

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

Minutes of the Board of Trustees

Thursday, September 5, 2002

TRUSTEES PRESENT

Mr. Sam Callejo, Chairperson	Ms. Kathryn Matayoshi
Ms. Audrey Hidano, Vice-Chairperson	Mr. Neal Miyahira
Mr. James Williams, Secretary-Treasurer	Mr. Willard Miyake (Left - 4:35 p.m.)
Ms. Joan Lewis (Arrived - 3:41 p.m.)	Mr. Clifford T. Uwaine (Left - 4:35 p.m.)
Mr. Gerald Machida	Mr. Davis Yogi (Left - 4:35 p.m.)

ATTORNEY

Mr. Brian Aburano, Deputy Attorney General

HEUHBTF STAFF

Mr. H. Mark Fukuhara, Administrator	Mr. John Garner, Consultant
Mr. Lynette Fukunaga	Mr. Andrew Keowen, Consultant
Ms. Shirley Kawamoto	Ms. Karen Tom
Ms. Maria Quartero	

OTHERS PRESENT

Ms. Jean Aoki, HSRTA	Ms. Karen Momono, RSG
Ms. Lynette Arakawa, HDS	Mr. Michael Moss, HMSA
Mr. George Butterfield, HSTA-Retired	Ms. Karen Muronaka, HSTA-Retired
Ms. Alana Deppe-Mariota, Kaiser Permanente	Ms. Celeste Nip, HFFA
Ms. Monica Engle, VSP	Mr. Rod Tam, HMSA
Mr. Melvin Higa	Mr. George Yamamoto, HGEA-Retirees
Mr. Charles Khim	

I. CALL TO ORDER

Trustee Sam Callejo, Chairperson called the regular meeting of the Board of Trustees to order at 3:35 p.m., in Conference Room 408, State Capitol, 415 South Beretania Street, Honolulu, Hawaii, on Thursday, September 5, 2002.

ANNOUNCEMENTS

The Chair introduced Maria Quartero, the new secretary for the Trust Fund.

II. APPROVAL OF MINUTES

The minutes of August 6, 2002, August 20, 2002, and August 26, 2002 were not ready for review. There being no objections, executive session deferred to end of meeting

B. DEPUTY ATTORNEY GENERAL (Agenda Item IV.B.)

There being no objections, Agenda Item IV.B. was taken out of order for action.

As requested by the Board, Mr. Aburano prepared a memorandum on whether Trustee Miyahira was serving on the Board in violation of the prohibition of dual office-holding in Section 78-

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4(a), HRS, and whether the Employer Trustees were serving on the Board in violation of the common law doctrine of incompatible offices. Mr. Aburano noted that due to various matters, the Attorney General had not reviewed the memorandum, but the memorandum had been reviewed by the opinion review committee at the Attorney General's office. Mr. Aburano gave an overview of the memorandum (see handout).

Trustee Williams indicated a disagreement with the Deputy Attorney General's memorandum. Other Trustees questioned why the Director of Finance's designation of Trustee Miyahira to the Public Employees Health Fund ("PEHF") Board did not disqualify him from being on the Trust Fund Board. Mr. Aburano stated that the Director of Finance's designation of Trustee Miyahira did not mean that Trustee Miyahira held a board member's position on the PEHF Board. Rather, the Director of Finance continued to hold that position or office. The designation right was granted to officers such as the Director of Finance because they have many duties and are required to sit on several boards. The designation right is to allow a substitute to attend board meetings and act in their stead when they are unable to attend meetings. Trustee Miyake said that as a practical matter, Trustee Miyahira was sitting on two boards and noted that other Trustees had to resign from boards that they were on.

MOTION was made to seek declaratory ruling from appropriate court as to whether Trustee Miyahira can be the Director of Finance's designee to the PEHF Board and an appointee to the Trust Fund Board. (Williams/Lewis) After discussion by Trustees, the motion did not pass. (Employer trustees Callejo, Hidano, Matayoshi, Miyahira - NO/Employee-Beneficiary trustees Lewis, Machida, Williams - YES)

The Trustees continued their discussion on whether or not a declaratory judgment action should be filed. Trustee Matayoshi said she was concerned with the Board moving on activities to get employee benefits in place, and was concerned that a declaratory judgment action would adversely impact this. The Trustees also discussed whether Trustee Miyahira should participate in future Board actions. Mr. Aburano indicated that even if a later court action were to find that Trustee Miyahira held dual offices, as a de facto officer, his acts on the Trust Fund Board should still be valid. Mr. Aburano also noted that the staff's review of past actions shows that Trustee Miyahira's votes would not have changed the Employer Trustees' past votes; therefore no past action was jeopardized.

**PUBLIC COMMENT**

G. Yamamoto voiced a concern about the discussion regarding a designee being the substitute for the Director of Finance.

MOTION was made to waive the attorney-client privilege for the Deputy Attorney General's memorandum regarding Section 78-4, HRS, and Incompatible Public Offices.

(Williams/Matayoshi) The motion passed unanimously. (Employer trustees-4/Employee-Beneficiary trustees-3)

PUBLIC COMMENT

M. Higa commented that if the Legislature intended to allow a designee to serve on another board it would be in the law by statute. Outcome is that a person on two boards is deemed to resign from the first position if there is a conflict.

C. Khim commented that Deputy Attorney General's opinion on the common law is not correct in its application to Trustee Miyahira as the PEHF designee.

III. COMMITTEE REPORTS

A. ADMINISTRATIVE COMMITTEE - No Report

B. RULES COMMITTEE - No Report

C. BENEFITS COMMITTEE

J. Garner and A. Keowen, Garner Consulting, addressed comments on Request for Proposal.

Comments on Request for Proposal

1. Letter from Department of Education stating that they agree with the recommendations.
2. Questions from Gordon Murakami dated August 26, 2002 addressed by Andy Keowen, Garner Consulting:
  - 3) Questions/Answers will be posted on website and sent to all applicants by mail; questions after deadline no response.
  - 4) RFP not changed due to question, just clarification.
  - 5) Referred to Mr. Aburano and he noted that the RFP used the phrase "may disqualify" and not "shall disqualify". This was done to give the Trust Fund discretion in deciding whether or not to reject a proposal for the reasons stated.
  - 6) It is the responsibility of each carrier to get releases for use of information.
  - 7) This language gives the Trust Fund flexibility to respond to legislative changes affecting the availability of funding without the necessity of reissuing the RFP.
  - 8) Cancel at least 60 days; Board can change to 90 days. Not our intention to cancel after an open enrollment.
  - 9) \$5M coverage is common; contractors would normally provide that level of insurance coverage.
  - 10) This requirement is simply a part of the bid specifications that will be accepted by carriers who make a proposal in response to the RFP.
  - 11) Same response as above.
  - 12) 1<sup>st</sup> or last day of month, either payment system is acceptable. J. Garner stated he would like to modify the RFP to pick a single day of the month since it comes out the same at the end - won't affect the RFP. It would say the number enrolled would be based on enrollment as of a particular day of the month. Mr. Fukuhara

added that for administrative ease he agrees with J. Garner. After further discussion, no changes will be made.

- 13) No anticipation of change in level of benefits.
- 14) Not a violation of HIPAA privacy rules, it is information currently provided.
- 15) Part of proposal process – a competitive offering.
- 16) The premium determination date does not affect eligibility dates.
- 17) Mr. Fukuhara reported that changes would be made to apply alternative ID numbers for anyone not wanting to use SSN.

#### PUBLIC COMMENTS

G. Yamamoto asked if there were any problems with Medicare because they use the SSN. Mr. Fukuhara stated that he did not know of any problems.

3. M. Higa Letter dated August 27, 2002

Mr. Aburano reported he is not certain what is being asked in the letter. From his perception, the Benefits Committee did not want to review the issues referred to it because they felt that the Board would make a final determination on those issues anyway. As to whether the other committees need to do work before the Benefits Committee can move on, the Administrative Committee is considering contracting with a TPA and the Trust Fund's possible use of a TPA is already mentioned in the RFP. Further, the draft rules put together by the Rules Committee are already part of the RFP. When the Trust Fund's rules are finalized, it is anticipated that they will be sent out as an addendum to the RFP.

4. M. Higa August 29, 2002 letter

Mr. Aburano explained that the PEHF's current contract for long term care benefits extends beyond July 1, 2003. The contract is an asset that will be transferred to the Trust Fund under the provisions of Act 88, SLH 2001. There would be no liability assumed by the Trust Fund associated with such a transfer, as only the employees and not the PEHF pay for the long-term care benefits provided under the contract. Mr. Aburano noted that prior to the July 2, 2003 transfer date, only the PEHF could terminate the contract, and he did not know what grounds the PEHF could assert to terminate that contract.

Trustee Williams stated that the Board needs to decide if it wants to assume the PEHF's long-term care benefits contract. Trustee Callejo referred this matter to the Benefits Committee for review.

MOTION was made to approve Request for Proposal (Lewis/Matayoshi) After discussion by Trustees, the motion to adopt RFP with amendments unanimously passed. (Employer trustees – Callejo, Hidano, Matayoshi, Miyahira – YES/Employee-Beneficiary trustees – Lewis, Machida, Williams – YES)

Recess 5:30 p.m. – 5:37 p.m.

Discussion on Rate Structure, page 24, section 3(1)

MOTION was made to amend Request for Proposal page 24, paragraph D from 2 tier to 4-tier rates (Williams/Matayoshi). After discussion by Trustees, the motion on amendment from 2-tier to 4-tier for actives only did not pass. (Employer trustees Callejo, Hidano, Matayoshi, Miyahira – NO/Employee-Beneficiary trustees Lewis, Machida - NO, Williams – YES)

Trustee Williams stated it is a matter of equity; with a 4-tier rate structure more employees would benefit from the change than not benefit. Trustee Miyahira said collective bargaining is geared to a 2-tier structure; it's more prudent to stick with the current 2-tier structure. Mr. Garner stated that a move to a 4-tier structure may change the way collective bargaining is done. He prefers that the motion apply only to the actives since retiree contributions were set by statute on a 2-tier basis. Trustee Williams said it was okay to limit his motion to active employees. Trustee Matayoshi asked how employees would be impacted by a move to a 4-tier structure under the current collective bargaining contracts (based on 2-tiers). Mr. Garner explained that people who have 1 or 2 dependents would not be adversely impacted, whereas people who had more than 2 dependents would have to pay the differential in cost.

#### PUBLIC COMMENT

G. Butterfield commented that all plans are subject to inequity; large families are subsidized by others, high users are subsidized by lower users, etc.

A. Deppe-Mariota inquired if we are looking at counts by tier structure or industry standard, and whether we will be providing any rate ratios as rate ratios level the playing field. J. Garner stated that his understanding of the motion is based on the number of parties in the contract.

Trustee Lewis explained that the Benefits Committee determined that 92% of the anticipated participants in the Trust Fund's plans would be as good as they were before or better under a 2-tier plan. If they went with a 4-tier plan, 81% would be as good or better. At the time it was deliberated, that was the key factor for her to support the 2-tier structure.

#### PUBLIC COMMENTS

M. Engle requested that if the motion passed, the Trust Fund should be clear whether it is using one method of 4-tier versus another method of 4-tier; you really can't compare the two if you leave it up to the carrier to quote it.

C. Khim stated that he agreed with Trustee Williams on the 4-tier rate structure; otherwise you are passing on costs unfairly to smaller families. Eliminating inequities is better for the employee-beneficiaries.

Trustee Matayoshi's concern with a 4-tier structure is that it would increase the cost of health care for the people least able to afford it. Trustee Machida stated that the facts showed that a 2-tier structure would adversely impact less people. Trustee Williams stated that the same facts show that under a 2-tier system, 11,399 are paying 3 party rates when they are only 2 parties and persons with four parties are benefiting. Trustee Lewis noted that she and her husband are on single plans because of cost and asked if more people would come to the State plan if plan rates were more affordable. J. Garner stated that it's cost shifting from a state plan to a private sector plan and employers do it all the time.

#### PUBLIC COMMENT

C. Khim commented that what Trustee Lewis is proposing would never happen because under the pre-paid health care act an employer has to pay 100% for the spouse. Spouse will never jump in to a plan where it may be cheaper for a couple but they would pay a negotiated premium.

G. Butterfield stated it could happen because the State plan is richer.

M. Engle agreed with G. Butterfield if the State plan is richer.

M. Higa commented that what weighs heavily in terms of adverse selection is better benefits.

Trustee Williams referred to page 100A, of the RFP, Evaluation Criteria. He noted that claims/claims services are important and wanted to know how the weighting percentage was determined. J. Garner stated that the performance standards focus on claim and number service issues; balancing the proposed weighting percentages was discussed by the Benefits Committee. Trustee Lewis stated that Benefits Committee did scrutinize the weighting of the various factors.

Trustee Williams referred to page 101, top of page, first sentence, and stated that it was not complete.

MOTION to amend page 101, to add to the first sentence "...and invite the applicant to submit a revised price proposal." (Williams/Matayoshi) After discussion among the Board and with the consent of the Board, the motion to amend page 101 was withdrawn by Trustee Williams.

Discussion held by Trustees. Trustee Hidano was concerned that allowing an applicant to submit a revised price would open things up so that everyone would rebid; normally there is only one shot at bidding. Trustee Miyahira stated that we need to look at the market place with the exception of life insurance it is more of a negotiation. We are going to have ongoing negotiations; informal may be best. Trustee Williams agreed and stated that we need to look at the environment we are in. J. Garner stated that if there was a proposal that was outstanding in all areas but the price was higher then the other competitors, the intent of this provision was to notify the bidder that its price was high and allow the bidder to get back in the general ballpark.

Mr. Aburano commented that prior to a final award, all of the bidders' pricing would be confidential. As such, it would not be asking the bidders to bid against each other. Trustee Matayoshi would like to take the first sentence out because the second paragraph makes it clear that it is not an option. The first sentence is just part of the process for disclosing what are considered deficiencies of the proposal and it takes the price piece out of context.

#### PUBLIC COMMENT

C. Khim commented that it would not be like a construction bid because it is an experience rated plan. The cost will be the actual amount the carrier pays out plus an administrative fee.

M. Higa commented that deficient rates are not under the Board's jurisdiction; it falls under the insurance commissioner's jurisdiction.

MOTION was made to delete first sentence of pg. 101, item D1 (Matayoshi/Williams)  
Motion was unanimously passed. (Employer trustees-4/Employee-Beneficiary trustees-3)

Trustee Williams would like clarification on item B2 - Oral Presentations. J. Garner explained that they would pick the three priority listed applicants; each would make presentations, and then engage in discussion about proposal deficiencies. Trustee Williams suggested that the language in the RFP be switched so that oral presentations preceded discussions.

MOTION made to amend item B – Discussions/Presentations, page 100 of the RFP so that oral presentations from the applicants preceded discussions with them. (Williams/Matayoshi) The motion was unanimously passed. (Employer trustees-4/Employee-Beneficiary trustees-3)

Trustee Lewis commented that the heading for item B – Discussions/Presentations, page 100, should be changed and the new heading should be added called "Discussions".

#### PUBLIC COMMENT

C. Khim circulated a letter to the Board (see handout).  
He summarized the concerns raised in his letter.

M. Higa stated the Board has not adequately addressed the question as to whether it will or will not provide a long-term care benefits plan. It needs to be addressed and decisions made on whether to have that matter included and addressed in the RFP

M. Higa circulated 3 letters to the Board (see handouts). With respect to a concern raised regarding Section 2. III of the RFP, J. Garner explained that the Benefits Committee decided not to make the submission of the notice of intent to propose mandatory but made it voluntary. The direct communications that A. Keowen mentioned earlier would only go to those applicants who submitted a notice of intent to propose.

Trustee Williams raised a concern about the apparent inconsistency between the start of the contract under the timeline in the RFP and under other paragraphs of the RFP. Mr. Aburano explained that the problem occurred because you had a two-year contract starting on July 1, 2003, but that you needed the successful applicant to provide contract services before that date. Trustee Williams suggested that the wording be changed. Chair Callejo stated that a motion was not necessary as there was unanimous agreement to change the timeline to reference July 1, 2003 as the coverage start date.

Trustee Williams stated that Mr. Khim said it was unconstitutional for the RFP to require the primary applicant to perform 40% of the work. He wanted the consultant or Deputy Attorney General to explain how we define 40%. Mr. Aburano noted that this appeared to be a standard RFP provision. He thought that one of the purposes of the provision was to have a party who performs a substantial amount of the work be the primary applicant and, therefore, be responsible for providing information and other things required during the RFP process. In addition, that party if successful, would become the contractor responsible for performance of the contract. If you didn't have one party responsible, you could end up with a situation where multiple parties performing a contract could say that the other was responsible for a delay or other contract problem. Mr. Aburano said he didn't see this provision as creating an unconstitutional impairment of the contract. The provision does not invalidate or defeat an existing contract. It simply mean that certain applicants may have a problem bidding, but that's not an unconstitutional impairment of the contract. Trustee Williams stated that it seems that 40% is not a critical factor. The Trustees discussed doing away with the percentage factor.

MOTION made to change page 6, V. Submission of Proposals, 2<sup>nd</sup> paragraph last 3 lines, to put a period after applicant and delete "shall not have at least 40% performed..." (Williams/Lewis)

Trustee Williams stated that the main point is to have someone be the primary applicant and to disclose all subcontractors.

#### PUBLIC COMMENT

C. Khim stated that the assignor is always secondarily liable, the law provides that if you subcontract out to someone else you are still on the hook.

The Trustees discussed whether the applicant's financial status would be weighed as part of the RFP evaluation process and whether this would prevent the Trust Fund from contracting with a "shell" company that would disappear when there was a liability or performance problem. They also discussed whether and what type of review the Trust Fund would be able to do of the applicant's subcontractors.

#### PUBLIC COMMENT

M. Higa stated that his input emphasizes the use of the word "work" and suggested that Board should have a work definition. He said much of the discussion that is taking place here is not

work, it's financial, reinsurance, those kinds of things that are not really work. Work is a physical or mental exertion.

MOTION made to eliminate that part of the sentence that includes the word "work". After discussion by Trustees, the motion unanimously passed. (Employer trustees-4/Employee-Beneficiary-3)

Public comment about when the meeting will end. Chair Callejo answered that the Board meeting will end when the review of the RFP is completed.

Trustee Williams referred to Mr. Khim's letter, Section 2.VII.B. and stated that this is a constitutional issue and asked if this is the first time that it has been in an RFP. Mr. Garner and Mr. Aburano stated that it is standard language in RFPs that are issued by the State. Mr. Aburano stated that the provision does not breach an existing contract; a prospective applicant doesn't have to submit a bid if it can't or won't meet the requirements of this provision. The provision does not say that they must end a contract or say they have to breach a contract.

#### PUBLIC COMMENT

C. Khim clarified why he included Section 2.VII.B. He stated that if he used a subcontracting promoter that not only worked for him but for others, not being able to use that promoter would be impaired. The promoter is good in packaging his plan and selling it, it impairs his pre-existing promotion contract with the promoter. The constitution provision does not say that only if State action requires a cancellation of a pre-existing contract does it infringe on or is it unconstitutional. If he can't use that promoter on this big contract it would be a substantial problem.

Trustee Matayoshi proposed to amend page 9, XI. Competency of Applicant, 2nd paragraph, 1st line to add or subcontractor's after Applicant's. The amendment was approved by a consensus of the Board.

Trustee Williams referred to page 11, part B, paragraph 1, 7<sup>th</sup> line, ...appropriated yearly by, suggestion is to delete "yearly". The suggestion was approved by a consensus of the Board.

Trustee Williams referred to pg. 13, Section A, paragraph 1, 3<sup>rd</sup> line to add "employees, agents, or consultants." Insert the same in the following paragraph. The suggested insertion was approved by a consensus of the Board.

Trustee Williams referred to Mr. Khim's letter, Section 2.XVIII.B., pg. 13-14. He's satisfied about subcontracting, but does not understand about assignment and delegation. Mr. Aburano stated that it is unclear whether a court would hold that the Board can or cannot unreasonably withhold its consent to a contractor's attempt to enter into an assignment or subcontract. In his experience, parties often leave out the language suggested by Mr. Khim to give themselves more flexibility. If a court holds that the Board cannot unreasonably withhold its consent to a

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contractor's assignment or subcontract, it would do so regardless of whether that language is in the contract or not. Trustee Williams asked if leaving it out of the RFP would preclude putting it into the contract. Mr. Aburano replied no. Trustee Matayoshi commented why put the burden on the Board of Trustees. It should be left out. Trustee Williams agreed and if it is left out that it can be addressed in the contract.

Discussion about Section III, pg. 6 – Notice of Intent to Propose

After discussion held by the Trustees, consensus to make Notice of Intent mandatory, eliminate the word “not”.

Revised Schedule:

RFP issued – September 6, 2002

Deadline for submission of written questions – September 13, 2002

Notice of Intent to Propose – September 20, 2002

Response to Written Questions – September 20, 2002

All other dates remain the same.

The Board approved the revised schedule by consensus.

#### PUBLIC COMMENTS

M. Higa requested for additional time for public review of RFP.

M. Engle asked when bidders would be able to receive information.

J. Garner responded that the RFP will be e-mailed 9/6/02 to potential bidders, except for the census data that will be mailed.

Pick-up diskette at 3 p.m. or after at the Department of Budget & Finance, 1<sup>st</sup> Floor, room 106. Contact Mark Fukuhara at 587-5431 or Maria Quartero at 587-5433.

RFP will be placed on state procurement website and Trust Fund website.

List of Bidders circulated at the meeting (see handout).

#### IV. OTHER REPORTS

##### A. ADMINISTRATOR

Mr. Fukuhara reported on approval from DAGS regarding request for continued accounting services through June 30, 2004. (see handout)

##### B. DEPUTY ATTORNEY GENERAL

Mr. Aburano did not have anything else to report.

C. BENEFITS CONSULTANT  
Deferred to September 10, 2002.

V. UNFINISHED BUSINESS:

1. Trustee Williams prepared a motion and circulated for trustee review. Deferred to September 10, 2002.

VI. NEW BUSINESS - None

VII. COMMUNICATIONS FROM THE PUBLIC AND INPUT FROM ATTENDEES  
M. Higa believes that the Trust Fund must be licensed as a Mutual Benefit Society.

VIII. FUTURE AGENDA ITEMS AND NEXT MEETING DATE

The next Board meeting is scheduled for Tuesday, September 10, 2002, at 3:30 p.m., in the State Capitol, Conference Room 416. Rules Committee meeting scheduled for September 9, 2002, at 9 a.m., in the Leiopapa A Kamehameha Bldg, Conference Room 1403. Administrative Committee meeting scheduled for September 13, 2002, at 9 a.m., in the No. 1 Capitol District Bldg., Conference Room 436. Third Party Administrators presentations on September 16, 17, 18, 2002, from 8 a.m. - 1 p.m.

IX. ADJOURNMENT

MOTION was made to adjourn the regular meeting. (Miyahira/Matayoshi) The motion was passed unanimously. (Employer trustees-4/Employee-Beneficiary trustees-3)

The meeting was adjourned at 7:53 p.m.

Respectfully submitted,

/s/

Joan K. Lewis, Secretary-Treasurer

APPROVED as amended on March 18, 2003

Documents Distributed:

1. Memorandum from the Department of Education Dated August 19, 2002 Regarding Response to Plan Design Consultation. (1 page)
2. Questions to RFP No. 03-001 Submitted by Gordon Murakami Dated August 26, 2002. (3 pages)
3. Letter from Melvin Higa Dated August 27, 2002 Regarding Comments on Proposed RFP. (1 page)

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4. Letter from Melvin Higa Dated August 29, 2002 Regarding Long-Term Care Benefits. (2 pages)
5. Request to and Response from State Comptroller Regarding Continued Accounting Services. (2 pages)
6. Trust Fund Tiering vs. State Auditor's Report. (1 page)
7. Approved Minutes of July 23, 2002. (11 pages)
8. Memorandum from Charles Khim Dated September 5, 2002 Regarding Proposed RFP. (4 pages)
9. Comments from Melvin Higa Dated September 5, 2002 Regarding Proposed RFP Timeline (2 pages)
10. Comments from Melvin Higa Dated September 5, 2002 Regarding Proposed RFP Written Questions (1 page)
11. Comments from Melvin Higa Dated September 5, 2002 Regarding Proposed RFP Notice of Intent to Propose (1 page)
12. Comments from Melvin Higa Dated September 5, 2002 Regarding Proposed RFP Submission of Proposal (1 page)
13. Letter from Melvin Higa Dated September 5, 2002 Regarding Collective Bargaining/Benefit Plans (13 pages)
14. Bidders List from Garner Consulting Dated September 5, 2002 Regarding RFP (1 page)
15. Motion by Trustee Williams Dated September 5, 2002 Regarding Establishing An Investigative Committee (1 page)