reduced fees as a result. NDC participants will save a minimum of \$277,000 annually with this new single provider bid.

Prior to moving to a single provider, the committee surveyed the participants, both active and those that have left or retired from state service, and of the 1,521 respondents, 41% responded one record keeper, 36% responded two or more, and 23% had no opinion. Some might say, so what, if participants want to go with a smaller company and pay higher fees, that should be their right. Well, if it was just that simple, but it's not. The fact is, it's the total book of business bid out to a single record keeper that results in lower fees for all participants. So having multiple record keepers costs participants from both record keepers more.

Finally, as you may recall the last time I was before you regarding the retracted deferred compensation program record keeper contract, I informed you all that the participant was going to update his regulation, clarifying the bidding process that was used. And basically, I just repeat there that again, we had workshops, we had planning meetings, and they were all there. Now having said that...

Governor: And did you draft that, Mr. Sisco, what you just read?

Sisco: Yeah. This was my presentation, but I kind of changed it because we kind of went off in different directions. The second part of this is, again, I've carried out my duties as the chairman. I do personally have some concerns because I don't feel that you all have gotten all of the information that you needed to make this decision. The fact is, there's been a claim that one evaluator was biased. What you don't know, because the attorneys didn't know from either one of the other two companies, was immediately upon finishing that particular meeting, the Best and Finals meeting, where we scored behind closed doors, I went back to my office, I picked up the phone, I called state purchasing, and I called my DAG. I said, "I'm very concerned about what I just saw, five of the six evaluators did a very good job," and you can kind of tell because they're very close in their score wise. One of the evaluators was several hundred points apart, and in particular, he changed scores on items--today, he raised one company up and he lowered another company down for items that did not come back before us.

And what I mean by that is, we specifically asked these folks to come back for best and final offers, and asked them to concentrate their presentations on three things, on the best fee they can give us, the best interest rate they can give us, and how many technicians or representatives that they would give us, those three things. This particular--so that should have affected about three of the six things that you could score on. This particular evaluator went in and, like I say, basically raised one company up on everything, lowered another company down. The reason I say that is because it's on the record, and why the lawyers didn't know it up until now, ultimately in a deposition it would come out. The second thing that I should...

Governor: Let me stop you there because that's a really important point, Mr. Sisco, and I appreciate your candor. When that evaluator changed the score, did that evaluator already know the math, and how much the score needed to be changed to change the outcome?

Sisco: All I can say to that is that we all knew what the scores was and what the difference was between the two--actually the three. When we left the first meeting, we knew what they were. Therefore, going into the second meeting--I don't know. I mean, is it possible that he could've quickly--I can't answer that, whether or not he could...

Governor: But you knew, you and the others on this committee...

Sisco: Right.

Governor: ...knew what the scores were prior to that final presentation. And I think what I heard you say is that scores were changed on three categories that had nothing to do with what the final presentation did.

Sisco: That is correct, and that is one of the concerns that I raised when I made that call to state purchasing. And again, I was hoping that if there was any possibility that it could be looked at so that--because this was my biggest fear was that we were going to go through the same thing all over again, but apparently there's not a mechanism. I did receive a phone call back the next day from--I can't remember if it was that afternoon or the next day, from state purchasing, and what I was told was, "You are correct. The scores that that evaluator did change--did in fact change the outcome of the bid. We have checked with our DAG, but our DAG has responded that he will have to explain that if this goes to appeal." Having then certified that agreement then, the committee had its Monday morning meeting, our committee, the Deferred Compensation Committee, and having basically been given no choice but to go with the high scorer, we voted to move the contract forward that you have before you today.

Cortez Masto: Question.

Sisco: But the reason I brought that up just is because I was concerned that there is enough...

Governor: Let me ask one question, and then I'll go to the Attorney General. How often does that group meet and deliberate on different contracts? I mean, was this a pretty isolated type of situation, or does this happen all of the time?

Sisco: No. The committee meets quarterly, as required by statute, just for normal committee business and program business. But in a year in which we have an RFP out on the street or we're seeking a new investment consultant, we might have anywhere from two to three additional meetings as a result of those particular things.

Governor: I guess, let me be more specific. Where I'm going is, so do you have contract--is this a unique circumstance? I mean, you went back and said, "wait." This kind of concerned you, and that's why you went back and made those phone calls. Was this something unique that you hadn't seen before?

Sisco: No, it's not that that was unique that I had seen before, but I had lived through the last 24 months. And I think as Mr. Abramowitz mentioned earlier, we had some rather heated discussion in the committee regarding perceived bias and other issues. And my concern and the reason I made that call is I just saw a repeat of the last thing happening...

Governor: And was this the same evaluator in 2012 that had changed the score on the one you're talking about?

Sisco: That is--yes, that (inaudible).

Governor: Okay. And Madam Attorney General, you had a question.

Cortez Masto: I do. So the evaluator that changed his score, was he not following the rules?

Sisco: No. That is the one thing I did learn from state purchasing is that once the scores were reopened, he had the ability, and he had different knowledge of his own, he had the ability to go in and adjust scores as he saw fit.

Cortez Masto: So the process allowed any scorer to go in at a certain period of time and adjust if they--based on information that they had.

Sisco: Right.

Cortez Masto: So he wasn't doing anything wrong and not following the process.

Sisco: No. No, he hadn't.

Cortez Masto: Okay.

Chesney: And I'd just like to--Shane Chesney, Senior Deputy Attorney General. Governor, back to your question. The committee we're talking about is actually the review committee under purchasing, and so to your question, is this unique, yes it is. This group had never been together before other than to select a new provider. So we have two committees here: the deferred compensation committee, which does meet regularly; and then we have the selection committee, which is a statutory creation of purchasing, which actually had a member of the (inaudible) Board on it. So yes, they are unique, and it is not an annual or regular meeting.

Governor: Why would somebody change their score in categories that weren't even presented in that second meeting?

Sisco: Again, that's what raised my concern, and that's why I made the phone call I did. One in particular really jumped out at me that I did not believe could be explained, and what my hope was is that there was a mechanism for a quick look at that so that they could maybe do something before we ended up here today, and that particular one was financial stability. There was--and keeping in mind that all of the information from the first meeting had been taken from us, so we

had no new--we had no information other than what was in the Best and Finalist positions. The financial stability of the two companies absolutely did not change between the first meeting and the second meeting. So to raise one and lower the other was one of the things that really jumped out at me and made me make the phone call that I made.

Unidentified Male: I would just like to point out, though, all that being said, it was reviewed by purchasing, okayed by purchasing, and furthermore, it went to an appeal officer who said there was no violation (inaudible).

Governor: Well, we're getting to that. We'll get to that because I have some issues with this order as well. So Mr. Sisco, you were about to pivot to a second issue before I interrupted you. So you said, I have another thing I wanted to cover.

Sisco: Well, this was kind of it. Like is said, from the chairman point, it is a good contract, it will serve the participants well, and everything else. But my second issue is I feel that you all need to know what the risk is. We're down to risk analysis now, and in my mind, there's a potential two or three years down the line, for the lawsuit to finally hit the courts, and a court or a jury to agree that, yep, you know what, they were harmed, so you need to make the whole...

[Crosstalk]

Cortez Masto: Hold on for a minute. Let me just address this because I am getting--there's so much information, and let's categorize it. Mr. Sisco, I appreciate you being concerned about litigation for the state, but I'm not sure that's your role right now. Your role is to help us understand what happened through the selection process. And one question I'd like to know is, the fact that you did have questions about this one evaluator and the particular area that he changed the category on, did you ask him why he made these changes? Did anybody talk to him and ask him what happened or why he decided to make that change that you felt might be inappropriate?

Sisco: No.

Cortez Masto: Okay.

Sisco: Again, my perception of that came--and again, it's kind of--those are kind of refereed, if you will, by the person from state purchasing and whatnot. And believe me, I'm not throwing state purchasing (inaudible). They did a wonderful job on this, and it was very difficult, I think, for them all the way through and stuff, but they did an absolutely superb job on it and everything else. But my biggest concern, it was an overall thing. I just--like I say, when you're sitting through that for hours and hours and hours, and all of the sudden, like I said, five people are all here and one person's over there, you just start scratching your head. And having lived through the first go around--and the reason I shared the story (inaudible) because I do think that ultimately they get tied together.

Cortez Masto: Sure. And I absolutely understand that concern. So was he the only one that made changes at that time? Nobody else made any other changes...

Sisco: Oh, no. Almost...

Cortez Masto: ...to their score.

Sisco: Because of the fact that both parties came back with better bids and everything else, almost everybody jumped in and made changes.

Cortez Masto: So everybody else made changes at the same time that this individual made changes?

Sisco: Yes, that's correct.

Cortez Masto: Okay.

Governor: But did they make changes in the same categories he did?

Sisco: No.

Governor: Okay.

Unidentified Male: Madam Attorney General, I'm not the Purchasing Deputy, but to answer your question, I believe Ms. Perondi will state that the members of the selection committee were instructed not to talk to each other about anything. So nobody would have properly asked this person why they changed their answers other than possibly Ms. Perondi, but (inaudible).

Governor: So, let's go to the next step. So this outcome--does that complete all your presentation on that piece about what happened there?

Sisco: Yes, it does.

Governor: Okay. So maybe this moves away from you now. So that decision was made. MassMutual...

Cortez Masto: Actually, I do have one follow-up question.

Governor: Okay.

Cortez Masto: Since you are the chair of the committee, it sounds like there's a couple of things. You have concerns about how the procedure took place, correct?

Sisco: No.

Cortez Masto: You don't have any concerns about the process or procedure that took place to elect the current contractor?

Sisco: The only thing I...

Cortez Masto: As you sit here right now, do you have...

Sisco: As I sit here right now, the only thing that I wished there would have been in that procedure was a way where if a concern was raised, there was a mechanism for it to be investigated right then and there so that we could say, "you know what, it's not a problem, this is why," and move on from it. And unfortunately, there was not a mechanism other than just saying, "well, he'll have to justify his own..."

Cortez Masto: Okay. Aside from the procedure and mechanism, as you sit here today, do you have concerns about the merits of entering into the contract with the current contractor versus the previous contractor?

Sisco: I don't have any concern with that. I just have concerns with what the participants may be hit with later as...

Cortez Masto: But that's not your (inaudible).

Sisco: Sorry.

Cortez Masto: If I'm not mistaken, you were selected as a group to pick the appropriate contractor to represent the interests of the individuals.

Sisco: Right. And just to show you how unbiased I'm trying to be, my high score was for ING. I was a few points above ING.

Cortez Masto: Okay. So I'm hearing, you don't have concerns about the current contractor that is being picked today on their merits.

Sisco: The contractor itself, I do not have any concerns with them, absolutely not.

Cortez Masto: Okay.

Governor: But it's the process that you're concerned about, how we got here.

Sisco: Process and the results of that.

Governor: Okay.

Unidentified Male: Can I ask a follow-up about that?

Governor: Yeah.

Unidentified Male: On page three, and I assume that you've been provided with the letter that (inaudible) had sent out, signed by (inaudible)...

Sisco: Jim Barnes. Yeah.

Unidentified Male: (Inaudible) suggesting that a runaway evaluator could have skewed the process, which I think is (inaudible) specifically cite to the obligations of the NDC committee, saying that the committee shall act in such a manner as to promote the collective best interests of the participants in the program. (Inaudible). As you sit here today, looking back on the decision to use the purchasing request, how comfortable are you with the process that you ultimately selected, and you think it meets (inaudible) that obligation to operate in a manner to promote the collective best interest of the participants in the program?

Sisco: Absolutely. Yeah. I mean, again, like I say, there is nothing wrong with the process if everybody, you know, follows what's expected of them and is fair and impartial.

Unidentified Male: So you think the committee did that in the collective best interest of the program and going through the purchasing program.

Sisco: Mm-hmm.

Unidentified Male: You don't have any concerns about how (inaudible)?

Sisco: (Inaudible) at all.

Unidentified Male: Okay.

Governor: So we've reached--the committee has made its decision, there's a--one of the parties is unhappy. That party posts its bond and files an appeal. We heard some public comment that the lawyers met, and it was submitted to a hearing officer, which ultimately resulted in an order dismissing appeal that says, "The hearing officer has reviewed the notice of appeal, and concluded that the issues asserted by MassMutual do not raise a question of the state's compliance with the procedures set forth in RS Chapter 333." There's nothing in here about what we've just talked about today. There's no explanation as to--it's completely a conclusory statement. I have no idea how the hearing officer reached the decision that was made based on my reading this.

Unidentified Male: I appreciate that, Governor. Again, I'm not the deputy for purchasing, but I would point out that that would be the proper forum to address these very issues that we're talking about, and that they weren't discussed, or not in the order, is certainly not the issue before this body. Furthermore, they did not appeal that on judicial review. So, it is a final matter.

Governor: Well, were they able to argue in front of the hearing officer?

Menicucci: Yes, absolutely. All they would have to do is say, "we want to." They had a hearing. We had a hearing set. We met before the hearing, all parties, which could include counsel for ING, counsel for the state, and counsel for...

Governor: (Inaudible) the record, this is Mr. Menicucci.

Menicucci: Yes. I'm sorry.

Governor: It's all right.

Menicucci: Yes. Absolutely. All they had to do is say, "we want to go with the hearing." But counsel met. We exchanged documents. We told each other what our positions were in the matter, and at the suggestion of MassMutual's counsel, it was decided to present the matter to the hearing officer, to look at the notice of appeal, and determine whether it raised issues upon which she could grant relief. The hearing officer agreed to do that. And one of the advantages to all parties would have been that we would not have gone through the hearing process if it became unnecessary, or we would not have addressed all of the issues if some of the issues could be removed. And the hearing officer concluded, and advised all counsel, that she did not think there was anything in the notice of appeal that was grounds for overturning the contract in this case.

The hearing officer asked me, as one of the prevailing parties, to prepare the order, which I did, and circulate it to counsel. No counsel objected to the form of the order. The order was submitted to the hearing officer. The hearing officer signed it and entered it.

Governor: So they--I mean, the impression that I get from this, you know, after hearing what Mr. Sisco had to say is, so you--the three of you agreed to submit basically on the briefs to the hearing officer. Is that--they waived their right to oral argument, is that what you're saying?

Menicucci: Yes. It was at MassMutual's suggestion. And I should probably note that this was a one-sided presentation. The hearing officer was actually looking at the notice of appeal, written by counsel for MassMutual. We had not gotten to the point of filing our pre-hearing statements, which would have given written opposition to each of those points.

Governor: I'm just confused, given what's led us to this point, that essentially they would say, "never mind." And can you tell me, because I don't have the statue in front of me, is why there was not jurisdiction?

Menicucci: Well, there is jurisdiction, but the only ground for granting relief, that the hearing officer has, is that the procedures of NRS Chapter 333 were not followed, and the relief that can be granted is to grant the appeal, overturn the contract, and order a re-solicitation of that contract.

Governor: So basically, what this order says, is it was okay for evaluator number three to change the score, knowing what the outcome would be if the score was changed by a certain amount.

Menicucci: That was not raised in the notice of appeal.

Governor: But that's what this says. This says the process was fine...

Menicucci: Yes.

Governor: ...and that it's okay for one evaluator to change his score based on information--or change his score in a category that wasn't even questioned, and there was that secondary submission of information, and that presentation on financial stability wasn't part of--what the evaluator changed had not been presented secondarily, and that's okay. So going forward, it's okay for somebody to change their score, knowing what the scores were going in.

Menicucci: Governor, Jeff Menicucci again. Three finalists were allowed to make oral presentations to the evaluation committee. After the oral presentations, every single evaluator changed scores.

Governor: But they didn't change their scores in the same categories that evaluator three did.

Menicucci: Well, you had six evaluators, and some of them--none of them changed in all the same categories.

Governor: But Mr. Sisco said that, that evaluator changed scores in areas that the other did not.

[Crosstalk]

Cortez Masto: Governor, actually, can I...

Governor: I...

Cortez Masto: I would like to hear from purchasing because I understand Mr. Sisco is the chair, but actually purchasing keeps all of the statistics, so I would like to know--have your question answered.

Governor: Yeah. Well, I'm just getting clear what this order means from Mr. Menicucci. It essentially blessed the process. It said it's okay.

Menicucci: Purchasing reviewed the process.

Governor: Right.

Menicucci: And evaluators are permitted, under our statutes, to change their scores, which they did. We tabulated those scores. The evaluator that's been questioned, changed three categories for MassMutual, two categories for ING. Other evaluators changed as many scores, at least one changed five scores between MassMutual and ING.

Cortez Masto: But Jeff, you're not answering the Governor's question. The Governor's question is specific. Did--and maybe let's put it this way. The hearing officer apparently found in favor of the procedure that was followed, correct?

Menicucci: Pardon me.

Cortez Masto: The hearing officer found in favor of the procedure that was followed, correct?

Menicucci: Correct.

Cortez Masto: The question that really is appropriate here was, was the issue of this evaluator changing their position presented to the hearing officer?

Menicucci: I don't believe it's in the notice of appeal. I don't think you can fairly find it in their notice of appeal.

Cortez Masto: So this issue of changing your position--the evaluator changing their position, and how they changed it, and what categories they changed it, may have not been even presented to the hearing officer for the hearing officer to rule on that issue?

Menicucci: Not as it's been raised here today, ma'am. What was presented was the fact that an evaluator did change scores, and that evaluator was questioned in his judgment.

Cortez Masto: That was presented to the hearing officer?

Menicucci: Yes. The judgment--they were trying to attack the judgment of evaluator number three. Purchasing's position is that the procedure was followed, that any changes were within the normal range of changes that might occur after an oral presentation, and that the procedure was fair. The place where everyone got to present the merits and arguments and advocates for their position was before the evaluation committee, and three finalists did so. MassMutual, ING, and Prudential, I believe, were the three finalists. And I do not know everything that was said there. I was not present. Kim Perondi is the contract person that was available. And the scores that were changed had been tabulated. And I don't know if the Board of Examiners wants to review them or if it thinks that it would be appropriate, but it's now public information. The scores were changed and the categories. Every evaluator raised ING's scores after the oral presentations. Number three was not out of line in that regard.

Unidentified Male: What did MassMutual argue in their notice of appeal that was violated in Chapter 333, in addition to the one you just mentioned?

Menicucci: I could go through that in some detail. I have a copy of their notice of appeal here.

Unidentified Male: Can you just give us a brief synopsis if you recall?

Menicucci: Their grounds for protest were, they thought they had the better plan, and they were really questioning the panel's judgment on that, and then they argued about their costs and fees.

Unidentified Male: How did they frame that as a violation of Chapter 333, thinking that they had a better plan?

Menicucci: Our position is it wasn't.

Unidentified Male: Okay.

Menicucci: In fact, the complaints made by MassMutual were not that we failed to follow Chapter 333, but that we did.

Unidentified Male: When the hearing officer arrived at (inaudible) at the decision that was ultimately written into the order dismissing appeal by yourself, was there any record made as to the rationale behind the decision?

Menicucci: No formal record was made.

Unidentified Male: Did she have a conversation with you or others about the decision she was going to make?

Menicucci: We did have conversation, all counsel present, with the hearing officer, suggesting at MassMutual's urging, they asked for this first, and we thought it was a good idea that the hearing officer take a look at the merits of the arguments made by MassMutual, and determine if she had grounds on which she would overturn the contract.

Unidentified Male: And then there was a period of review, which she took it under submission, I would assume.

Menicucci: Correct.

Unidentified Male: How long was that?

Menicucci: I could be wrong on this, but it was a couple of days, I think.

Unidentified Male: And how did you learn that she had arrived at a decision after looking at the notes of appeal?

Menicucci: We had a subsequent phone conversation with her at which she told us how she--her decision and asked me to prepare the order.

Unidentified Male: Who was on that phone conversation?

Menicucci: Myself, Stephanie Allen representing ING, and Mr. Barnes representing MassMutual.

Unidentified Male: And what were the hearing officer's representations as to the rationale behind her decision?

Menicucci: She didn't go into a lot of detail that I can recall.

Unidentified Male: Yeah. And so then it was concluded that you were going to draft the order of dismissing appeal.

Menicucci: Correct.

Unidentified Male: Okay. Thank you.

Cortez Masto: And all of the parties agreed that there would not be a record made of the presentations or what was submitted to the hearing officer in any type of manner whatsoever? In other words, there's no transcript.

Menicucci: There would be no further record made. There would be no testimony taken if the hearing officer concluded that it was not something that would cause her to overturn the contract, even on the face of the notice of appeal.

Cortez Masto: So the presentation that was given to the hearing officer at the time, were they written briefs that were just submitted and no oral argument?

Menicucci: The presentation was the notice of appeal...

Cortez Masto: Okay.

Menicucci: ...to the hearing officer. The next step would have been preparation of pre-hearing statements, and each party would have presented those, but we did not get to that point. And so what the hearing officer had in front of her was MassMutual's own notice of appeal and whatever pieces of record that they attached to that.

Cortez Masto: And she did not have anything from the state's position, purchasing's position, or anyone else's position in front of her? She just had the notice of appeal from MassMutual?

Menicucci: That's correct.

Cortez Masto: And that's what she made her decision on?

Menicucci: That's correct. If I could follow up on the grounds stated in the notice of appeal. One was scoring discrepancy, but it was really that the scores were outside of any normal range of deviation.

Unidentified Male: Was there a legal argument made that that violates Chapter 333?

Menicucci: I would say no. That was our position, that it's not a violation of Chapter 333 for an evaluator to have a little different opinion than the others.

Governor: That's not what we're talking about today. Of course they can change their mind, but they had access to everybody else's scores when their mind was changed, and, like I said, there's been some contradictory presentation here. Evaluator three changed scores in categories where additional information had not been presented.

Unidentified Male: MassMutual did complain about a change in the score for financial stability.

Governor: That hadn't been brought back to that committee for consideration. It had been voted on once. There were other categories where they sought additional information, and additional information presented. The other evaluators changed scores, as you say, and was completely fine within the rules and such, but they didn't change them in the categories that were not presented by those subsequent submissions.

Menicucci: All of the evaluators changed some score, I think, except perhaps one criteria. There may be one criteria that was not changed between the two participants--the two finalists.

Unidentified Male: Can I just make a point? The main objection seems to be with the process, either with purchasing's process or with the Appeal and Hearing Division's process. That being said, from a lawyer's point of view and the fact that there was an order that wasn't appealed, and looking at the state's liability on this thing going forward, I would rather defend any potential attack from MassMutual rather than ING who was legitimately awarded the contract at this point. I think the process could be fixed going forward. These are valid concerns, but they have been adjudicated and found to be not a violation of NRS 333. And I wouldn't be the one defending it, but I know if I were, I would rather be defending the MassMutual thing where I would say, you know, "you had your chance, there's no jurisdiction to hear this, motion to dismiss." Going forward, fix these issues so that...

Governor: And how would you suggest--what is a suggestion, and I think there already has been--I mean, the issue here, just instead of going around and around, is the fact that there was one score that was changed that changed the outcome.

Cortez Masto: But did it? I guess that's the question, Governor. I'm not sure it has changed the outcome. And that would be my next question is, is it harmless error? Did the fact that this individual go back and change in categories that probably didn't get, I guess, a presentation on, did that actually affect the overall outcome of this--awarding this contract?

Chesney: Well, anecdotally, I did hear this.

Cortez Masto: Well, hold on. I--actually, Shane, I appreciate that, but I'd like to hear from purchasing who actually takes a look at the numbers and (inaudible).

Smith: Governor, if I may. Greg Smith, Purchasing Administrator. If I thought that the situation was as you describe it, I would be equally as concerned as you. I brought with us today Kim Perondi, who was the purchasing officer for the entire project, to answer some of the direct questions about the individual scoring. If I could just set the table--well, no, I'll let you go ahead because I know you've worked hard at preparing this.

Perondi: Okay. Kim Perondi with state purchasing. I brought with me today (inaudible) a copy of the final score sheet, and then another copy that shows all of the changes that we made. And if it's okay, I would like to just give you a brief overview of the process that we followed to get to

this point and the instructions that were given to the evaluation committee members. So, before the RFP was released, we established the evaluation criteria, which you see listed on the score sheet and the associated weights, which the evaluation committee as a whole, agreed in order of importance with regard to how this would be evaluated.

The final scores--the initial evaluation meeting was a group meeting with all evaluators, an open-discussion meeting, where everyone could voice their opinions, and what they read, and why they're scoring certain ways. My role is to supervise the meeting, and ensure that no one evaluator is intimidating or manipulating the rest of the committee. I didn't feel that that happened, and none of the other evaluators had any comment to that.

We did tally the scores to come up with a ranking to decide who would be the finalists invited to do a presentation. Those scores were disclosed during the meeting; however, at the end of the meeting, I collected everything. No one had any information with them going into the finalist presentations. At the finalist presentation meeting, each vendor was asked to prepare a presentation with some guidelines on what information was to be seen in that presentation, and they were allowed 30 minutes for presentation, 15 minutes for questions and answers. And each evaluator was advised and instructed at the beginning of each presentation, at which time I only gave them the score sheets, their own individual score sheets, so they didn't have access to everyone else's scores, that any of the information presented during that meeting, if it affected their opinion and their scores, they were allowed to make a change to the score.

So the second score sheet you see with the circles on it, shows you that every evaluator made score changes, and multiple evaluators made score changes in multiple categories. There was never any instruction on the limitations of where they could change their scores. It was all subjective based on what they saw in the presentation. Mr. Sisco did bring to my attention, and I can't recall if it was right after this meeting or right after the deferred comp committee meeting approving the selection, but he did bring up to me his concern about Mr. Davey's scores. And by the way, Mr. Davey is down in Vegas if anyone has any questions.

And so I looked at it, and the reason I gave you the first score sheet is to show you what we look at when these concerns come to us. Our role, again, is to ensure that each evaluator is following the instructions that were given to them, and that they are using their own, independent evaluation process consistently amongst the proposals they're reviewing. So when I looked at the scores of all of the proposals and all of the evaluators, the score ranges were all over the place. So it was not one person that stood out here. It was just everywhere. And then as far as the concern of the finalist's presentations and the score changes, I can't say because I don't know the statistical analysis of where the scores were changing and so forth, but anybody to be able to swing that vote would have had to know who was changing what category and what weight was assigned to that category, and none of them had that information in front of them.

I asked Mr. Davey about Mr. Sisco's concerns. I didn't identify you, but just saying raising the fact that there were questions about his scoring, and he was prepared to defend himself and go to hearing. So, I found that the process was solid.

Smith: If I may add just very briefly--Greg Smith, once again, from purchasing. In a bid process where we have specifications and then math, it's very much like grading a math paper. You match up the specifications, you look for the lowest price, relatively simple. I would argue that a RFP process that's designed to produce the best proposal, as the evaluation committee sees it, in professional services is far more like grading an English paper. There is an element of subjectivity in it that I think is just inherent in the process, and so it's why we use a variety of evaluators. Some people tend to score a little high. Some people tend to score a little low. There's a range of different opinions based on experiences and the way they see it.

I think often times unsuccessful proposers find it very frustrating that every evaluator didn't grade their score exactly the same. And again, I would argue, it's much more like grading an English paper than a math paper. But I do concede that when the majority of the people are grading at a B or a B+ or a B-, and somebody grades something a D, that's a reason to look at it. Our concern in the process, we play the role of referee. We have no dog in the hunt as to who is going to get this contract. We just want the process adhered to, and we believe that under NRS guidelines, as they exist today, that was done. Are there areas that could be right for looking at moving forward to try to ensure certain things? Absolutely. We always learn from these things. But I use the phrase, "Don't let the perfect be the enemy of the good." I think that while there may be areas that can be looked at moving forward, this process is defensible.

We've actually looked forward--we never look forward to going to a protest, but we looked forward to having the opportunity to have both sides present their case, cross examine, give evidence, give information, and then see where it goes. We never had that opportunity.

Cortez Masto: So, can I ask you a question?

Smith: Yes, ma'am.

Cortez Masto: Is this--we're talking about evaluator number three on page--the second sheet.

Smith: Yes.

Cortez Masto: And is this the actual sheet that you're saying that he changed his scores? Because if you look at his scores that he actually changed, he improved them for MassMutual, he didn't decrease them. Am I missing something there?

Unidentified Male: Yeah.

Perondi: Sorry. The handwritten numbers are the original scores, the typewritten are the...

Cortez Masto: So say that again. The hand written ones (inaudible).

Perondi: Are the original scores during the first evaluation, and then after the Best and Final presentations, the score changes are reflected in...

Cortez Masto: Okay. So his original one would have been seven in experience and financial stability, and then changed it to a six.

Perondi: Correct.

Cortez Masto: Okay. So he changed it one down for each one of the three categories.

Perondi: Yes.

Cortez Masto: Okay.

Menicucci: Madam Attorney General, Jeff Menicucci. I think in direct response to your question, which was very good, was what is the impact of changing this single score that Mr. Sisco has focused on here. That would be the change from a seven to a six. If you'll note, the weight of that is 5%. So if that were changed one number times 5%, it would not affect the final result, which was a seven point difference.

Cortez Masto: In that category, that number one category of experience and financial stability.

Menicucci: Correct. And we were not focusing on that in the notice of appeal because the main argument of MassMutual, at that time, was that the scores as a whole, were out of line, and they should have removed the high score of this evaluator for the winning bidder. And that's something that we felt we didn't even have the statutory authority to do under Chapter 333.

Perondi: And if I may add one last thing, on the score sheet with the circles, we did kind of run a few different analyses to look at outcomes. And if, in fact, we did limit the score changes just to cost and fees and credit ratings and so forth, if we take out all of the score changes in those other categories, the outcome remains the same because the heaviest weight were in the last two factors, representing 55%, and every evaluator improved ING after the finalist presentations.

Governor: I want to make sure I'm reading this properly, so walk me through that again, please.

Perondi: Okay. So the...

Governor: So I'm looking at the one with the circles.

Perondi: Okay. The one with the circles show, in the circle in the handwritten numbers, represent the--now I'm confused--the original scores that were given after their first review.

Governor: So that's the six in category one.

Perondi: The seven. So the original score was a seven...

Governor: Mm-hmm.

Perondi: ...and after seeing the presentations, he revised it to a six. But as you can see, evaluator six had changes in numbers two and three, and then down on ING there were changes made by evaluator two, five, and six, also in various categories.

Unidentified Male: If I'm understanding you correctly, there was a suggestion that the Best and Final offer was limited in terms of their presentations to only three of the six criteria. Which three criteria were they focusing on?

Perondi: They were not limited. That's what Mr. Sisco was implying, that he was under the impression and shouldn't have allowed the changes. But we did allow changes to any of the criteria.

Unidentified Male: Okay. But in terms of the presentation, what was--did the committee ask them to focus on three specific areas?

Perondi: They asked--yeah, I can give you a copy of the letter here. They were asked to focus their presentation on, I believe, participant services, recordkeeping fees, and...

Unidentified Male: Stable account.

Perondi: ...stable account. However, the evaluation committee members did have questions in all different categories.

Unidentified Male: Okay. I mean, despite the fact that they apparently asked them to limit their presentations, on number two, recordkeeping administration, three, participant services, and five, stable value, most of the changes occurred in categories five and, I guess this would be a typo, six, cost structure and vendor fee.

Perondi: Oh, yes. Yes.

Unidentified Male: Okay. So, I mean, the argument that this was in some way limited to the changes only being allowed to be made to those three criteria, doesn't seem to be reflected in the fact that five of the six evaluators, in fact, changed their scores on an area that wasn't part of the final presentation.

Perondi: Maybe you can answer better on whether or not that was part of the presentation. I believe that five and six were the heaviest focus...

Sisco: That was true. And I...

Perondi: ...and number three was part of it.

Sisco: I didn't mean to imply that it was, "here's the rules and you can only do this." I'm just saying that we specifically brought them back, and they complied with that. They focused on three areas.

Perondi: Which was number...

Unidentified Male: So maybe I'm not understanding as to what you're saying when you re-weighted this to try to only focus on the three areas that had been pointed out. Did you focus on two, three, and five then, and then remove any of the changes that would've occurred in any of the other categories?

Perondi: I looked at five and six only, and removing any changes to the rest. But participant services, which is number three, was also one of the things specifically asked for in their presentation, and I think you can see that the outcome probably would have still been the same had we included that.

Unidentified Male: But when you re-weighted the outcome, you only looked at the changes that occurred in categories five and six.

Perondi: Correct.

Unidentified Male: Okay.

Governor: So if there are proposed changes to improve the process, what would they be?

Smith: Governor, Greg Smith for the purchasing division. I think one thing we've talked about is possibly a change to make sure that a majority of the evaluation committee members have scored the successful vendor the highest. There are some other things that we can do that we are considering piloting to test. One would be that we don't release the evaluation weights. They still get to score, but the evaluators would not know what the weights are. There are some concerns. It certainly eliminates one of the concerns on one side. I think when I mentioned it to Chairman Sisco, being an evaluator at the other time, does that limit their ability to really render a good judgment in the best interest of the state, not knowing whether something is a five-percentage point category or a 60-percentage point category. But that's another thing that could be piloted and looked at. There was a third one.

Perondi: Yeah. It was not disclosing the total raking--the total score...

Smith: Yes.

Perondi: ...when we're ranking to decide who our finalists.

Governor: Well, that one is pretty clear.

Smith: That was--yes.

Governor: Because here's the bottom line, and I don't want to belabor this. I just want it to be fair.

Smith: Yes, sir.

Governor: I didn't sit--I don't know MassMutual and Voya. I don't know any of that. I don't know what the presentation was, and similar to what we heard in public comment today. But I never want another contract to come up before this Board where there's a question as to whether the process was fair. And that's why I have been probing so deeply on this because I just want to make sure that it was fair, because it really taints--you know, when we get these contracts, we assume all that has been done appropriate, and that, you know, this is--in my four years here and in my previous experience as the Attorney General sitting on this Board, this has never happened...

Unidentified Male: Right.

Governor: ...before, and so it concerns me. And that's why--and I appreciate the Attorney General and the Secretary of State also--you know, I'm not looking--like I said, if there's a decision by this committee that one entity is stronger than the other, fine. But as I said, there's been some issues here and moving forward, I want to make sure that they don't repeat themselves. And for me, these individuals shouldn't know what the scores are going into that second round. It should be completely blind. And so what I'm hearing today is it wasn't completely blind, although in compliance with the regulations and how it had been done before. But it sent this off into a direction that has brought us here today.

So, you know, the other question that hasn't been asked today, and maybe it would come out the same, would it make a difference to go through it again or should we or can we?

[Crosstalk]

Unidentified Male: I would just point out that by statute, this committee is supposed to (inaudible) RFP every five years. We're now on year seven of the contracts. So I mean, we definitely fudged that line, but I wouldn't recommend doing it again.

Governor: Okay. And that's fine, too. You know, there's no good outcome here, at least in my humble opinion. But I don't disagree that the policies and procedures and the regulations were followed. And at the end of the day, albeit, I think this is a specious order, that it came to the right result, that I would've like to have seen a little more detail in this order to explain why it came to the conclusion that it did. But I think it is the correct result given the issues that were presented to the hearing officer.

Teska: And Governor, I'd just like to say, since purchasing is actually one of the divisions in my department, since this issue was brought to my attention and going through this process, I certainly see your concerns with some of the--this process has been in place for a long time and it, to this point, had served us well. This to me is kind of a tipping point for us that we really need to go back and evaluate, not only the statutes, the regulations, and the policies and

procedures that we follow in this area. And we're in the process of doing a pretty thorough re-evaluation of all of those.

Governor: And it would've been really helpful to get these score sheets before today. So, you know, it helps me because I think that there's been a lot of focus on evaluator number three when, had I had this information, it would've been helpful to me. It might have saved us an hour. But in any event, we did get this information. Your presentation was helpful to me as well. So I hope this is a teaching moment, and that as we move forward that there can be some changes just to, again, the bottom line, ensure fairness. I want everyone--they may be unhappy that they didn't win, but at least they'll have confidence that the process was fair.

Cortez Masto: And Governor, can I just seek clarification...

Governor: Yes.

Cortez Masto: ...because this clarification is going to serve for me to decide whether I can vote on this or not, so I just have a couple more questions. Is it safe to say that what we're voting on today is the procedure that was used and not the merits between the two contracts, correct?

Perondi: Absolutely. And I'm glad you asked that, because I think sitting here as this Board, the process is in place for the appeals, for the RFP. We're not sitting--you are not sitting as an appellate Board. You're here to just look at the contract. So, I absolutely agree.

Cortez Masto: So my--the fact that I'm a member of the deferred compensation, and I do get a pecuniary interest on whoever is chosen, I still have the ability to vote on the procedure, what doesn't necessarily call into question my pecuniary interest. Does that make sense?

Perondi: That does make sense. And if it's not going to material--your pecuniary interest, if that's not going to materially alter your decision in this matter, then you're free to vote on it.

Cortez Masto: And that's why I want to make the clarification. For my purposes, I'm voting on procedure, strictly procedure, not the merit of what's better for the members of the deferred compensation, just what happened procedurally. I absolutely agree with the Governor's comments. From a procedural perspective, absolutely have concerns, and know that you're going to be addressing those. But at the same time, after looking at these numbers, it appears that even if there is that concern, it's, to use a judicial term, harmless error. It really didn't carry weight when you look at the bigger picture of the percentages that were taken into consideration, and the fact that other evaluators changed their numbers as well in various different categories than just the three categories that were identified. So, I just wanted to put that on the record as well. So I will be voting on this today.

Governor: Thank you, Madam Attorney General. One final question for Mr. Menicucci, just so I'm sure on this. You said that they didn't seek judicial review of this order, dismissing appeal. Has the time passed?

Menicucci: The time has passed. It's now final.

Governor: Okay. All right.

Unidentified Male: I just have one disclosure to make, which is my wife's law firm represents ING in this matter. I've met with those attorneys, but I've asked my deputy attorney general whether or not that poses a conflict. My wife didn't have any involvement with this contract. I don't receive any financial benefit. And they've advised me that it doesn't pose a conflict, and that I should just disclose it.

Governor: Okay. All right.

Unidentified Male: I should also point out that I also met with MassMutual and any number of stakeholders about this on repeated occasions as well.

Governor: Okay. No, and I didn't meet with anybody. I read the materials, but that's all I have in front of me. But I think I got a lot more out of this hearing than I did the materials that were presented to me. So before I take a motion on contracts 1 through 30, members do you have any questions regarding any item before the Board on Agenda Item No. 10? All right then. The chair will accept a motion for approval of contracts 1 through 30.

Cortez Masto: All good for approval.

Miller: Second.

Davey: Mr. Chairman?

Governor: Yes.

Davey: Mr. Chairman, my name is Brian Davey, and I'm a member of the Deferred Compensation Committee, and I guess I'm feeling a little frustrated because no one has asked me any questions about this process. And one of my concerns going forward and hearing the comments now is that it seems like the process is under fire and under question because of my scoring. And no one has ever asked me why I changed a score or about my scoring, and I think as you can see, that the change was--despite the way it has been characterized by others, it was fairly minimal. I came here today because I feel like my integrity has been questioned by some of the folks that were protesting this decision. And I do have a couple notes that I made that I would like to make at some point, but I don't want to hold up the process either, and I want to see it go forward. But I am amazed that no one has ever--aside from a couple questions and discussions with Kim Perondi over the last several months, no one has ever asked me a question about this process, or my scoring, and my process in going through this.

And I also am the longest serving member on this committee, and no one has ever asked anything about the experience and knowledge that I've gained on this committee over these years. And I'm just concerned that questions are going to be raised about this process, which I think is very good and very valid, and we followed it precisely. And I gave our chairman a lot of credit for the way he handled it over the last year and a half, even though he and I have had many conflicts in the

past, and we do have conflicts about the history that you were given this morning. I have different ideas about that history. Some of his was by hearsay, but I was there. And we agreed long ago to stop talking about that history because of our conflicts about it, and we have adhered to that.

So, I apologize for the length of my comments, but I believe that they are important, that you know that I don't think there was anything wrong with this process. And I would really hate to see this--the purchasing process come under fire because of the alleged actions that I took or my alleged motivations or judgments. Thank you to all of you on the Board.

Governor: Thank you, Mr. Davey. And no one is questioning your integrity. As I said, we just want to ensure that there's a good process. I appreciate your service. I know that it's a lot of extra work. Given the testimony and the presentations today, I didn't think it was necessary to ask you questions because I'm satisfied with what I have heard. So, I hope you don't leave today thinking that your integrity has been questioned because it certainly hasn't been questioned by me or any other member of this Board. But as I said, it was somewhat of a unique situation, and this was something that we just needed to get all of the information out there, so that the Board can be in a position to be able to approve or disapprove the contract. So thank you for being here today.

So we are at the stage where the chair will accept a motion to approve contracts 1 through 30. Did you make a motion, Madam Attorney General?

Cortez Masto: Yes, I did.

Governor: Okay. Madam Attorney General has made a motion to approve. Is there a second?

Miller: Second.

Governor: Secretary of State has seconded the motion. Any questions or discussion on the motion.

Cortez Masto: No.

Governor: All in favor say aye.

Group: Aye.

Governor: The motion passes 3-0. Let's move on to Agenda Item No. 11, which are the master service agreements.

Clerk's Recommendation: I recommend approval.

Motion By:

Seconded By:

Vote:

Comments:

Governor:

***11. FOR POSSIBLE ACTION – MASTER SERVICE AGREEMENTS**

Twenty-four independent contracts were submitted to the Board for review and approval.

Governor: Ms. Teska.

Teska: Thank you, Governor. There are quite a few master service agreements on the Agenda today. That's because a couple of different large service areas, in particular, technology and consulting services were up for contract. There is one item that I think we would like to highlight on here, which is number 15, because it's a new program that we're starting. And I believe Keith Wells from fleet services is here to speak to this item. Try and end our meeting on a positive note.

Governor: Good morning, Mr. Wells. And again, there's no question with regard to the merits of this master service agreement. I just think--not think, but I appreciate your seeking other ways to save the state money, and entering into a leasing program is a way to do that.

Wells: I appreciate that, Governor.

[Crosstalk]

Wells: No. Good morning, Governor. For the record, Keith Wells, Fleet Services Administrator. That is the sole intent of this contract is to give us an avenue to pursue alternatives to buying vehicles and have real world experiences. The cities and counties, I've worked with them. They're excited to look into it. So I want to take, you know, over the next year, just slowly integrate this into our operation and see what works and what doesn't so the state can make informed, long-term decisions on the most cost-effective way to manage the fleet.

And having the cities being a part of that, too, really gives us a bigger picture of what's good and what doesn't work, and how to make this program successful. Because I think integrating leased vehicles versus owning is just a best practices approach to the state for a long-term fleet management solution, and I think it will have a great outcome.

Governor: And it could save us on maintenance as well, correct?

Wells: Yeah. It can save on maintenance. It can save on a lot of things. One of the things that I'm hoping it saves on is controlling the size of the fleet on a statewide basis. For example, I get requests from agencies that they'll have a grant for one year, and they need a vehicle for that one-year period. Well, I don't want to buy them a car, and that vehicle can creep and just integrate into my fleet for the long-term. If I lease them a car for the one-year period, then it goes away. It might be more expensive for that one-year time frame, but the long-term solution is the car is gone, or whatever it is. It gives us more opportunities and more flexibility to manage the state's fleet.

Governor: No, and I--again, I always want to encourage innovation and seeking ways to save the state money, but at the same time provide the best service.

Wells: Right.

Governor: As you said, what good does it do to have a car sitting in the fleet that we only needed for one year.

Wells: Absolutely.

Governor: Questions from Board members? All right. Thank you very much.

Wells: Thank you.

Governor: Anything else Ms. Teska?

Teska: No, that was the only item on the master service agreement.

Governor: Chair will accept a motion to approve master service agreements 1 through 24, described in Agenda Item No. 11.

Cortez Masto: Move for approval.

Miller: Second.

Governor: Attorney General has moved for approval. The Secretary of State has seconded the motion. All in favor say aye.

Group: Aye.

Governor: Motion passes 3-0. We'll move on to Agenda Item 12, information items.

Clerk's Recommendation: I recommend approval.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Comments:

Governor:

12. INFORMATION ITEM – CONTRACTS

Pursuant to AB 41 of the 2013 Legislative Session, the Clerk of the Board may approve all contract transactions for amounts less than \$50,000. Per direction from the August 13, 2013 meeting of the Board of Examiners, the Board wished to receive an informational item listing all approvals applicable to the new threshold (\$10,000 - \$49,999). Below is a list of all applicable

approvals for contracts and amendments approved from September 23, 2014 through October 21, 2014.

Twenty independent contracts were submitted to the Board for review.

Governor: Ms. Teska.

Teska: Thank you, Governor. These are the contracts that you see every month that have been approved that exceed the prior Board of Examiners threshold, which was \$10,000, but are below the current threshold, which is \$50,000. There are 20 such items on the Agenda this month, and we'll take any questions on any of those if you have any.

Governor: I have no questions. All right. Agenda Item 13, information item.

13. INFORMATION ITEM

A. Department of Conservation and Natural Resources – Division of State Lands

NRS 321.5954, the Division of State Lands is required to provide the Board of Examiners quarterly reports regarding lands or interests in lands transferred, sold, exchanged, or leased under the Tahoe Basin Act program. Also, pursuant to Chapter 355, Statutes of Nevada, 1993, at page 1153, the agency is to report quarterly on the status of real property or interests in real property transferred under the Lake Tahoe Mitigation Program. This submittal reports on program activities for the fiscal quarter ending September 30, 2014.

- **1989 Tahoe Basin Act**
 - There were no transfers of lands or interest in lands during the quarter.
- **Lake Tahoe Mitigation Program**
 - The agency reports that there were no acquisitions of land or interest during the quarter. However, two land coverage transactions did occur during the period. The transactions resulted in \$11,917 in proceeds for the Nevada Land Bank.

Teska: Last information item today is the quarterly report from Department of Conservation and Natural Resources, Division of State Lands. This is regarding lands or interest in lands transferred, sold, exchanged, or leased under the Tahoe Basin Act Program. And this is also--the second item, there was no items on that report. And the second item are the quarterly reports on the status of real property or interest in real property transferred under Lake Tahoe Mitigation Program. As you can see, there's a small amount added to the Nevada Land Bank.

Governor: Any questions?

14. BOARD MEMBERS' COMMENTS/PUBLIC COMMENTS

Governor: Agenda Item 14, any Board member comments? Public comment? Is there any member of the public here in Carson City that would like to provide public comment to the Board? Is there anyone present in Las Vegas that would like to provide public comment to the Board? Seeing none.

***15. FOR POSSIBLE ACTION – ADJOURNMENT**

Clerk’s Recommendation: I recommend approval.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Governor: Chair will accept a motion for adjournment.

Cortez Masto: Move to adjourn.

Miller: Second.

Governor: Attorney General has moved to adjourn. The Secretary of State has seconded the motion. All in favor say aye.

Group: Aye.

Governor: Motion passes 3-0. This meeting is adjourned. Thank you, ladies and gentlemen.

Respectfully submitted,



JULIA TESKA, CLERK

APPROVED:



GOVERNOR BRIAN SANDOVAL, CHAIRMAN



ATTORNEY GENERAL CATHERINE CORTEZ MASTO



SECRETARY OF STATE ROSS MILLER

**Public Comment
Submitted to the
November 12, 2014
BOE Meeting**

My name is Barbara Jewett. I am a retired officer from the Department of Public Safety and I have approximately \$190,000 in the general fund of Mass Mutual. It is my understanding that this fund makes up a large percentage of all of the money that employees have contributed to their deferred compensation savings. Consequently, when I heard that all of our savings were going to be transferred to VOYA and that there would no longer be a choice between two plans, I became very concerned and I began doing some research.

I learned two very significant things, the first of which is the history of VOYA. VOYA is not ING. ING is a huge multi-national banking conglomerate owned by the Dutch. It got into financial trouble in 2008 and was eventually ordered by the European Union to divest itself of its assets in the United States. As a result ING in the U.S. is no longer owned by the Dutch and is now an entirely new, publicly owned company (aka VOYA). The selling of stocks began in May of 2013 and will be complete by December, 2016. VOYA is not a new name for an old company, it is in all respects a brand new institution.

The second thing I learned is the difference between a publicly owned institution and a mutual insurance company, such as Mass Mutual. A publicly owned company, such as VOYA, is responsible to its stock holders. This means it is risk-oriented and driven by short-term profits. A mutual insurance company is responsible to its policy holders which means it is focused on long-term gain so, by its very nature, it must consider safety and security and not be short-sighted.

The difference between VOYA and Mass Mutual is a big deal because of everything that is going on in the world right now. This is not just my concern. In fact, the economic crisis in Europe and the unrest in the Middle East are listed as risk factors in the filing that VOYA had to submit to the Securities and Exchange Commission when it began selling stocks. Furthermore, VOYA has been around for a year and a half; Mass Mutual has been in business for over 150 years.

The bottom line is that the State needs to offer us a choice between plans. I do not want the number of available funds reduced because it would be easier to manage, or because the Committee believes too many funds are confusing for participants. More confusion will be generated if a fledgling institution becomes insolvent. If we are not going to be offered a choice between plans then it is incumbent upon the Committee to safeguard our savings and go with a solid, stable institution with a proven track record; one that can survive an economic crisis similar or worse than the crash of 2008. It is unacceptable to jeopardize the life savings of hundreds of employees by going with a company that has only been around for eighteen months. This is a preventable risk. I would urge the Committee to not get bogged down in logistics and remain focused on the big picture.

Thank You

Barbara Jewett Sparks, NV (775) 250-3176 DEF COMP November 4, 2014

In May, 2013, being the beneficiary of my ex-husband's account, Massachusetts Mutual, henceforth MM, transferred his account to me after his death. He had told me about a month before his retirement in 1999 that he had left me his beneficiary. Meanwhile, his Texas live in girlfriend's attorney wrote to MM alleging they lost documents which made her beneficiary in the late 1980's (we were married at that time), later alleged to be 1995. A subsequent letter was sent enclosing a copy of the girlfriend's Application for Letters of Administration to Texas Probate which included Application to Determine Heirship with a listing all assets including his MM account with a notation it's distribution was unknown. Deferred Compensation is a nonprobate asset. * The account had already been transferred to me according to the governing instrument. In August, 2013 MM ILLEGALLY FROZE MY ACCOUNT, seizing control from me claiming they feared a possibility of being required to make duplicate distributions even though they are protected by Nevada law as follows:

NRS 111.781 subsection 6 A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by the provisions of this section or for having taken any other action in good faith reliance on the validity of the governing instrument before the payor or other third party received written or actual notice of any event affecting a beneficiary designation. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written or actual notice of a claimed forfeiture or revocation under this section. See also: NRS41B.400

MM's responsibility to me is defined as follows:

NRS111.757 Transfer to designated beneficiary according to beneficiary designation or other direction. When a transferring entity accepts a beneficiary designation or beneficiary assignment or registers in beneficiary form certain property, the acceptance or registration constitutes the agreement of the owner and transferring entity that, unless the beneficiary designation is revoked or changed before the death of the owner, on proof of the death of the owner and compliance with the transferring entity's requirements for showing proof of entitlement, the property will be transferred to and placed in the name **an control** of the beneficiary in accordance with the beneficiary designation or transfer-on-death direction, the agreement of the parties and the provisions of NRS 111.751 to 111.779, inclusive. (Added to NRS by 2011, 1421)

I requested assistance from NDC in this matter. After investigation, I was told MM had taken the action of seizing control of my account in response to a COURT ORDER which is clearly NOT true; however that explanation was accepted by NDC without evidence and caused NDC to drop the matter. I believe if MM had truthfully disclosed what had occurred NDC could and would have intervened to resolve this matter but because MM misrepresented to NDC the documents received, I had no recourse but to file suit against MM, which I did in October, 2013 at unnecessary legal expense. Their Initial Disclosures later revealed they had not received a Court Order. MM then counter filed against the girlfriend. MM has petitioned the court three times to allow transfer of my account funds to the court against my will which would cost me exorbitant income tax obligation for a lump sum distribution without funds to pay, loss of 3% interest, and the free stock market investment benefits and other services which could not be restored.

MM requests the court to render them harmless from future court actions in this matter. This would be tantamount to confiscation of my account, taking my account out of my name (they already seized

control) and placing it in the name and control of the court; and using the court to shield them from legal remedy for their illegal confiscation of my account. MM's third such request is currently pending the Court's decision.

In the litigation of my inherited 370,000 account, I stand to lose half or more in court costs and attorney's fees if resolved on the September, 2015 hearing date. Meanwhile I am being ordered to attend a Settlement Hearing as though the legal beneficiary were in question.

This could happen to YOU or any participant of NDC because of the failure of MM to carry out their fiduciary contract responsibilities to: 1. NDC who contracted with them to administer accounts in accordance with the Plan Document and Nevada Law, 2. To the participant who made beneficiary designation with full expectations his designation would be honored, 3. and to the legal beneficiary in whose name and control the property should have and was initially placed.

Because MM failed to adhere to Nevada's laws and the Plan Document, it was necessary to litigate in order to retain what is mine. This could happen to anyone having an account with them. Nevada State employees should not be subjected to such arbitrary, illegal and costly misdeeds.

It appears to me that MM's contract which they purchased from Hartford ends 12/31/14 and I believe it would be prudent to take these matters under consideration when contemplating a renewal of contract.

NRS111.707 "Contract" defined. "Contract" includes an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account, custodial agreement, deposit agreement, compensation agreement, deferred compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement or other written instrument of a similar nature. (Added to NRS by 2011, 1418).

Excerpt from NDC website FAQ: **What happens to my accounts when I die?**

Your **designated beneficiary(ies)** will receive the remaining value of your account, if any. Your beneficiary must contact a MassMutual/Voya Financial representative to request a distribution.

* **NRS111.721 "Nonprobate transfer" defined.**

"Nonprobate transfer" means a transfer of any property or interest in property from a decedent to one or more other persons by operation of law or by contract that is effective upon the death of the decedent and includes, without limitation:

1.
A transfer by right of survivorship, including a transfer pursuant to subsection 1 of (a) NRS 115.060;
A transfer by deed upon death pursuant to (b) NRS 111.655 to 111.699, inclusive; and
A security registered as transferable on the death of a person. (c)

The term does not include:

2.
Property that is subject to administration in probate of the estate of the decedent; (a)
Property that is set aside, without administration, pursuant to (b) NRS 146.070; and
Property transferred pursuant to an affidavit as authorized by (c) NRS 146.080.

(Added to NRS by 2011, 1418)

For further information contact: Trudy Stanford at 882-9574 or mybridgy@live.com

Jennifer Burry

From: Budget Division
Sent: Wednesday, November 05, 2014 2:43 PM
To: Lesley Henrie
Cc: Jennifer Burry
Subject: FW: Nevada Deferred Compensation contract
Attachments: ErvinComments_BoardOfExaminers_20141105i.pdf

From: Kent Ervin [<mailto:kentmervin@gmail.com>]
Sent: Wednesday, November 05, 2014 2:31 PM
To: Budget Division
Subject: Fwd: Nevada Deferred Compensation contract

Dear Ms. Teska,

The e-mail address I had found for Governor Sandoval did not work. Could you please make sure that he and the other members of of the Board of Examiners receive this communication including the attachment? Could you also please confirm receipt?

Thank you.

Best regards,
Kent Ervin

----- Forwarded message -----

From: Kent Ervin <kentmervin@gmail.com>
Date: Wed, Nov 5, 2014 at 2:24 PM
Subject: Nevada Deferred Compensation contract
To: bsandoval@gov.nv.gov
Cc: budget@admin.nv.gov, sosmail@sos.nv.gov, aginfo@ag.nv.gov, "SChesney@ag.nv.gov" <SChesney@ag.nv.gov>, Robert Boehmer <rboehmer@defcomp.nv.gov>

The Honorable Brian Sandoval

Governor of Nevada

State Capitol Building

101 North Carson Street

Carson City, Nevada 89701

Dear Governor Sandoval:

5 November 2014

The Honorable Brian Sandoval
Governor of Nevada
State Capitol Building
101 North Carson Street
Carson City, Nevada 89701

Dear Governor Sandoval:

I wish to submit the attached public comments for consideration of the Board of Examiners at its meeting on November 12, 2014, regarding approval of the recordkeeping contract for the Nevada Deferred Compensation Program.

As an active participant in the NDC Program who has closely followed the actions of the NDC Committee over the past several years, it is distressing to me that an active campaign by a losing bidder is underway to subvert the NDC Committee's well-run Request for Proposals and contract award process. Not awarding the contract according to the legitimate outcome of the procurement process would cost participants higher fees and lower crediting rates over the next five years and would represent a fiduciary breach by the State of Nevada.

Respectfully yours,



Kent M. Ervin

cc: Ross Miller, Secretary of State
Catherine Cortez Masto, Attorney General
Julia Teska, Clerk for the Board of Examiners

MassMutual has also presented to you a highly complex statistical analysis of the RFP scoring. This is based on a false premise, namely that the State Purchasing process requires that individual scorers meet certain sophisticated statistical tests. The procurement process only requires that all six evaluators receive the same instructions, that they have the same opportunity to adjust their scores within the allowed ranges, and that they justify those scores in writing. A simpler analysis of the scores (Attachment B) shows the “suspect” Evaluator #3, Mr. Brian Davie, actually had average scores for the three finalists nearly equal to the overall average and his standard deviation (a simple measure of the spread of the scores) is nearly equal to the standard deviation for Evaluator #4 (Mr. David Olsen). MassMutual’s suggestion for a different scoring mechanism is simply asking for different rules in their favor after the fact. But even if it were a simple majority decision by the NDC Committee, three of the five members of the Committee (Mr. Scott Sisco, Mr. Steve Woodbury, and Mr. Davie) scored ING/Voya higher than MassMutual.

MassMutual now offers to nearly (not quite) match ING/Voya’s crediting rate over five years, per Mr. Barnes’s letter of 10/30/2014. Obviously, a fair bidding process does not allow a company to come in with a higher bid than their “best and final” offer after the other proposals are public. Their proposal to extend both current contracts is unworkable because ING/Voya could not afford to run the program on its current asset base with the pricing offered for the single-recordkeeper contract or probably even its current fees. Either pricing would go up from the current contract for Voya participants, Voya would be forced to withdraw from the program, or litigation would ensue.

MassMutual has a disturbing history of using a political process to circumvent results of a negative RFP decision (see [Las Vegas City Council minutes](#), May 15, 2013, agenda items 10, video 0:56-1:01, and 55, video 1:39-4:35). They appear to have regularly recruited their NDC participants, with whom they have an intimate financial relationship, to testify at NDC meetings on their behalf. Mr. Steve Watson, long-time consultant for MassMutual/Hartford and former lobbyist for The Hartford, has testified as a member of the Retired Public Employees of Nevada, both to the NDC and to the Las Vegas City Council. No company should be allowed to use lobbying efforts to obstruct normal state procurement and contracting procedures. Why would any other company bother to bid in the future if the process is perceived as politically fixed in favor of one company? Already, two major players in the 457 plan market, Nationwide and Great-West, did not rebid in 2014 after being finalists in the failed 2012 RFP process.

The future health of the Nevada Deferred Compensation Program depends on a successful RFP process and award of the contract. Interference with the process at this point would be a breach of the State’s fiduciary duty to act in the best interest of participants as would be determined by an independent expert and following a prudent process. If the Board of Examiners chooses a different course, then its members effectively become the fiduciary decision makers and should be held accountable as fiduciaries by participants.

Thank you for the opportunity to provide my input on this issue.

Attachment B. Finalist Scoring Summary

HIGH SCORES

	Evaluators						TOTAL
	#1 Oliver	#2 Woodbury	#3 Davie	#4 Olsen	#5 Sisco	#6 Romo	
ING/Voya							
1. Experience and Financial Stability	5	7	9	8	9	9	42
2. Record Keeping and Administration	10	8	10	8	8	8	83
3. Participant Services	25	8	10	9	8	8	213
4. Overall Response	5	8	9	9	8	8	43
5. Stable Value	40	7	10	9	9	8	353
5. Cost Structure / Vendor Fee	15	9	10	9	9	8	135
TOTAL WEIGHTED SCORE	100	770	990	885	860	805	868 ING/Voya

MassMutual							
1. Experience and Financial Stability	5	8	6	9	9	9	42
2. Record Keeping and Administration	10	9	6	8	7	9	80
3. Participant Services	25	9	6	9	8	9	204
4. Overall Response	5	8	6	9	8	9	41
5. Stable Value	40	8	9	9	8	9	347
5. Cost Structure / Vendor Fee	15	10	9	10	10	10	148
TOTAL WEIGHTED SCORE	100	865	765	905	825	915	861 MassMutual

PRUDENTIAL							
1. Experience and Financial Stability	5	8	9	9	8	9	43
2. Record Keeping and Administration	10	7	8	8	8	8	78
3. Participant Services	25	7	6	8	8	6	179
4. Overall Response	5	8	3	5	7	6	31
5. Stable Value	40	5	5	3	4	5	187
5. Cost Structure / Vendor Fee	15	5	5	4	5	4	70
TOTAL WEIGHTED SCORE	100	600	565	530	590	565	588 Prudential

Average scores for three finalists
Standard deviation of scores for three finalists

Average scores for three finalists	745	822	773	773	758	762	772
Standard deviation of scores for three finalists	134	127	213	211	147	179	179

[Oral public comments for Board of Examiners, 11/12/2014]

Thank you, Governor Sandoval and members of the Board. My name is Kent Ervin E-R-V-I N, with comments for the record about contract #30, the Nevada Deferred Compensation (NDC) recordkeeper contract. I am on the faculty in Chemistry at UNR and a member of the NSHE Retirement Plan Advisory Committee, but am representing only myself as an active participant in the NDC Program. I have submitted written comments and so will abbreviate my oral comments.

As a UNR faculty member, I will have no Social Security and no PERS pension when I retire. Rather, I will have to depend solely on my defined contribution retirement accounts. That's why I am so passionate about the health of our retirement programs, including NDC. A substantial part of my retirement savings is invested my NDC 457 plan and I cannot make withdrawals until retirement.

I have been a critic of the NDC program because of its failed Request for Proposals (RFP) for record keepers in 2012, which has cost participants significantly higher fees and lower earnings over the past two years. I am happy to observe that this year the NDC program conducted a thorough and defensible RFP process. The RFP was led by the State Purchasing Office as required by statute. The Committee wisely chose, at an open meeting last Spring, to go to a single record keeper to leverage higher service at lower cost, both for the recordkeeping contract and for future administrative and auditing costs.

I have no personal loyalty to any provider company. In fact, I transferred all my 457 assets from ING (which is now Voya) to MassMutual in 2013 because MassMutual is currently providing lower fees on the index funds that I mostly invest in. I have reviewed the proposals from both vendors, however, and it is clear to me that Voya submitted the stronger bid on both services and pricing. MassMutual's appeal statement is simply not a fair comparison of the two bids.

MassMutual has also presented to you a highly complex statistical analysis of the RFP scoring from one of my accomplished colleagues. This is based on the false premise, however, that the individual scores are expected to satisfy any particular statistical test. All the evaluators

charged with that duty and why they have hired an independent consultant as an expert co-fiduciary to advise them. If the Board of Examiners chooses a different course, then you effectively become the fiduciary decision makers and you should be held accountable as fiduciaries.

In conclusion, the Board of Examiners should formally approve NDC's new, favorable contract with the legitimate winner of the RFP, namely ING/Voya Financial, and should inform MassMutual that they are expected to abide by the normal procurement process like any other vendor.

Thank you very much for the opportunity to provide my comments on this issue. I would be happy to answer any questions.

November 4, 2014

Board of Examiners
State of Nevada

Dear Board Members:

We, current members of the Carson City Chapter of Retired Public Employees of Nevada at our November 4, 2014 meeting, are writing in regards to the Nevada Deferred Compensation plan RFP #3119 and the action to approve the contract with VOYA Financial that is on this Agenda. While State Purchasing has built in some safeguards to protect the integrity of the scoring process, it is clear that there is an anomaly in the scoring. One of the six evaluators, evaluator #3, scored one vendor so high and another vendor low that his score negated what the other evaluators had scored and determined the outcome. State Purchasing uses a total score system with a weighted average to account for normal deviations among scorers but evaluator #3 was not within normal deviations of the other scorers so the weight average theory could not apply. We, as retirees, argue that our representatives' vote as well as other evaluators' vote were negated because of evaluator #3 and ultimately didn't matter. We would also point out that this was the second time evaluator #3 has done this. The previous RFP was rescinded, in part, because of scoring irregularities and we felt that by having State Purchasing involved, evaluator #3 would not be allowed to manipulate the process. We seek your help in correcting this situation and ask you not approve the contract before you.

Sincerely,

Ellen R. Westphal
Keyaki Nishikawa
Fred Luwe
Frances Ellis
Sandra Sedgens

Linda Hayes
Roger Brennan
M. Wade
Frank J. Purge

October 22, 2014

Scott Sisco, Chairman
State of Nevada Deferred Compensation Committee

Dear Mr. Sisco:

I have attached a letter from the Carson City Chapter of RPEN to the State Board of Examiners requesting their assistance in correcting the scoring anomaly that occurred during RFP #3119 which I request be read at your next meeting. RPEN members at our November 4th meeting will sign this letter.

While the DC committee voted to approve the scoring committees recommendation, we believe you did so based on State Purchasing's advice that the total score must be used. In our opinion, the committee should have rejected that based on the major deviation of scorer #3 compared to the other five scorers. I, therefore, ask for the committee's reconsideration of their vote on RFP #3119, to rescind the contract from the BOE and to correct the process.

Sincerely,



Ellen R. Westphal

President

Carson City Chapter

Retired Public Employees of Nevada

cc: State Board of Examiners

Report on

**Statistical Analysis of
Nevada Deferred Compensation Committee decision
regarding the award of the contract pursuant to
Request for Proposals RFP 3119 – 457(b)**

Submitted to James Barnes
on October 27, 2014

by Dr. Ilya Zaliapin
Associate Professor
Department of Mathematics and Statistics
University of Nevada Reno
Reno NV 89557
zal@unr.edu
775-784-6077

1. Statement of Purpose

This report is prepared in response to a request from MassMutual representative, Mr. James Barnes, who is in the process of appealing the decision of the Nevada Deferred Compensation Committee regarding the award of the contract pursuant to Request for Proposals RFP 3119 – 457(b). The report aims at substantiating the claim of **Section 2** of the **Notice of Appeal**.

Specifically, the report provides statistical evidence in support of the following **Statements**:

- (i) The scores of Evaluator #3 in both the 1st and final rounds of evaluation fall outside the reasonably expected confidence intervals that take into account natural variability of Evaluator opinions;
- (ii) The final decision of the Committee was overturned by the scores of Evaluator #3 and not by the consensus vote of the other five Evaluators;
- (iii) The final ranking of the companies changes, bringing MassMutual to rank 1, after correcting the reported fluctuations of the scores of Evaluator #3.

2. Introduction and Motivation

Choosing a winner among several competitors by a group of evaluators is a well-known problem with a long history in political, social, and mathematical sciences (e.g. *Balinski and Laraki*, 2011, 2007; *Gaertner and Xu*, 2012). Active research during the last century revealed many important and not immediately clear properties of the group ranking. For the purpose of the present report, the most important conclusion is that there can be no self-consistent and non-contradictory method for electing and ranking, unless special measures are undertaken to remove the outlying opinions. This conclusion was expressed by Sir Francis Galton in 1907 (*Galton*, 1907; *Levy and Peart*, 2002) and has been substantiated during the past century.

The present report provide statistical evidence in support of the statements (i) that the absence of a mechanism for removing statistical outliers among the Evaluator scores has affected the scoring process for the RFP 3119 – 457(b), and (ii) that the Committee evaluation results would change if such a mechanism was implemented.

3. Scoring Process

We start by briefly describing the scoring process implemented by the Nevada Deferred Compensation Committee for evaluating proposal submitted in response to RFP 3119 – 457(b). An Evaluation Committee (EC) of six members was assembled to evaluate four proposals submitted in response to RFP 3119 – 457(b). The scoring was done in accordance with the “Evaluation Guidelines for Procurement of Services”. Specifically, each proposal was evaluated in six categories by each of the six EC members. See **Appendix A** for the list of categories being evaluated. Each proposal received a score from 0 to 10 in each category, according to the Scoring System Summary shown in **Appendix B**. The individual scores were weighted and averaged to come up with a single

consensus score for each proposal. The weights used by the EC are shown in **Appendix A**. The finalist was determined based on the final consensus score.

3. Summary of Findings

The report is aimed at supporting the three main **Statements** listed in Section 1 above. These statements are supported by the following specific statistical **Findings**. (**TABLE 1** shows the relations among the report statements and findings.)

- A. Evaluator #3 had issued unexpectedly large number of extreme scores (largest or smallest among the six Evaluators): 7 extreme scores in 8 rounds of scoring (four companies, two evaluation rounds). Assuming that each Evaluator has the same chance of issuing the maximal or minimal score for a given proposal, the probability of reproducing the number of extreme scores actually issued by Evaluator #3 is 0.0024. This means that such situation may occur naturally one time out of about 400 evaluations.

- B. The weighted average scores issued by Evaluator #3 fall outside of reasonable confidence intervals suggested by the weighted average scores of the other five Evaluators. In 7 out of 8 scorings, the weighted average scores of Evaluator #3 are outside of 98% confidence intervals estimated from the scores of the other five judges. When scoring a single proposal, such situation may naturally occur one time out of 50. In scoring 8 proposals, such situation may naturally occur one time out of 10^{11} , which means that issuing the scores of Evaluator #3 is practically impossible under the assumption of natural statistical variability of scores around some consensus values.

- C. Removing the scores of Evaluator #3 from consideration (that is, doing the evaluation with a committee of the five other Evaluators) leads to the highest score assigned to MassMutual in both 1st and final evaluations.

- D. Replacing the scores of Evaluator #3 with the scores of any other Evaluator (in particular, the other two Evaluators who ranked ING higher than MassMutual) leads to the highest consensus score assigned to MassMutual, in both 1st and final evaluations.

TABLE 1
*Relation among the report general Statements (Section 1)
and specific statistical Findings (Sections 4,5)*

	Statement (i)	Statement (ii)	Statement (iii)
Finding A	✓		
Finding B	✓		
Finding C		✓	✓
Finding D		✓	✓

5. Technical Description

This section provides technical details of the analyses that led to the findings in **Section 4** above.

5.1 Finding A

We find that the Evaluator #3 had issued an abnormally large number of *extreme scores*. An *extreme score* is defined as the maximal or minimal weighed average score among the weighted average scores of the six Evaluators for a particular proposal. There were 8 evaluations (four in the 1st and four in the final evaluation). In 7 out of 8 evaluations Evaluator #3 issued extreme scores. For comparison, the second largest number of the extreme scores was observed for Evaluator #4 who issued 4 extreme scores. The summary of the extreme scores for all Evaluators is presented in **TABLE 2**.

To evaluate the possibility of this outcome happening naturally (by chance), we use the following assumptions. Assume that each Evaluator has equal chance of issuing an extreme score when evaluating a particular randomly chosen proposal. Indeed, when we consider a given company (say, ING), different Evaluators have different expert opinions, so their chances of issuing an extreme score will differ. Nevertheless, the facts that we (i) count both minimal and maximal scores, and (ii) that we consider a *randomly chosen* proposal, will compensate for the existence of personal Evaluator opinions.

Under the above assumptions, the probability for a given Evaluator to issue the maximal score for a given company is 1/6 (symmetric among all the Evaluators). The probability of issuing the minimal score is also 1/6 for the same reason. The probability of issuing an extreme score (the maximal or the minimal score) is hence 1/6+1/6=1/3 (since one cannot issue the maximal and minimal scores at the same time, the probabilities are simply added).

To count the number of extreme scores that one can naturally issue in 8 scoring rounds, we assume that the scorings of different companies are independent (more specifically, the fact that a given Evaluator gives an extreme score for one company does not affect his/her chances of giving an extreme score for another company).

As a result, we use the Binomial distribution with 8 trials and probability of success $p = 1/3$ to model the number E of naturally occurring extreme scores:

$$P(E = k) = \frac{8!}{k!(8-k)!} \left(\frac{1}{3}\right)^k \left(\frac{2}{3}\right)^{8-k}.$$

The respective probabilities for each evaluator are given in the bottom line of **TABLE 2**. Evaluator #3 is the only person whose probability is way below 0.01 (1%). Specifically, the probability of issuing 7 extreme scores in 8 scorings according to the model above is 0.0024, which means that this may happen naturally and by chance in one case out of 416. In other words, this only could be seen in one proposal evaluation out of 416.

TABLE 2

Number of times the evaluator gives the maximal or minimal score to a company. The bottom line shows the probability P of observing the total number of extreme scores under a Binomial model of natural variability. Green indicates observations that have less than 1% chance of occurrence according to the model.

	Eval. 1	Eval. 2	Eval. 3	Eval. 4	Eval. 5	Eval. 6
1 st round	1	1	4	2	0	0
Final	1	1	3	2	0	1
Total	2	2	7	4	0	1
P	0.27	0.27	0.0024	0.17	0.04	0.16

5.2 Finding B

We find that the weighted average scores issued by Evaluator #3 in both 1st round and final evaluation deviate significantly from the weighted average scores issued by the other five Evaluators.

Specifically, we perform the following experiment. Consider the six weighted average scores $(s_1, s_2, s_3, s_4, s_5, s_6)$. Remove the score s_i of Evaluator # i , and fit a Normal distribution to the remaining 5 scores; denote the estimated cumulative distribution function by $N_i(x)$. Compute the probability p that a Normal random variable with distribution $N_i(x)$ has a larger deviation from the estimated mean than s_i . This probability is called *relative quantile*.

For example: In the final evaluation of MassMutual the six scores are (865,890,765,905,825,915). Remove the score by Evaluator #3 ($s_3=765$). The mean of the remaining 5 scores is 880, the standard deviation is 36.05. The probability that a Normal random variable with mean 880 and standard deviation 36.06 takes a value smaller than 765 is 0.00071. This means that the score by Evaluator #3 does not belong to the population of scores issued by the other evaluators (formally speaking this score can be observed once in 1400 evaluations).

We perform the above experiment for every evaluation (8 total) and every Evaluator (6 total), which results in a set of $6 \times 8 = 48$ relative quantiles. These quantiles are shown below in **TABLE 3**. We observe that the weighted average scores of Evaluator #3 deviate consistently and significantly from the weighted average scores by the other Evaluators. Specifically, the scores of Evaluator #3 are significantly low (below average) for Valic,

Prudential, and MasMutual, and significantly high (above average) for ING. The only other quantile that does not fall within the 99% confidence interval (the number above 0.99 or below 0.01) is that for Evaluator #2 for Prudential.

We notice that in a set of 48 relative quantiles, the probability of observing 1 value that falls out of a 99% confidence interval is 0.3, which suggests that the observation for Evaluator #2 does not trigger a red flag. At the same time, the probability of observing more than 3 such values is improbable (less than 1% chance). This means that consistently abnormal (small or large) relative quantiles for Evaluator #3 are highly improbable under the assumption of natural statistical variability of the weighted average scores.

TABLE 3

Relative quantiles for weighted average scores (see experiment description in Section 5.2). Green cells indicate abnormal relative quantiles (above 0.99 or below 0.01).

(3.1) Relative quantiles: Final Scores

	Eval. 1	Eval. 2	Eval. 3	Eval. 4	Eval. 5	Eval. 6
Valic	0.2796	0.8735	0.0044	0.8956	0.7012	0.3529
Prudential	0.6081	0.9999	0.3075	0.0634	0.5217	0.3075
MassMutual	0.5313	0.7149	0.0007	0.8159	0.2389	0.8757
ING	0.0402	0.6733	0.9961	0.5921	0.4538	0.1683

(3.2) Relative quantiles: 1st Round

	Eval. 1	Eval. 2	Eval. 3	Eval. 4	Eval. 5	Eval. 6
Valic	0.2796	0.8735	0.0044	0.8956	0.7012	0.3529
Prudential	0.5137	0.9955	0.0088	0.3115	0.6356	0.5137
MassMutual	0.3967	0.7754	0.0005	0.947	0.3967	0.6288
ING	0.1093	0.443	0.9998	0.7233	0.3308	0.1996

5.3 Finding C

Given the fact that the scores of Evaluator #3 deviate significantly from the scores of the other five Evaluators, we proceed with examining the overall scoring results if the results of Evaluator #3 are dismissed. Namely, we compute the consensus weighted average scores for each company in 1st evaluation and final evaluation using the scores of the five Evaluators, excluding Evaluator #3. The results are presented in **TABLE 4**.

The table shows that the five Evaluators come to the same consistent conclusion in both evaluation rounds: (i) MassMutual is ranked the best in both rounds of evaluation, (ii) The rankings for the four companies are the same in 1st and final rounds, (iii) The difference between the first and second place is at least 36 points.

TABLE 4
Weighted average scores for the five Evaluators excluding Evaluator #3.
The winner is highlighted in green.

		Eval. 1	Eval. 2	Eval. 4	Eval. 5	Eval. 6	Average	Rank
1 st round	Valic	365	570	580	505	390	482	4
	Prudential	565	645	540	580	565	579	3
	MassMutual	865	890	905	865	880	881	1
	ING	715	780	830	760	735	764	2
Final evaluation	Valic	365	570	580	505	390	482	4
	Prudential	600	675	530	590	565	592	3
	MassMutual	865	890	905	825	915	880	1
	ING	770	900	885	860	805	844	2

5.4 Finding D

Given the fact that the scores of Evaluator #3 deviate significantly from the scores of the other five Evaluators, we proceed with examining the overall scoring results if the scores of Evaluator #3 are replaced by the scores of another Evaluator. Since Evaluator #3 ranked ING higher than MassMutual, we replace his scores with the scores of the other two Evaluators who ranked ING higher than MassMutual in the final evaluation: Evaluator #2 and Evaluator #5. (Notice that in the 1st evaluation all Evaluators except Evaluator #3 ranked MassMutual higher than ING). The results are shown in TABLE 4.

The results show that replacing the scores of Evaluator #3 with scores of any other Evaluator leads to the following consistent conclusions: (i) MassMutual is ranked the best in both rounds of evaluation, (ii) The rankings for the four companies are the same in 1st and final rounds, (iii) The difference between the first and second place is at least 29 points.

TABLE 5

Weighted average scores in the experiment where scores of Evaluator #3 are replaced with scores of another Evaluator who ranked ING higher than MassMutual in the final evaluation. The winner is highlighted in green.

(5.1) Evaluator #3 is replaced with Evaluator #2

		Eval. 1	Eval. 2	Eval. 2	Eval. 4	Eval. 5	Eval. 6	Average	Rank
1 st round	Valic	365	570	570	580	505	390	497	4
	Prudential	565	645	645	540	580	565	590	3
	MassMutual	865	890	890	905	865	880	882	1
	ING	715	780	780	830	760	735	767	2
Final evaluation	Valic	365	570	570	580	505	390	497	4
	Prudential	600	675	675	530	590	565	606	3
	MassMutual	865	890	890	905	825	915	882	1
	ING	770	900	900	885	860	805	853	2

(5.2) Evaluator #3 is replaced with Evaluator #5

		Eval. 1	Eval. 2	Eval. 5	Eval. 4	Eval. 5	Eval. 6	Average	Rank
1 st round	Valic	365	570	505	580	505	390	486	4
	Prudential	565	645	580	540	580	565	579	3
	MassMutual	865	890	865	905	865	880	878	1
	ING	715	780	760	830	760	735	763	2
Final evaluation	Valic	365	570	505	580	505	390	486	4
	Prudential	600	675	590	530	590	565	592	3
	MassMutual	865	890	825	905	825	915	871	1
	ING	770	900	860	885	860	805	847	2

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Appendix A

Evaluation categories with respective weights

1. Experience and Financial Stability	5
2. Record Keeping and Administration	10
3. Participant Services	25
4. Overall Response	5
5. Stable Value	40
5. Cost Structure / Vendor Fee	15

Appendix B

Sample Scoring System Summary

Either		Description
Percentage of Points Available Method	Weighted Scores Method	
100%	10	Exceptional
90%	9	Exceeds Minimum Requirements
80%	8	
70%	7	
60%	6	
50%	5	Meets Minimum Requirements
40%	4	Fails to Meet Minimum Requirements
30%	3	
20%	2	
10%	1	Unacceptable
0	0	