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AGENDA ITEM

Action Item

Information Only

Date: September 24, 2020

Item Number: IX

Title: Legislative Counsel Bureau (LCB) Audit Findings and Proposed Corrective Action Plan

SUMMARY

This report summarizes the Legislative Counsel Bureau (LCB) audit findings and proposed Corrective Action Plan.

BACKGROUND

In March 2019, PEBP was notified by the Legislative Counsel Bureau (LCB) Audit Division that it would be performing a contract and operational audit of the agency. Throughout 2019, PEBP staff worked diligently to assist the auditors and collect all requested data and information required to perform this function. In May 2020, PEBP was provided an initial draft of the final findings by the LCB Audit Division and was required to submit a written response to the findings indicating acceptance or disagreement. The report includes a total of five findings: three regarding procurement practices, one concerning acceptance of gifts and one regarding improper expenditures. Each finding also includes recommendations offered by the auditors for staff and the Board. PEBP accepted all five findings and provided an initial plan on how the agency intended to rectify the deficiencies identified in the report. The findings and associated responses (Attachment A) were presented to and accepted by the Legislative Commission's Audit Subcommittee on September 3, 2020. PEBP is required to provide an initial 60-day corrective action plan followed by a subsequent six-month status report due at a later date.

REPORT

Based on the recommendations provided, PEBP has developed the proposed Corrective Action Plan:

Recommendation 1:

The PEBP Board should develop policies and procedures to ensure:

- *Competitive procurement of contracted services once the original term of the contract ends, in compliance with state policies*
- *Contracts and contract amendments have supporting documentation, including proper approvals by the Board and State Purchasing Division; and*
- *Changes to a contract's original scope of work are competitively bid*

Response: PEBP accepts this recommendation.

Proposed Corrective Action:

The PEBP Board shall form a subcommittee with the purpose of editing existing and/or developing new policies and procedures to address PEBP procurement practices.

Recommendation 2:

Comply with state law and agency policy concerning gifts and include periodic training and documented attestations of Board member and employee acceptance of policies.

Response: PEBP accepts this recommendation.

Proposed Corrective Action:

PEBP will coordinate with the Department of Human Resource Management to ensure PEBP policies and Procedures are updated to reflect state gifting policies and ensure all employees sign updated attestations. Additionally, PEBP will continue to request ethics training be provided to staff and Board members on an annual basis.

Recommendation 3:

Establish formal policies and procedures regarding the Request for Information process and compliance with State Purchasing guidelines.

Response: PEBP accepts this recommendation.

Proposed Corrective Action:

PEBP staff will edit existing and/or develop new policies and procedures addressing procurement practices that align with State Purchasing guidelines.

Recommendation 4:

Develop policies and procedures that require accurate information be provided to the Board and other governing bodies when seeking to amend contracts and supporting documentation to be provided.

Response: PEBP accepts this recommendation.

Proposed Corrective Action:

1. The PEBP Board shall form a subcommittee with the purpose of creating criteria and/or guidelines to be met by staff before any contract amendments are brought to the Board for consideration.

2. Once Subcommittee recommendations have been approved by the Board, PEBP staff will update its policies and procedures accordingly.

Recommendation 5:

Develop policies and procedures, in consultation with PEBP's Board, to ensure the use of funds and resources directly relate to the purpose of the agency and the statutory intent for the use of those resources.

Response: PEBP accepts this recommendation.

Proposed Corrective Action:

1. The PEBP Board shall form a subcommittee with the purpose of creating criteria and/or guidelines to address NRS 287.0434(1) regarding authorized expenditures to be met by staff before any proposed expenditures are brought to the Board for consideration.
2. Once Subcommittee recommendations have been approved by the Board, PEBP staff will update its policies and procedures accordingly.

Recommendation: PEBP recommends the Board approve the proposed corrective action plan, including any additional edits based on Board member input.

Audit Highlights



Highlights of performance audit report on the Public Employees' Benefits Program, Contract Management issued on September 3, 2020.

Legislative Auditor report # LA20-15.

Background

The Public Employees' Benefits Program (PEBP) is a state agency that is legislatively mandated to provide group health, life, and accident insurance for state and other eligible public employees and retirees. PEBP's mission is to provide employees, retirees, and their families with access to high quality benefits at affordable prices.

PEBP currently administers various benefits and is responsible for designing and managing a quality health care program for approximately 44,000 primary participants and 27,000 covered dependents, totaling over 70,000 individuals.

PEBP enters into contracts with vendors to provide services to its participants. In fiscal year 2019, PEBP paid over \$114 million to 19 vendors under contract with the agency. Vendor payments included things like actuarial services and medical, dental, and pharmaceutical administrator services.

A 10-member board oversees PEBP's operations. Nine board members are appointed by the Governor, and the 10th member is the Director of the Department of Administration or a designee approved by the Governor. The Board appoints an Executive Officer to direct the day-to-day operations.

Purpose of Audit

The purpose of the audit was to determine if PEBP has adequate controls to ensure vendor selection and payments complied with state laws, policies, and contract terms; and expenses related to contracts, awards, and accreditations were appropriate. Our audit included a review of contract procurement and payment practices, and award and accreditation expenditures for fiscal year 2019, and prior years for some activities.

Audit Recommendations

This audit report contains four recommendations to improve PEBP's contracting practices and one recommendation to ensure the proper use of PEBP's resources.

PEBP accepted the five recommendations.

Recommendation Status

PEBP's 60-day plan for corrective action is due on December 3, 2020. In addition, the 6-month report on the status of audit recommendations is due on June 3, 2021.

Contract Management

Public Employees' Benefits Program

Summary

The Public Employees' Benefits Program's (PEBP) contracting practices changed over the past several years, focusing more on amending and extending contracts through private negotiations instead of competitive procurements. While contract amendments may be appropriate in some circumstances, for the most part, amendments should be infrequent and not utilized as a default to extend contracts and procure services worth hundreds of millions of dollars. State law creates the PEBP board giving it responsibility for ensuring contracting practices comply with laws and policies, and to help ensure the proper use of agency resources. However, PEBP's contracting practices did not always follow state laws and policies as some amendments significantly modified contracts' scopes of work and contracts were extended without proper approvals. Furthermore, some wasteful spending of agency resources occurred. Without proper contracting practices and agency oversight, there is increased risk the best interests of the State and PEBP participants will not be realized, and agency resources will not be used appropriately.

Key Findings

Between fiscal years 2015 and 2019, PEBP authorized nearly \$96 million in contract services that were not competitively bid through a Request for Proposal (RFP) process, as PEBP began to focus more on extending contracts. For 14 of 19 active service contracts in fiscal year 2019, PEBP amended these contracts to extend them beyond the original contract term, with some extended more than once. As a result, the average contract term increased from almost 5.5 years to over 8.5 years, with two contracts having 11-year terms. Under PEBP's management of the past 5 years, 23 contract extensions were performed and only 12 RFPs. State policy indicates contracts should be competitively solicited at least every 4 years. While PEBP claims a longer contract term is more desirable for some contracts, amending and extending contracts indefinitely does not help ensure the State and PEBP participants receive the best value. (page 6)

Private negotiations became a standard practice as PEBP's management extended vendor contracts for multiple years. Some negotiations took place through direct contact with vendors or by emails. For one contract, negotiations included two vendor paid trips, at the request of PEBP management, in which PEBP employees received transportation, lodging, and meals worth more than \$7,000. Following the second trip, a significant scope modification occurred and the contract was extended 2 years. The amendments and contract extension occurred despite PEBP management and staff dissatisfaction with the vendor's performance. Not only does accepting gifts violate state ethics laws and policies, but it increases the risk of fraud and that contracting decisions will not be in the best interests of the State or PEBP's participants. (page 10)

PEBP management claimed that competitive bidding for contracts was unnecessary as they performed regular market checks to determine the value of the services their current vendors were providing. However, market checks were only performed multiple years for one vendor, and showed PEBP was paying more than other plans of similar size. In addition, cost savings was used to justify several contract extensions, after vendors agreed to lower pricing in exchange for added years to their contract terms. Market checks and cost savings should not be used to supplant bidding processes since additional value and savings may be received through competition. (page 12)

PEBP's board did not provide adequate oversight of contracting practices as it approved significant modifications to contracts' scopes of work and changes to PEBP's policies and procedures that placed less emphasis on competitive procurement. In addition, 6 of 18 contract extensions took place without State Purchasing's approval or being discussed at a PEBP Board meeting; thereby, circumventing state policy and law. (page 14)

During our testing, we observed some agency expenditures were unnecessary and not an efficient use of agency resources. For instance, PEBP allocated over 620 hours and nearly \$51,000 to obtain business awards and an accreditation. It is the responsibility of PEBP's Board and management to ensure funds are spent appropriately. (page 21)