

In The Matter Of:

*PUBLIC EMPLOYEES' BENEFITS PROGRAM BOARD SUBCOMMITTEE
TRANSCRIPT OF PROCEEDINGS*

*TELECONFERENCE OPEN MEETING
January 19, 2021*

*Capitol Reporters
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PUBLIC EMPLOYEES' BENEFITS PROGRAM BOARD SUBCOMMITTEE
TRANSCRIPT OF PROCEEDINGS
TELECONFERENCE OPEN MEETING
TUESDAY, JANUARY 19, 2021

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The Board: LAURA FREED, Chairperson
MICHELLE KELLEY, Member
BETSY AIELLO, Member
TIM LINDLEY, Member

For the Board: BRANDEE MOONEYHAN, Deputy
Attorney General

For Staff: LAURA RICH
Executive Officer
CARI EATON
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TUESDAY, JANUARY 19, 2021, 10:00 A.M.

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CHAIRPERSON FREED: Good morning, everyone. I would like to call the subcommittee meeting to order. It is 10:01 a.m., and I will ask PEBP staff to call the roll.

MS. LUNZ: Laura Freed.

CHAIRPERSON FREED: Here.

MS. LUNZ: Betsy Aiello.

MEMBER AIELLO: Here.

MS. LUNZ: Michelle Kelley.

MEMBER KELLEY: Here.

MS. LUNZ: And Tim Lindley.

MEMBER LINDLEY: Present.

MS. LUNZ: And we have a quorum.

CHAIRPERSON FREED: Thank you. Let's move to Agenda Item 2, public comment.

UNIDENTIFIED SPEAKER: Thank you, ma'am. Good morning. For those of you that have joined for public comment, your name or the last three digits of the phone number will be announced and advised that you have been unmuted. As a reminder for those on the phone, press star six to unmute. Please slowly state and spell your name for the record and then proceed with your comments. As a time consideration, each caller will be limited to three minutes.

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1 CHAIRPERSON FREED: May I interrupt for a second?
2 Staff, I think you might be on the wrong slide. There we go.
3 Thank you.

4 UNIDENTIFIED SPEAKER: 837, your line is now
5 unmuted.

6 MR. ERVIN: Good morning, Chair Freed, Executive
7 Officer Rich, and Committee Members. Thank you for your work
8 on improving the PEBP board's oversight and contracting
9 procedures. This is Kent Ervin, E-r-v-i-n, for the State
10 Nevada Faculty Alliance for the record.

11 Thank you for your work on improving PEBP's
12 board's oversight of contracting procedures in response to
13 the critical overview and review of the legislative audit.
14 The new draft is an improvement over past practices.

15 Participation by board members on evaluations
16 committees for request for proposals for major contracts
17 should be more strongly encouraged by the policy. Not having
18 board participation and buy-in during the confidential
19 evaluation process risk having objections brought up by board
20 members only after a contract is fully negotiated.

21 If the board acts to cancel an RFP only after the
22 contract has been fully negotiated, PEBP as an agency will
23 have created a liability of appearing to have negotiated in
24 bad faith. That could be prevented by having the board

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1 approve the notice of intent to a board per Nevada
2 Administrative Code 333.170 Subsection 1 instead of only
3 approving the notice of award for NAC 333.170 Subsection 5,
4 which is at the stage just before the board of examiners.

5 Besides the sections on contracting, the duties,
6 policies, and procedures document needs substantial revision
7 to serve as an effective statement of board policy,
8 especially as it regards the rate-setting process and state
9 employer contributions. Those areas are vague, incomplete,
10 or confusing. I strongly encourage a thorough revision so
11 that the document accurately documents the procedures for
12 both board members and the public. Thank you very much and
13 thank you for your work.

14 CHAIRPERSON FREED: With that, we'll move to
15 Agenda Item 3, discussion and possible action on changes to
16 board policies and procedures related to PEBP's corrective
17 action plan submitted to the LCB audit division as it
18 pertains to contracting.

19 So I hope that the subcommittee members have all
20 had a chance to read and digest the latest red line version
21 of the contracting sections of the board's duties, policies,
22 and procedures. And, in particular, section three, contracts
23 beginning on page ten listed needed changes on page 11.

24 I'm going to open this up for comments,
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1 reactions, corrections, discussion.

2 MEMBER AIELLO: This is Betsy. And I think my
3 first comment might be not as controversial as some of the
4 other discussions we may be having. But I'm still trying to
5 understand if the green part, the executive officer shall
6 solicit the participation, relates only to routine
7 administrative contracts or if it should have its own letter
8 or if it really does have its own letter B but the way the
9 underlying looks it doesn't look like it. I'm guessing
10 that's a question for you, Michelle Weyland.

11 MS. RICH: Actually, Betsy, this is Laura Rich.
12 Yeah, sometimes when you do these red lines in -- it just
13 looks funky, but when you actually accept changes, it will
14 look a lot better. The formatting will eventually. I
15 promise the formatting will look great after all is said and
16 done.

17 MEMBER AIELLO: So that section is Section B and
18 it's not just related to the administrative contracts then;
19 correct?

20 CHAIRPERSON FREED: Correct. This is Laura
21 Freed. That's the way I read it, yes.

22 MEMBER AIELLO: Okay. Good. Then I'm happy to
23 start with Section C. And I appreciate understanding the NRS
24 Section 333.335, because when I read it, it's saying the list
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1 of items that is done in a procurement is either done by the
2 chief of the using agency, which would be us, or a committee
3 appointed by the chief but not duplicated by both. And I'm
4 wondering that the way this is written that it's saying some
5 of those activities are duplicated then. And so I'm thinking
6 that Section C is a bit duplicative and we wouldn't want both
7 the chief and the committee to be doing those, if I'm reading
8 it correctly.

9 MEMBER KELLEY: Michelle Kelley here for the
10 record. I know that Michelle Weyland was playing with the
11 shared screen earlier, and I wonder if we -- if it wouldn't
12 be more conducive to a good conversation to actually see the
13 sections that we're talking about on the screen for all of
14 us. I just think it might be easier. Thank you.

15 So, Betsy, you were talking about?

16 MEMBER AIELLO: I'm talking about B, procurement
17 process, B-2-C. I believe it is the language maybe that you
18 wrote, Michelle, for all of the contracts including any that
19 involve the procurement, services or actuarial services, the
20 board delegates ministerial and administrative duties as
21 chief of the using agency but the board retains the power and
22 duty as chief to approve scope of work, to appoint members of
23 the board to the evaluation committee, et cetera. But the
24 NRS 333.335, the chief of the using agency or a committee
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1 appointed by the chief develops this solicitation.

2 And so I do believe that that might be
3 duplicative, unless I'm just reading it wrong. I think it's
4 either the chief of the using agency or a committee, but not
5 both, do some of those things.

6 MEMBER KELLEY: So this is our procedure; right?
7 So while we follow the NRS, this wouldn't be read in
8 conjunction with. So NRS obviously wins. But I'm reading
9 this as just that the board is the ultimate responsibility
10 and is going to be involved in, I guess, you know, approving
11 the scope of work, basically approving the contract.

12 MEMBER AIELLO: I'm sorry. This is Betsy. But I
13 think that could put us at some legal risk because of the
14 committee. I mean, if the evaluation committee needs to do
15 everything, including negotiating the contract and all of
16 that, then we come in at the end. And I think this is saying
17 we come in more. Maybe I'm reading it wrong. So I'll just
18 stop with my comment there and let someone else.

19 CHAIRPERSON FREED: This is Laura Freed. I would
20 like to have the deputy attorney general respond to Betsy's
21 observation, please.

22 MS. MOONEYHAN: Sure. We're looking at
23 Subsection C; is that right?

24 MEMBER AIELLO: Yes. And maybe I can be clearer.
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1 I'm not sure it's -- If the board is delegated already to an
2 evaluation committee, I don't think it's the board's role to
3 prove the notice of award, because I think that's the
4 evaluation committee process through purchasing. And the
5 same with the duty of negotiating it. So that's where I'm
6 going to stop.

7 MS. MOONEYHAN: Yeah, I think you're correct
8 about that. I think that having talked a little bit with the
9 purchasing division, I do believe that to be in compliance
10 with Chapter 333 that the committee that has been delegated
11 the duty of reviewing the proposals and that sort of thing
12 the NRS, of course, sets forth at the end of the day the full
13 board can decide not to proceed with the contract, but the
14 full board is not -- is not -- it's not contemplated that it
15 will be involved at this level of negotiations and those
16 procedures. So I think you're right.

17 CHAIRPERSON FREED: Okay. Thank you,
18 Ms. Mooneyhan. This is Laura Freed -- I'm sorry -- for the
19 record. All right. So what if we, in view of the
20 intersection of this document and NAC 333.170, what if we
21 changed it to -- Okay. For all other contracts including any
22 that involve procurement of services to PEBP members or
23 actuarial services, the board delegates ministerial and
24 administrative duties as chief of the using agency to the
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1 executive officer, but the board retains the power and duty
2 as chief of the using agency. And then we delete to approve
3 scopes of work for RFP's and then pick up with to appoint
4 members of the board to evaluation committees. Does that
5 satisfy -- Does that enable this document to be read
6 harmoniously with NAC?

7 MEMBER AIELLO: This is Betsy. I think we would
8 also have to eliminate and to approve notices of award.

9 CHAIRPERSON FREED: That too, yes. Thank you.
10 Okay. Okay. So using agency to appoint members of the board
11 to evaluation committees pursuant to NAC 333 -- Excuse me --
12 NRS 333.335 period. The next sentence, the duty of
13 negotiating and administering the contract is delegated to
14 the executive officer.

15 MEMBER KELLEY: It's Michelle Kelley here. At
16 the last meeting I thought that the subcommittee agreed that
17 we would delegate contracts up to that hundred thousand
18 dollars, which is documented above, to the executive officer.
19 And that for contracts that, like, obviously that are over a
20 hundred thousand but specifically have significant impact to
21 our participants that we did want to be able to review scopes
22 of work and -- So what I'm saying, I just want it to be
23 really transparent here. So with the changes to C and with
24 what the deputy AG has indicated, once the PEBP board
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1 approves -- Basically we're approving money for a contract
2 and we appoint the subcommittee, we have no further control.
3 Is that kind of what you're saying the NAC says?

4 CHAIRPERSON FREED: This is Laura Freed. I don't
5 think we would -- are advocating our duty to review scopes of
6 work. I think we, in order to make this conform to
7 regulation, we are saying that it's not the place of the
8 board to approve scopes of work for RFP's unless we're one of
9 those people on the evaluation committee. Correct me if I'm
10 wrong, Ms. Mooneyhan.

11 MS. MOONEYHAN: No. I agree. I do think that
12 the full board at the end of the day does have authority, of
13 course, too, if they don't like the -- The full board is
14 there at the beginning of the process to say we know you're
15 going to be pursuing this and this is kind of what we're
16 looking for. But in terms of writing up the details, that is
17 a delegated duty.

18 And then at the end of the day if the full board,
19 once this is all developed, the full board always has the
20 authority to reject the award. But it does not -- it's not
21 contemplated that it will be involved in that level of detail
22 of approving the scope of work while it's being worked out
23 and negotiated with the vendor.

24 MEMBER KELLEY: So if we remove that from C,
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1 which is what's being discussed right now, no where in the
2 policy does it talk about that responsibility for the board,
3 I guess, is my concern. So right now they're talking about
4 the intent. Ms. Mooneyhan, you talked about the intent. But
5 if it's not in our policy, then in two years time are we
6 going to be back doing this again because different board
7 members, different chair, wants different control? And will
8 it ever get done or will the policy be if it's not in the
9 policy we can't do it. So I think it needs to be documented.

10 MEMBER AIELLO: Michelle, this is what I think
11 I'm trying to say is that when PEBP comes to us and says we
12 need a contract for -- And I'm just making stuff up -- case
13 management to cover some of our high cost medical things, the
14 board would talk about maybe the high cost medical things and
15 what diagnoses, but we would not write or approve the actual
16 scope of work, which may go to the once someone has agreed to
17 be case managed, you call them once a month and then you
18 offer -- because the scopes of work sometimes are that
19 intense and are 500 pages. So we're approving a scope that
20 a -- that we want a contract for and are willing to pay money
21 for, but then we delegate the actual development of the
22 in-line, the line-by-line scope that gets released for
23 bidding to purchasing and the committee that they run. Or we
24 don't have to. The chief of the using agency or committee

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1 appointed by the chief. But I don't believe that the board
2 as the chief would want to do that level of all the
3 contracts.

4 So I think that actually approving the scope of
5 work, what we're doing is saying we want this type of thing
6 for this type of money. But the actual scope we aren't
7 approving. And I think that's where the disconnect is, in my
8 mind.

9 MS. RICH: So this is Laura Rich. Michelle, I
10 think something that might I guess make you feel better about
11 this process is that -- And I think in another section we
12 address it. So, as board members, our approach to
13 participate on any of these solicitations, they are invited
14 to participate not just in being on the evaluation committee
15 but also in developing that solicitation. So that would be
16 any board member who is -- who does want to participate in
17 that solicitation has the ability to provide input in to
18 scope of work and things like that as we're developing that
19 solicitation. I don't know if that helps.

20 MEMBER KELLEY: You know, I think it helps. And,
21 you know, I really want to reiterate that for me some of this
22 is the transparency, right. So I guess my concern is now
23 that RFP's are confidential and developed behind closed doors
24 and released and reviewed behind closed doors, how does the
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1 Nevada public actually get to see what contracts and the
2 detail of the contracts we're issuing?

3 And, Betsy, thank you for the case management.
4 You know, I've never done an RFP proposed, management. I
5 have never seen a scope of work that is 500 pages, so I'll
6 just put that out there. And, no, I would not be thrilled to
7 be reviewing a 500-page scope of work.

8 MEMBER AIELLO: Having worked for Medicaid, oh,
9 my God, our scopes of work are unbelievable, just so you
10 know.

11 MEMBER KELLEY: Right. You know, I wasn't
12 discounting what you said. But I do think the scopes of work
13 tell the committee or tell the board, I'm sorry, exactly
14 what's been put out to contract. So I don't know that it's
15 500 pages. But I do think the committee has a duty to
16 understand what's being put out for bid.

17 And, so, you know, I don't know what the solution
18 is to that, but I do think the public has a right to know
19 what contract, you know, the bullet points of the contract
20 that's being put out to bid. And that's, you know, I think
21 that's where I'm coming from. Because, otherwise, all of it
22 is secret and we have these contracts out there that nobody
23 is fully sure of what they include.

24 So, I'm happy for modifications to that section,
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1 but I just want to ensure that a scope of work either in
2 bullet point form or in some form gets discussed or at least
3 added as an information item to board meetings.

4 MEMBER AIELLO: This is Betsy again. And correct
5 me, someone, because I'm going from my memory. But once the
6 RFP is released for entities to develop their bids, the RFP
7 itself is public; right?

8 CHAIRPERSON FREED: Yes. I'm sorry. This is
9 Laura Freed. Yes, correct.

10 MEMBER KELLEY: Right. But that assumes people
11 are -- I mean, yes, that's true. But I'm not sure that that
12 serves the purpose that I'm talking about. Because at that
13 point, you know, the public or employees or employee groups
14 don't have an opportunity to kind of opinion on what we're
15 soliciting.

16 So -- And then further to that, I guess, you
17 know, the other part of this discussion was kind of removing
18 that the board has the duty to approve the contract. So --
19 So if we remove that from the policy, where does the board
20 retain the right to review the three -- You know, obviously
21 we can't modify things, but we do have the right to say
22 something went wrong with the RFP, we're not issuing the
23 contract. So where in the policy is that outlined?

24 MEMBER LINDLEY: Tim here. I have a couple of
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1 questions and it's just procedural. And this may help. Do
2 you mind if I kind of open up a dialogue? Maybe the
3 executive director, Ms. Rich, may be best for that.

4 So PEBP generates a request for RFP. They want
5 to do a proposal for case management, right? You present
6 that to the board and the board approves it; am I correct?

7 MS. RICH: That is correct, Mr. Lindley.

8 MEMBER LINDLEY: Please work with me here. When
9 you present that, you kind of give a gist or a summary of
10 what the proposal is; right?

11 MS. RICH: Yes. We try to present the board with
12 general information about what that solicitation will
13 include. We do not get in to the details of it. Generally,
14 when this is first presented to the board, it is in the very
15 early stages of, you know, the solicitation rates. So we
16 bring to the board, this is -- this contract is expiring as
17 of such and such date, we need to start working on a plan to,
18 you know, to get a new contract in place so that we can
19 initiate that contract when this other one expires.

20 And, so, typically, when it's brought to the
21 board at the beginning, it's basically just this is what the
22 service is, we need to find a replacement, because the
23 contract is expiring on X date.

24 MEMBER LINDLEY: Exactly. Okay. And then if
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1 there's a problem where a contract is needed or there is a
2 vendor needed for a problem, you say, hey, here is our
3 problem, can we go out for a solution; is that correct? Am I
4 correct in thinking that?

5 MS. RICH: Correct.

6 MEMBER LINDLEY: All right. And so at that point
7 I would say to Michelle Kelley's questions is the public is
8 notified that there is an RFP out. And during the last
9 subcommittee meetings, if you look at page 12, Subsection C,
10 amendments, it says, you know, in a nutshell, the board shall
11 review and discuss all contract extensions, solicitation
12 waivers, approve justifications. But we've also gone in to
13 more detail with appropriate checklists.

14 And then I think that -- I can't seem to find it
15 off the top of my head. But we go through current
16 outstanding contracts. And maybe the director can help me
17 out.

18 CHAIRPERSON FREED: This is Laura Freed. I think
19 you mean 3-A-2, there shall be a standing item on the board
20 meeting agenda to review the status of current contracts and
21 active RFP's.

22 MEMBER LINDLEY: To me that also informs the
23 public that there is an RFP out there, the details are
24 public, and anyone who tunes in is made aware through that
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1 alone as well. And I hope that answers Ms. Kelley's
2 questions. And I appreciate you working with me, Ms. Rich,
3 on those kind of -- that discussion on how the process works.

4 MS. RICH: I would also like to add -- This is
5 Laura Rich. I would like to add that the development of
6 scope and the development of the RFP in general, we don't
7 want to do that in public because it's -- it's not
8 something -- you don't want to give vendors the opportunity
9 to, you know, to prepare or to, you know -- or give anyone
10 the -- any sort of advantage in a solicitation.

11 So this is typically done behind the scenes. And
12 PEBP works with subject matter experts. We have -- We elicit
13 the services of many of our vendors, et cetera, et cetera.
14 And so a lot of this is done behind the scenes. And then
15 when that solicitation is finalized, it actually does get
16 final review through the purchasing division and posted via
17 the purchasing staff through that -- the purchasing division.

18 So I caution against doing anything publically as
19 far as scope goes and the development of that RFP publically.

20 MEMBER LINDLEY: Tim here. So that's kind of why
21 I said, you know, PEBP presents a problem. We have a
22 contract ending or we have an issue that we don't have a
23 contract for, we're going to submit an RFP to solve this
24 problem, such as a new contract or getting an extension, et
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1 cetera.

2 I cannot go in to the minutia of an RFP line by
3 line item details and write out an RFP because that's what
4 you are for, PEBP is for, is to do that legwork. But when
5 the RFP does go public, we can review it, and maybe there's a
6 board member on the review committee who can say, hey, does
7 this RFP satisfy our needs or the problem presented. And
8 that's kind of where I'm going for on clarification.

9 MEMBER KELLEY: So the policy is silent on that.
10 So in C, I think what Betsy was saying was basically C,
11 remove all the language, so what would be left is for all
12 other contracts, including any that involved the procurement
13 of services to PEBP members or actuarial services, the board
14 delegates ministerial and administrative duties as the chief
15 of the using agency to the executive officer but the board
16 retains the power to appoint members to the board to evaluate
17 committees subject to 333.335. That's it?

18 So essentially what the policy will say all the
19 board does is select the committee or approve the selection
20 of the committee and then we're out. So I'm not sure if you
21 go down to D that specifically my interpretation of D is that
22 it's specifically talking about contract amendments. It's
23 not talking about new contracts because it says seeking to
24 amend contracts.

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1 So, really, you know, Tim, I agree, we don't want
2 to review 500 pages. I think my intent is just so that
3 before -- my intent was only that the committee would be
4 clear that a contract has been issued and what it involves.
5 And so if that is -- You know, Ms. Rich has said that that
6 will happen. Where can we document it?

7 Because a policy is meant to be the road map to
8 how we do things. So, you know, like if we leave lots of
9 blanks, then it's open to interpretation. So, really, I
10 just -- I agree with that, but it's not documented.

11 MEMBER AIELLO: So this is Betsy. Michelle, for
12 D, and everyone else, should we add, when seeking new or to
13 amend contracts, so add the word new or to D?

14 CHAIRPERSON FREED: This is Laura. I'm open to
15 that. But, again, I want to make sure that that doesn't run
16 afoul of the instructions in NAC 333.

17 So, Ms. Mooneyhan, is that something that we
18 could do without every member of the board having to be on
19 the evaluation committee and therefore it be, you know, privy
20 to the confidential proposals and that sort of thing?

21 MS. MOONEYHAN: I guess it -- I will reconsult
22 NAC 333. But I think it kind of depends on -- Well, it has
23 in there that the, you know, providing detailed information.
24 I guess part of it is the definition of that. If I

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1 understand purchasing instructions, then definitely the board
2 is aware there's a contract, you know, being negotiated,
3 what's going on. There are members of the full board that
4 are on the committee that are evaluating and they could
5 definitely hopefully represent the full board's concerns to
6 the extent, you know, they can. And then, of course, the
7 full board will ultimately see the result.

8 But I do think that -- And, again, I am going to
9 double-check as you talk. But I do think that would be
10 consistent with the NRS provided that maybe there's a
11 definition of what is detailed information or maybe as
12 detailed as information as possible under the statute or
13 something like that, just because I don't want the policy to
14 conflict with the statutes and purchasing desires.

15 CHAIRPERSON FREED: Okay. Okay. So let's hold
16 on C for now. The executive officer shall ensure that
17 accurate and detailed information -- something like as far as
18 law and regulation permits is provided to the board and other
19 governing bodies when seeking to bid new contracts and amend
20 existing contracts, something like that.

21 Also, I think that this is just me being a prig
22 about the whole thing. I think this is as written kind of an
23 awkward sentence. I had suggested in my own notes to myself
24 move up supporting documentation. In other words, the
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1 executive officer shall ensure that accurate and detailed
2 information and supporting documentation, again, as far as
3 the law permits is provided to the board and other governing
4 bodies when seeking to bid new contracts and amend existing
5 contracts. Something to that effect.

6 Okay. How does everybody feel about that? Thank
7 you, Ms. Weyland, for making those edits.

8 MEMBER AIELLO: The edit about the law isn't in
9 there yet. Or the executive board, should it be within the
10 rules of NRS or within something like that?

11 CHAIRPERSON FREED: Yeah, let's see. This is
12 Laura Freed. The executive officer shall ensure the accurate
13 and detailed information, supporting documentation -- I would
14 suggest within the bounds of statute and regulation and set
15 that off as a comma subclause out there. Provided to the
16 board and other governing bodies when seeking to bid new
17 contracts and amend existing contracts. What do you guys
18 think?

19 MEMBER AIELLO: That sounds good to me.
20 Michelle, it's a comma after documentation.

21 CHAIRPERSON FREED: Okay. Again, this is Laura
22 Freed. Okay. So in order to conform to the administrative
23 code as we've been advised by the DAC, I think we do need to
24 delete approved scopes of work for RFP's and approve notices
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1 of award, because that is the purview of the selection, the
2 evaluation committee in concert with the purchasing division
3 running the solicitation.

4 MEMBER LINDLEY: Tim here. Laura, yeah, I agree.

5 MEMBER AIELLO: And this is Betsy. I agree also.

6 CHAIRPERSON FREED: This is Laura Freed again.

7 And then leave the sentence, the duty of negotiating or
8 administering a contract is delegated to the executive
9 officer.

10 MEMBER KELLEY: It's Michelle here. I don't
11 agree. But if that's what purchasing and the DAC is saying
12 the statute says, then I can't argue anymore.

13 MEMBER AIELLO: Michelle Weyland, were you going
14 to make those edits on line here?

15 CHAIRPERSON FREED: Thank you, Betsy. This is
16 Laura. I was just going to ask Michelle Weyland to make
17 those.

18 MS. WEYLAND: If you can provide me exactly where
19 you want them, that would be --

20 CHAIRPERSON FREED this is Laura. Okay. So okay.
21 After chief of the using agency, delete to approve scopes of
22 work for request for proposals, delete that one, about six
23 lines down there. To approve scopes of work, right. Okay.
24 And then delete and to approve notices of award. So delete
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1 the rest of that sentence. And then just put a period after
2 335.

3 Okay. So let's give it a read. For all other
4 contracts that, including any that involve the procurement of
5 services to PEBP members or actuarial services, the board
6 delegates ministerial and administrative duties as chief of
7 the using agency to the executive officer, but the board
8 retains the power and duty as chief of the using agency to
9 appoint members of the board to evaluation committees
10 pursuant to NRS 333.335. The duty of negotiating and
11 administering the contract is delegated to the executive
12 officer.

13 Next section. The executive officer shall ensure
14 that accurate and detailed information and supporting
15 documentation within the bounds of statute and regulation is
16 provided to the board and other governing bodies when seeking
17 to bid new contracts and amend existing contracts.

18 How does everybody feel about that? Clear enough
19 expression of the intent?

20 MEMBER KELLEY: It's Michelle here. So it's
21 clear. So just a question of clarification again. So the
22 board has no role in the final approval of contracts anymore?
23 Is that what the NAC says? So basically once we appoint
24 the -- I just want it to be clear. So once we appoint the
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1 committee, we're done, and the PEBP officer will come back or
2 the executive officer will come back once all is said and
3 done and tell us who was awarded the contract and whatever
4 other information. But that would be after the contract is
5 issued; is that correct?

6 CHAIRPERSON FREED: This is Laura. No, that is
7 not correct. If you turn to page 12, top of page 12, the
8 board shall review the results of any evaluation and
9 proposals for a contract board program pursuant to NRS
10 333.335 in closed meeting. And then we added the executive
11 officer will provide an appropriate checklist to assist the
12 board. And then in an open meeting, down there on five, the
13 board awards the contract but the board gets sufficient
14 documentation to ensure justification for the recommendation
15 made by PEBP management.

16 MEMBER KELLEY: Okay. Thank you.

17 CHAIRPERSON FREED: Okay. All right. Again,
18 this is Laura. All right. Other comments on page 11 edits?

19 Okay. Shall we move to page 12?

20 MEMBER LINDLEY: Hey, Tim here.

21 CHAIRPERSON FREED: All right.

22 MEMBER LINDLEY: Page 11-C, one thing that kind
23 of bothers me is the repetition of the words chief of the
24 using agency. I hate to be a stickler, but that bothers me.

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1 CHAIRPERSON FREED: Did you want to delete that
2 second as the chief of the using agency?

3 MEMBER LINDLEY: I don't know what it is.
4 Because we have Section A, right, the board delegates the
5 role of chief of the using agency to the EO for routine
6 administrative contracts under a hundred grand. Cool, I like
7 that. But then we're kind of saying we delegate ministerial
8 and administrative duties but then the board retains the
9 power and duty of chief. It bothered me. I don't know why.

10 Spitballing a fix, I would just say put the board
11 retains the power of duty of -- put that under its own
12 section. Make that, like, Section E.

13 CHAIRPERSON FREED: So, in other words, move that
14 to a separate sentence, D, and then this next one becomes E?

15 MEMBER LINDLEY: Yeah.

16 CHAIRPERSON FREED: All right. I'm okay with
17 that.

18 MEMBER LINDLEY: And then the duty of negotiating
19 and administering the contract -- contracts, delegated to the
20 EO, put that under its own section. Because, I mean, I would
21 say it's pretty common sense that the EO does the negotiating
22 for almost all the contracts, am I correct?

23 MS. RICH: You are correct, yes.

24 MEMBER KELLEY: So it's Michelle here. I guess
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1 if we're making further edits to this section, because it is
2 meant to be an overview of the procurement process, can we
3 move the language on section -- on page 12 that Chairperson
4 Freed indicated earlier, can we move it as a bullet point
5 under here as well? It was going to be D maybe. Because
6 that kind of outlines the board to have another role to play.
7 At the moment the overview of the process doesn't really
8 indicate that.

9 So I'm not saying any language change. Just
10 perhaps move that particular section that's on page 12 over
11 and make it a separate bullet point on this section. That's
12 the overview of the procurement process.

13 CHAIRPERSON FREED: Ms. Weyland, this is Laura
14 Freed. Can you scroll up a tiny bit. I keep trying to
15 scroll up on my screen. A little bit more. That's okay.
16 That's good.

17 MEMBER AIELLO: My question would be, just to be
18 sure, that all of this that we are outlining under two, the
19 board shall act as the chief of the using agency for the
20 purposes of NRS 333.335. Would the board approving the
21 contract be part of the NRS 333.335 or do we need to add
22 another NRS there to move that up there?

23 I think number two is supposed to specifically be
24 related to that NRS. I was going to try and open it up, but
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1 then I thought I would mess up my Zoom.

2 CHAIRPERSON FREED: This is Laura. Betsy, can
3 you restate the question? You lost me there.

4 MEMBER AIELLO: Okay. Number two where we have
5 this A, B, and C, it's strictly related to NRS 333.335 in the
6 first sentence there. So all the A, B, C, and D shouldn't be
7 the whole board process but should be the board process, in
8 my mind, as related to NRS 333.335.

9 CHAIRPERSON FREED: I concur.

10 MEMBER AIELLO: And then number three or four or
11 something can come from some of the other regs too. So if we
12 were to move that area up, we need to make sure it relates to
13 that NRS or we add another NRS there. And I'm afraid to try
14 to open up the web to get to NRS's right now.

15 MEMBER KELLEY: So it's Michelle here. So, on
16 page 12, point four and five specifically refer to NRS
17 333.335. So four is where the board is reviewing the results
18 in a closed meeting and then five is taking actions in an
19 open meeting. And both refer back to 333.335. It's
20 really --

21 MEMBER AIELLO: You're right. That's true.

22 MEMBER KELLEY: Honestly, I think it's just a
23 flow question now, because these two specifically relate to
24 the overview of the process. So the here in here, you know,
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1 since we were kind of adding things here, it would be
2 appropriate to have them in this section. But if the
3 committee doesn't desire, that's fine too.

4 MEMBER LINDLEY: Tim here. I cut out about five
5 minutes ago. Michelle, can you scroll up to page -- Yeah,
6 there you go. I'm sorry to go back because I was cut out for
7 a minute.

8 Section C, the duty of negotiating and
9 administering a contract that's delegated to EO, could that
10 be Subsection F below E?

11 CHAIRPERSON FREED: To the extent that -- Yeah,
12 to the extent that it applies to the routine administrative
13 contracts, as we specified in A, as well as bigger contracts
14 that are services directly of PEBP members, I think, yeah,
15 that's fine.

16 MEMBER LINDLEY: Because we as board members
17 don't do the negotiating.

18 CHAIRPERSON FREED: Right.

19 MEMBER LINDLEY: So I would say make that its own
20 letter.

21 CHAIRPERSON FREED: Okay.

22 MEMBER LINDLEY: And then, of course, clean that
23 up. The duty of negotiating and administering contracts is
24 delegated. That's all from me right now.

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1 CHAIRPERSON FREED: Okay. This is Laura again.
2 Okay. Are we ready to roll on to four, five, six, seven, and
3 eight?

4 MEMBER KELLEY: I guess so.

5 CHAIRPERSON FREED: Okay. So, again, we've got
6 the board shall review the results of any evaluation of
7 proposals for a contract of a program pursuant to 333.335.
8 There's that statute again. With the added language, the EO
9 will provide an appropriate checklist to assist the board in
10 their review of the RFP in that closed meeting.

11 Then it specifies under five the actions that can
12 be taken only in an open meeting, award the contract, cancel
13 the RFP, modify and reissue the RFP. And then, again, the
14 board shall review sufficient documentation to ensure
15 justification for the recommended actions and validation of
16 the recommendations by PEBP management.

17 I have to say I feel comfortable with this added
18 language because it sort of reminds all the board members
19 that your job is not to just be passive about whatever
20 contract item the executive officer and her staff bring to
21 the board but to ask questions in a closed meeting and have
22 as spirited a discussion as possible in the open meeting.

23 MEMBER AIELLO: This is Betsy. I agree. And I
24 know this is for longer term for when there's other boards.
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1 But, from what I see of this board, I don't see a lot of
2 passiveness, so that's good.

3 CHAIRPERSON FREED: Yeah, concur.

4 All right. Rolling on to six, seven, and eight,
5 we didn't make any changes to six or seven, just sort of a
6 re-number there.

7 Okay. So, number eight, the board shall oversee
8 significant scope modifications and ensure a competitive bid
9 process is followed for but not limited to changes in scope
10 of the competition or vendor status, changes that were not
11 within the contemplation of the parties when the original
12 contract was entered, changes that materially -- That should
13 be alter, not alters, the contract, changes in the function
14 of the item or the type of work. You guys are going to have
15 to refresh my -- I know you guys explained what that means to
16 me last time and I don't remember. And I'm not sure anybody
17 reading this document cold would know what that means.

18 So, anyway, changes in the quantity of major
19 items or portions of work or historically procured services
20 under a separate contract.

21 Thoughts? Feelings? Are we good with this?

22 Laura, can you tell me what function of the items
23 or type of work is? I cannot honestly remember. Sorry.

24 MS. RICH: And this is Laura Rich. I honestly
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1 cannot remember either. Michelle, do you remember what -- I
2 know someone gave an example of this at the last meeting and
3 for the life of me I can't remember it.

4 MS. WEYLAND: Actually, I gave examples for one
5 of the -- Oh, yeah, for F. All of these items came out of
6 the internal audit as a list of things to be aware of. I am
7 attempting to, in my mind, understand what they would have
8 meant by function of the item or type of work.

9 CHAIRPERSON FREED: I mean -- This is Laura. I
10 mean, you know, so much of this is captured in C. There can
11 be many, many kinds of changes that materially alter the
12 contract. So I'm not sure -- Unless somebody can give me a
13 hard example of what a function of the item or the type of
14 the work is without actually having to call and consult with
15 LCB audit, I'm not sure it's necessary. But I'm extremely
16 open to counter-arguments about that.

17 MEMBER AIELLO: Well, this is Betsy. Whether
18 necessary or not, if people really don't know what it means,
19 it's not good policy. I mean, it may need to be stated
20 differently or something. But when policy is written, if
21 people can't interpret it, that's kind of a problem.

22 MEMBER KELLEY: So it's Michelle Kelley here. So
23 just reading through the list, what pops to my mind when I
24 see -- when I review D is when contracts are -- when work is
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1 changed due to technology, right, especially in the benefits
2 world where they're introducing new platforms, new ways to do
3 things where it could change the way things are done or it
4 could combine different items of work, that's what I think
5 they're referring to in changes in the function of the item
6 is actually factoring those -- the movement of technology,
7 the change in processes and that kind of thing, rather than
8 vendors. So it's work-related, not vendor-related.

9 CHAIRPERSON FREED: Okay.

10 MEMBER AIELLO: So here would be my statement
11 though. If you have a vendor that's paying your claims and
12 they've made a significant improvement in their claims
13 computer system, I don't know that if that's what they were
14 doing, we would want to have to ensure a competitive bid
15 process was followed if it's within the current contract, if
16 that's what you're saying, Michelle.

17 MEMBER KELLEY: Well, I think it would only come
18 to the board if they wanted to change the contract because of
19 the changes in the work load, if you will. So if the scope
20 of work was -- if they were still providing all of the same
21 functions under the same contract and the same terms, I don't
22 think it would even be an issue. It would be an issue if
23 mid-contract, you know, we needed to change things to keep up
24 with that scope, to keep up with the way things are done. If

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1 it fundamentally changes, the competition for the bid
2 potentially changes as well, right.

3 MEMBER AIELLO: That makes sense. That makes
4 total sense to me.

5 MEMBER KELLEY: It's not my language. But after,
6 you know, being involved for so long, things like, especially
7 with technology, things change. And unless kind of we're
8 thinking about it, we don't think about the changes to the
9 contract that might follow. So that's --

10 CHAIRPERSON FREED: This is Laura. So could we
11 change that to something like changes in the technology
12 utilized to accomplish deliverables or scope of work or
13 something?

14 MEMBER AIELLO: This is Betsy. Again, I'm not
15 sure that any of that is not included in number C.

16 CHAIRPERSON FREED: Well, right. I mean,
17 there's -- Right. Or we could strike it. I mean, I don't
18 know. If you guys want to -- Betsy, are you discussing to
19 strike D, that's fine.

20 MEMBER AIELLO: Possibly. Unless we get more
21 clarification from the audit team and it's able to be written
22 in a way that there's clarity for everyone.

23 CHAIRPERSON FREED: This is Laura. I'm going to
24 go out on a limb here and say that LCB audit is not going to
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1 commit to giving us a hard example of what their audit means.
2 Just tossing that out there. Knowing what I know about the
3 counsel bureau.

4 MEMBER KELLEY: I would support removing it, I
5 guess striking it. I do think that LCB was probably just
6 giving a list of things that they observed in their order and
7 so it's worth keeping it in mind of the things that the
8 report generally might be supportive of striking. Because I
9 do think material changes to the contract pretty much
10 captures everything.

11 CHAIRPERSON FREED: Okay. I concur with that.
12 Okay. So let's strike D and then go. There we go. All
13 right. I think the rest of it is pretty good. I don't know
14 about you guys.

15 Okay. Hearing no great outcry, I guess we'll
16 move to Section C, amendments. The board shall review and
17 discuss all contract extensions and ensure extensions receive
18 all required approvals, i.e., solicitation waivers,
19 appropriate certification, and documentation. The executive
20 officer shall provide appropriate checklists to the board in
21 order to assist the board in their evaluation of the
22 amendment.

23 I like this a lot because it heads off some of
24 the problems noted specifically in the audit that were
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1 quantified by LCB audit, the number of contract extensions
2 over a period of some fiscal years, which was not great.

3 So, just keeping the board, especially as Betsy
4 has noted, this is a relatively active board, and keeping the
5 board apprised under that standing agenda item of pending
6 amendments would probably stimulate at least this particular
7 board to ask some probing questions.

8 MEMBER KELLEY: Michelle here. I'm supportive of
9 that section.

10 CHAIRPERSON FREED: Okay.

11 MEMBER AIELLO: I agree.

12 CHAIRPERSON FREED: Okay. Thank you. So this
13 kind of brings us to the end. So having been through all of
14 the changes to the procurement and contract amendment process
15 under Section 3, are we ready to vote to recommend this red
16 line to the full board?

17 MEMBER AIELLO: This is Betsy again. My
18 understanding was the other was already voted to go to the
19 full board, the bottom part. But I have to be honest, I
20 don't understand all of the bottom part. So when we're
21 amending, we're talking specifically, I'll make a motion
22 specifically about the contract section, if that works,
23 because that's what I'm comfortable with.

24 CHAIRPERSON FREED: Betsy, this is Laura. Yes,
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1 we can absolutely separate -- And by bottom part you mean
2 everything that's not section three; right?

3 MEMBER AIELLO: Yes. Because I honestly don't
4 know the difference about 95 percent to some of the other
5 things written in there unless I was given some education
6 about that. I don't feel comfortable voting on something I
7 don't understand fully. I'm sorry.

8 CHAIRPERSON FREED: This is Laura. No, don't be
9 sorry. Gosh. The scope of this subcommittee is only to deal
10 with the LCB audit. So, you know, I don't believe it is --
11 it is necessarily appropriate unless the executive officer
12 and the DAC disagree with me about this one to take a motion
13 about the red lines to this document that are related to the
14 rate setting and some of the policy decisions about, you
15 know, subsidization policy and other things that we talk
16 about at past board meetings.

17 So I would like to keep this narrowly on the
18 scope of the audit, which means section three contracts. So
19 if you're comfortable moving to recommend the changes as we
20 discussed them today to the full board, I'm comfortable
21 taking a vote on that.

22 MEMBER AIELLO: So this is Betsy. And I move to
23 take to the full board the sections on contracts that we --
24 and the changes as discussed today.

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1 CHAIRPERSON FREED: Okay.

2 MEMBER LINDLEY: Tim Lindley here. I second.

3 CHAIRPERSON FREED: Okay. All right. It's been
4 moved and seconded to recommend to the full board the changes
5 that all you guys can see that we talked through today on
6 screen. And, without any questions on the motion, I will
7 take a vote. All in favor say aye.

8 MEMBER KELLEY: It's Michelle Kelley here.

9 CHAIRPERSON FREED: Sure, sure.

10 MEMBER KELLEY: I would just like to say that I'm
11 going to vote in support of this. But, for the record, I
12 continue to be concerned about advice we're getting from
13 purchasing and the legal advice because I just don't think
14 the intent of these statutes was for so much of this
15 purchasing to be happening behind closed doors, so not in
16 front of the public, generally.

17 So, saying that, you know, the language that has
18 been crafted obviously is satisfactory to purchasing and the
19 legal opinions we've got, so I will support it but I am -- I
20 continue to be concerned.

21 CHAIRPERSON FREED: All right. Thank you. Duly
22 noted.

23 Any other comments? All right. All of those in
24 favor say aye and raise your hand.

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1 (The vote was unanimously in favor of the motion)

2 CHAIRPERSON FREED: Okay. Motion carries
3 unanimously. We will forward this red line to the next full
4 board meeting. That is if the executive officer can get it
5 on the agenda. I know time is growing short and she's got a
6 pre-session budget hearing planned, among other things.

7 MEMBER AIELLO: I do have a question about the
8 second half. Is that going to the full board or did you guys
9 say last time that the part we didn't discuss today has
10 already been to the full board?

11 MS. RICH: I'm hoping to bring this to the board.
12 We may have to -- I have to look at the agenda again. I
13 know, Brandee, it's been sent to you, but I might want to
14 take a second look at it and make sure that it's worded
15 appropriately so that we can take action on both of these
16 items, because the red line version of the policies that were
17 changed I believe in July, those policy changes are included
18 in this and need to be approved by the board.

19 MEMBER AIELLO: So then I would just like to say
20 that I will probably have the same discomfort at that level
21 and probably abstain from voting. And I don't know if other
22 new members will have that same discomfort. And I don't know
23 how it will affect open meeting law or not to review these
24 changes ahead of time or -- And you may have plenty of a
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1 board to vote with some abstention to approve the first half.
2 But I just will have trouble approving something I don't
3 understand.

4 MS. RICH: Ms. Mooneyhan, I think you can weigh
5 in on this. But, I believe that if we separate out the
6 two -- these two actions in to separate approvals, we should
7 be -- our bases should be covered at that point.

8 MS. MOONEYHAN: I agree. I will pay special
9 attention to that in looking at the agenda. But if the
10 agenda is set up in the way that you contemplate, I think
11 that is appropriate.

12 CHAIRPERSON FREED: Okay. With that, I think I
13 will move to Agenda Item 4, which is, once again, public
14 comment.

15 UNIDENTIFIED SPEAKER: Thank you, Madam Chair.
16 Currently there is nobody in there. Would you like me to
17 just put up the screen showing the public comment
18 information?

19 CHAIRPERSON FREED: Yes, please. Let's hold for
20 a few seconds to see if anybody wants to quickly dial in for
21 public comment.

22 MS. MOONEYHAN: Madam Chair, I'm just looking at
23 the agenda. And maybe the checklists were addressed in the
24 previous meeting, but I just wanted to make that absolutely
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1 clear about the status of the checklists.

2 CHAIRPERSON FREED: Oh, Ms. Mooneyhan, are you
3 suggesting that we need a separate motion for Item 3.2?

4 MS. MOONEYHAN: I think it would be clearer for
5 the record, yeah.

6 CHAIRPERSON FREED: All right. All right. I'm
7 sorry, PEBP staff. I'm sorry, subcommittee members. Let's
8 quickly go back to 3.2.

9 Ms. Aiello, do you want to move to approve the
10 checklist as provided in the meeting packet?

11 MEMBER AIELLO: Yes, I would like to move to
12 approve the checklist. But here's something we talked about
13 last time. If PEBP feels they need to add or delete
14 something, I would like to approve the concept of checklists,
15 but I don't want to get to the point of having to approve
16 exactly every line on those checklists.

17 So, I would like to move to approve PEBP for
18 providing appropriate checklists similar to those as listed
19 in this packet, if that's appropriate.

20 CHAIRPERSON FREED: Yeah. So your motion would
21 be to approve the checklist with authority for staff to make
22 changes to the checklist as circumstances dictate?

23 MEMBER AIELLO: Perfect, yes. That's what I
24 would like to move.

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CHAIRPERSON FREED: All right.

MEMBER KELLEY: I'll second that. Michelle here.
Michelle will second it.

CHAIRPERSON FREED: Okay. Thank you. All in favor. And Tim has already voted thumbs up, yep.

(The vote was unanimously in favor of the motion)

CHAIRPERSON FREED: There you go, Ms. Mooneyhan.
We did it for you.

With that in mind, PEBP staff, do we have anybody for public comment?

UNIDENTIFIED SPEAKER: No, Madam Chair, no we don't.

CHAIRPERSON FREED: Okay. Well, with that, I think that concludes the subcommittee's work. Thank you very much for the discussion over the last three meetings. And it is 11:11 in the morning and we are adjourned. Thanks, guys.

MEMBER KELLEY: Thank you. Have a good week, everyone.

(Hearing concluded at 11:11 a.m.)

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I, CHRISTY Y. JOYCE, Official Court Reporter for the State of Nevada, Public Employees' Benefits Program Board, do hereby certify:

That on Tuesday, the 19th day of January, 2021, I was present, via Zoom, in Reno, Nevada, for the purpose of reporting in verbatim stenotype notes the within-entitled public meeting;

That the foregoing transcript, consisting of pages 1 through 42, inclusive, includes a full, true and correct transcription of my stenotype notes of said public meeting.

Dated at Reno, Nevada, this 19th day of January, 2021.

CHRISTY Y. JOYCE, CCR
Nevada CCR #625

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**PUBLIC EMPLOYEES' BENEFITS PROGRAM BOARD SUBCOMMITTEE TELECONFERENCE OPEN MEETING
TRANSCRIPT OF PROCEEDINGS
January 19, 2021**

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**PUBLIC EMPLOYEES' BENEFITS PROGRAM BOARD SUBCOMMITTEE TELECONFERENCE OPEN MEETING
TRANSCRIPT OF PROCEEDINGS**

January 19, 2021

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