

In The Matter Of:
STATE OF NEVADA
PUBLIC EMPLOYEES' BENEFITS PROGRAM BOARD

December 11, 2020

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STATE OF NEVADA
PUBLIC EMPLOYEES' BENEFITS PROGRAM BOARD
YOUTUBE OPEN MEETING
CARSON CITY, NEVADA
FRIDAY, DECEMBER 11, 2020

The Board: Laura Freed, Chairperson
 Tim Lindley, Member
 Michelle Kelley, Member
 Betsy Aiello, Member

For the Board: Brandee Mooneyhan,
 Deputy Attorney General

For Staff: Laura Rich,
 Executive Officer
 Michelle Weyland,
 Admin Services Officer II
 Wendi Lunz,
 Executive Assistant

Reported by: Michel Loomis, RPR

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MEETING NOTICE AND AGENDA

AGENDA

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1 CARSON CITY, NEVADA, FRIDAY, DECEMBER 11, 2020, A.M. SESSION

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3
4 CHAIRPERSON FREED: Okay. Thank you. It is
5 10 o'clock precisely by the clock on my computer monitor, so I
6 will call this subcommittee of the Public Employees Benefits
7 Program Board to order and we will go straight into it.

8 Agenda Item 1, roll call.

9 MS. PLUTA: Laura Freed.

10 CHAIRPERSON FREED: After I unmute myself, here.

11 MS. PLUTA: Michelle Kelley.

12 MEMBER KELLEY: Here.

13 MS. PLUTA: Betsy Aiello.

14 MEMBER AIELLO: Here.

15 MS. PLUTA: Tim Lindley.

16 MEMBER LINDLEY: Present.

17 MS. PLUTA: And that's it.

18 CHAIRPERSON FREED: Thank you. We have a quorum.

19 All right.

20 Agenda Item 2, public comment, I'll turn it back
21 to PEBP staff to put forth public comment.

22 And just a reminder, as per usual, public comment
23 can't -- we cannot take any action on a matter raised under
24 public comment unless it's cleared on a future agenda item,
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1 and public comments to the Board are always taken under
2 advisement, but may not be answered. And I think I'll limit
3 it to 4 to 5 minutes per commenter.

4 So with that, I'll turn it back over to staff.

5 MS. PLUTA: Thank you. And as a reminder, the
6 Zoom phone number is for public comment only. This meeting is
7 streaming live on YouTube, so listen to the PEBP Board
8 meeting, please access the YouTube link located on the agenda.

9 For those of you who have called in during this
10 period for public comment, the last three digits of the phone
11 number will be announced and advised that the phone line has
12 been unmuted at which an audible message from Zoom will say
13 that you are unmuted and press star six to unmute. After the
14 caller has unmuted themselves, they may proceed with their
15 comments.

16 So for the first phone number for public comment,
17 we have phone number ending in 404. You are unmuted.

18 MR. RAMP: Good morning. Can you hear me?

19 MS. PLUTA: Yes, we can. Thank you.

20 MR. RAMP: Yes. Good morning, Chairwoman Freed
21 and committee members. My name is Kevin Ramp, representing
22 AFSCME Local 4041 active state employees. I'd first like to
23 thank everyone for your hard work taking this audit seriously.

24 State employees are extremely disappointed with
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1 the findings of the legislative audit. Numerous state
2 employees are living paycheck to paycheck and look to get the
3 best value from their benefits.

4 As we know, legislative auditor found numerous
5 concerns with the contract extensions and other areas during
6 the period that our country and our state was on a financial
7 uptick. These companies benefitted and state employees did
8 not. We will never know that they could have had real savings
9 and improved benefits during these periods. That may be lost
10 forever, but we hope they're not forgotten.

11 I'd like to thank everyone for their time as we
12 are grateful PEBP has taken steps to comply with the audit and
13 make the necessary changes to ensure this doesn't happen
14 again. Policies clearly are going to be changed. People are
15 not going to be held accountable unfortunately. Some of those
16 individuals are no longer with us. And for those reasons, we
17 always call for further transparency to ensure that state
18 employees receive the best value for their health benefits
19 going forward.

20 Again, we hope to see real savings for state
21 employees in regards to your guys' decisions and we appreciate
22 your time and efforts you put into complying with the audits
23 requests and making these changes today.

24 Thank you.
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1 MR. ERVIN: Hello, this is Kent Ervin. Am I on?

2 CHAIRPERSON FREED: Yes, we can hear you,
3 Mr. Ervin. Please go ahead.

4 MR. ERVIN: Okay. Thank you very much. Good
5 morning, Ms. Rich, Ms. Freed and subcommittee members. Kent
6 Ervin, E-R-V-I-N, for the Nevada Faculty Alliance.

7 Having reviewed the legislative audit report and
8 based on over 15 years of following policies, I encourage the
9 subcommittee to make meaningful changes in the duties,
10 policies and procedures manual to reinforce a change in the
11 culture of PEBP.

12 Between 2015 and 2019, the manual was changed in
13 ways that make the operations of PEBP less transparent and
14 that has contributed to the valid criticism in the audit.

15 Making PEBP more transparent and accountable will
16 improve PEBP's standing with the legislature and with its
17 members. I have submitted written comments and more details,
18 but I'd like to highlight a few of them.

19 A major issue highlighted in the audit report is
20 the perceived lack of oversight and involvement by the Board
21 itself and awarding of contracts. In particular, they noted
22 that the executive officer has been delegated the duties of
23 the chief of the using agency under purchasing section, which
24 are given to the Board in NRS 287.04345. That delegation

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1 should be reversed.

2 The Board should restore decision-making
3 authority over our fees with prior approval of scopes of work
4 and scoring ratings and approval of notices of intent to award
5 contracts and should only delegate the administrative duties
6 to process them and negotiate term.

7 Next, the previous executive officer or perhaps a
8 previous Board chair apparently removed the responsibility for
9 contract administration from the quality control officer who
10 reports to the Board share per NRS 287.0426, the staff members
11 under the executive officer's direct supervision.

12 That should be reversed so there is an
13 independent line of reporting to the Board about contracts and
14 to remove a conflict of interest when the executive officer is
15 supervisor of the evaluation committee member. That is the
16 intent of the statute. The QCO's duty should be defined and
17 in the manual.

18 Another issue with the manual is the prescription
19 of the Board policies per plan design and rate setting have
20 been weakened and made more vague over the past five years.

21 That leads to a lack of transparency with
22 policies changes over time without clear documentation and
23 also means that the new Board members have no solid reference
24 of what current policy is.

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1 The methodology should be specified in detail, a
2 third party or new executive officer should be able to
3 reproduce the rate tables based on written policy and
4 methodology.

5 The record of Board decisions should be
6 documented directly by amendments to the manual rather than
7 simple Board motions as the primary source for Board
8 operations, plan design, rate setting and employer
9 contribution policies.

10 Finally, in the past, the Board played an active
11 role in monitoring the program for various quarterly reports
12 that are now on consent agendas. At least annually, those
13 reports should be explained and reviewed in detail by the
14 Board.

15 Thank you for this opportunity to comment and
16 thank you for your consideration of these issues to improve
17 the program and address the serious issues in the legislative
18 audit.

19 Thank you.

20 MS. PLUTA: Line ending in 237, you have been
21 unmuted.

22 Madam Chair, the public comment has been
23 completed.

24 CHAIRPERSON FREED: Okay. Thank you very much.
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1 With that, we will move on to Agenda Item 3, discussion and
2 possible action on changes to Board policies and procedures
3 related to PEBP's corrective action plan submitted to the LCB
4 audit division.

5 Subcommittee members, you've had a chance to
6 read, and of course we had a presentation about the audit at a
7 past full Board meeting and you've had a chance to read the
8 audit and you've had a chance to read the corrective action
9 plan dated November 28th that PEBP staff sent.

10 So I don't know if the executive officer wants to
11 talk about what practical steps for amending the Board
12 policies and procedures we can take to implement the
13 corrective actions on these recommendations or -- the
14 objective was to brainstorm practical solutions.

15 So, Executive Officer Rich, do you have any
16 thoughts on that?

17 MS. RICH: Sure. For the record, Laura Rich.
18 The reason that there is no Board report associated with this
19 is because I think the intent, and if you read the audit, it's
20 very clear that the auditors felt the need for the Board to be
21 more involved in these processes and to establish what it is
22 that the Board would like and its benchmarks and guidelines
23 for staff.

24 And so I didn't think it was appropriate for
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1 staff to come and say this is what we think the Board should
2 do. So it was left open for the Board members to have or the
3 subcommittee to have kind of an open discussion.

4 However, I did invite Kevin Doty. He is the
5 administrator of purchasing who I've had some conversations
6 with and I feel may have some information at least to provide
7 to the Board as far as the recommendations or the corrective
8 action plan related to the contracts, which is the majority of
9 those recommendations that were -- that are in that corrective
10 action plan.

11 So I don't know, Kevin, if you want to maybe just
12 kind of kick it off with your thoughts and maybe opinions on
13 actions that the Board should or could take or where that --
14 the Board should start their conversations.

15 MR. DOTY: Thank you, Laura. Kevin Doty, for the
16 record. I am the Administrator for State Purchasing. Yes,
17 I've read the LCB's audit and the corrective action plan and I
18 don't think there's anything that's unusual in what I see
19 here.

20 I mean, this is the kind of problems I can see an
21 agency getting into as far as -- in a certain sense, relying
22 upon solicitation waivers to extend contracts is an easy
23 button that agencies too often push.

24 It is -- and oftentimes in each individual
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1 circumstance, it is done -- maybe done with the best of
2 intentions, the idea that they actually are achieving best
3 value for the state. But with the LCB audit coming in and
4 seeing the entire forest and not just each individual tree,
5 each individual contract and solicitation waiver, it was
6 obvious that tens of millions of dollars in contracts were
7 awarded or extended without the benefit of an RFP.

8 And it is the policy of the State of Nevada
9 that -- the general policy of the Board of Examiners that
10 contracts be solicited at least every four years.

11 And I think that is a starting point for the
12 Board to look at, keeping tabs on how contracts are being put
13 in place and knowing that if an RFP is being done, then the
14 assumption that is the right way to do it. Extra scrutiny
15 should be applied whenever something is done that isn't part
16 of an RFP process.

17 And I guess beyond that, my recommendation would
18 be it might be worth while considering placing a -- having a
19 standing item on the PEBP Board meeting agenda regarding
20 contracts so that there can always be an update regarding
21 where PEBP staff is in the different contracting process.
22 Many of the difficulties I see that agencies get into come
23 from a lack of planning.

24 It's important to know that RFPs can't be pulled
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1 off overnight. They require a lot of work and they're -- they
2 need to be drafted and redrafted and done with the help of
3 subject matter experts who know exactly what you're looking
4 for, and you have to put together an evaluation committee of
5 experts and it's a lot of work.

6 And you have to allow time for that process to
7 play out, plus the time to negotiate contract or contracts
8 after there's been an award and then finally BOE approval
9 which takes some time in itself.

10 So even if it's simply a matter of maintaining
11 all of PEBP's contracts on a spreadsheet and where they are in
12 the different process, and I know that the next couple of
13 years, that will be a little hectic since there is currently a
14 lot of RFPs in the pipeline for PEBP and just causing a lot of
15 work for PEBP staff.

16 And so it will be probably a couple of years
17 before you're in a position where you can return to what we
18 would call normalcy with regard to managing contracts. But
19 just off the top of my head, those are the things that come to
20 mind and I'm happy to answer any questions.

21 CHAIRPERSON FREED: Thank you, Mr. Doty. I --
22 so, Subcommittee Members, essentially we're talking about
23 Recommendations 3, 4 and 5. We can return to Recommendation 2
24 about gifting policies maybe in a bit, but since we have the
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1 purchasing administrator with us, I wanted to ask his opinion
2 on -- clearly, you know, the state administrative manual says
3 contracts should be bid at least every four years and we need
4 to adhere to that.

5 What is an appropriate term of a contract for
6 these really large dollar contracts that PEBP enters into that
7 something like a Medicaid would enter into where transition of
8 vast amounts of database information become necessary.

9 And so what's the best practice for PEBP in terms
10 of negotiating life -- lives, terms of contracts and
11 periodicity for bidding.

12 MR. DOTY: Yes. Like I said, it's the general
13 policy of the Board of Examiners that contracts be resolicited
14 every four years. That isn't an absolute, and as you
15 correctly pointed out, Chair Freed, there is -- there are very
16 good reasons to go beyond four years.

17 And the State has, for instance, with our Smart
18 21 contracts, those are ten-year contracts for the replacement
19 of our HR and financial systems. We are working on an RFP
20 right now for Medicaid that will probably be a ten-year
21 contract. So if we have justification to go longer than four
22 years, then we can do that.

23 And so there may be differences in the different
24 contracts PEBP has. Some may need to go longer than four.

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1 Other times it's possible to do a contract for, say, four
2 years and then build in the possibility for one or two years
3 renewal. And the renewal will be based upon what market
4 conditions are at that point and looking at what best value
5 is.

6 One of the downsides to that is sometimes, in
7 that situation, agencies will just assume that two years are a
8 given and not look seriously at whether a new RFP should be
9 done.

10 But certainly four years is a guideline. It is a
11 guideline in both directions. If PEBP were to get a year and
12 a half into a four-year contract and decided the contract
13 wasn't working for PEBP, then it could be useful to start
14 putting together another RFP ahead of schedule and go out to
15 bid early if that was what the PEBP Board decided was best.

16 And likewise, there are going to be contracts
17 where it is in the best interest of PEBP and the State of
18 Nevada for the contracts to be initially put into a place for
19 a period longer than four years.

20 CHAIRPERSON FREED: Okay. So, you know -- and
21 I'll throw this out to the subcommittee to chew on. My own
22 feeling is that, I mean, for instance, the auditor's contract,
23 you know, I know we have to go out to bid to replace Bob Carr
24 and health claim monitors. That could be done every four

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1 years.

2 The actuary, that could be done every four years,
3 because there's obviously competitors in the market and it
4 behooves us to seek best value on stuff like that.

5 I'm thinking more of the enrollment and
6 eligibility system, the provider network contracts, the big
7 stuff that we'd want to do for maybe six or eight years.

8 What appetite does the subcommittee have for
9 getting into that kind of specificity in the policies and
10 procedures? In other words, listing out all of our major
11 vendors and saying the policy of the Board is to rebid this --
12 well, to rebid everything at least every four years, but these
13 larger contracts, we would seek a term longer than four years.
14 How does everybody feel about that.

15 MEMBER AIELLO: This is Betsy, and I have a
16 little bit of an opinion. I worked at Medicaid for 17 years
17 and they may be doing a ten-year contract now, but we did
18 manage to pull off during the time I was there every four
19 years with large contracts. But it was outrageously hard and
20 we had to start drafting them after two years. So I'm not
21 suggesting that that was best practice either.

22 But I'd like the auditor's suggestion that maybe
23 our policies and procedures use four years as a standard and
24 we develop a check-off sheet that has the requirements and

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1 probably purchasing already has one that maybe can be brought
2 to us and we might make some tweaks, but that then there's the
3 suggestion in our policy or the exception that management can
4 deviate from this with documented reasons why.

5 And then it would be in the records so that if
6 we -- we would know that the standard was X, but management
7 has come to the Board and suggested for X contract for this
8 period, they're wanting an exception because of X, Y and Z,
9 and then it's approved and it's documented.

10 Because I really liked a lot of the suggestions
11 as being part of the policies, but that you could deviate.
12 During the time I was there, we had a large HMO that probably
13 had a 120,000 -- maybe not that many, maybe 50,000, because I
14 think it was our -- a new one that said after a year and a
15 half, we can't do it for this money you're paying us, you need
16 to give us more and we said we can't, and they ended the
17 contract.

18 And we needed a way to scramble, and so there are
19 times that you need to have exceptions even outside the voted
20 and accepting if someone says they're going to walk, you know.

21 But -- so I like the idea where it says that we
22 develop a check-off list that gets for every contract
23 submitted to the Board, what was done to meet this
24 requirement.

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1 And like I said, Mr. Doty, probably purchasing
2 has a generic one for RFPs or maybe not.

3 MR. DOTY: Thank you for the question. If the
4 question is about going beyond four years --

5 MEMBER AIELLO: Not just to that.

6 MR. DOTY: Okay.

7 MEMBER AIELLO: It's a check-off list that says
8 this RFP or this contract meets state law because we did state
9 law X, we did this, state law Y. We did have something like
10 that at Medicaid that we had to submit to our DAGs, and we --
11 I don't know. They -- we couldn't do anything without them
12 saying okay, and so we had a contract check-off list before we
13 released our RFP that everything in the RFP was that way, that
14 the timelines were that way.

15 Whatever it is that needs to be, because I could
16 say this audit found four things, so we adapt our policy for
17 these four things. But maybe there's three others then that
18 they'll pull the next audit.

19 So we need to have a comprehensive checklist, I
20 think. Whether it's a small contract, the checklist would be
21 easy to sign. It's in RFP Item 1.3.8 meets this requirement
22 or whatever, and then it could be -- go to the Board and the
23 Board could know that this meets the requirement and this
24 contract does.

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1 But then if there's a Requirement Number 5 that
2 PEBP doesn't feel, maybe that's the length of the contract or
3 maybe that's some sort of insurance that the vendor has to
4 cover and we think it needs to be waived for some -- whatever
5 it may be, this item is waived because -- or it -- the PEBP
6 agency is asking us as a Board to waive that item.

7 So that's my thought is that -- because as expert
8 as we can be on our piece because we've done them for years
9 and years and years, not all the Board has done them, and each
10 year I get a little bit older and a little bit farther away
11 from having done certain things and a little more forgetful,
12 and so that's where some of these requirements on forms would
13 be helpful to me. Just a thought.

14 MEMBER KELLEY: Michelle Kelley here. So, you
15 know, when I think about PEBP contracting, I think it's
16 obviously one of the most important things the agency does;
17 right? Everything, all the rate setting, the plan design is
18 based on the value we can get from our contracts.

19 And so I think I -- I do agree with the Chair, I
20 think that there's some -- there -- I think that the policy
21 and procedures are very general at the moment and I think that
22 there needs to be more specificity across all of the items,
23 not just the contracting firstly, but we're talking about
24 contracting today.

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1 And I also think that there's a benefit for
2 especially our more complex contracts. They tend to have the
3 highest dollar value and so I think that by having a longer
4 than four years upfront, like if the plan is to do -- to maybe
5 allow 6- or 8-year contracts, then let's bid it like that
6 because there's value in that length; right, for the vendors.

7 And so I do think that the Board should identify
8 those high value complex where it's in everyone's best
9 interest to go for the longer term. I mean, we can always
10 cancel them out; right? There's generally a 30-day notice
11 period or for health insurance, it's 60 or six months,
12 whatever. So for non-performers, we can get them out.

13 But I think perhaps the value -- and I don't
14 think there's a lot of those ones. Like I do agree, you know,
15 the networks are important because they obviously impact our
16 employees. We don't want those particularly turning over
17 every four years because there's always disruption and our
18 employees go crazy about that disruption, rightly so.

19 So I think identifying that and listing it in the
20 policy and having the checklist. The checklist is a great
21 idea.

22 And maybe as a Board, for that oversight piece,
23 we as a Board need to be reviewing every contract every year
24 with the checklist; right, to make sure the vendors are

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1 performing, we're still getting value, our employees are
2 satisfied, all of the different items that go into, you know,
3 a successful contract.

4 So I think that -- so basically I'm agreeing that
5 we need to have more detail. We should identify those high
6 values where we want to go longer and the default should be
7 four years, you know. I mean, and I think a lot of them, as
8 the chair said, fall into that four-year category.

9 So I also think -- kind of stepping back a bit, I
10 also think that the language in the policy really does need to
11 be more specific even as far as requiring the Board members be
12 on those RFPs. It doesn't even say that. It says maybe a
13 Board Member or Members will be on the committee. Like -- so
14 we need to be more specific and I also would like to see a
15 timeline built into this policy.

16 So right now it's so general, but I'd like to --
17 obviously it's not a timeline with designated dates or
18 anything, but what is the order that the RFPs happen in and
19 who's responsible? When does it come back to the Board?
20 Basically a bullet point of how the entire process, from start
21 to finish, with the Board oversight built in there before the
22 contract's awarded.

23 Before that notice of intent goes out, the Board
24 needs to be approving the selection of vendor; right? I mean,
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1 that's our job. And then giving the executive officer or the
2 quality control officer the power to start those negotiations
3 for a better deal or the best deal possible. My 150 cents.

4 MS. RICH: Can I interject here for a minute on
5 that -- on the last comment? This is Laura Rich for the
6 record. So we ran into a problem, Michelle. This is before
7 you were on the Board, but we ran into a problem several years
8 ago when -- and it was -- we actually had to make changes to
9 legislation because of this where we had an evaluation
10 committee make a decision and then it went back to the Board,
11 and the Board did not agree with that decision that was made.

12 And so anyway it -- long story short, it was --
13 it contradicted purchasing statutes. And so that process
14 contradicted purchasing statutes and we had to go back and
15 make changes to our own statute so that that didn't happen, so
16 that we had an evaluation committee that essentially chooses
17 who -- that winning vendor. And then at that point, a notice
18 of intent goes out which does give the executive officer and
19 PEBP the ability to start those negotiations.

20 But if we revert back to that, it could cause
21 potential problems because it's essentially in conflict with
22 NRS 333. And I don't know, Kevin, if you want to add anything
23 to that.

24 MR. DOTY: Sure, Laura. Thanks. Basically, we
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1 don't want to be in a position where the evaluation
2 committee's selection of a vendor from the winning proposals
3 is somehow contradicted by a political decision or anyone who
4 is in a position to -- you know, we don't want a version of
5 the Board being subject to lobbyists or anything like that,
6 trying to overturn what an evaluation committee has decided.
7 That is why we do need to stick with what the evaluation
8 committee -- their initial choice.

9 If for some reason it's not possible to complete
10 negotiations with that vendor, then it is possible to move on
11 to the next highest scoring vendor in a solicitation.

12 But I think what Laura was talking about was, you
13 know, trying to make sure the process is politically
14 insulated. That is what -- how our evaluation process is
15 established under Chapter 333.

16 MEMBER AIELLO: And this is Betsy. I just want
17 to support those answers. Having been on some rather large
18 evaluation committees, you may get binders that the evaluation
19 committee may have spent 80 hours reviewing the submissions
20 from all the different vendors or more as an individual at
21 your house. Then you go to evaluation committee meetings,
22 which can last up to 40 hours.

23 So there's a lot of background in the choice that
24 a Board would never have all the knowledge, and that's where I
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1 could see the requirement or recommendation that a Board
2 Member sit on one of the evaluation committees to represent
3 the Board. But there's a huge amount of work that nobody on a
4 Board could know goes -- well, I mean, that goes in for the
5 choice, so -- -

6 MEMBER KELLEY: I think I understand all those
7 points, and I don't disagree, but I think that they are
8 clearly a conflict in both NRS 333 and the auditor's report,
9 because the auditor's report says the Board is ultimately
10 responsible. But the process that's outlined here basically
11 delegates that responsibility to the executive officer, but
12 also the committee.

13 If the Board -- if the Board basically -- and I'm
14 not saying that the Board should review all of the finalists
15 or should even revisit the scoring. I guess what I'm saying
16 is that before the letter of intent is issued in that closed
17 confidential meeting, the chair of the RFP committee should
18 present the findings, including just the scoring on the
19 finalists and perhaps, you know, all of the highlights of the
20 contract.

21 Because at the moment, it feels to me that when
22 it comes to the Board, its failure complete, how are we meant
23 to perform our fiduciary duties if we're getting handed
24 something with a bow and there's no alternative.

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1 So I'm sorry -- so I'm not presuming that we
2 would second guess scoring, because, yeah, like I've obviously
3 been on those RFPs. There's a lot of documents to review and
4 there's a lot of people to talk to. But I do think that -- I
5 feel like the Board can do its fiduciary duty and be satisfied
6 with the outcome without getting into the political sphere. I
7 think that was done for years and years. It's only in recent
8 advents that there's been lobbyists out there at all the
9 meetings and second guessing decisions.

10 My intent is not because I think decisions need
11 to be second guessed, but I do think that ultimately the NRS
12 says where the Board is responsible. And so how do we ensure
13 that we are doing due diligence that's appropriate for the
14 size of the contract?

15 CHAIRPERSON FREED: So I -- what if we put into
16 the policies and procedures that depending on the size of the
17 value of the contract, one or more Board Members need to sit
18 on the review committee?

19 MEMBER KELLEY: Yeah, I think, absolutely.

20 CHAIRPERSON FREED: Okay.

21 MEMBER KELLEY: I mean, even aside from this
22 conversation, I think there does need to be Board
23 representation --

24 CHAIRPERSON FREED: Okay.

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1 MEMBER KELLEY: -- on that to make sure it's
2 clear.

3 CHAIRPERSON FREED: Yeah, and, you know, Laura
4 Rich has done that in all the RFPs are pending. At least one
5 of us and more likely two of us are on those committees, which
6 is, I think, a good thing. So we can certainly put that into
7 the policies and procedures, because you're right.

8 I mean, subcommittee members, Member Kelley was
9 talking about policies and procedures beginning on page 9 and
10 it ends on page 10. It's a very short section right now.

11 So -- okay. What I am hearing is that we should
12 work on a -- tell me, Member Aiello, if I'm mis-restating your
13 comments because I think they were incredibly valuable and
14 your experience as a retiree from HHS is really, really
15 valuable.

16 So we should have a checklist that staff needs to
17 submit to the Board if we're going to deviate from a typical
18 four-year RFP cycle.

19 MEMBER AIELLO: Let me read what I wrote in my
20 notes and see if I --

21 CHAIRPERSON FREED: Okay. Great. That sounds --
22 that's even better.

23 MEMBER AIELLO: I would suggest a policy and
24 procedure is needed to require contracts -- this is almost
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1 what the auditors said, and contract amendments have
2 supporting documentation showing compliance with state laws
3 and policies and proper approvals before submission to BOE.
4 And then I would suggest this would include a checklist that
5 identifies this that could be submitted to the Board,
6 something along that line.

7 And then I would like to see a policy and
8 procedure that PEBP management would need to provide
9 documentation that would justify any deviation from the State
10 policies and procedures or best practices that would then be
11 submitted to the Board.

12 So, in other words, if that checklist had an item
13 that couldn't be checked because PEBP was wanting to deviate
14 from it, they would submit justification for that deviation.

15 And then following with that, because purchasing
16 gets to review everything and say it's a go or it's not a go,
17 that there needs to be a P&P that requires purchasing's
18 approval for any amendments or contract extensions that are
19 above a certain level.

20 And purchasing could probably guide us on this
21 because you may not release a RFP, you may just do -- want to
22 do a contract extension. But at a certain point, it should go
23 to purchasing through the Board, but to purchasing. But we
24 need to know where in our policies that needs to occur unless

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1 it's 100 percent of them and maybe if it needs certain
2 checklist things, purchasing just stamps it.

3 I mean, I'm not big for total bureaucracy, but
4 sometimes when you dial things back, you have to get tighter
5 again before you can loosen them.

6 CHAIRPERSON FREED: Those are all great ideas,
7 but I -- let me play devil's advocate here for a second.

8 One of the things that got the past executive
9 officer, you know, called out in this audit was zero dollar
10 scope changes that purchasing would never see.

11 And that's where the Board comes into play
12 because it turns out some of those scope changes, which just
13 go straight to the clerk of the Board of Examiners because
14 they're zero dollar, you know, they're -- that was stuff that
15 didn't get taken to the Board for review and approval, and
16 then it just went to straight to GFO. And, you know, again,
17 Purchasing would have no insight into that.

18 MEMBER AIELLO: And --

19 CHAIRPERSON FREED: So how do we deal with that
20 kind of thing where a zero dollar scope change might, in fact,
21 be programmatically really substantive?

22 MEMBER AIELLO: And maybe Kevin Doty -- Doty or
23 Doty (pronouncing), I'm sorry, could address -- it was my
24 understanding that with most contracts, you can't make a scope
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1 change because vendors didn't have the ability. You could
2 make an extension maybe and with the extension, it might add
3 more dollars.

4 But I thought that a substantive scope change was
5 not allowed under NRS at all from my understanding, because
6 other vendors didn't get the chance to tell you what their
7 options may have been, and maybe I'm wrong.

8 MR. DOTY: Thank you for the question. I think
9 you hit upon exactly the right word there and the word
10 substantial. If you have a substantial change in scope, then
11 it is something that we should really look at possibly going
12 out to bid for a new contract possibly, whereas if you're
13 making changes within the scope of the -- what was bid, which
14 often happens, especially when you have a complicated
15 contract.

16 There are -- especially if it involves IT
17 components of any type, things come up that need to be
18 adjusted and changed along the way, and then it's appropriate
19 to do a change in scope and make sure you get that all put in
20 writing because we'd much rather have the lawyers review
21 changes like that and make sure things are put in writing in
22 the contract as opposed to just having a vendor say, oh, yeah,
23 we'll make that change for you.

24 It's much better practice to make sure we go
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1 through the process of amending the contract to show that that
2 change is reflected in the contract.

3 MEMBER AIELLO: And so maybe that -- because the
4 question then would be how -- I think your question, Laura,
5 was how would that get caught? And that might be the removal
6 of the executive -- that exception of the Board to the
7 executive officer, because if a contract change was requested
8 to be being made that included a scope change, if the Board
9 members were aware in their policies and procedures and in the
10 audit report, I thought it was pretty clear -- actually I even
11 wrote in my notes that the United States GAO had some real
12 good language about what requires a substantial scope change.

13 I think it was in the audit report and if that
14 was somehow in the P&P's for the Board, then the Board would
15 all be educated to what's substantive versus not.

16 If the Board was, again, the chief as NRS is
17 requiring, then the -- it would be -- the onus would be on the
18 Board and the Members of the Board to catch it when a scope
19 change. I -- some thoughts. I'll try to be a little quiet.

20 MS. RICH: And this is Laura Rich for the record.
21 I think that Betsy said -- she hit the nail on the head when
22 it comes to the fact that we need to define substantive,
23 because, Kevin, I think you can probably agree with me here
24 that in the past, these scope changes that were approved by

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1 the previous executive officer were considered in -- at the
2 time by him and also by the previous purchasing administrator
3 to not be substantive and -- which is why it was the audit
4 finding -- it was in the audit finding, but it -- when it
5 actually happened, it made it through the process because that
6 definition of what is substantive was never -- it was never
7 really -- it never existed. And so I think that that's
8 something that is necessary in this case.

9 MEMBER KELLEY: So it's Michelle here. I
10 actually -- so, you know, I think I agree with a lot of what
11 Betsy's saying, but, you know, I also oversee and have in the
12 past large RFPs and we don't want to make it too bureaucratic;
13 right? I mean, I think that is my -- I have some concerns. I
14 think that, yes, we need to define what substantive is, but
15 that is almost contract dependent; right?

16 I mean, I think that you have to start at the
17 beginning. You have to start at -- firstly, the Board needs
18 to be responsible for developing the scope of work. I
19 think -- I feel like in the past few years under the former
20 executive officer, maybe the desire was to keep the Board out
21 of as much as possible.

22 And as an administrator, I can see the value of
23 getting the Board out of as much business as you can, but the
24 reality is, is that the Board is responsible.

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1 You know, like the NRS outlines what the Board is
2 responsible for and it's everything; right? And a lot of it's
3 delegated to the executive officer, but I don't really think
4 contracts should be delegated in any way because I do think
5 that -- as I've said, I think it's one of the largest things
6 we do as a Board and it needs to be transparent and there does
7 need to be input.

8 So I -- you know, I personally think that -- I
9 agree with Betsy that the delegation to the executive officer
10 needs to be removed. I think that the Board itself needs to
11 approve all of the scope of works for any and all contracts.

12 And that can be done -- that can be done long
13 before the RFP goes out. Like these contracts don't change a
14 whole lot from time to time, it's a fairly stable thing. And
15 I understand new technology maybe changes the scope of work
16 that then comes back to the Board, you know.

17 And that would actually educate the Board, one,
18 so that when there is a scope change, people understand what
19 you're talking about, because I think that there -- you know,
20 I mean, we've talked about the different knowledge levels of
21 the Board Members. So part of educating them is kind of
22 reviewing all of that material on a fairly regular basis.

23 So I think that -- you know, I think the Board
24 needs to take back responsibility. You know, it needs to be

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1 really clear in the procedure process. I do think that we
2 can -- for those contracts that are more complex and high
3 dollar value, we can justify upfront why they're more than
4 four years; right? I mean, we can go through the high value
5 or the complex with assistance from staff and go, okay, well,
6 this is high value, it's complicated. What are the pros and
7 cons of going for six or eight or whatever we want to talk
8 about and actually document that in advance.

9 And then we don't have to do it every time and we
10 don't have to burden Purchasing. Every time kind of we go out
11 or there's a change, we don't have to kind of go to them and
12 say, well, this is why we're doing it. Let's do it up front
13 because I think that allows more input from the public, too;
14 right?

15 So the Board's responsible for the scope of work
16 in my perfect world and then, of course, there is the
17 subcommittee that does its evaluating and its selection, and
18 then it comes back to the Board to present on the finalist,
19 you know, and that's when the contract's entered into.

20 But I do think that, yeah, you know -- I mean, I
21 just think that it feels like -- it feels like the Board's
22 kind of being sidelined from when I used to watch all the
23 meetings, we -- there used to be a lot of information given to
24 the public, which was really helpful in understanding the

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1 decisions the Board had to make.

2 Yeah, so I think that -- I think I'm midway with
3 Besty and not, because I think that maybe there's too much
4 bureaucracy in the -- if you really dig down deep, but we can
5 do a lot of this work up front that's not competitive.

6 MEMBER LINDLEY: Hey, Tim here if I may chime in.
7 All right. Tim for the record. So kind -- we've kind of gone
8 through a lot of topics and I do have some notes on my end
9 and, Kevin, you may have to chime in.

10 Can you kind of -- please understand I'm a new
11 Board member, newly appointed and getting my feet wet and
12 learning as much as I can. But can you tell me what a
13 solicitation waiver is and what it does?

14 MR. DOTY: Certainly. Kevin Doty, for the
15 record. A solicitation waiver comes up in a couple of
16 different circumstances. Essentially it is a -- it is the
17 administrator of the state purchasing determining that an RFP
18 doesn't have to be done.

19 And in a case where we have a sole source, for
20 example, where there's only one vendor who can possibly do the
21 work, or more often than that, agreeing to extend a contract
22 beyond its original four-year time frame. And that is done in
23 order to adhere to the state's policy of best value.

24 Oftentimes I have to grant an extension for a
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1 certain amount of time because an agency simply doesn't have
2 time to complete an RFP and get it done, get the contract
3 approved, but before the one that is in place expires. But
4 hopefully with good planning, that doesn't happen. That's
5 basically what a solicitation waiver is.

6 MEMBER LINDLEY: Okay. So just kind of recapping
7 what you said. It's typically done when there's one vendor
8 out there, no other potential people out there or wanting to
9 extend the contract beyond four years or an attempt to adhere
10 to the policy at best value.

11 My question is to the Director Rich would be: Do
12 we have any contracts where there is only one vendor who can
13 possibly do the work?

14 MS. RICH: That's not usually the case.

15 MEMBER LINDLEY: Okay.

16 MS. RICH: Usually with most of the contracts
17 that we have, it is -- we definitely would go out to bid
18 for -- I can't think of one that would just have one vendor.

19 MEMBER LINDLEY: Okay. So I guess what I'm
20 trying to understand is we -- in the audit, there were
21 solicitation waivers; is that correct? And that they were
22 used to extend contracts beyond the contract frame? All
23 right. The four-year time is just a recommendation in the
24 same; is that correct, Mr. Doty?

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1 MR. DOTY: That is correct. It is the general
2 policy of the Board of Examiners, the contracts should be
3 resolicited at least every four years.

4 The idea behind that is that we assume the
5 competition is what will yield the best price for the state,
6 the best value for the state. And if there are circumstances
7 where it can be shown that best value can be achieved without
8 that, then that is when a solicitation waiver is.

9 MEMBER LINDLEY: Kevin, you also noticed that
10 there is a time to process, you know, the RFP process,
11 generating the RFP all the way to approval. What's the
12 general time frame for approving a contract?

13 MR. DOTY: It's longer than most people think.
14 It's -- and it depends entirely on the complexity of the
15 contract. It can take a long time to get together a big RFP
16 because it is important, as we heard in the earlier
17 discussion, to make sure we have a good scope of work put in
18 that RFP so the vendors know what it is we're looking for.

19 And then there is time for the evaluation
20 committee to review the proposals and score them and that's
21 when we issue a letter of intent. And that starts contract
22 negotiations with the vendor who is -- scored number one in
23 the evaluation process.

24 And what makes it difficult for me to put an
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1 exact timeline on the whole process is that contract
2 negotiations are something that is oftentimes beyond our
3 control. They can drag on quite a bit once the attorneys get
4 involved. We have contracts that -- we have vendors who
5 accept the State's conditions on day one and we just proceed.

6 Other times it takes months of going back and
7 forth. And there are situations where the attorneys simply
8 can't agree and we have to decide to move on to the second
9 highest scoring vendor because we simply can't come to
10 (electronically indiscernible) contract.

11 So once we get to that point, that's when we
12 issue a -- once we have contract terms agreed to, that's when
13 we get to what we call a notice of award, this. And that's
14 when a vendor who didn't win has the opportunity to file an
15 appeal with our appeals division and that could delay things
16 further.

17 If we don't have that or we've gotten past that
18 point, that's when we go to the Board of Examiners for
19 approval and that's -- usually with the kind of contracts
20 we're talking about at PEBP, they're usually going to be a big
21 enough dollar amount that's going to be full Board approval.
22 So that's going to be at least another six weeks.

23 MEMBER LINDLEY: So my -- a quick question: Is
24 this on the internet, like kind of the steps? You know, RFP,
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1 is that all on the internet?

2 MR. DOTY: You should be able to find this
3 information at our website for the purchasing division.

4 MEMBER LINDLEY: Okay. I'm there.

5 MR. DOTY: And if you have any questions, you
6 know, you can always ask me.

7 MEMBER LINDLEY: But the whole process is online,
8 okay. And so -- and as far as time frame, I guess, Director
9 Rich, what would you -- what would you say is our typical time
10 frame for a normal -- or just ball park, you don't need to get
11 specific.

12 MS. RICH: So -- well, I was actually going to
13 provide you with a -- kind of an example, an illustration.

14 So back in, I believe it was the May Board
15 meeting, we presented to the Board -- PEBP presented to the
16 Board the request to -- for a solicitation for the enrollment
17 and eligibility system. That was very, very quickly
18 developed.

19 We really should have taken more time to do it,
20 but we -- you know, we had a very, very small window of time
21 to release it, knowing that the implementation for that was
22 going to be a year long. That was back in May.

23 We developed the solicitation that went out and
24 the committee met at the end of August, I believe, and decided
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1 on a winning vendor. In that time, we negotiated the contract
2 and done everything that Kevin Doty just talked about and it
3 is now just up for the -- or it was just approved at BOE the
4 other day. So I mean, we're now in December and so that
5 process was from May to December. And that's pretty normal
6 for the most part. It's -- contracts do take -- solicitations
7 do take about six months from start to finish.

8 MEMBER LINDLEY: Okay. So one thing I've heard
9 in the discussion was education and probably one thing I would
10 like to see is in the Board packet or the agenda, maybe just a
11 hyper link to the Purchasing Division's step-by-step process
12 on how contracts are awarded.

13 So then if someone asks, you know, like Michelle
14 said, we received a -- the number one bid wrapped in a bow, we
15 know -- or we can show, hey, this is the process on how we got
16 it gift wrapped and put into a bow because it's education at
17 that point.

18 Another thing is we were talking about time frame
19 for contracts, you know, four years is the recommended period.
20 As an active member and -- well, Mr. Doty, I'm an auditor for
21 taxation and as an auditor, the one thing I don't like is
22 change because when there's change, there's room for error
23 or -- yeah, we don't like -- I don't like change because
24 change shows problems or can reveal things that are not

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1 originally found, you know. You know what I'm saying, I hope.

2 So for members and state employees who use our --
3 the PEBP contracts, such as HMO, the dental providers or the
4 PPO or even the pharmacy network, there -- I guess you could
5 say that we don't want them to see a lot of change because a
6 lot of change in health insurance benefits tends to yield less
7 confidence in the employer. And my idea would be to break out
8 two categories of contracts.

9 One would be kind of a front of the house
10 contract and the other one would be a back of the house
11 contract. Back of the house contract, for example, would be
12 the auditor.

13 As an employee, I don't really know who the
14 auditor is. I don't interact with the auditor. I don't have
15 face with the auditor. But I do have face with my dental
16 network, with my pharmacy benefits manager because I'm going
17 to go pay for my prescriptions.

18 And so if we -- I would say that we throw out
19 the -- just my idea of spit balling here, the idea of saying,
20 okay, if it's an administrative type contract or back of the
21 house type contract, put it to a four-year period.

22 And if it's a front of the house contract
23 extended to six or eight years or even ten years, because then
24 we can say -- show our members, hey, we have longevity, we

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1 don't expect a lot of change, you know. You have your doctor,
2 you can keep your doctor kind of thing. Those are my comments
3 at this time.

4 CHAIRPERSON FREED: Okay. It is 10:57. We've
5 been at it for an hour. Would everyone like a couple minutes
6 break?

7 MEMBER KELLEY: Yes, it's Michelle here. I
8 just -- I do have a quick question for Mr. Doty before we get
9 off in case he disappears. I wasn't sure if he was planning
10 to go off.

11 CHAIRPERSON FREED: Mr. Doty is not allowed to
12 disappear. I'm sorry.

13 MEMBER KELLEY: Okay. I'm fine withholding it
14 then.

15 MEMBER AIELLO: And, Laura, I just wanted to
16 bring up I have a 1 o'clock meeting elsewhere because this was
17 posted 10:00 to noon.

18 CHAIRPERSON FREED: Yeah.

19 MEMBER AIELLO: I don't know if it'll go longer
20 because I can cancel the other meeting during the break if I
21 need to.

22 CHAIRPERSON FREED: This is -- I don't know if
23 that was directed at Laura Rich or Laura me, but I -- no, my
24 intention -- I mean, I know this is an item for possible
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1 action. My intention is to take the discussion here and then
2 have PEBP staff kind of work on a red line version of, you
3 know, the contract exception to the policies and procedures.

4 MEMBER AIELLO: Okay.

5 CHAIRPERSON FREED: And then we'll have another
6 meeting to discuss the kind of -- the ideas generated and how
7 that the -- how the red line looks and how we feel about that.

8 MEMBER AIELLO: Okay.

9 CHAIRPERSON FREED: Okay?

10 MEMBER AIELLO: Thank you. I won't cancel my
11 next appointment.

12 CHAIRPERSON FREED: Okay. Sounds good. All
13 right. So I'll see everybody in like -- at like 11:05.

14 (Recess.)

15 CHAIRPERSON FREED: Okay. It is 11:06, so we'll
16 call the subcommittee back to order. Mr. Lindley wanted to --
17 I think had a few further comments, so I'll toss it to him.

18 MEMBER LINDLEY: Thank you very much. I just
19 wanted to recap because we did step on a break. We recapped
20 the solicitation waiver.

21 And one quick question, Mr. Doty: That's done by
22 the Board of Examiners?

23 MR. DOTY: It's done by me.

24 MEMBER LINDLEY: Okay.

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1 MR. DOTY: I'm the (electronically indiscernible)
2 solicitation waivers. We have a form on our website that gets
3 filled out and submitted to me and an agency can explain their
4 justification for why they think a solicitation waiver is
5 warranted.

6 MR. LINDLEY: Gotcha. And then a couple more
7 questions. So the audit found that solicitation waivers were
8 submitted, but it wasn't -- it was at the recommendation of
9 the prior director, but it did go through a secondary process;
10 is that correct?

11 MR. DOTY: Yes, and my understanding is that that
12 process is the executive officer of PEBP would send the
13 solicitation waiver over to the administrator of State
14 Purchasing, would then sign it and then the executive officer
15 of PEBP would attach that solicitation waiver to, say, a
16 contract extension that was then submitted to the Board of
17 Examiners.

18 MEMBER LINDLEY: Okay. So it was a lot of steps
19 that took place for the solicitation waivers.

20 MR. DOTY: Yes.

21 MEMBER LINDLEY: All right. All right. There
22 is -- okay. So kind of recapping, there is no requirement for
23 four years. We can't extend greater than for years for
24 contracts. The contract renewal process is a very long

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1 process.

2 My recommendation was to show members that we
3 don't have a lot of change and possibly break up contracts
4 into two or maybe three main categories. One category that
5 has a direct impact on members and they have a longer term
6 than the four years and then a category that doesn't have a
7 direct impact, direct impact on members like an administrative
8 category, such as the auditor, for example, just spit balling
9 here, that is four years.

10 And my general thoughts is to keep it as simple
11 as possible, because the more complex we get, the longer the
12 approval process becomes. And instead of six months, we're
13 looking into eight months, nine months, even a year for an
14 approval process. And I don't want to wait a year or go
15 through papers for a year to make a decision.

16 Oh, and then add the Purchasing Division's --
17 like maybe the hyperlink to the agenda item for items that are
18 presented to the Board for approval. So then if a Board
19 Member or public has any questions, we can say, here's the
20 hyperlink, please go to the state purchasing website so the
21 Board Members and members and public know this is a process.
22 It's not just here is one choice, it was thoroughly vetted by
23 multiple people.

24 MEMBER KELLEY: Mr. Doty, I just have a question
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1 for you regarding -- I think it's NRS 333. It's my
2 understanding that even though -- although the full Board
3 can't revisit the scoring as a whole that the evaluation
4 committee does, the committee as a Board can reject the
5 bidder, right, for -- I mean, for documented reasons.

6 If the full Board decided there was personnel
7 issues or there was conflict, am I correct in thinking that
8 the Board could reject the -- you know, the highest scorer
9 that the selection committee had selected?

10 Can you talk a bit about that process maybe
11 rather than just yes, no?

12 MR. DOTY: Yes, I think there is a -- unlike most
13 agencies, most agencies simply follow the process set forth in
14 Chapter 333 and that's what we do. PEBP has a specific
15 statute regarding the role the Board plays in the awarding of
16 contracts.

17 So that's something where, you know, you would
18 have to -- I would defer to whatever interpretation your DAG
19 has of that statute regarding what the Board's powers are,
20 regarding accepting or rejecting a statute -- I mean,
21 accepting or rejecting the recommendation of the evaluation
22 committee, because it is slightly different than just how
23 Chapter 333 applies to most other agencies.

24 MEMBER KELLEY: Okay. Thank you. Is the -- is
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1 -- Chairperson Freed, is our DAG there?

2 CHAIRPERSON FREED: She is. Ms. Mooneyhan, take
3 it away.

4 MS. MOONEYHAN: Thank you. Brandee Mooneyhan for
5 the record. I can look it up right now and let you know the
6 exact site, but there is a statute in Chapter 287 that does
7 allow the entire Board to consider in a closed session the
8 RFPs, the recommendation by the committee.

9 For example, I think on your last Board meeting,
10 there was an agenda item that said, you know, this may be
11 closed for a small time for the Board to discuss with the
12 committee how the decision was made. So that is available to
13 the PEBP Board.

14 CHAIRPERSON FREED: Right. This is procurement
15 process. This is page 9 of the P&P is procurement process B4,
16 the Board shall review the results of any evaluation and
17 proposals for the contract for the program pursuant to NRS
18 333, 335 in a closed meeting.

19 And last meeting we did not choose to go into
20 closed session to discuss the scoring of that enrollment and
21 eligibility RFP.

22 MEMBER KELLEY: I guess I -- so at my last
23 meeting, I was -- what, it was my second meeting, and I
24 personally didn't feel comfortable shutting down the meeting
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1 to go into closed session.

2 So I would prefer that the Board reviewing the
3 details of that RFP not be optional. I think it should be
4 required. Even though it has to be closed, I think it should
5 be part of our process; right, because by us not reviewing it,
6 we just kind of rubber stamped without -- I mean, there was no
7 information provided about that particular contract.

8 So I think that -- you know, I think that the
9 Board should automatically have to close the meeting to review
10 that, even if it's just for five minutes.

11 But I think that the process should outline that
12 that's required, you know. I mean, I just have concerns about
13 us -- some of this stuff being discretionary, because
14 depending on your maturity on the Board, depending on your
15 knowledge as to whether you're going to, you know, kind of
16 follow the procedures or just follow what other people do, and
17 I don't think we're in the business -- you know, I mean, we're
18 in the business of making wise decisions for all of our
19 population, and I'm just not sure that that's always just by
20 rubber stamping stuff. So I would prefer that that be a
21 requirement.

22 MEMBER AIELLO: And this is Betsy. Just one of
23 the things that could occur if the Board isn't comfortable
24 with the regular RFP process, having worked closely with
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1 administrators in the agency, they rarely changed anything in
2 the RFP process, because large dollar contracts would most
3 assuredly go into legal proceedings if an awarded and
4 negotiated vendor.

5 And so when you have things like medical networks
6 or HMO's and things like that and they get tied up, your
7 current vendor would have to be willing to have an extension
8 and there's a lot of times, computer programming and things.

9 So potential Board negative -- if the Board's not
10 comfortable with what comes out of the RFP process, the
11 negative consequences are huge, just bringing this up, and
12 would probably have to add some timeline in Medicaid for our
13 medical ones.

14 We had to start the RFP process year two of four.
15 So in a four-year contract, at year two, we were releasing the
16 RFP because it would take the vendors almost three months to
17 develop the proposals because they were extremely complex.
18 And then once it was awarded, there were three to six months
19 for computer programming, enrollment choices, turnover.

20 So just to throw that out, it's -- I would
21 have -- I think it would be very problematic if the Board ever
22 rejected what had come through purchasing at the end of an RFP
23 process, but I'm willing if other people wanted to do that,
24 but --

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1 CHAIRPERSON FREED: No, I tend to agree with
2 that. I think that would get us into litigation very quickly.

3 MEMBER LINDLEY: And then we would have
4 solicitation waivers again?

5 MEMBER KELLEY: But it looks like a worst case
6 scenario; right? I mean, it's -- personally that is the worst
7 case scenario and I don't think the fear of that kind of
8 litigation should prevent us from doing our job.

9 MEMBER AIELLO: This is Betsy again. I think
10 when you say you're going to do something at a certain
11 process, then to not -- I mean, to do it, but then still
12 rubber -- quote/unquote rubber stamp or hold that is almost
13 not doing it and to put it in the policy you're going to. I
14 don't know. It's scary to me to do that from my background
15 and the legality -- legal things, issues we used to deal with.

16 CHAIRPERSON FREED: And I think that's the reason
17 you'd have one or two, or depending on the size of the RFP,
18 even three Board Members on the committee. I mean, you'd have
19 the SMEs who -- you know, and Board Members may or may not, in
20 fact, be SMEs.

21 But they're there on the evaluation committee to
22 protect the interests of the Board even if they don't have the
23 niche expertise that other folks on the evaluation committee
24 do.

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1 So if you take that into a closed meeting, you
2 know, the people who were on the evaluation committee can
3 speak freely to other Board Members about why the scoring is
4 what it is.

5 MEMBER AIELLO: And then that goes back to the
6 checklist that I talked about and when the contract comes to
7 the Board meeting. It indicates that all the legal steps were
8 followed in a way, whether it's reviewing -- part of the RFP
9 process, my understanding, is reviewing the vendor for past
10 breaches of contract, personality conflicts, political,
11 whatever it is.

12 So if you have this checklist that says when it
13 comes to the Board, and if there's a section that wasn't done,
14 then we require PEBP to write up why it wasn't done. We're
15 justifying we didn't do this one because of something, then we
16 could have confidence that everything that needed to be
17 followed was followed.

18 MEMBER LINDLEY: Tim here, if I may chime in. I
19 think to Michelle's point, and Brandee kind of answered it,
20 the Board reserves the right to close it and review the RFPs
21 in more detail; is that correct, Ms. Mooneyhan?

22 MS. MOONEYHAN: Yes. The way the statute is
23 written is that the Board can review the results of any -- the
24 scoring process basically. You can do that in a closed

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1 meeting.

2 And so our Board can go ahead and review that,
3 but then in the open meeting, of course, you can either award
4 the contract or the not or choose to make changes to the RFP
5 or whatever you desire.

6 MEMBER LINDLEY: And if we wanted to close it,
7 would we -- would that have to be an agenda item or could a
8 Board Member just request it?

9 MS. MOONEYHAN: Well, generally, we -- the --
10 PEBP does put it on the agenda that it may be closed, and I
11 did look at the statutes NRS 287.04345. It does alert the
12 public that it may be closed to consider that, and of course,
13 a Board Member can could do that or if you did want to make it
14 a policy that you always closed it for that, you could do
15 that. It's just the way the agenda item is written is to
16 alert the public as to what may or may not happen.

17 MEMBER LINDLEY: So it's pretty much already
18 there, and I think that would answer your question,
19 Ms. Kelley. It doesn't necessarily have to be a policy and
20 procedure because it's already notified to the public.

21 And Ms. Mooneyhan, if Ms. Kelley or I want to
22 close a meeting, we would just say, can we review the RFP in
23 more detail and go from there or -- of course with a little
24 bit of advance notice?

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1 MS. MOONEYHAN: Right, right. And I do -- PEBP
2 does usually set up the agenda item to that effect, to kind of
3 alert the Board and the public that this may be closed to
4 consider the RFPs -- I mean, to consider the way they were
5 evaluated.

6 MEMBER KELLEY: Ms. Mooneyhan, I just have
7 another question around the timing of that meeting.

8 So at the last meeting, the RFP that came to us
9 came to us after the letter of intent was issued. So the
10 letter of intent is basically the decision's been made, and
11 yet the Board didn't really review that decision until the --
12 so I'm just confused about the timing.

13 It's my understanding that, in fact, that can
14 come to the Board before the letter of intent is issued
15 because it's closed, it's confidential; right? We're not
16 going to talk about anything in public session that would
17 breach that confidentiality.

18 MS. MOONEYHAN: Right. The statute does not
19 dictate the timing on that. So you could do that earlier in
20 the process if you so desired.

21 MS. RICH: This is Laura. So, Michelle, in that
22 situation, the letter of intent -- and Kevin can correct me if
23 I'm wrong, but the letter of intent basically just is -- it's
24 the letter that notifies the vendor that we intend to contract
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1 with them, but it opens the door for negotiations and that's
2 all it is.

3 It's a -- really it's a notification to the
4 vendor saying, you -- the evaluation committee picked you, the
5 door is now open to start those contract negotiations, but the
6 award does not happen until after those contract negotiations
7 have taken place.

8 MEMBER LINDLEY: Laura Rich, that is --

9 MS. RICH: That is correct, yes. Yes.

10 MEMBER LINDLEY: Having contract negotiations can
11 still fail, so the -- my understandings is the letter of
12 intent is -- yeah, is just opening the door. It's not full
13 commitment. We're not married to the contract; is that
14 correct?

15 MEMBER KELLEY: From a legal perspective, the
16 timing is just interesting to me; right? I mean, if we're
17 ultimately responsibility, if the Board is ultimately
18 responsible, then surely the Board should be doing its due
19 diligence before that letter of intent goes out.

20 MR. DOTY: If I may, I think one of the issues we
21 have is -- has to do with compliance with Chapter 333. Our
22 confidentiality provisions apply from the moment we issue the
23 RFP until notice of award.

24 So that's when the contents of the RF -- of the
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1 proposal submitted in response to the RFP are kept
2 confidential under Chapter 333.

3 So that's -- only the evaluator should be seeing
4 the proposals at that point, the evaluators and the purchasing
5 officer who's running the solicitation should be seeing the
6 proposals from the moment that they're submitted until there
7 is a notice of award issued. So that could be one of the
8 issues here.

9 So I think it's -- the Board will probably need
10 to put extra effort into making sure the scope and the RFP are
11 exactly the way you want them before the RFP is issued,
12 because that's the time to make changes to the RFP is before
13 we put it out on the street and before vendors submit
14 proposals.

15 And then when the Board goes into session to
16 review a notice of award and making a decision on whether to
17 award a contract or not, I think it would be -- it would
18 create legal problems if the Board decided that they would
19 rather choose one vendor over another.

20 But if the Board looked at what was being awarded
21 as the contract and came to the conclusion that, well, this
22 doesn't meet the Board's needs, then that would be a situation
23 where we would look at -- and as painful as it might be, if we
24 get to that stage and we don't actually meet the needs, that

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1 means that the RFP probably wasn't written correctly and we
2 may need to cancel and restart the process with a new RFP.

3 But those are just the -- some of the rules we
4 have to deal with in Chapter 333.

5 MEMBER KELLEY: Okay. So then it's your rule,
6 and that's okay, like it's Purchasing's rule that that not
7 come to the Board before that letter of intent. That's kind
8 of what I heard in a nutshell.

9 MR. DOTY: Yes.

10 MEMBER KELLEY: Or your recommendation.

11 MR. DOTY: Yes, it has to do with our
12 confidentiality requirements under Chapter 3333.

13 MEMBER KELLEY: Okay.

14 MR. DOTY: Yeah.

15 MEMBER KELLEY: Thank you.

16 MEMBER LINDLEY: Tim here, piggybacking off that.
17 So we can chime in on the RFP process; is that correct?
18 Before the RFP is sent out on drafting the RFPs?

19 MR. DOTY: Absolutely. The more people who
20 are -- who add constructive criticism and help in the
21 development of an RFP, that's a good thing. We want to have a
22 lot of effort put into drafting the RFP and making sure it's
23 going to -- the outcome of this process is something that is
24 what PEBP needs, because as we've talked about, this is a

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1 lengthy process. That is why it makes sense to invest time up
2 front in making sure you have an RFP and particularly a scope
3 of work in that RFP that will yield what you want at the end
4 of the lengthy process.

5 MS. RICH: So the members of this subcommittee
6 came in after the fact. But at least with this last round of
7 RFPs, I personally reached out to all of the Board Members and
8 asked, one, if they would like to be evaluators, and two, if
9 they would like to participate in the development of that RFP.
10 And we did have Board Members who provided their input and
11 feedback on those RFPs before they were put out on the street.

12 So that's something, Michelle, I could put that
13 also into the policies and procedures that not only would
14 Board Members be approached for -- to be evaluators, but also
15 to be part of that development process of those solicitations.

16 MEMBER KELLEY: So I'm just -- really the
17 development of the solicitation is the scope of work; right?
18 I mean, that's the most important piece of any RFP. So under
19 the process you followed, Ms. Rich, have you been -- are those
20 coming to the Board or are you saying only the people who
21 agree to be on the committee are getting to review those
22 scopes of work?

23 MS. RICH: So in practice, what we have been
24 doing is I have reached out to the Board members and have
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1 asked, do you -- would you like to be a part of any of these
2 solicitations? If you -- and Board Members did respond and
3 say, yes, I would like to be a part of, you know, either
4 specific ones or, you know, just assign me to one.

5 At that point, then they're given access to the
6 RFP and not only does PEBP staff provide their input and
7 feedback, but the PEBP Board Members also have provided input
8 and feedback as well.

9 No, it has not gone to the Board for final
10 approval. However, I caution that because while it's great,
11 it's a good idea, it really adds on a lot of time to a
12 solicitation.

13 You've already heard that an average solicitation
14 can take six months. I would probably add, you know, another
15 four months onto that because the Board meets every other
16 month and there would possibly be -- it would bring it back,
17 those solicitations would definitely start taking a lot
18 longer. And I'm not opposed to that, but I'm just saying
19 that, you know, now we're going to have to start looking at
20 solicitations way in advance.

21 MEMBER KELLEY: Sorry, it's Michelle here. So
22 what I see is that PEBP currently has 16 contracts, which is a
23 lot. There's no doubt about it. I think the beauty of --
24 even though if you want to look at the bright side of the
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1 audit report is we're having an opportunity to look at the
2 processes; right?

3 And it would be my hope that out of this process,
4 the subcommittee and then the Board considering it, that we
5 actually come up with a calendar whereby we know that, you
6 know, you've issued what, six RFPs this year.

7 So we've got a start date on each of these RFPs
8 and that we develop a full calendar for all of these contracts
9 that stagger it so that you never have to do six big ones in a
10 year again; right.

11 So if we have a calendar developed such as that,
12 that says, you know, this contract goes out, you know, every
13 six years or whatever, we can actually put years -- the year
14 it's going to go out and that builds time in for that scope of
15 work to be considered at a Board meeting.

16 And the reason I keep coming back to that is that
17 that's the public's opportunity to also see how some of the
18 sausage is made; right? I mean, that's their opportunity to
19 see what does this contract actually do. What's involved in
20 the eligibility system and scope of -- you know, not everyone
21 wants that level of detail and certainly, you know, there
22 generally, you know, would be comments, but hopefully not too
23 many changes. But I do think that that's the opportunity for
24 more transparency.

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1 And so I'm a proponent of actually building that
2 calendar out, building in the opportunity for the full Board
3 to -- at least as an information item, more as an action item
4 though, to review the scope of work for any comments before
5 it's actually released rather than just the subset.

6 MEMBER AIELLO: May I ask a question, Mr. Doty?
7 Is there a problem if a contract scope of work is reviewed at
8 public meetings before it actually drops and/or if PEBP would
9 change?

10 Because I know that the contracts we would
11 release were highly confidential until they dropped so there
12 would be no vendor got knowledge ahead of another vendor
13 and/or if it went through a public meeting, then if there was
14 a change, even if it was based -- someone identified a law
15 wasn't followed in it or something, would that be problematic
16 or because it is changed for everybody, it -- I don't know,
17 just a question.

18 MR. DOTY: That's an excellent point. I think
19 that's one of the reasons why PEBP has the specific statute
20 that allows it to go into closed session to discuss the -- an
21 RFP, not just the notice of award, but the RFP itself.

22 We don't -- we try to keep RFPs and the contents
23 of the RFPs confidential until they're released because we
24 want to maintain a level playing field. We don't want one

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1 vendor seeing the RFP before another, because there is a -- it
2 is a window of time that each vendor gets to propose in
3 response to an RFP.

4 And particularly with many of these PEBP
5 contracts, they are quite complicated and it takes a lot of
6 effort to put together a good proposal and response to one of
7 these RFPs. So we want to make sure we don't, you know,
8 accidentally favor one vendor over another in that process.

9 MEMBER AIELLO: So the RFP discussion could be in
10 closed session also to meet that and that's where that --
11 because I know we never let any -- nobody could talk -- once
12 we were writing RFPs, oh, my gosh, you couldn't say a word.

13 MR. DOTY: Yes, and there's another good reason
14 for why you want the -- that discussion about what goes into
15 the scope to be probably held in a closed hearing.

16 Anything you say in an open hearing, any attorney
17 who represents an unsuccessful bidder later will try to use
18 that to their advantage in a potential lawsuit and say, well,
19 they considered this, they didn't consider that. That's why
20 this RFP wasn't done correctly and so forth.

21 So I think that's one of the reasons why that
22 provision for a closed meeting for an RFP discussions is
23 included in your law.

24 MEMBER LINDLEY: Tim here. I wanted to kind of
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1 bring it back to improvements with policies and procedures.
2 Are we allowed or is the executive director's presentation
3 allowed to say, okay, in the next few years, these are the
4 contracts coming up?

5 CHAIRPERSON FREED: Absolutely.

6 MEMBER LINDLEY: I would like that. I mean, just
7 keeps us more informed.

8 CHAIRPERSON FREED: That is actually -- I mean,
9 she's actually put into her executive officer report, not last
10 Board meeting, but I think the one previous. So I think what
11 we'll do, you know, since we're sort of -- it is 11:30 and I
12 know Member Aiello has a meeting at 1:00.

13 I want to sort of bring the conversation back to
14 specific edits to -- or specific draft edits, I should say, to
15 the contract section of the policies and procedures.

16 So to your point, Mr. Lindley, I think -- and to
17 Mr. Doty's suggestion really early in this meeting, that we
18 have just a standing Board item on contracts.

19 I think we should add that into the policies and
20 procedures and that would be the opportune time for the
21 executive officer to sort of provide us the calendar of all
22 the contracts we have, where they are in their terms, when we
23 should be rebidding them and what kind of time frame that's
24 going to -- that's going to be, especially if we're going to

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1 go into closed session to discuss an RFP or scope of work. So
2 that's one thing.

3 On B2, the Board shall act as the chief of the
4 using agency for the purposes of NRS 333, 335, I think this is
5 a good spot to incorporate your ideas about front of the
6 house, public facing contracts and back of the house, auditor,
7 janitor, you know, stuff like that that, you know, doesn't
8 effect the participants particularly much.

9 It would be something like the Board shall act --
10 or excuse me, the Board delegates the role as chief of the
11 using agency to the executive officer in the following cases,
12 you know what I mean? And then --

13 MEMBER KELLEY: We're already delegating that,
14 Executive Officer Freed. But I don't understand what we're
15 delegating. That was a big criticism out of the audit report.

16 CHAIRPERSON FREED: Because, you know, how
17 much -- I guess how much time does the Board want to spend on
18 contracts that are pretty small in the grand scheme of things?

19 Like I would never delegate to the executive
20 officer health or dental network, but I would delegate, like I
21 said, the auditing contract for four years or, you know, the
22 basic -- you know, because we could really into the weeds.

23 I mean, does the Board really want to know about
24 the copier leases in the PEBP office? I mean, that's a

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1 contract. Does the Board want to know who the janitorial
2 service is? That's a contract that has to go to the Board of
3 Examiners.

4 So you're talking -- you know, the essential
5 question is: Where does the Board want to draw the line about
6 what it wants to spend Board meeting time on?

7 MEMBER AIELLO: This is Betsy. I have a
8 question, though, but that's part of what the audit did hit
9 was that some of those contracts were extended when maybe they
10 shouldn't have been or some of -- especially like the actuary
11 and the audit, I think, because they are a little higher value
12 than the couple of others that you did say.

13 And so that's where I liked the idea of the
14 check-off. Maybe the Board would retain being the chief, but
15 the Board itself would not get into the weeds in them because
16 they would just approve those based on some of those things,
17 where the other contracts.

18 Of course that may depend on who the Board is,
19 but I know that the audit did hit some of those that might be
20 considered back office because they still are at high dollar
21 because auditors and actuaries are not cheap.

22 CHAIRPERSON FREED: Right. So we could determine
23 a dollar value that we would delegate to the executive officer
24 and the executive staff of PEBP or we could go --

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1 MEMBER LINDLEY: Tim here.

2 CHAIRPERSON FREED: Go ahead.

3 MEMBER LINDLEY: I would say if it's de minimus,
4 less than -- de minimus established at ten percent, if it's
5 less than ten percent of our total expense, it's probably
6 below threshold for Board review. We can delegate that.

7 MEMBER AIELLO: With PEBP's budget, that could be
8 a fairly high --

9 CHAIRPERSON FREED: -- Yeah, we actually -- yeah,
10 right. I mean, at ten percent --

11 MEMBER AIELLO: -- if it's -- huge --

12 CHAIRPERSON FREED: I think you might mean
13 ten percent excluding the claimed categories.

14 MEMBER LINDLEY: There you go, yeah.

15 CHAIRPERSON FREED: Okay.

16 MEMBER KELLEY: I would suggest that maybe not
17 the dollar amount, but if it impacts the plan. So I think
18 janitorial, copier, they have an indirect relationship with
19 the plan.

20 MEMBER LINDLEY: So back of the house.

21 MEMBER KELLEY: As administrative function, but
22 if it's -- because I think actually reviewing our auditors is
23 important; right? We trust them.

24 The Board should be looking at the auditors
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1 because, I mean, way before my time when I was a baby, I
2 remember coming to PEBP meetings and hearing about how the
3 auditor had basically led the plan into a place where we had
4 to get a bailout from the state government and the government
5 was not happy about that.

6 And for my first ten years in my job with Nevada,
7 I kept hearing about the auditors. So audit is actually
8 really important even though it's not a big number; right.

9 So I think that if -- to me, if it impacts the
10 plan so, you know, if it impacts participants, if it impacts
11 our price and the plan, we should be looking at the RFPs.

12 MR. LINDLEY: Okay.

13 MEMBER AIELLO: So let me ask this: If we were
14 to remove that, the Board delegates the role as the chief,
15 then when a contract was coming up, could the Board not
16 one-on-one vote that that contract could be delegated as the
17 Board wanted to, but it -- wouldn't it have to be listed
18 ahead? Just throwing that out.

19 MEMBER KELLEY: I think that would be a great
20 compromise to -- you know, that at those regular contract
21 discussions, we -- you know, the executive officer puts the
22 contract up and says, this is the pros of us just handling
23 this, and the committee can decide to delegate --

24 MR. LINDLEY: Well, that kind of adds on to what
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1 I was thinking like two categories. You could even say three
2 categories of contracts. You know, the janitorial contract
3 category, I don't really want to see and weigh in on the
4 janitorial contracts or the copy machines. And then
5 there's -- and so I would say that's far back of the house.

6 And then there's back of the house, such as the
7 auditor and then there's front of the house such as the health
8 plan of Nevada, for example. I mean, the third -- the first
9 tier we don't see because I don't really care who cleans the
10 offices.

11 The second contract we kind of see a bit more
12 detail, but the third contract we definitely delve into a bit
13 more, just spit balling here.

14 CHAIRPERSON FREED: Okay. I think that gives the
15 staff something to work on a red line version with. I also --
16 and I won't suggest where it might be good, but I do hope they
17 can work in Member Aiello's suggestion of a checkoff list and
18 language regarding -- and I think this could be under like a
19 standing contracts item, you know, discussion and possible
20 action of, you know, any -- and, in fact, you know what, I
21 would suggest adding a subsection C.

22 We've got procurement process and then I think we
23 should probably break out amendment process in a specific
24 subsection. And then we can -- you know, then the staff can

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1 suggest language of around, you know, an amendment that
2 substantively changes the scope and then we can incorporate
3 that discussion that we had previously about the definition of
4 what a substantive scope change is that the Board needs to
5 weigh in on.

6 MEMBER AIELLO: And just throwing out again for
7 Laura Rich, they did in the audit report have the DAO
8 definition of scope of change on page 27 as 64. So at least
9 it's a federally accepted definition. You may want to make
10 adjustments, but it might be easier if you look there.

11 MS. RICH: So is the suggestion then to use that
12 definition?

13 MEMBER AIELLO: I'm always for ease, but if
14 there's something in it that really doesn't work for you, I'm
15 fine if you want to bring back some slight amendments to it,
16 but use it as a start. I don't feel like I need to dictate
17 exactly to you guys.

18 CHAIRPERSON FREED: And the only other -- oh, go
19 ahead, Laura.

20 MS. RICH: So just for clarification, I think we
21 talked about Board Members being required to be a part of the
22 evaluation committee and possibly the development of a
23 solicitation. Is that the general consensus?

24 Because -- and I'll just tell you from not --
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1 prior to my time, but I know with the previous executive
2 officer in different makeups of the Board, there's always been
3 a -- by PEBP staff, Board Members have always been given the
4 opportunity to participate.

5 They just have not always had the time or they
6 felt that they didn't have the expertise or, you know,
7 whatever the reason may be, they did not -- we did not have
8 any Board Members who chose to participate. And so if we make
9 that a requirement, that really does put a burden on the Board
10 Members. I just want to make sure that that is -- that's
11 something that everyone understands.

12 MEMBER LINDLEY: Laura, Tim here. I would say
13 when we do the contract review, like we have a lot of
14 contracts coming up in two years, Board Members -- you know,
15 that's the time when you invite Board Members to, you know,
16 participate or as a reminder because we have a lot on our
17 plates obviously and we could tend to forget. But in an open
18 meeting like that, it kind of -- you've already given us
19 notice.

20 MEMBER KELLEY: You could also use -- sorry, it's
21 Michelle for the record. So you could also use the chart that
22 Tim suggested with the back of the house, the back of PEBP and
23 then the front of PEBP. We could also designate Board based
24 on kind of that -- those tiers; right?

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1 Because really the PEBP Board doesn't need to be
2 involved in administrative stuff, such as copiers and, you
3 know, janitorial, bad examples that you're going to hear
4 forever now. But we don't need to be involved at that level.

5 But, you know, I think that the other two levels
6 where there is a lot more money spent and it does have a
7 material impact on rate setting and all of that, I do think
8 personally that Board Members should -- one or more Board
9 Members should be on those contracts depending on the size.

10 CHAIRPERSON FREED: Well, maybe we should have
11 language that says something like, you know, instead of any
12 number of Members of the Board may be appointed to the
13 evaluation committee based on the, you know, sort of three
14 categories that Mr. Lindley was talking about, a certain
15 number of Members, you know, should be appointed to the
16 evaluation committee. I mean, strongly encouraged to.

17 MEMBER LINDLEY: Bouncing off Michelle, maybe,
18 you know, administrative side not required, back of the house,
19 strongly recommended, front of the house required.

20 MEMBER KELLEY: And I also -- just -- so it's
21 Michelle again. I just also want to push back just generally
22 on it's been said a couple of times where Board Members didn't
23 feel they had the expertise to be on an RFP. You don't really
24 have to have a lot of expertise to evaluate these RFPs because
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1 you're comparing apples with apples; right?

2 And so if you've got the ability to read and
3 analyze and apply certain principles, you should be able to
4 score an RFP even without having in-depth knowledge of, you
5 know, the network, for example.

6 So I think maybe we can -- when these matters are
7 brought to the Board, we can kind of encourage people because
8 staff are the experts; right?

9 And some of us, as Chair Freed mentioned, might
10 have expertise from -- that's current and some of us have
11 expertise on different things from 20 years ago. And that's
12 all really valuable. But I don't think you have to have that
13 expertise to evaluate the RFPs.

14 And so I guess I throw it -- I'm interested to
15 hear from Mr. Doty's opinion on that about kind of expert
16 versus the non-expert people evaluating these RFPs.

17 MR. DOTY: Certainly. Thank you for the
18 question. It's true we may like people who have expertise and
19 knowledge in the area, but some people are just good at
20 serving the role of evaluator because they take the obligation
21 seriously and they go through all the proposals and are very
22 careful in what they do and they have experience as evaluators
23 on other RFPs.

24 And at this point, I should say how grateful I am
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1 to the people who serve as evaluators on evaluation committees
2 because our entire process depends upon State of Nevada
3 employees taking on this extra time that they're not
4 compensated for to serve as evaluators on these committees to
5 make these decisions for the State in a way that is
6 politically insulated and in a way that hopefully gets us the
7 best vendor in each solicitation that we do.

8 MEMBER KELLEY: Thank you.

9 CHAIRPERSON FREED: Okay. Let's see.

10 Subcommittee Members, do we think we have given the PEBP staff
11 enough to go on to provide a draft red line of the policies
12 and procedures? Well, maybe I should pose that question to
13 PEBP staff.

14 Ms. Rich and Ms. Waylon, have we given you enough
15 to go on?

16 MS. RICH: I think so. I think we can take a
17 good stab at it and bring it back to the full Board, I
18 believe, in January, unless you want to have another
19 subcommittee meeting where we iron out the details before
20 that.

21 CHAIRPERSON FREED: I think we do want to have
22 another subcommittee meeting just because the corrective
23 actions on Number 4 and Number 5, I believe, the PEBP Board
24 shall form a subcommittee, and then Sub 2, once subcommittee
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1 recommendations have been approved by the Board -- oh, okay.

2 Well, yeah, I mean, we can make recommendations,
3 but I would still like to see the subcommittee take action
4 like, okay, yes, these are the recommendations for the full
5 Board. So I think we do need to have another subcommittee
6 meeting. I know more meetings is just what everybody loves.
7 Everybody's got time for that.

8 MS. RICH: So I think it's in line though. So a
9 follow up to the -- I think -- I'm trying to think of the
10 timing on this. I believe we have six months to carry it out,
11 so I think we're okay.

12 I was thinking March would be -- that March Board
13 meeting would be too late to bring it back. We'd have to
14 bring it to the January 1, but I think the March one would be
15 okay.

16 MEMBER AIELLO: I did have another question, too.
17 We've talked a lot about the contract and it's a big project.
18 So it -- some of it, to actually have everything completed in
19 six months may not be realistic.

20 But, Laura, was there recommendations you needed
21 about unnecessary spend money on awards and accreditation? We
22 haven't touched that area or the edits to that. And it's
23 because if we want to do this in the right way, it can't
24 entirely be rushed. But I just thought I'd throw that out

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1 there, too. Sorry, guys.

2 CHAIRPERSON FREED: No, that's great. Thank you.
3 You reminded me of something I was just about to forget.
4 You're right. We haven't touched Number 5 and, you know, I
5 got to say this one baffles me a little bit because clearly
6 the audit was talking about the URAC accreditation and then
7 they were talking about the travel.

8 And, you know, real quickly, going back to Number
9 2, this one -- you know, the proposed corrective action is
10 PEBP will coordinate with DHRM to ensure PEBP policies and
11 procedures are updated to reflect state gifting policies and
12 ensure all employees sign updated attestations.

13 Additionally, PEBP will continue to request
14 ethics training be provided to staff and Board Members on an
15 annual basis, and we have done our annual training and we will
16 continue to do so.

17 So Number 2, I'm not sure requires any guidance
18 or recommendations to the full Board from the subcommittee,
19 but you're right, Number 5 does and I am -- you know, I'm not
20 entirely sure what LCB is looking for here.

21 PEBP will form a subcommittee with the purpose of
22 creating criteria or guidelines to address 287.0434 regarding
23 authorized expenditures to be met by staff before any proposed
24 expenditures are brought to the Board for consideration.

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1 Okay. Does that mean please don't pursue URAC
2 accreditation without asking the Board, or does that mean
3 don't pursue expenditures outside of the norm, whatever the
4 norm is, before asking the Board?

5 This -- I -- again, so I was -- and part of the
6 reason I was going to have a second subcommittee meeting was
7 because I wanted to ask subcommittee members to think about
8 what they think expenditures -- that is operating
9 expenditures, not claims costs paid in the normal course of
10 business, what kind of operating expenditures do you think are
11 outside the norm that should be considered by the Board
12 because -- go ahead.

13 MEMBER AIELLO: I was going to say some of it,
14 again, may be subject matter expert things because Medicaid
15 would require our health plans as part of our RFPs or we
16 actually gave them extra points for being URAC accredited, and
17 those were the health plans that we would release in our RFPs
18 and PEBP being a health plan.

19 Now, the auditors said no other public health
20 plans have ever required it, but some of this stuff might be
21 hard because I think any of that could fall under
22 administration of the program.

23 And to actually identify whether it was wrong or
24 right might be a matter of opinion, and maybe that's what
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1 you're trying to get at, Laura, is how we could identify it.

2 But it might be something that the Board should
3 renew any new expenditures outside of scope, out -- a new
4 scope for PEBP. And then if the managers did write why it was
5 needed, at least the Board could say it appeared to be a
6 reasonable administrative expense because X, Y and Z was
7 written up or we thought it wasn't because it looked like more
8 like a pretty bow on a package and wasn't needed.

9 And so I'm wondering if it's any new
10 administrative -- again, we don't want to get into the weeds.
11 So there you get the scope. So I know I'm rambling, but my
12 point was I'm not entirely convinced that URAC would have been
13 totally unneeded other than the fact that maybe other public
14 entities didn't have it, but --

15 MEMBER KELLEY: Just to piggyback on that, so
16 it's Michelle for the record, you know, I can see the
17 auditor's point. And I think that sometimes when these things
18 are not done or not discussed by the Board, it gives the wrong
19 appearance.

20 So to me some of these things just need to come
21 to the Board, not to second guess what staff want to do, but
22 just as a check against that strategic direction; right?

23 Because we shouldn't be spending money,
24 taxpayers' money, employee money on things that aren't

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1 strategically relevant to our plan and to providing the best
2 health plan we can.

3 And staff can do that evaluation as well as us,
4 but it's harder for them to prove they did it if they didn't
5 bring it to the Board. And so for me, like documenting those
6 expenditures as opposed to running the office and supervising
7 staff is really to help staff, you know, stay focused on the
8 strategic mission.

9 MEMBER AIELLO: Ms. Kelley, I think that's
10 what -- I think that's what I was trying to say. I think you
11 restated what I was trying to get out.

12 MS. RICH: So this is Laura Rich. I believe, and
13 I have to go back and check, but in the situation that -- in
14 the situation with URAC, that was actually brought to the
15 Board and approved by the Board.

16 The Stevia awards, I do not think were. It was
17 such a small dollar amount that it was not brought to the
18 Board. Those URAC awards were -- or sorry, accreditation was
19 brought to the Board and approved by the Board.

20 So this is a situation where the auditors did not
21 find that expense to be a legitimate expense by the program,
22 but it had been approved by the Board.

23 MEMBER KELLEY: I think whenever -- so it's
24 Michelle here. Whenever the stuff like that comes to the
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1 Board, the minutes we -- maybe we need to do a good job of
2 linking it to the strategic plan; right? So why are we doing
3 this? This is the strategic plan and, you know, I mean, they
4 can -- auditors are going to audit; right? Two can -- if
5 they're going to come in and audit something, they're going to
6 find issues. It's very rare that they don't.

7 So, really, in response, all we can do is make
8 sure the records of meetings are clearer as to why an expense
9 is approved or if they really think that those kinds of awards
10 don't add any value, then maybe the LCB needs to be clearer
11 about that and just say don't spend any money on -- but they
12 didn't say that; right? So really we just maybe need to
13 tighten the records.

14 MEMBER AIELLO: Michelle, I think that's an
15 excellent point. If a new strategic initiative is brought to
16 the Board, the Board will -- based on the strategic plan or a
17 new initiative is brought to the Board, the Board will review
18 and it could be written in a policy to see if it's in line
19 with the strategic plan and approved based on the strategic
20 plan. I think that's an excellent point you just brought up
21 and that might be how the policy could be structured. I don't
22 know.

23 MEMBER KELLEY: So I guess what I -- my
24 recommendation would be just that we do maybe put a paragraph
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1 in about those, you know, extra expenditures, having to add
2 strategic value, come to the Board.

3 And then at -- when we evaluate them, we evaluate
4 them next to the -- you know, we are very clear in our record,
5 in the public records that strategically this is -- this adds
6 value to our mission because bullet point, bullet point,
7 bullet point.

8 CHAIRPERSON FREED: That is a very good
9 suggestion. Thank you for making it and, PEBP staff, does
10 that help? Okay.

11 MS. RICH: Yes.

12 CHAIRPERSON FREED: Okay. With that, I think
13 maybe we've wrapped up what we can do today. So I will let --
14 I will let PEBP staff work on stuff for the rest of the
15 calendar year and we'll see if we can find some time in
16 January.

17 And I mean, if the stars align and we can have a
18 subcommittee meeting in advance of the January Board meeting,
19 we might still make it. But we'll see what we can do because
20 I know we're heading into the session and we're heading into
21 the end of year when people take time off.

22 And so I know this isn't going to be super easy
23 to coordinate, but we'll do what we can do. Thank you.

24 MEMBER AIELLO: Laura Freed, I do have one more
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1 quick question.

2 CHAIRPERSON FREED: Yeah, of course.

3 MEMBER AIELLO: Sorry, I keep interrupting.

4 CHAIRPERSON FREED: No, I -- your participation
5 is valuable. Go ahead.

6 MEMBER AIELLO: There are red lines and
7 additions, red additions to the policies that we haven't
8 discussed, but I do know there was some input in the public
9 comment both verbally and that -- written submitted.

10 So I don't no know if that will be discussed if
11 we have another meeting or if that's just planned to go to the
12 Board meeting the way it is. Just a comment. I'm the one, I
13 know, that said I had to end.

14 CHAIRPERSON FREED: Okay. The executive officer,
15 I think, is going to say the same thing as me, so I'll let her
16 say it.

17 MS. RICH: No, this is Laura Rich. Yes, Betsy,
18 the red lines in the document are actually red lines based on
19 Board decisions that were made earlier this year. And so
20 those have not been brought back to the full Board yet.

21 If Board decisions were made, the updates have
22 then subsequently been made and the Board policies and
23 procedures, but has not been brought back to the Board yet for
24 final approval just because we knew that we'd make these

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1 additional changes as well.

2 So that is where we stand on the changes to date.
3 As far as other changes to the Board policies and procedures,
4 that is -- that can be placed on a future agenda if the Board
5 so chooses, but that is not something that we can discuss
6 today.

7 CHAIRPERSON FREED: Okay. With that, I think we
8 have exhausted ourselves on Agenda Item 3. I will return to
9 our second public comment period under Agenda Item 4 and turn
10 it over to PEBP staff.

11 MS. PLUTA: Again, for those of you who called in
12 during this period for public comment, the last three digits
13 of the phone number will be announced and advise that the
14 phone line has been unmuted at which an audible message from
15 Zoom will say that you are unmuted and press star six to
16 unmute. After the caller has unmuted themselves, they may
17 proceed with their comments.

18 Line ending in 837, your line has been unmuted.

19 MR. ERVIN: Hi, this is Kent Ervin. Can you all
20 hear me now?

21 MS. PLUTA: Yes, we can.

22 MR. ERVIN: Okay. For one thing, I know Marlene
23 Lockhart was trying to get on at the earlier public comment,
24 so I -- maybe she's on now also. So Kent Ervin, E-R-V-I-N,
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1 Nevada Faculty Alliance.

2 So I was involved with the other public employee
3 advocates on SB502 in 2017, which placed the rules in
4 287.04345 on how PEBP does these procurements and also I'm a
5 member of the Nevada deferred compensation committee that has
6 the same rules. I'd like to comment on some of the comments
7 that have been made about that process.

8 First of all, I don't believe that that section
9 allows you to go into closed session to discuss the scope of
10 an RFP prior to issuance. It's only about considering the
11 evaluation committee results.

12 It makes sense to do the RFP scope in an open
13 public meeting. It may be very different if it's an RFP being
14 prepared by staff only and an agency where, yes, it would be
15 bad if one vendor got advance knowledge of what's in the RFP.

16 But when you have an open Board, open meeting law
17 Board doing that in open meeting, then all vendors have equal
18 opportunity to listen in and see what the Board has to say
19 about the RFP. And then when it eventually comes out, they'll
20 see what's in the RFP just like everyone else and then
21 everything is confidential.

22 As far as the closed meeting to consider the
23 results of the evaluation committee, the intent of that is
24 that the Board at that point after the proposals have been

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1 scored, there's only one finalist and that's the only finalist
2 that can go forward for contract negotiations.

3 But that Board -- the Board can evaluate in
4 closed session, get some of the confidential details from the
5 evaluation committee and they might decide, for example, that,
6 well, what we got back from this RFP, although there's a
7 winning vendor, it just does not meet our needs.

8 Maybe the scope was flawed, and in that case,
9 they're allowed by the statute to cancel the RFP or modify the
10 RFP and reissue it and start the whole process over. No, you
11 would not want to do that unless it was really necessary, but
12 it does give the Board the possibility of doing that if it's
13 necessary.

14 One example I see where you might want to do that
15 is, for example, there's an RFP out now for the provider
16 network for the self-funded plan, and I believe there's also
17 an RFP for the HMO's or it will go out soon.

18 You might get pricing back for an HMO and decide
19 that the Board does not want to go forward with an HMO and
20 substitute the EPO, for example, that it would be a better
21 deal.

22 If you do that before the letter of -- the notice
23 of intent is issued, you would avoid negotiating a contract
24 that, in the end, the Board might disapprove later on.

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1 So it makes sense to have a closed meeting to
2 discuss that, not put out any confidential details, but then
3 in open meeting, make the decision, just your choice, go with
4 the letter of intent for the high scorer or start over the
5 process. So that was the intent behind 287.04345 and I hope
6 to -- that provides some clarification.

7 Thank you.

8 MS. PLUTA: BJR, your line has been unmuted.

9 Madam Chair, the public comment has been
10 completed.

11 CHAIRPERSON FREED: Okay. Well, with that, I --
12 we are at the end of the meeting. I would like to thank
13 everybody on this subcommittee for their active participation
14 once again. You are honestly a terrific Board and the state
15 is lucky to have you all, and I'd like to thank Mr. Doty for
16 his expertise as well as Ms. Mooneyhan for her legal.

17 And with that, we are adjourned. Thanks,
18 everybody.

19 MEMBER KELLEY: Thank you.

20 (Adjournment.)

21 (Proceedings concluded at 12:08 p.m.)
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