

Approved Minutes
Commonwealth Competition Council
Wednesday, November 14, 2007, 10AM
General Assembly Building,
3 East Conference Room
Richmond

Members present:

Senator Emmett W. Hanger, Jr., Chairman
Geoffrey Segal, Vice Chairman
Marian M. Pegram
Christopher Andreano
Delegate Thomas Davis Rust
Beverly B. Davis
David A. Von Moll
Lana Ingram Digges
Sara Redding Wilson

Members absent:

Robert A. Archer
Delegate Timothy D. Hugo
Roger E. Ortega, Sr.
Kim Y. Farrar
Barry R. Green
Senator J. Brandon Bell, II

Notice of the meeting appeared on the Commonwealth Calendar on the Internet. A quorum was present. Senator Hanger presided over the meeting.

Public Comment

None

Minutes

The minutes of the September 19, 2007, meeting of the Council were approved as distributed. In addition, draft minutes appear on the Internet as soon as possible but not later than ten working days following the meeting in accordance with § 2.2-3707.1 of the Code of Virginia. In addition, Commonwealth Competition Council minutes are being posted in accordance with the above to the Council web page at <http://www.egovcompetition.com>.

Issues Pertaining to COMPETE and its Conveyance to Thomas Jefferson Institute for Public Policy

Ms. Carrie Nee, Assistant Attorney General of the Office of the Attorney General, was invited to discuss options regarding the request from the Thomas Jefferson Institute for Public Policy (hereafter referred to as "the Institute") to distribute the Commonwealth Competition Council's COMPETE Materials. Concerns regarding the licensing issues of the materials arose in the Council's last meeting of September 19, 2007.

In regards to the question of legal issues, Ms. Nee stated that the Council's response would be contingent upon the time and energy that the Council would like to expend. Ms. Nee presented the following considerations:

- The software disk is outdated so securing a drive to run the software will require effort
- The Institute is not going to charge for the license – their interest in the software is purely as a vehicle for distributing the program to localities
- The Institute will charge production costs for distributing the software

Ms. Nee presented the following required and recommended steps prior to distributing the COMPETE Materials:

- The Council will need approval from the Secretary of Administration to license or release the intellectual property out of state before the Council can proceed with distributing the materials
- The COMPETE materials contain a statement of acknowledgement for the work of Cherry, Bekaert, and Holland in developing the materials. The Council should obtain an assignment of rights from this accounting firm before distributing the materials
- The software was created in 1996 and has not been updated since this time. The Council should update the materials to make them consistent with the Council's current goals and staffing before distributing the materials

Ms. Nee presented the following possible Council responses to the request from the Institute to distribute the COMPETE Materials:

1. Dedicate the materials to the public domain
2. Assign the Council's interests in the materials to the Thomas Jefferson Institute or the author of the work
3. Develop a licensing program
4. Decide not to distribute the materials

Mr. Von Moll asked if all of the possible Council responses required approval from the Secretary of Administration to release the intellectual property out of state. Ms. Nee responded by stating that all possible council responses to the request would require the approval of the Secretary of Administration to release the intellectual property out of state. Delegate Rust asked about what the COMPETE program is and what it provides. Mr. Gentile, Executive Director of the Council responded that the software determines if it would be cost beneficial to outsource an activity – it provides a cost benefit analysis.

Mr. Von Moll asked if the state was currently using the software and if we [the Council] were perhaps trying to promote something that is outdated. Mr. Gentile responded that the state is not currently using the software and has not used it for five to six years. However, he added that the Institute finds value in the product. Senator Hanger remarked that the product was determined to be useful but was left on the shelf and became outdated. He stated that the Thomas Jefferson Institute for Public Policy may have the ability to update it. He requested that Council staff invite someone from the Institute to present at the next Council meeting to see if the Institute wants to update the product and to determine if they are convinced that the product is useful. Mr. Gentile remarked that he had invited Mr. Michael W. Thompson, President and Chairman of the Institute to today's meeting but that he was unable to attend.

Ms. Pegram asked "how much did we (the Council) spending developing the software or was there a value of the contract with the firm (Cherry, et al.) that developed it?" Senator Hanger responded that his understanding was that the firm was hired to do a job but that they did not retain any rights. Mr. Gentile remarked that he does not have record of the contract costs with the firm but that he will call them to see if they have record of the costs.

Senator Hanger asked if the Council could retain rights but enter into an agreement with the Institute to market the product. Ms. Nee responded that in order for the Council to retain their rights, they would need to develop a licensing program. Ms. Nee explained that the agreement will need to include what the Council expects the Institute to do and what they convey to others. Ms. Nee added that once the Council starts distributing the product on a larger basis that they will need to protect their interests. Senator Hanger stated that the “we [the Council] don’t need to protect our interests.” Ms. Davis asked, “Is someone going to make a profit for distributing the software?” Ms. Nee responded that the only fee is the cost of production – for recouping expenses. Delegate Rust added that no one is currently publicizing the software and there are currently no fees involved. Ms. Nee remarked that the Council could associate a fee. Delegate Rust clarified that the Institute would continue to not charge a fee for the software but would publicize the software. Mr. Segal remarked that the Institute is a non-profit organization and as such cannot make a profit but that general funds may be involved. Ms. Digges asked, “Couldn’t the Institute just use it if we dedicate the materials to the public domain?” Mr. Segal responded that if the Council retains the license then the Institute would have more of an incentive to update the software.

Senator Hanger asked Ms. Nee if she would have time to work with the Council in drafting an agreement with the Institute that will establish no specific performance criteria, where the Institute will operate in good faith and with little to no cost. Ms. Nee stated that she was available to assist the Council in development of the agreement.

Senator Hanger asked if the Council wanted to move forward. Mr. Gentile asked for clarification of the motion – “was it to invite Mr. Thompson of the Institute to the next meeting or to develop a marketing agreement?” Senator Hanger stated that they are voting for a tentative letter of agreement between the Council and the Institute – a marketing agreement. Ms. Wilson moved and Mr. Segal seconded the motion. Delegate Rust asked, “Which response are we moving forward with?” Ms. Nee responded that it is the third one – to develop a licensing program because anytime you have a contract, you have to go through the steps as stated with option three. Senator Hanger remarked that it is actually a hybrid of numbers two and three – to assign the Council’s interests in the materials to the Institute and to develop a licensing program. He stated that the motion is not to transfer the license but to allow them to market the software on behalf of the Council – to have the Institute serve as our agent. Ms. Nee responded that the Institute cannot contract on behalf of the Commonwealth. Senator Hanger stated that he envisioned the Institute as a non-paid employee so that the Council would not have to give them licensing authority. Ms. Nee stated that she did not know if she could structure that contract. Senator Hanger responded that the Council could give the Institute the copyright and the materials. Ms. Nee asked if the agreement would allow the Institute to contract on their own behalf, and Senator Hanger responded that it would. He stated that the agreement would need to be brief – one page and asked if Ms. Nee could draft such a document. Ms. Nee stated that it would be contingent upon what the Council wanted to include in the agreement. She also stated that the cost of a copyright is \$45. Delegate Rust asked if the Council protects the copyright and transfers the materials to the Institute, would the Institute be prohibited from updating the software. Ms. Nee responded that the Council can grant the Institute temporary rights to update the software. All Council members approved the motion to construct a draft agreement with the Institute.

Senator Hanger asked if any of the Council members wanted to volunteer to draft the agreement, if not, he would go over the agreement with Mr. Gentile. Senator Hanger thanked Ms. Nee for her presentation.

Status on Privatizing Health Services for Incarcerated Individuals

Mr. Fred Schilling, Medical Services Director for the Department of Corrections, was invited to update the Council on the Status of Privatizing Health Services for Incarcerated Individuals.

Mr. Schilling began his presentation by discussing the background of the Department of Corrections' (DOC) privatization of health services. He stated that when he first came to DOC, the department was already using the private sector manage health care. They were using contract physicians, dentists, laboratory services, and pharmacy operations. They began privatization pharmacy operations in the 1990s because they were not able to recruit pharmacists. Today, most of DOCs' physicians are private contractors who work part-time. He made the following points:

- The DOC is able to operate more efficiently by using part-time contractors.
- Today, dentists are the most difficult health care professional to recruit.
- There is only one dentist per 18,000 Americans.
- Optometrists are also part-time. They are virtually all private.
- Of the 40 to 45 DOC institutions, about eight are private

Senator Hanger asked how many full-time equivalent (FTE) dentists are being used by DOC. Schilling responded that it was about 25 full-time equivalent dentists. Mr. Andreano asked "When do inmates get to see the dentist?" Schilling stated that the inmates have a Constitutional right to health care. The courts have concluded that this means that they have a right to the community standard of need for the insured i.e. inmates are on an eighteen month schedule for teeth cleaning. Mr. Andreano asked if the DOC dentists were well staffed and Mr. Schilling responded that they were. Delegate Rust asked if the standard of care was different from locality to locality and Mr. Schilling responded that it was not. Mr. Schilling added that inmates have typically let their dental work go and that they are on average about ten to fifteen years physiologically older than their chronological age.

Mr. Schilling discussed recruitment of health care staff as a benefit of health care privatization:

- Many health care professionals don't want to work in a prison setting or in rural settings, where most prisons are located
- When recruiting health care professionals, they have to realize that they are there for public safety first and health care is second
- Private contractors can offer incentives such as pay for performance and flexible scheduling which DOC cannot offer

Mr. Segal asked if the contracts are based on each institution and Mr. Schilling stated that at one point, there was a master contract but competing contractors were serving under that single contract. Delegate Rust asked if it would help if the DOC could offer the same private incentives to their DOC employees. Mr. Schilling responded that the DOC staff includes employees who are not health care providers who would want access to the same incentives. He stated that they would have to weigh this. Ms. Pegram added that their staffing issue may also be a result of the Millennium generation, which began in 1986, whose tendency is to jump from job to job. She remarked that if the state wants to employ these young people that the state will have to begin offering some private incentives. Ms. Wilson added that the DOCs' staffing issues are due to multiple reasons. Mr. Schilling stated that the DOC has tried to be creative in resolving the staffing issues. Delegate Rust asked if the salaries were competitive and Mr. Schilling responded that they were competitive up front but that their salaries were not competitive for the more experienced nurses.

Mr. Schilling discussed cost containment as a benefit of health care privatization:

- Excessive cost or lack of budgetary control is a strong motivation for government seeking out health services from the private sector
- Until 2005, a contractual arrangement specified a group of services to be provided for a fixed guaranteed fee – financing on a “capitated rate” basis based on the inmate population. This method assured that the budget was not exceeded and was provided economically and efficiently.
- In 2005, medical contractors insisted upon an “off-site medical care pool” due to their having absorbed significant costs from prior contracts based on the “capitated rate.”
- House Bill 29, Item 474 of the Virginia General Assembly in June 2000 examined the cost effectiveness of using private contractors to manage DOCs’ medical services and concluded that the private sector costs were similar to state costs although the accounting was different.

Mr. Andreano asked what the cost of health care was per inmate and Mr. Schilling responded that it was about \$4,000 per inmate per year. He added that this amount is in the middle for most states. Mr. Andreano asked if the Commonwealth recovers some of the health care costs from inmates and Mr. Schilling responded that they have a co-pay to teach responsibility to inmates. He added that the co-pay is used to pay for a Tele-med operation at DOC. Mr. Von Moll asked if the analysis in item 474 showed full costs – including indirect and administrative costs and Mr. Schilling responded that although the state and the private industry use different accounting elements, the analysis included the full costs of both.

Mr. Schilling discussed the risks of health care privatization:

- Concerns about the quality of services are heightened
- Civil rights liability claims - inmate health services are a share responsibility

Mr. Schilling stated that contractors want to “be around” so that it would not be in their best interest to reduce their quality of services because their reputation is a factor in their continuing to secure contracts. In regards to liability issues, Mr. Schilling stated that the state needs to provide explicit requirements in contractual arrangements. They also need to implement and enforce quality standards and provide a system of monitoring with liquidated damages.

Senator Hanger asked if the cost numbers under Medical Services included mental health and substance abuse services, and Mr. Schilling replied that they did not. Ms. Wilson asked if it included medical and surgery only, and Mr. Schilling responded that it also included dental services. Senator Hanger inquired about the cost numbers of mental health and substance abuse services, and Mr. Schilling stated that he did not know the numbers. Senator Hanger asked how many geriatric patients were being served, and Mr. Schilling stated that the term “geriatric” is different in prison because of the higher physiological age so people over 50 years of age are considered “geriatric.” About 3,000 out of the 30,000 inmates are over 50 years of age, and they are almost all male. Deerfield Geriatric Center has about 56 in assisted living and about another 100 classified as skilled nursing facility care. Some are in the infirmary at Greensville or Powhatan. Senator Hanger remarked that Virginia also has a geriatric release policy.

Mr. Von Moll asked what percent of DOCs’ medical services were outsourced and if DOC reviews current arrangements to see if privatization of these services is still cost beneficial. Mr. Schilling stated that about half of the costs are outsourced and that they look all the time at the cost per inmate in private facilities versus the cost per inmate in state facilities. Mr. Andreano asked if there are inmates in the facilities who are not getting the operations that they need. Mr.

Schilling stated that he was not aware of anyone but that they have a utilization management team who determines when surgery is needed for inmates. This team is made up of a group of physicians who review national standards and determine if the surgical request is legitimate. If they determine that the need for surgery is not legitimate, they write the requesting physician for more information. The utilization management team sometimes applies a more conservative approach such as resolving issues of obesity instead of approving back surgery. Mr. Andreano asked if it would make more sense for DOC to purchase health insurance for healthier inmates. Mr. Schilling responded that they have a third party insurance plan through Anthem for the inmates which has cut their medical expenses in half. Ms. Davis asked about inmates who are insured before entry into institutional care – do they continue to use their insurance? Mr. Schilling stated that inmates lose their insurance upon entry into institutional care. Delegate Rust asked for clarification regarding the low number of privatized institutions (8 out of 40) versus the percentage of costs that are for privatized medical services versus state medical services – how are these costs justified when they represent a lower number of institutions? Mr. Schilling stated that these are some of the more difficult institutions to recruit and manage; the cost is justified because we now pay less for these institutions than when they were managed through the state. Delegate Rust asked since the last cost study is seven years old, are the costs the same? Mr. Schilling responded that they look regularly at the cost per inmate for private versus state managed institutions. Mr. Segal asked if they had tried to determine what their costs would be if they operated the medical services versus private contracting. Mr. Schilling responded that of the eight private institutions, DOC operated three or four of them before they were privatized so they know the costs of operating the institutions through the state.

Senator Hanger thanked Mr. Schilling for his presentation.

New Business

Senator Hanger introduced items of new business with a discussion of the Operational Reviews. Ms. Wilson provided a brief update of the Information Technology review. She stated that a draft is expected by the Thanksgiving Holiday. Senator Hanger stated that the Council's mission was being worked on through the operational reviews, and he stated that perhaps the Council could be an entity for evaluating them. Ms. Wilson explained that they are focusing largely on managing the cost of people – focusing on human capital. She stated that it is difficult to find wage and contractual information so they don't know exactly how much it is currently costing to get work done. She added that they have surveyed other states and have made data requests to other work groups across the state and that she is pleased with the work that is being done. Ms. Wilson stated that she would plan to provide an update on the Information Technology Review at the next Council meeting.

Senator Hanger asked if there were other issues to address. Mr. Gentile stated that he would like to request that the Council pare down the list of potential projects for 2007 from the January 2007 Council meeting. Senator Hanger recommended that the Council look at the recommendations from the operational reviews as potential projects. He also asked for thoughts from the Council on legislative initiatives. Mr. Andreano stated that he is a Board member of the Chesterfield County Police Foundation and that the Virginia Department of Agriculture and Consumer Services have requested that they supply a large stack of papers that another state agency, the State Corporation Commission, already possesses. He asked that the Council consider reduction of duplicative paper requests within state agencies as a potential legislative initiative. Ms. Pegram stated that we already have the Paperwork Reduction Act. Ms. Digges inquired of yearly elections and asked that the Council consider the election law savings by not holding elections every year as a potential legislative initiative. Senator Hanger explained that he had concerns

about the Office of Vital Records because of their issues at the federal level. He stated that he is concerned that we will be mandated to come up with a national identification, etc. He added that addressing the efficiency of Vital Records could also address the issue of illegal immigration. He stated that there are issues that the Council can address in regards to Vital Records. Ms. Wilson added that this is a good time to address this issue because a lot of work is currently being done in this area. Senator Hanger stated that the Census is also coming up and that perhaps the data collection should be decentralized and delegated to the states. Mr. Segal remarked that the federal government is bound to the Census through the Constitution. Senator Hanger stated that the same is true for the immigration issue. Senator Hanger asked if there were other issues. Delegate Rust addressed Mr. Gentile and asked if there was a list over the past few years of potential projects that the Council has not addressed. Mr. Gentile stated that he was not aware of a list but that he would go through the Council's records. Senator Hanger asked Mr. Gentile to send the list of potential projects from the January 2007 meeting with instructions to the Council members to rank the projects before the Council's meeting in January 2008.

Adjournment

Senator Hanger asked if there was any other business. Since there was no response, he thanked everyone for their attendance and the meeting was adjourned.

Next meeting

The next meeting of the Council will be held on January 7, 2008 from 10AM to noon at the General Assembly Building in the Third Floor East Conference Room.

Jerry J. Gentile
Department of Planning and Budget