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Inspector General
Commonwealth of Massachusetts

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The Plymouth County 2006 Stop Loss Insurance Bidding Process: A Question of Conflict

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Table of Contents

Executive Summary

This Office received a complaint in July 2006 pertaining to the Plymouth County Commissioners' award of the Plymouth County (County) 2006 Stop Loss insurance contract to Cook & Company (Cook), Marshfield, Massachusetts. The complainant alleged that Cook should not have been permitted to bid on the Stop Loss insurance contract because Cook was acting as the County Health Insurance Consultant at the time Cook's proposal for the Stop Loss insurance contract was submitted. The complainant alleged that this gave Cook an inside advantage over other bidders and amounted to a conflict of interest. Upon receiving this complaint, this Office initiated an investigation to determine the validity of the allegations.

The investigation revealed that, despite assertions to the contrary, Peter Kenney, the President of Cook's Health Plan Management Group, acting as the County Health Care Consultant, was an active participant in the County's preparation of its 2006 Stop Loss Insurance Request For Proposals (RFP) before it was issued. Moreover, the investigation determined that Cook received a unique and unfair competitive advantage over other Stop Loss insurance vendors during the RFP process because Peter Kenney was given access to competitors' price information during the bidding process. Kenney obtained the information in his role as County Health Care Consultant.

The investigation further disclosed that Cook and its President, Peter Kenney failed to fulfill their contractual obligation to Plymouth County to act as Health Care Consultant during the Stop Loss RFP process. Peter Kenney dropped out of the RFP process in midstream and no longer provided health care consulting advice to the County during the remainder of the process. Despite dropping out of the RFP review process, Cook received its full annual compensation of over $78,000 for its Health Care Consulting work for the County. The investigation also uncovered the fact that Cook attempted to over bill the County for in excess of $63,000 dollars after being awarded the Stop Loss insurance contract for 2006. Finally, the investigation concluded that Cook was awarded the Stop Loss insurance contract by County Commissioners McMullen and Welch despite significant red flag warnings that Cook had a conflict of interest in the matter.

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The Investigation

Interview of Plymouth County Officials

During the course of the investigation, this Office interviewed the Plymouth County Benefits Coordinator and the County Administrator. The Benefits Coordinator advised that Cook was selected as the County Health Insurance Consultant in March 2005 after a public bidding process. She stated that Peter Kenney, President of Cook's Health Plan Management Group, was designated by Cook to be Cook's actual Plymouth County Health Care Consultant. Cook was hired to provide independent health care insurance advice to the County. Accordingly, Peter Kenney was actively involved in the County's **2005** Request For Proposals (RFP) pertaining to Stop Loss insurance.

The Benefits Coordinator advised that Kenney reviewed the **2005** County Stop Loss RFP before it was issued. He was involved in reviewing and evaluating the actual 2005 proposals after they were received by the County. This Office is in possession of a letter from Mr. Kenney to the County Administrator dated 7/1/05 which reflects that he was involved in a decision to recommend to the County Commissioners that they award the 2005 Stop Loss insurance contract to a particular vendor. Moreover, according to the County officials, Kenney actually created the County spreadsheet that reflected the bid information gleaned from the review of the actual proposals submitted during the bid process. The County Administrator advised on 3/29/07 that she used this spreadsheet to make a public presentation to the County Commissioners on 7/13/05 concerning the results of the RFP process. Following that presentation, the Commissioners selected the winner of the RFP process and awarded the 2005 Stop Loss insurance contract.

The County Benefits Coordinator created a draft RFP for the **2006** County Stop Loss Insurance contract in May, **2006.** She faxed a copy of the draft to Peter Kenney for his review on 5/17/06. This Office has obtained a copy of this fax. Among other things, the draft RFP sent to Kenney included County health plan participant numbers of 2,808 individuals and 3,868 families. These figures represented the participant numbers that prospective bidders must use in calculating their proposal prices. Kenney called her after his review and suggested minor changes. He also responded with a fax which contained information relevant to the RFP. She subsequently issued the RFP to four companies. She did not send one to Cook because she believed that Cook had a conflict because Cook was also the County Health Consultant. The deadline for the return of completed proposals was 6/15/06. On 5/31/06 Peter Kenney came to the County Commissioners' Office and picked up a copy of the Stop Loss RFP for Cook. Four companies, including Cook, submitted proposals by the deadline of 6/15/06 in response to the RFP.

Shortly thereafter, on 6/22/06, the County Administrator, the Benefits Coordinator and Peter Kenney reviewed the initial round of Stop Loss proposals after they were opened. During this review Kenney wrote down the price information from the other bidders' proposals on a piece of paper. This document was later obtained by this Office from Cook in response to a subpoena. During an interview with this Office, Peter Kenney was shown a copy of this document and confirmed that the handwriting on it was his. None of the vendors that received the RFP were invited to be present at the opening of the proposals. None were able to review and evaluate the price information contained in the proposals submitted. Nonetheless, Peter Kenney was permitted to be present at the opening of the proposals, and review and record the price information submitted by Cook's competitors because of his role as County Health Care Consultant.

The County Administrator advised that during the above described meeting, she informed Peter Kenney that she did not intend to open Cook's proposal because she believed that Cook had a conflict of interest. Both County officials advised that during the meeting Peter Kenney recommended that the County rebid the RFP. Kenney informed the Benefits Coordinator that the first RFP was too confusing and made it difficult to compare the proposal submissions. He suggested for the sake of uniformity that the RFP be rebid without an aggregate deductible.[1] This Office has reviewed the first RFP issued by the County and observed that it was silent on whether proposal submissions should include an aggregate deductible. It should be noted that all of the proposals received by the County, with the exception of Cook's and one other, contained aggregate deductibles of varying amounts.[2] The Benefits Coordinator adopted Peter Kenney's suggestion and on 6/22/06, faxed a request for the submission of new proposals to the bidders with instructions to eliminate price figures based upon an aggregate deductible.

The Benefits Coordinator advised that prospective bidders were instructed in the 6/22/06 fax to submit their new proposals by 6/28/06. She advised that the requirement that all bidders submit proposals without an aggregate deductible caused bidders who had previously submitted proposals with an aggregate deductible to recalculate and raise their prices. She explained that these bidders would need to raise their prices because of the increased financial risk they must assume in the absence of an aggregate deductible. Conversely, Cook would not need to raise its prices because its

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[1] Stop Loss insurance is insurance offered to self insured entities, e.g. Plymouth County, when individual participant health claims exceed a certain designated limit, (e. g. $225,000 dollars). An aggregate deductible involves an **additional monetary figure**, (e.g. $300,000.00), over and above the $225,000 figure, that the self insured entity is responsible for paying before the stop loss insurer becomes responsible for paying any claims. When an aggregate deductible is in place, the self insured entity continues to be responsible for participant claims over $225,000.00 until individual participant claims exceeding $225,000 **in the aggregate** reach an additional threshold of $300,000 dollars. Only when the self insured entity has paid in the aggregate, an additional $300,000 in participant claims, does the responsibility of the stop loss insurer to pay claims begin. In the absence of an aggregate deductible, the stop loss insurer will pay all participant claims above $225,000 up to a designated ceiling.

A stop loss insurer will offer lower rates for stop loss insurance when an aggregate deductible is in place because their responsibility to pay claims will be less because of the aggregate deductible. Conversely, the rates offered will be higher in the absence of an aggregate deductible because the stop loss insurer will be liable for an additional $300,000.00 in claims.

[2] A total of eight actual proposals were submitted in the initial RFP process from four separate companies. American Stop Loss submitted two proposals from two different underwriters, Stop Loss Brokers submitted three from three underwriters and EBS Foran submitted two from two underwriters. Cook submitted a proposal from one underwriter. Six of the proposals submitted contained an aggregate deductible.

proposal was initially submitted without an aggregate deductible. In fact, during the second round of proposal submissions, Cook's proposal remained identical to its first one.

A review of the actual price proposals submitted by Cook and competitor American Stop Loss illustrates the point made by the Benefits Coordinator. Cook's initial proposal submitted on 6/15/06 contained monthly rates of $6.43 for individual County health plan participants and $13.24 for family participants. As mentioned above, Cook's first proposal did not contain an aggregate deductible. Using the plan participant figures from the original County RFP, i.e. 2,808 for individuals and 3,868 for families, and the rates offered by Cook of $6.43 and $13.24, the original Cook proposal amounted to an annual cost to the County of $831,213.12.[3] As mentioned earlier, Cook's second proposal submitted on 6/28/06 did not change. Since its initial proposal had been submitted without an aggregate deductible, there was no need for Cook to recalculate its price submissions to reflect assuming greater risk.

By way of comparison, the price proposal initially submitted by American Stop Loss to the County on 6/15/06 was substantially lower than the Cook proposal. The American Stop Loss proposal, underwritten by Life Investors Insurance Company of America, was based upon the inclusion of an aggregate deductible of approximately $450,000 dollars. Inclusion of the aggregate deductible permitted American Stop Loss to lower its proposed rates to $4.50 for individuals and $11.67 for families for a total annual cost to the County of $693,307. By including an aggregate deductible, American Stop Loss' proposal contained prices lower than those offered by Cook. However, after being instructed to exclude the aggregate deductible during the second RFP process, American Stop Loss was forced to recalculate its rates. The second American Stop Loss proposal contained rates of $6.77 for individuals and $17.57 for families. Its second proposal amounted to a total of $1,043,651. Its offer was now substantially

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[3] A review of internal Cook documents disclosed that Cook based its price proposals submitted on 6/15/06 and 6/28/06 on different plan participant numbers that those set forth in the County RFP. The internal Cook figures were 3,019 for individuals and 4,166 for families. If the internal Cook figures are used to ascertain a final Cook price proposal, the Cook bid is even higher, namely, $895,044 annually.

higher than Cook's. As mentioned above, when aggregate deductibles are excluded from the process, the Stop Loss insurers must assume more risk which results in higher monthly rates. County records show that at the conclusion of the second RFP process, Cook's price proposal was over $200,000 dollars lower than the next lowest proposal.[4]

The County Administrator informed this Office that during the RFP process, she received a telephone call from County Commissioner Timothy McMullen. She stated that Commissioner McMullen wanted to know why the Cook proposal was rejected. She advised that he was angry and asked her who she thought she was in rejecting this proposal. He told her that she had overstepped her bounds and that she would be severely reprimanded for her actions. She advised that he accused her of acting without legal counsel and said that he was appalled to receive a letter from Cook, which complained about the County's refusal to accept its Stop Loss proposal. She responded that she had consulted with an attorney from the Inspector General's Office about the matter and followed the advice provided.

Records of the Office of the Inspector General confirm that on 6/21/06, the County Administrator sought guidance from this Office regarding this matter. She was referred to an article written for this Office's *Procurement Bulletin*, located in Volume 9, issue 2 of the *Procurement Bulletin*. This opinion holds that permitting a vendor to bid on a public entity's insurance RFP that a vendor's employee helped prepare as Health Care Consultant for a public entity, amounts to a conflict of interest and is inherently unfair to other competitors. Records of the Inspector General further reflect that the Attorney for Plymouth County contacted our Office on 6/28/06 to ascertain the nature of our advice previously provided to the County Administrator. He was informed that this Office believed that a conflict existed regarding the Stop Loss insurance RFP and that Cook should be removed from the process of selection.

The County Administrator and the Benefits Coordinator informed this Office that Peter Kenney agreed to meet with them on 6/29/06 to assist them in evaluating the second

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[4] When the County health plan participant numbers of 2,808 and 3,868 are used to calculate the offered price proposals during the second RFP process, Cook's annual proposal was $831,213.12. The next lowest proposal was in the amount of $1,043,651.

round of proposals which were due on 6/28/06. He never attended the scheduled meeting. They explained that on 6/29/06, Kenney attended a separate meeting with them that directly preceded the scheduled 6/29/06 meeting to evaluate the second round of proposals. The first meeting was for an entirely different purpose. Commissioner McMullen also attended the first meeting on 6/29/06. At the end of the first meeting, Kenney abruptly left the office of the County Administrator with Plymouth County Commissioner Timothy McMullen. He failed to explain why he was not going to attend the second meeting as promised to assist in the evaluation of the second round of Stop Loss proposals. Mr. Kenney never participated in the Stop Loss insurance RFP process again in his role as County Health Care Consultant.

The County officials expressed shock and surprise at Kenney's actions. He did not review and evaluate the second round of proposals, or prepare a spreadsheet comparing the prices offered by competitors. He did not make a recommendation to the County Commissioners as to whom the Stop Loss insurance contract should be awarded to. In the **2005** Stop Loss RFP process, Mr. Kenney did all of these things in his capacity as County Health Care Consultant.

On 7/12/06, the Plymouth County Commissioners held a public hearing concerning the selection of the County Stop Loss insurer. According to the minutes of that meeting, the County Administrator informed the Commissioners that Peter Kenney helped with the original Stop Loss RFP, was present when the proposals were opened and wrote down the Cook competitor's price information. She declined to recommend Cook for the Stop Loss contract despite the fact that Cook was the low bidder during the second RFP process. Peter Kenney did not attend the public hearing.

The minutes further reflect that during the hearing, a Cook representative stated that the RFP specifications for the 2006 Stop Loss bid were the same as had been used by the County for the last several years. Moreover, he stated that the RFP was sent out to the bidders by the County and sent by them directly back to the County with no involvement from anyone else. He further stated that Cook's proposal was over $200,000 dollars lower than the next lowest proposal and he did not believe Cook had a conflict of interest in the matter. The County Commissioners voted to award the Stop Loss insurance contract to Cook. Commissioners Timothy McMullen and Jeffrey Welch voted for Cook and Commissioner John Riordan voted against Cook.

The County Administrator advised that during the public hearing, a Cook employee presented a letter to Commissioner Welch written by Peter Kenney. The letter stated, “The insinuation that I was involved with the drafting of the RFP is incorrect. In fact, this is a very old, fairly standard document that the County has used prior to my involvement.” The County Administrator has informed this Office that the “very old standard document”, (i. e. the RFP mentioned by Kenney in this letter), was in fact adopted for use by the County in 2004 and was by no means old. Further, she reiterated that Peter Kenney had been involved in the entire RFP process until he removed himself from it after the first round of proposals were opened.

On 4/9 and 4/10/07 Timothy McMullen, Plymouth County Commissioner was interviewed and advised that he recalled having a conversation with Peter Kenney sometime between 6/15/06 and 6/29/06 concerning Cook’s Stop Loss insurance proposal. He advised that Mr. Kenney informed him that Cook’s Stop Loss proposal was not being considered by the County Administrator because Cook was also the County Health Care Consultant. He advised that he told Kenney to step away from the County Administrator’s decision to refuse to consider Cook’s proposal and let either Chairman Welch or County Attorney Mark Gildea handle it. He stated that he did not want Kenney and the County Administrator butting heads over the issue. Commissioner McMullen stated that he never instructed Kenney to stop doing his job as Health Care Consultant with respect to this matter and stated that he was not aware that Kenney had been providing consulting advice regarding the Stop Loss RFP process. He stated that he was not aware that Kenney had participated in the first round of proposal openings for the 2006 Stop Loss contract and had failed to participate in the second round of 2006 proposal openings.

Commissioner McMullen has no recollection of having any conversation with County Attorney Mark Gildea about a telephone conversation that Gildea had with the Office of the Inspector General concerning advice this Office gave the County Administrator regarding Cook’s potential conflict of interest. He also stated that Peter Kenney did not tell him that he decided not to attend a meeting with the County Administrator on 6/29/06 to evaluate the second round of Stop Loss proposals.

Commissioner McMullen did recall having a conversation with the County Administrator on or about 6/28 or 6/29/06. During that conversation he told her that he questioned her authority to decide on her own not to open Cook's Stop Loss proposal. He informed her that she worked for three Commissioners and should have sought their input and the advice of the County Attorney before deciding to reject Cook's proposal. The County Administrator told him that she made her decision after having a conversation with the Inspector General's Office on 6/21/06. She told him that she received a fax from an Attorney in the Inspector General's Office regarding the Inspector General's position on the conflict of interest issue. Mr. McMullen also advised that during the conversation with the County Administrator, he told her that Attorney Gildea told him that he did not instruct her to disqualify Cook's proposal. He told the County Administrator that no executive should make this kind of decision without consulting her superiors and he thought that she should be reprimanded in writing.

Commissioner McMullen advised that the County Administrator gave him a copy of the Inspector General's fax during a Commissioner's meeting on 6/28 or 6/29/06. McMullen advised that the County Administrator also provided a copy of this fax to the two other County Commissioners as well. McMullen advised that during the Commissioner's meeting, the County Administrator informed the Commissioners that she believed that Cook had a conflict of interest regarding its Stop Loss proposal. He advised that after the meeting, he read the Inspector General's opinion regarding the conflict issue furnished to him by the County Administrator.

Interviews of Cook Employees

On 2/13/07 Peter Kenney, President, Health Plan Management Group, Cook and Company was interviewed and advised that Cook became the Health Care Consultant to the County in March 2005. Kenney advised that he was involved in the County Stop Loss insurance RFP in 2005 as the Cook Health Care Representative to the County. He advised that he reviewed the various proposals that were submitted to the County.

He recalled sending a written recommendation to the County Commissioners[5] that the company that submitted the low quote should be awarded the contract. He stated that he could not recall having a role in the preparation of a spreadsheet for the Commissioners that would assist them in deciding who should receive the Stop Loss insurance contract. Kenney examined a copy of this spreadsheet during the interview and denied preparing it. He also could not recall that Cook submitted a proposal for the County 2005 Stop Loss insurance contract until he was shown a copy of a document which demonstrated that Cook did bid on this contract. Cook was not the low bidder in 2005.

Kenney advised that prior to the County's issuance of its **2006** Stop Loss insurance RFP, he received a call from the County Health Benefits Coordinator. She told him that she was considering issuing the RFP without lasers. Kenney explained that lasers are predetermined ceilings, above which an insurer is not responsible for paying claims for particular plan participants. Kenney informed the Coordinator that sending out the RFP without lasers was not a good idea. Kenney stated that the Coordinator never provided him with a copy of the RFP before it was issued and he never saw it before it went out. Kenney thinks he picked up the 2006 RFP from the County for Cook. He brought it back to Cook's office and probably gave it to the Cook Stop Loss Coordinator. Kenney advised that he had no other involvement in the preparation of Cook's 2006 Plymouth County Stop Loss proposal. Kenney stated that he did not see it before it was submitted to the County.

Kenney advised that after the County received the initial proposals, he met with the County Administrator and possibly the County Benefits Coordinator at the County Office on or about 6/20/06. He reviewed the various proposals that had been submitted for the Stop Loss insurance contract. He stated that he was told by the County Coordinator that she did not open the Cook proposal because she thought there was a conflict. Kenney advised that the other proposals were all over the place with respect to aggregate deductibles which made it difficult to compare them. He stated that he did not know whether the Cook proposal contained an aggregate deductible at that time

[5] This letter was in fact sent to the County Administrator and is dated July 1, 2005.

because he had not seen it. During the meeting, he expressed the view that more clarity was needed in order to properly compare the proposals. He recommended to the others that they issue a new RFP with no aggregate deductible or be clear as to what the aggregate deductible should be.

During the interview, Kenney was shown a hand-written document with bid prices written on it. This document was obtained by this Office from Cook pursuant to subpoena. He acknowledged that the handwriting was his and stated that he wrote down the proposal prices of Cook's competitors during the above mentioned proposal review process. Kenney denied showing this document to any other Cook employee. He stated that to the best of his recollection, he did not share the competitors' price information with the Cook employees that prepared the Cook proposal. He stated that he placed this hand written document in a file in his office in Marshfield.

Kenney advised that he was not aware of the plan participant numbers for individuals and families that were used by Cook in preparing its Stop Loss proposal. He was shown participant numbers used in the preparation of the Cook proposal which later became part of the Stop Loss contract awarded to Cook. These figures disclosed that Cook based its proposal on 3,019 individual participants and 4,166 family participants in the County Health Care Plan. He stated that he did not know the origin of these numbers. He stated that he had nothing to do with a Cook invoice sent to the County after the Stop Loss contract was awarded to Cook which used the numbers of 3,019 and 4,166 to calculate the amount of the bill.

He advised that after the 6/20/06 proposal evaluation meeting with County officials was over, he recalled calling either Commissioner McMullen or Commissioner Welch on the phone. During the conversation he informed one of them that the County Administrator refused to open the Cook proposal because of an alleged conflict. The Commissioner told him to "step away" and he would handle it from there. He advised that from that time forward he had no involvement in the matter.

On 3/12/07, this Office interviewed Cook's former Stop Loss Coordinator who had been involved in the preparation of Cook's **2006** Plymouth County Stop Loss insurance proposal. She is no longer employed by Cook. She advised that she was responsible for gathering the Plymouth County Health Plan participant information that was used in creating the Cook Stop Loss proposal that was submitted to the County in 2006. She advised that the plan participant numbers used by Cook (i.e., 3,019 for individuals and 4,166 for families) came from Blue Cross and Harvard Pilgrim. She provided those figures to Cook's underwriter, the Matrix Group Benefits Company (MGB). MGB used those plan participant figures to calculate the amounts it would offer for Cook's Stop Loss proposal (i.e., $6.43 for individuals and $13.24 for families). She provided this information to another Cook employee who was responsible for putting together the rest of Cook's proposal.

The Stop Loss Coordinator stated that she did see the plan participant numbers set forth in the County RFP (i.e., 2,808 for individuals and 3,868 for families) but did not focus on the difference between the RFP plan participant numbers and the higher numbers she obtained from Blue Cross and Harvard Pilgrim. She could not recall any discussion between her and Peter Kenney regarding the difference in those numbers before the Cook proposal was submitted either time. She advised that she does not know whether Peter Kenney reviewed the Cook proposal before it was submitted to the County by the 6/15/06 deadline. She stated that prior to Cook's submission of its second proposal to the County, Peter Kenney may have told her that Cook's second proposal would be the same as the first one they submitted. She recalled that after the second round of proposals were opened by the County, Peter Kenney informed her that Cook got the contract.

The Stop Loss Coordinator was shown a copy of Cook invoice, #SL070616, dated 7/13/06 in the amount of $75,570.01. This invoice was submitted by Cook to the County for the first month's payment for the 2006 Stop Loss insurance. This document relied on plan participant numbers of 3,019 for individuals and 4,166 for families. She advised that she had not seen this document before because it was the responsibility of another Cook employee to do the billing. She advised that after the bill was sent to the County, the Cook billing employee told her that something was not correct regarding the plan participant numbers listed on the Cook invoice. She advised that she discussed the problem with Peter Kenney. Kenney told her to tell the Cook billing employee that they should use the figures of 2,796 for individual plan participants and 3,868 for family participants for their County invoice. She was shown a Cook internal document obtained by subpoena which showed the change from 3,019 and 4,166 to 2,796 and 3,868. This document contained a notation in the Stop Loss Coordinator's handwriting which said "per PK [Peter Kenney] OK."

On 9/19/2006 the Plymouth County Benefits Coordinator advised that the Cook proposals did not list the plan participant numbers used by Cook at all, nor did Cook estimate monthly or annual premium figures. All that was listed in Cook's price proposals was the cost of $6.43 for individual plan participants and $13.24 for family participants. She advised that on 7/20/06 the County received the first month's Stop Loss insurance invoice from Cook. She noticed that the individual and family plan participant figures were different and higher than the figures set forth in the County RFP. She explained that the original County RFP, which had been faxed to Peter Kenney by her before the RFP was first issued, specifically set forth plan participant figures of 2,808 for individual participants and 3,868 for family participants. She explained that these were the figures that each prospective vendor was required to use in its proposal. The County Benefits Coordinator advised that the plan participant numbers used by Cook in the first invoice were 3,019 for individuals and 4,166 for families. This amounted to a total increase in plan participants of 509 subscribers.

This was the first time in the entire process that the County Benefits Coordinator realized that Cook used higher plan participant numbers to calculate the rates set forth in its proposal. By using the higher plan participant numbers, Cook was in effect, over billing the County in the amount of approximately $5,302.25 per month or $63,627.00 annually.

Investigative Findings

Peter Kenney, Acting As The Cook & Company County Health Care Consultant, Was An Active Participant In Plymouth County's Preparation Of Its 2006 Stop Loss Insurance RFP Before It Was Issued

By letter dated 7/13/06, Peter Kenney, President of Cook's Health Plan Management Group, informed County Commissioner Jeffrey Welch that, "The insinuation that I was involved with the drafting of the RFP is incorrect." Notwithstanding this assertion, our investigation has determined that Peter Kenney, acting as Cook's County Health Care Consultant, played an active role in the County's preparation of its 2006 Stop Loss insurance RFP before it was issued. The County Benefits Coordinator sent a draft of the 2006 Stop Loss RFP to Kenney for his review. Despite Kenney's claim to this Office that he never saw the RFP before it was issued, this Office has obtained a copy of a fax sent to Kenney with the draft RFP included. The fax is dated 5/17/06. The RFP was not issued by the County until 5/18/06. Further, Mr. Kenney sent a fax back to the Benefits Coordinator on the same day which contained information concerning the Stop Loss RFP.

During Mr. Kenney's interview with this Office, he advised that he did participate in the drafting process pertaining to the 2006 Stop Loss RFP. He explained that he had a conversation with the County Benefits Coordinator concerning the draft RFP. She sought his advice on whether the County should include lasers in the RFP. He explained that lasers are ceilings which limit coverage regarding specific plan participants. He told her that sending out the RFP without lasers was not a good idea.

Peter Kenney, Acting As Cook & Company's Health Care Consultant to Plymouth County, Failed To Provide Quality Advice To The County Regarding Its 2006 Stop Loss Insurance Proposal

This Office believes that Peter Kenney failed to provide quality advice to County officials regarding the initial RFP issued in May 2006. The draft RFP forwarded to Kenney for his review by the County was silent on whether bidders should bid with an aggregate deductible. Likewise, when the first RFP was issued by the County it failed to mention whether bidders should bid with an aggregate deductible. This lack of clarity regarding an aggregate deductible resulted in price proposals that could not be properly evaluated and compared after they were submitted. The Stop Loss contract for the previous year contained a specific aggregate deductible of $300,000. Mr. Kenney, having participated directly and substantially in the 2005 RFP process should have been keenly aware of this fact. Moreover, as an experienced health care consultant, he should have foreseen the consequences of the failure to clarify the aggregate deductible issue in the first RFP and advised County officials accordingly. His failure to do this was the prime cause for the need to rebid the Stop Loss insurance RFP.

Cook & Company Received A Unique And Unfair Advantage Over Its Competition Because Peter Kenney Was Given Access To Competitors' Price Information In His Role As County Health Care Consultant

On or about 6/22/06, Peter Kenney, President of Cook's Health Plan Management Group, and acting as Plymouth County Health Insurance Consultant, met with County officials to review and evaluate the proposals submitted by vendors in response to the County's 2006 Stop Loss RFP. This Office has been informed by County officials that none of the vendors who submitted proposals were offered an opportunity to be present when the various proposals were opened and reviewed. No vendor was permitted to obtain the price and proposal information of their competitors after the proposals were opened. Nonetheless, Mr. Kenney, a President of Cook & Company, was given this opportunity in his capacity as County Health Care Consultant.

Mr. Kenney took full advantage of the opportunity that was denied to Cook's competitors. He was able to review the various proposals that were submitted at a meeting with County officials. During the meeting, he wrote down the price information from Cook's competitors on a separate sheet of paper. A copy of this paper was obtained by this Office from Cook in response to a subpoena. Kenney left the meeting with that information and brought it back to his office at Cook & Company. During the meeting, the County officials declined to open the Cook proposal and cited conflict of interest reasons for not doing so.

During the meeting, Mr. Kenney was in a position to see the low bid from American Stop Loss and the fact that its proposal contained a specific aggregate deductible. The American Stop Loss proposal contained the low bid of $693,307, based upon proposed rates of $4.50 for individual and $11.67 for family plan members. These rates were also based upon an aggregate deductible of approximately $450,000. By way of contrast, the Cook proposal was either $831,213.12 or $895,044.00, depending on which set of health plan participant numbers are used to calculate the annual cost.[6] According to two County officials, it was Mr. Kenney who suggested that the Stop Loss proposal be rebid. During an interview with this Office, Mr. Kenney advised that he and the County officials agreed that more clarity was needed in the proposal process, and he recommended that they initiate a new RFP process that eliminated an aggregate deductible or designated a specific aggregate deductible.

Mr. Kenney has been employed by Cook since 1990 and has developed significant expertise in the field of health care insurance. Given his knowledge and experience, it is reasonable to believe that he knew that eliminating the aggregate deductible from the second RFP proposal process would cause Cook's competitors to raise their rates and the total amount of their price proposals in the second round. Moreover, he would understand that Cook's proposal submitted without an aggregate deductible could well become the low bid during a second round of bidding.

In fact, this is precisely what happened. American Stop Loss was required to raise its rates due to the elimination of the aggregate deductible during the second RFP process. The company's annual proposal jumped from $693,307.00 to $1,043,651.00. Conversely, Cook's proposal, which was submitted during the first RFP process without an aggregate deductible, remained unchanged during the second RFP process. Cook's price proposal now became the low price proposal during the second RFP process.

[6] See Footnote 3 and the corresponding information set forth in the text of this report for an explanation of how the variance in health plan enrollment numbers resulted in different Cook annual proposal prices. Suffice it to say that either figure set forth above is substantially higher than the price offered by American Stop Loss.

During the interview, Mr. Kenney advised that he picked up the initial Stop Loss RFP from the County and delivered it to a Cook employee involved in preparing Cook's proposal. He advised that from that point forward, he had no involvement in the preparation and submission of Cook's initial proposal. He also advised that he never saw Cook's actual proposal before it was submitted to the County and did not know whether it contained an aggregate deductible. A Cook employee who assisted in the preparation of the Cook proposal said that she did not know whether Kenney reviewed the Cook proposal before it was submitted to the County by the June 15, 2006 deadline. Kenney also stated that since Cook's proposal was not opened at the meeting, he did not see that its price information was calculated without an aggregate deductible.

Notwithstanding Mr. Kenney's denials that he had no knowledge of the contents of Cook's initial proposal, this Office believes that it is more likely that he had that knowledge and acted accordingly. For example, if Kenney wished to remain entirely impartial, there was no reason for him to record the price information from Cook's competitors and bring it back to his office. Kenney's claim that he made no use of the competitor information that he carefully recorded during the meeting with County officials, strains credulity and defies logic and common sense. After all, he held the position of President of Cook's Heath Plan Management Group and would have been under considerable pressure to share the information that he obtained with other Cook officials for the benefit of the company. The fact that Cook's proposal remained unchanged between the first and second RFP process clearly suggests that Cook knew it was in the driver's seat in the process and had no reason to fear that they faced an unsuccessful outcome. Even if we accept Kenney's assertions that his conduct in this matter was entirely above board, the appearance of impropriety for Kenney and his employer is nothing short of overwhelming.

The procurement of health care insurance, including stop loss insurance is currently exempt from direct oversight by the Inspector General pursuant to M.G.L. c.30B. The facts developed during this inquiry strongly suggest the need for direct authority and oversight by this Office regarding the procurement of health insurance by governmental bodies.

There is no doubt that Cook submitted the low price proposal during the second round of bidding in this matter. In fact, Cook's proposal was over $200,000 dollars lower than their nearest competitor. Obtaining the lowest price from a responsible vendor is a worthy goal in any public bidding process. However, a worthy goal can never be justified by improper means. A worthy goal cannot be lawfully achieved unless the process used to reach that goal is fairly and equitably administered. Competition between reliable vendors is fostered when the public bidding process is administered with fundamental fairness. Prospective vendors will choose not to participate if they perceive that they have no legitimate chance of winning. Fair competition is the victim of a bidding process that gives even the appearance of being weighted in favor of one bidder. In the long run, taxpayers will ultimately pay more when competition is eliminated due to the perception of an uneven playing field. In this case, the evidence suggests that the appearance of impropriety may well have become the reality of impropriety.

Cook & Company And Its President Peter Kenney, Failed To Fulfill Their Obligation To Plymouth County To Act As Health Care Consultant With Respect To The 2006 Stop Loss Insurance RFP

Our investigation has determined that Cook & Company is paid over $78,000.00 dollars annually by Plymouth County to serve as its Health Care Consultant. Moreover, the investigation has determined that Peter Kenney, acting as Cook's Health Care Consultant to Plymouth County, actively participated in the County's **2005** Stop Loss insurance RFP process. This Office believes that he reviewed the 2005 County RFP before it was issued. Further he reviewed and evaluated the 2005 proposal submissions after they were received by the County. He was also involved in the decision to recommend to the County Commissioners as to whom they should award the 2005 Stop Loss insurance contract. Finally, he created a spreadsheet that was used to make a public presentation to the County Commissioners concerning the 2005 RFP.

Mr. Kenney, acting as Cook's County Health Care Representative, participated actively and substantially in Plymouth County's **2006** Stop Loss RFP process. He reviewed the 2006 RFP before it was issued and provided advice to County officials during its preparation. He subsequently met with County officials after the initial round of proposals were received, and reviewed and evaluated the proposals at that time. He also recommended that the County rebid the Stop Loss insurance RFP. However, this is where his work as County Health Care Consultant came to an abrupt halt. From that time forward, neither Mr. Kenney, nor any other Cook employee provided any consulting advice or assistance to the County with respect to the 2006 Stop Loss RFP. During the same process in 2005, Peter Kenney remained in his consultant role throughout the entire Stop Loss insurance process.

This was not the case in 2006. During the interview, Mr. Kenney could not recall that he made a commitment to meet with County officials to review the second submission of proposals on 6/29/06. However, two County officials have a definite recollection that Kenney agreed to meet with them for this purpose. Both County officials specifically recall that the meeting to review the new proposals was scheduled for 6/29/06 with Mr. Kenney. It was supposed to follow another meeting that Kenney in fact attended in the County Office. Kenney admitted during the interview, after reviewing his calendar, that he attended the first meeting at the County Office on 6/29/06.

Both County officials expressed shock when Kenney left at the end of the first meeting and walked out in the presence of Commissioner Timothy McMullen. He left the building without saying a thing to either official. Thereafter, he provided no further advice or guidance to County officials concerning the 2006 Stop Loss RFP process which was far from being completed.

During the interview, Mr. Kenney advised that after the initial meeting with County officials to evaluate the first round of Stop Loss RFP proposals was over on or about 6/20/06 he had a telephone conversation with either Commissioner McMullen or Commissioner Welch. During the conversation he informed the Commissioner that the County Administrator had refused to open the Cook proposal because of an alleged conflict of interest. He stated that the Commissioner informed him that he should “step away” and that he would handle it from there. He advised that from that time forward he had nothing to do with the process. It should be noted here that the County Administrator reported receiving a call from Commissioner McMullen during the RFP process. She advised that he wanted to know why Cook's proposal was rejected. He was angry with her and accused her of overstepping her bounds. He told her that she would be severely reprimanded and said that he was appalled at receiving a letter from Cook informing him that their proposal had been rejected.

It is beyond question that Cook & Company failed to perform its contractual duty and obligation to Plymouth County to provide consulting advice to the County in the 2006 Stop Loss insurance process. Cook dropped out of the process in midstream and left the County with no consulting advice during the remainder of the process. Mr. Kenney backed out of the process and failed to perform the services for the County that he had performed during the same process a year earlier.

This Office finds troubling Mr. Kenney's report that a County Commissioner told him to "step away." The inference could be drawn from this that the Commissioner authorized Kenney to drop his health care consulting role regarding the Stop Loss RFP process. After all, the County is paying Cook over $78,000 dollars annually to perform this very service.   It should be noted here that Commissioner McMullen has confirmed that he told Peter Kenney to step away. However he explained that he told Kenney to step away from the County Administrator's refusal to open Cook's Stop Loss proposal and allow that issue to be resolved by Commissioner Welch or the County Attorney. McMullen denied telling Kenny to step away from consulting on the Stop Loss RFP process and stated that he was unaware that Kenney had any consulting role in that process.

Two County Commissioners Failed to Investigate Warnings of a Conflict of Interest Involving Cook & Company and the County Stop Loss Insurance RFP

This situation occurred because the County Commissioners who voted to award the Stop Loss contract to Cook failed to investigate allegations from several sources that Cook & Company had a conflict of interest involving its bidding for the County's Stop Loss insurance contract while simultaneously acting as the County's Health Care Consultant. The Office of the Inspector General warned the County Administrator and the County Legal Counsel that a conflict of interest existed in this matter before the contract was awarded to Cook. Moreover, according to Commissioner McMullen, the

County Administrator furnished him and the other Commissioners with a copy of the Inspector General's opinion on the conflict issue well before the contract was awarded to Cook. Further, Commissioner McMullen advised that he and the other Commissioners were informed directly by the County Administrator that she believed that Cook had a conflict of interest in the Stop Loss insurance matter.

Mr. McMullen was also informed directly by Peter Kenney that the County Administrator declined to open Cook's Stop Loss proposal because of an alleged conflict of interest. Finally, the minutes of the County Commissioner's meeting of 7/12/06 reflect that prior to the Commissioners' decision to award the Stop Loss contract to Cook, one of the competing vendors raised the conflict issue before all the Commissioners. Despite warnings from several sources that a conflict existed, Commissioners' McMullen and Welch proceeded to award the contract to Cook without investigating the conflict allegations. A thorough investigation of conflict allegations would have uncovered the same factual information revealed in the investigation conducted by this Office.

Cook & Company Attempted to Overcharge Plymouth County By Over $63,000 Dollars for Stop Loss Insurance For 2006

The Plymouth County Official involved in the preparation of the 2006 County Stop Loss insurance RFP used County Health Plan participant numbers of 2,808 for individuals and 3,868 for families. Principles of bidding fairness and equity require all vendors bidding on public contracts to calculate their bid or proposal prices based upon the specifications issued by the awarding authority. All vendor bids or proposals must be based upon identical specifications to insure fundamental fairness. Cook submitted its 2006 Stop Loss insurance proposal to the County without identifying the plan participant numbers that were used to calculate their proposed rates of $6.43 for individuals and $13.24 for families. Moreover, they failed to show in their bid the total monthly and annual cost to the County of their proposal. Nonetheless, when the RFP plan participant numbers (2,808 and 3,868) and the rates offered by Cook ($6.43 and $13.24) are used, the result is a monthly/annual cost to the County of $69,267.76 monthly and $831,213.12 annually for Stop Loss insurance.

Our investigation revealed that Cook did not use the County Health Plan participant numbers set forth in the County RFP to calculate its proposal price. Instead, Cook used participant numbers of 3,019 for individuals and 4,166 for families for this purpose. When the higher numbers are multiplied by Cook's offered rates, the monthly cost of Stop Loss insurance to the County is $74,570.01 and the annual cost is $895,044.00. None of Cook's 2006 Stop Loss proposals ever revealed that the plan participant numbers used were different from and higher than those used by the County in its RFP. These numbers remained undisclosed to the County until Cook submitted a Stop Loss insurance contract to the County on July 19, 2006. This contract, apparently prepared by Cook, disclosed for the first time the plan participant numbers used by Cook in preparing its proposal. The contract was subsequently signed by Commissioner Welch without objection. It obligated the County to pay $63,627.00 more than it should have for 2006 Stop Loss insurance.

Cook also sent an invoice to the County Administrator dated 7/19/06 which likewise revealed to County administrative officials for the first time the actual plan participant numbers used by Cook in calculating its proposal prices. The County received this invoice in the amount of $74,570.01 on 7/20/06, the day after the Stop Loss contract was signed by Chairman Welch. The County Benefits Coordinator astutely recognized that the bill involved an attempt to over charge the County in the amount of $5,302.25 for the first month's Stop Loss insurance coverage for 2006. Upon recognition of the overcharge, Cook was informed of the problem and agreed to be paid at the lower amount. But for the keen observation of the County Benefits Coordinator, the County would have paid $63,627.00 dollars more than required for the insurance.

When questioned about the origin of the plan enrollment figures used in Cook's proposals, its Stop Loss Coordinator advised that she obtained them from Blue Cross and Harvard Pilgrim. She advised that she saw the County Stop Loss RFP which contained lower plan enrollment numbers but did not focus on the difference. She was also shown a copy of Cook's price proposal sheet and asked why it did not disclose the enrollment figures used by Cook and a total of the monthly and annual cost figures that the County would have to pay for the insurance. She stated that there was no special reason for this and advised that she was not aware of any attempt by Cook officials to mislead the County in this regard. Peter Kenney was questioned by this Office concerning the higher plan participant numbers used by Cook for its proposal. He did not know the origin of these numbers and said he had nothing to do with the first invoice sent to the County by Cook for payment of the Stop Loss premium.

It should be noted that all other vendors submitted their price proposals to the County with the plan participant numbers that they used and the annual cost to the County clearly identified. All of the other vendors except one also included the estimated monthly cost to the County as well. Only Cook's price proposal was written with none of this information set forth.

Recommendations

- Plymouth County should not allow Cook & Company to bid on any future health insurance related contract as long as Cook remains in the position of County Health Care Consultant.
- Plymouth County should seek fair reimbursement from Cook for its failure to provide full and complete service to the County as Health Care Consultant with regard to the 2006 Stop Loss insurance RFP process.
- Plymouth County, in conjunction with its own Legal Counsel, should prepare its own contracts with vendors and have them reviewed by knowledgeable personnel before being presented to vendors. The Commissioners should not accept contracts prepared by vendors in order to prevent potential over billing and other irregularities. The legal interests of the parties are clearly different and the County must rely on contract language designed to protect its own interests.
- Plymouth County must insure that all bidders for County contracts specifically adhere to the specifications set forth in Invitations For Bid and Requests For Proposals. This effort should include requiring all bidders to specifically demonstrate in writing the methods that they used to arrive at their bid prices.
- Plymouth County must insure that all Invitations For Bid and Requests For Proposals contain clear and uniform specifications that leave no doubt among prospective bidders as to exactly what they are bidding on. This must be done to insure fundamental fairness and a level playing field in the bidding process.
- Plymouth County should report what occurred in this matter to the State Ethics Commission. At a minimum, what happened in this matter suggests an appearance of impropriety.
- Plymouth County should insure that all County employees including the Commissioners receive appropriate training in public bidding procedures to prevent what happened here from occurring again.