



## Minutes

**Wednesday, June 10, 2009**

**Primary Location:** Commonwealth Enterprise Solutions Center (CESC)  
Chesterfield Conference Room, 11751 Meadowville Lane, Chester VA 23836

**Secondary Location:** CIO's Office, Building 400  
120 Corporate Boulevard, Norfolk, VA 23435

### Attendance

#### Members present:

The Honorable Ric Brown  
Dr. Patricia Cormier  
Hiram R. Johnson  
Kenneth S. Johnson Sr.

Walter J. Kucharski  
James F. McGuirk II, Chair  
Len Pomata

#### Members absent:

Scott D. Pattison  
Bertram S. "Bert" Reese (Monitored proceedings by phone from the secondary location)

#### Others present:

Lemuel C. Stewart Jr., Chief Information Officer of the Commonwealth  
John Westrick, Office of the Attorney General  
Marcella Williamson, Executive Director, ITIB

### Chair's Report

#### Agenda

Chairman McGuirk said today's session is a special meeting to discuss invoices between the Commonwealth and Northrop Grumman and the Commonwealth and the agencies. He said that is the only topic for the meeting. Chairman McGuirk said a closed session would follow to discuss filling the CIO position. He apologized for any confusion regarding the agenda.

#### Call to Order

Chairman McGuirk called the meeting to order at approximately 3:40 p.m. in the Chesterfield Conference Room at the Commonwealth Enterprise Solutions Center (CESC) in Chester.

Chairman McGuirk noted the recent appointment of Len Pomata as Secretary of Technology by Governor Tim Kaine. He congratulated Len Pomata on his appointment and asked those in attendance to give him an official congratulation. Mr. Pomata received a round of applause.

## Roll Call

Chairman McGuirk asked Ms. Williamson to call the roll. There was a quorum at CESC with Secretary Brown, Dr. Cormier, Mr. Hiram Johnson, Mr. Kucharski, Mr. McGuirk and Mr. Pomata in attendance. Mr. Reese monitored the meeting by phone from the secondary location but did not participate. There were no members of the public present at the secondary location.

## CIO's report

Chairman McGuirk asked CIO Lem Stewart for a briefing on invoicing.

CIO Stewart congratulated Secretary Pomata on his appointment.

CIO Stewart said he wanted to provide an informational briefing to the ITIB on the financials and contract items related to the IT Infrastructure Partnership with Northrop Grumman.

He said VITA's revenues are running approximately \$6 million behind and the agency will end the current fiscal year with a deficit of \$6 million to \$8 million. He said this is the third year in a row that VITA's costs will exceed its revenues primarily due to incomplete inventory and inconsistent and incomplete billing data. He noted that the ITIB has heard on several occasions about issues regarding the wall-to-wall inventory of IT equipment at agencies.

CIO Stewart noted that in FY10, VITA will not be able to fully pay Northrop Grumman and other bills, absent remedial actions. Those actions could include increasing agency charge backs or deficit funding through a Treasury loan/line of credit. He said retained earnings over three years have decreased (\$29.7 million on July 1, 2006; \$27.7 million on July 1, 2007; \$11.1 million on July 1, 2008). He noted that expenses exceeding revenues have been covered by retained funds. He said the funds have rapidly been depleted and are estimated by July 1 of this year to be down to \$4 million. The cash position similarly has dropped significantly, he said.

Past due accounts receivable have doubled since the end of FY08 from \$6.5 million to \$12.9 million through the end of May 2009, CIO Stewart reported. CIO Stewart said 23 agencies – essentially a quarter of the executive branch or in-scope agencies – are disputing VITA bills primarily due to claims of inaccurate asset inventories.

He said the invoice data received from Northrop Grumman each month is insufficient. Under the comprehensive infrastructure agreement, managed services billing (usage-based vs. fixed-price billing) was to begin July 1, 2008. He said, however, that Northrop Grumman does not have the validated information to support managed services billing primarily because of delays in completing asset inventory, subsequent delays in establishing procedures and tools for measuring and reporting revised inventory, and resulting delays in re-baselining.

Since the 2008 date passed, CIO Stewart said Northrop Grumman asked VITA to pay invoiced amounts each month based on some components of 2005 agencies' technology assets. He said VITA agreed that it was in the best interest of the partnership to do so until asset reconciliation was completed. However, he said, that was not completed.

Northrop Grumman's cover letter accompanying the invoice every month during this time acknowledges the situation, CIO Stewart said. The cover letter states: "The enclosed invoice is for services rendered in (month) 2009. Northrop Grumman represents that the resource unit figures shown in the attached invoice are based on the original contract baselines. We ask that you make payment of this amount (or an adjusted amount) for services rendered

and for cash flow purposes. Northrop Grumman IT hereby agrees that it will not claim that VITA's payment or failure to object in any way waives any rights of the Commonwealth."

CIO Stewart said VITA made the payments as an accommodation, but did not waive any of its rights. He shared a copy of a fixed-price invoice for April from Northrop Grumman. He said that progress has been made on the hard asset inventory, which includes items such as PCs and servers that can have a barcode placed on them, but work still needs to be done on soft asset items such as storage.

CIO Stewart said the comprehensive infrastructure sets out what is required to be included on an invoice from Northrop Grumman and states, "Any improperly formatted invoices may be returned by the Commonwealth for correction and resubmission, provided that such return occurs timely and that the Commonwealth identifies in reasonable detail what is not correct."

Northrop Grumman has been penalized financially but still is not meeting contractual obligations, he said. He said performance in the following areas is unacceptable:

- Milestones
- Operational stability
- Request for services
- Inventory and accurate billing
- Agency transformation detail plans

CIO Stewart said his plan of action is to return the May invoice for correction and resubmission for payment.

Mr. Kenneth Johnson arrived.

CIO Stewart said returning the invoice means VITA is asking Northrop Grumman to comply with the comprehensive infrastructure agreement, and that Northrop Grumman may correct and resubmit the invoice for payment. CIO Stewart said returning the invoice also demonstrates that VITA is acting to maintain its fiduciary responsibility for the expenditure of Commonwealth funds.

Dr. Cormier asked if one reason agencies have not paid is because of agency budget cuts. CIO Stewart said it's a question of the accuracy of the bill not whether they have the money to pay the bill. He said when inventory is reconciled, the agency quickly catches up with payment. He said if VITA increases rates, it is quite likely that agencies would not have funds to pay additional costs.

Secretary Pomata asked which part of VITA's fiduciary responsibility is being exercised by returning the invoice. CIO Stewart said it would be compliance with the comprehensive infrastructure agreement relative to financial expenditure of taxpayer funds. Mr. Pomata noted that VITA has been accepting the invoices for 10 months, and asked what has changed in VITA's fiduciary responsibility in the last month or two that makes returning the invoice a consideration. CIO Stewart said inventory, billing accuracy and quality control have not been completed and dates for completion continue to be pushed out.

Secretary Pomata said the physical inventory now has been agreed to by all but three agencies and the non-physical inventory is expected to be done this month or next. He asked, given that progress, why take such action. And, he asked, what problem is being solved. CIO Stewart said he is proposing the action because VITA is running out of funds since it can't bill agencies for services they actually are using and because he does not have confidence that Northrop Grumman can complete work and provide accurate data by the projected dates in July and August.

Secretary Pomata said VITA still would owe the money to Northrop Grumman. He asked how rejecting the bill would solve VITA's financial problem. CIO Stewart said as soon as Northrop Grumman corrects the invoice, VITA will generate invoices to agencies that will generate significantly more and rightful revenue and that will avoid what will be federal and state audit exceptions that could have very serious consequences with payment issues if VITA continues with fix-based billing. He said federal agencies graciously granted VITA a year to correct the billing issues, and if it does not, there is the danger of losing federal payments that cannot be recouped.

Secretary Pomata said this seems like VITA is trying to solve a cash flow problem and not a financial problem. He said while a problem with FY10 is being reported, he hasn't seen an FY10 budget for VITA. He said there seems to be an opportunity to change VITA expenses.

CIO Stewart said the board has seen recent budgets and budget trends, and noted that VITA already has reduced overhead in recent years from 17% to 9.9%. He said VITA has met every budget reduction without impacting agency services overall. He said FY10 won't be any different from FY09, and that VITA expenses will exceed revenue projections on a monthly basis if the current situation continues.

Mr. Kucharski said APA is doing a follow-up audit to look at federal billing. He said APA has seen no improvement and that will be reported and federal reimbursement will be a problem.

Mr. Hiram Johnson said the cash VITA has is helping Northrop Grumman's cash flow, not VITA's cash flow. He said the action CIO Stewart plans to take is very prudent and he applauds that action.

Mr. Ken Johnson asked what impact this would have on end users and on completion of transformation. Mr. Stewart said he hopes Northrop Grumman's response would be to step up and comply with the contract, and that any dispute of this type cannot impact services or it would be a breach of contract. He said transformation should continue.

Dr. Cormier said this has been going on for some time and questioned why the issue should be addressed at this point. CIO Stewart explained that Northrop Grumman was supposed to switch to service or usage billing by July 1, 2008, but was unable to do so because of inventory issues. He said VITA agreed to give Northrop Grumman more time on a month-by-month basis to address issues and provide accurate invoices. VITA also has been withholding funds for lack of performance. Still, he said, projected completion dates are not credible and the situation is to a point where VITA will have serious revenue and expense problems.

Mr. Ken Johnson said he understands there have been contract issues with Northrop Grumman for the past year or two, and that staff members on both sides are working to resolve these issues. He said this basically is a contract issue and should be addressed with other issues.

Secretary Brown said not paying Northrop Grumman will not help the Commonwealth in terms of service, and the end result would be remediation.

Chairman McGuirk said there is a translation between the invoice from Northrop Grumman to VITA to the invoice from VITA to agencies. He asked if the agency withholds are because of problems with the VITA bill. CIO Stewart said the problem is with the asset data of wall-to-wall inventory and there are errors and changes. Chairman McGuirk asked if the invoice changes month to month. Mr. Kucharski explained that agencies are uncomfortable with their bills because they may agree on inventory and may not have any changes in inventory, yet their bills change. Some agencies are so uncomfortable with the inventory and bill that they

will not submit them when they are eligible for federal reimbursement. Then, the agencies don't have the cash to pay the bill.

Chairman McGuirk asked if it is possible that the June, July and possibly August invoices may be returned to Northrop Grumman, which means that in addition to the current nearly \$8 million in withholdings, the non-payment of invoices could total \$28 million to \$42 million. CIO Stewart said that is correct because the monthly bill is approximately \$14 million per month.

CIO Stewart said nine agencies were not paying VITA, and now that has increased to 24. He said agencies won't pay based on invoices they believe are not correct. He said action needs to be taken to correct billing so that VITA can get paid.

Secretary Pomata clarified that the current bill that is being sent to agencies is based on a fixed-price bill from Northrop Grumman, and agencies are rejecting it based on quantities being correct. CIO Stewart said rejections are based on accuracy of quantities. Secretary Pomata asked if inventory is correct and service billing is done, would that be acceptable to federal agencies. Mr. Kucharski said that is correct. Secretary Pomata said Northrop Grumman has noted that it cannot have corrected billing for approximately three months, and returning the invoice basically would result in no payment to Northrop Grumman for three months. He said VITA is asking two things: correct the inventory and change the entire billing process to VITA from fixed-priced invoicing to usage invoicing. He said either choice would solve the federal issue and the cash flow problems.

CIO Stewart said both are important and two teams are focused on solving the problem.

Secretary Pomata said it would be a three-month process and VITA will be withholding three months of payments.

Mr. Ken Johnson emphasized that this is a fundamental contract issue. He said this is a public-private partnership and resolution would come between staff, the board and Northrop Grumman sitting down to work out these issues. He said "taking my ball now and going home" will not work. He said working toward a date to resolve all issues would be a better solution. He said it appears we are not partners anymore, but that VITA is saying this is what we are going to do to protect ourselves.

CIO Stewart said VITA has been working with Northrop Grumman, and the Commonwealth has been most gracious in working with the company as partners to extend milestone dates, pay early, excuse penalties and allow the company to bill month-to-month even though the company has not completed inventory and provided usage billing.

Mr. Ken Johnson said there has been scope creep and deviation from the contract that allowed VITA to be more flexible with Northrop Grumman.

There was discussion regarding the amount of the \$14 million per month that is federal. It was estimated to be as high as 25%.

Mr. Kucharski noted that several non-federally funded agencies that have signed off on inventory and receive a correct bill one month, receive a changed bill the next month when there haven't been any changes in inventory. He said there is a reluctance to pay because the agencies aren't sure what they are paying for when they receive an invoice.

CIO Stewart said VITA wants to go to the billing system that is required in the contract, both reconciling the hard quantities and moving from the current invoice to a usage invoice that also includes soft assets such as storage.

Chairman McGuirk asked if giving an invoice with correct inventory counts will solve the problem; CIO Stewart said it would solve the problem on the hard assets and agencies will pay.

Mr. Kucharski said the invoice isn't the issue. He said the question is that the staff made the decision for month-to-month billing to go forward a year ago. He said the issue in front of the board is whether to allow the month-to-month invoicing to continue, or to say we haven't gotten deliverables required by the contract and we need to set a date for accurate service billing. He said the issue is a change in the way we have been operating and how to require Northrop Grumman comply within the confines of the contract.

Mr. Ken Johnson again suggested that this issue be folded in with others that are being discussed by VITA and Northrop Grumman.

CIO Stewart said there are several contract issues under discussion, including performance, and this is one. He said his appearance before the board is to let members know that he plans to take action – serious action – on this particular issue while other issues are discussed with Northrop Grumman.

Dr. Cormier asked if a representative of Northrop Grumman could respond. Chairman McGuirk said the meeting was to brief the board and Northrop Grumman was not asked to prepare. Secretary Brown said input could be given in the public comment period and suggested public comment be moved up on the agenda before the closed session. Chairman McGuirk agreed.

Secretary Brown asked about deadlines for the federal audit. Mr. Kucharski said APA is wrapping up the second phase, and this issue is not resolved. Mr. Kucharski said the APA report to federal entities will depend on the outcome of this meeting, but said the APA expects it will report that the state is exactly where it was one year ago and has not made progress on billing that it said it would a year ago.

Mr. Kucharski said the board is focused on the invoice when the issue is what's under the invoice and how it gets created.

Secretary Brown asked if the board made the decision in July 2008 to go to month-to-month invoicing while issues were worked out. CIO Stewart said he made the decision.

Secretary Pomata asked what it would take to issue accurate bills to agencies. Mr. Kucharski said the simplest answer is correcting both the hard and soft inventories. He said there's no problem with the mainframe application on usage billing because that's been in place. He said getting the hard and soft inventory would help. Secretary Pomata asked if the agencies and, ultimately, federal entities will accept the hard inventory. Mr. Kucharski said the agencies and federal entities want both hard and soft inventories. He said the feds ultimately want what VITA and Northrop Grumman are doing in the mainframe environment.

CIO Stewart said another component is that JLARC approves VITA rates. He said JLARC, like federal bodies, are very much aware that VITA is billing based on estimates and that we do not have the accurate data to take to JLARC for rates. He said when the inventories are correct, that will require a complete reconstruction of the VITA rate structure.

Mr. Ken Johnson asked who is validating the inventory. Mr. Kucharski said agencies sit down with VITA and Northrop Grumman and agree. Yet, he said, the next month when the agency has not purchased or disposed of IT hardware, the numbers change. He said the numbers provided by Northrop Grumman changed. Mr. Ken Johnson said there are fundamental issues

with the agreement that need to be addressed, and again stressed that this should be rolled into those discussions. He added, "However you choose to handle it, Mr. CIO."

Mr. Hiram Johnson said he respectfully disagreed to some extent with Mr. Ken Johnson. Mr. Hiram Johnson said this issue is "important enough, serious enough" that it has to be resolved outside any other negotiations. Secondly, he said, the data to make this billing process accurate is under the control of Northrop Grumman and it changes month to month. Mr. Hiram Johnson said, "We've got to get it fixed, and I think today is the day to get it fixed."

Dr. Cormier asked when CIO Stewart discussed these issues over the last several months, what the response has been from Northrop Grumman. CIO Stewart said Northrop Grumman agrees that it has missed dates and says it will fix the billing issue. He said Northrop Grumman says it does not have the data to bill correctly yet. He said a second inventory was conducted because the first was invalid. He said Northrop Grumman says it will provide the information. He noted that it has been nearly a year and the issue has not been resolved.

Secretary Pomata said all but three agencies have signed off on the hard inventory, and the others are signing off this month. He said somehow there is a "corruption" of the data base when one invoice goes out correct and the next one is incorrect. He said those can be corrected on the hard side. If the inventory is correct, it's the process in billing that gets corrupted. Mr. Kucharski pointed out that the data is from Northrop Grumman. Secretary Pomata said something in the translation is not allowing consistent billing. He said he is not sure what's changed that there now is a different level of fiduciary responsibility than the past 10 months. CIO Stewart said it is not all of a sudden, but nonperformance that is getting more serious.

Mr. Ken Johnson asked how many VITA staff now work for Northrop Grumman. CIO Stewart said 168 are "managed employees" and that Northrop Grumman absorbed approximately 570 employees. Mr. Ken Johnson said the inventory was conducted by a "good, core group" of VITA and former VITA staff. CIO Stewart said the wall-to-wall inventory was contracted to an outside source. He said state employees are not responsible for the inventory.

Chairman McGuirk thanked the CIO for his presentation, and told the ITIB that the CIO had the fiduciary responsibility for this matter. He said there was surprise on the timing of the CIO's proposed action, and noted that some matters of this magnitude should be brought to the attention of the full board not just board committees.

## Other Business

Chairman McGuirk asked for other business, there was none.

## Public Comment

Chairman McGuirk asked for any public comment.

Doug McVicar, Northrop Grumman lead on IT Infrastructure Partnership, said he was not prepared to respond to CIO Stewart's comments because he was unaware of the presentation and plan to return the invoice. He said he does not agree with all the statements made and that Northrop Grumman holds itself accountable. He said there are two distinct issues blurred into one – first, the invoice and compliance and, secondly, the data provided to VITA to bill agencies.

Chairman McGuirk asked if Northrop Grumman could be prepared to respond at the regular ITIB meeting on July 16. Mr. McVicar said Northrop Grumman could be prepared well before that time. Mr. McVicar said because of the financial repercussion of the CIO's decision, Northrop Grumman would like to address the issues as soon as possible. Chairman McGuirk said the board will determine when it can meet to hear Northrop Grumman's response.

## Closed Session

Chairman McGuirk made the following motion:

*"I move that the Board go into closed session pursuant to § 2.2-3711(A)(1) for the purpose of discussing potential appointees to the Chief Information Officer position and the performance of the CIO; pursuant to § 2.2-3711(A)(7) for the purpose of conferring with legal counsel regarding rules for conduct of the closed meeting."*

Mr. McGuirk asked Ms. Williamson to conduct a roll call vote. All members present voted in the affirmative: Secretary Brown, Dr. Cormier, Mr. Hiram Johnson, Mr. Ken Johnson, Mr. Kucharski, Chairman McGuirk and Secretary Pomata. The board went into closed session at approximately 5 p.m.

At approximately, 6:35 p.m., the board reconvened in open session, and Chairman McGuirk stated:

*"The Board is now reconvened in open session having completed a closed meeting. I now will conduct a roll call and will ask each member to certify, to the best of his or her knowledge, that only public business matters lawfully exempt from open meeting requirements under the Freedom of Information Act and only those public business matters identified in the motion convening the closed meeting were heard, discussed or considered in the closed meeting."*

All board members present so certified: Secretary Brown, Dr. Cormier, Mr. Hiram Johnson, Mr. Ken Johnson, Mr. Kucharski, Chairman McGuirk and Secretary Pomata.

Ms. Williamson returned to the meeting.

Dr. Cormier made a motion, seconded by Mr. Ken Johnson:

"I move that Len Pomata be appointed Interim CIO effective immediately."

On a roll call vote, Secretary Brown, Dr. Cormier, Mr. Ken Johnson, Mr. McGuirk and Secretary Pomata voted in the affirmative. Mr. Hiram Johnson abstained citing legal concerns questioning whether the Secretary of Technology could serve as CIO, and asked for a ruling from the Office of the Attorney General. The motion passed on a 5-0 vote with one abstention. Mr. Kucharski is an ex-officio, non-voting member.

## Adjournment

Chairman McGuirk adjourned the meeting at approximately 6:40 p.m.