Report to the Nebraska Legislature on the Eastern Service Area Child Welfare Contract

Pursuant to Legislative Resolution 29 (2021)

December 15, 2021

Eastern Service Area Child Welfare Contract
Special Investigative and Oversight Committee

John Arch, Chair
Justin Wayne, Vice Chair
Robert Clements
Suzanne Geist
Matt Hansen
Mark Kolterman
Terrell McKinney
Dave Murman
Rita Sanders

Health and Human Services Committee

John Arch, Chair
Matt Williams, Vice Chair
Machaela Cavanaugh
Jen Day
Ben Hansen
Dave Murman
Lynne Walz

Special Counsel

Marnie Jensen, Husch Blackwell
Thomas Kenny, Kutak Rock

Committee Staff

Paul Henderson, Legal Counsel
T.J. O'Neill, Legal Counsel
Geri Williams, Clerk

Acknowledgments

The Committee extends its gratitude to the stakeholders, officials, and staff who contributed to the work required by LR29, including:

Senator Kathy Campbell, former Chair of the Health and Human Services Committee;
Hon. Robert B. O'Neal, Sarpy County Juvenile Court;
Hon. Chad M. Brown, Douglas County Juvenile Court;
Hon. Matthew Kahler, Douglas County Juvenile Court;
Hon. Amy N. Schuchman, Douglas County Juvenile Court;
Hon. Mary M. Z. Stevens, Douglas County Juvenile Court;
Corey Steel, State Court Administrator;
Jennifer Carter, Inspector General of Nebraska Child Welfare;
Monika Gross, Executive Director of the Foster Care Review Office;
Liz Hruska, Legislative Fiscal Office; and
Tyler Mahood, Legislative Aide to Senator Kolterman.

The Committee also thanks the Department of Health and Human Services and the Department of Administrative Services for the significant time and effort they expended to cooperate with the Committee's many inquiries and record requests.

Table of Contents

Executive Summary

Legislative Resolution 29 ("LR29") created a special committee—the Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee of the Legislature—to study the State's contract with Saint Francis Ministries for child welfare case management services in the Eastern Service Area ("ESA"), including the procurement that led to the contract award to Saint Francis Ministries and the quality of services being provided under the contract. Between June and December 2021, the Committee conducted its study pursuant to LR29, including review of the history of Nebraska's child welfare privatization efforts and past procurement challenges.

History of Nebraska's Privatization Initiative

Through its work, the Committee observed that Nebraska's privatization initiative, beginning in 2009, suffered from the lack of an appropriate cost analysis and a contract structure that pushed financial risk onto the contractors. The result was a disruption in child welfare across the state, as contractors dropped out one-by-one. By early 2012, one case management contractor remained: Nebraska Family Collaborative ("NFC"), which would come to be known as PromiseShip. NFC/PromiseShip continued to serve as the sole case management contractor, providing case management and service coordination in the Eastern Service Area until the 2019 award to Saint Francis. The seven-year period between 2012 and 2019 represented the greatest stability the State had seen throughout its attempts at privatization. However, this relative stability was undermined by the lack of a long-term contract and a challenging relationship with the Department of Health and Human Services ("DHHS").

Past Procurement Challenges

Nebraska has faced procurement challenges in the past, including two notable examples examined by the Committee. The 2007 Medicaid Management Information System ("MMIS") procurement resulted in an award to a company with little track record, which was ultimately unable to deliver the system, despite being paid more than $6.8 million. The State terminated the contract in July 2009, making an additional settlement payment of $4.75 million.

In 2014, the State awarded an $80 million contract for the development of a modern Medicaid eligibility and enrollment system. DHHS terminated the contract in 2018, stating that there was no evidence to support completion of any part of the contract, despite having paid the contractor $6 million in state funds and $54 million in federal funds. The contract is now the subject of ongoing litigation, in which the State alleges (1) that the contractor underbid the contract and then sought to make up additional funds by extending the timeline and increasing the cost structure and (2) that the contractor lacked the expertise to complete the project.

Both past examples examined by the Committee support the conclusion that Nebraska's procurement system has not consistently resulted in successful procurement decisions and outcomes.

2019 Eastern Service Area Case Management Procurement

In June 2019, DHHS and the Department of Administrative Services ("DAS") announced their decision to award the ESA case management contract to Saint Francis Ministries, a Kansas-based nonprofit, over PromiseShip, the incumbent contractor, which had been the sole case management contractor in the ESA since 2011. Saint Francis proposed to perform the five-year contract for $197 million, or about 40% less than the incumbent contractor's bid of $341 million. The decision to award the contract to Saint Francis was announced after a May 2019 report by DHHS's own consultant found that PromiseShip's costs were closely aligned—and in some years less—than the State's own costs in other service areas.

PromiseShip protested the State's decision to award the contract to Saint Francis, arguing that Saint Francis's bid (1) was unrealistically low and (2) explicitly proposed a caseload ratio of 25 to 1, in violation of Nebraska law, which requires caseloads to range between 12 and 17 cases per worker.

After the State announced its intent to award the contract to Saint Francis—but before the contract was executed—DHHS and DAS required an explanation from Saint Francis regarding how it would comply with the statutory caseload ratio requirement of no more than 17 cases per caseworker. In response, Saint Francis stated it would need an additional $15 million in order to comply, a change which would have invalidated its bid. Despite Saint Francis's request for additional funding, DHHS and DAS came to an agreement with Saint Francis to meet caseload requirements without additional funding.

Numerous stakeholders questioned the reasonableness of Saint Francis's cost proposal. Despite the significant deviation from known costs and Saint Francis's subsequent request for an additional $15 million, DHHS and DAS finalized the five-year contract with Saint Francis Ministries in July 2019. Cases were fully transitioned to Saint Francis Ministries by the end of 2019.

Financial Concerns and Emergency Contract

By early 2020, DHHS projections showed Saint Francis was spending at a rate that would exhaust budgeted funding before the end of the fiscal year. This same rate of over-spending continued into fiscal year 2021, despite DHHS's warnings that the lead agency would not be paid more than the contract amount.

In October 2020, Saint Francis announced it was suspending its CEO and COO pending an investigation into a whistleblower complaint alleging financial mismanagement at the organization. An internal investigative report at Saint Francis substantiated these allegations, including the revelations that Saint Francis had bid the Eastern Service Area contract improperly, despite warnings by staff to Saint Francis leadership that the bid was flawed.

As a result of Saint Francis's financial instability, DHHS was forced to negotiate a new contract with Saint Francis to enable the organization to continue providing case management in the Eastern Service Area. By the end of January 2021, DHHS finalized an emergency contract agreement with Saint Francis Ministries to continue providing case management services in the ESA through February 2023 via a contract estimated at approximately $69 million in its first year, and $78 million in the second thirteen months. The new contract also reimbursed Fiscal Year 2020 expenses of $10.5 million. The new contract now exceeds PromiseShip's bid by $3.7 million when converted to the same time period.

Saint Francis's Performance in the ESA

Saint Francis has struggled with a number of performance issues, many of which can be traced to high worker turnover and high caseloads, which make it difficult for case managers to prepare for court hearings, communicate effectively with children and families, and complete documentation in a timely manner. Over the course of the contract, DHHS has required seven corrective action plans ("CAPs") to correct performance deficiencies, including failure to complete case plans within 60 days, failure to document placement changes within 72 hours, court performance, caseload ratios, and monthly face-to-face contact with youth.

While Saint Francis has made progress on certain measures in recent months, it continues to struggle with others—most notably caseload ratios. In September 2021, only 40% of Saint Francis workers were in compliance with the statutory caseload limit.

In June 2021, DHHS placed Saint Francis's child placing agency license on disciplinary probation after multiple compliance checks between September 2020 and February 2021 found that Saint Francis was unable to provide documentation of certain requirements. The Division of Public Health initially gave Saint Francis until August 1, 2021 to come into full compliance, but then extended the deadline to September 30, ultimately issuing Saint Francis a probationary license on October 1.

As of October 1, DHHS restricted Saint Francis from taking on new case referrals. As a result, DHHS employees are performing case management for new cases in the Eastern Service Area.

Longitudinal View of Eastern Service Area Performance

Over the past decade, a number of evaluations of privatization in the Eastern Service Area have been conducted by child welfare experts. The most positive reviews have found that outcomes under privatization are no better—nor worse—than under state management. However, a recent evaluation demonstrated that the Eastern Service Area has the lowest rate of successful cases, with success defined as reunification within 12 months or adoption within 24 months. While the cost per out-of-home case in the Eastern Service Area is the lowest when compared to the other service areas, children stay in care longer, mitigating those savings. A recent evaluation demonstrated that the three-year average cost of success in the Eastern Service Area is 27% higher than the average of all other service areas. Additionally, while Nebraska lags behind other states in its use of federal reimbursement, the Eastern Service Area has had the smallest increase in federal reimbursement over the past decade when compared to the other service areas.

Findings

1. **Privatized case management has led to instability in the Eastern Service Area.** The transition from PromiseShip to Saint Francis Ministries and the subsequent challenges in the Eastern Service Area highlight a fundamental difficulty of privatized case management: instability. Contractual relationships with the case management contractor will inevitably terminate or turn over. This instability manifests itself in difficulty recruiting and retaining staff, a challenging relationship between DHHS and the contractor, and disruption to families and children.
2. **Nebraska lacks a strategic direction for child welfare.** Stakeholders do not have a shared and concrete vision for how to best serve vulnerable families in Nebraska. By engaging in a strategic planning effort, the State has an opportunity to strengthen child welfare, including (1) developing a practice model that all stakeholders understand and support, (2) incentivizing innovation, and (3) increasing federal reimbursement for child welfare.
3. **Nebraska's procurement system has failed to result in adequate diligence into bidders and the reasonableness of their proposals.** The 2019 ESA case management procurement and subsequent challenges with Saint Francis demonstrate the difficulty Nebraska has faced in awarding large, important contracts to bidders who ultimately cannot deliver on their proposals. The procurement process (1) failed to meaningfully assess the reasonableness of Saint Francis's bid despite its significant deviation from known costs, (2) permitted an award to a contractor that had proposed a caseload ratio inconsistent with state statute, and (3) resulted in a contract which had to be supplemented with millions of additional dollars via an emergency contract only one

year into full implementation. Past procurement failures—in addition to the 2019 ESA case management procurement—reinforce this Committee's opinion that Nebraska's procurement system should be improved.

Recommendations

1. **Do not extend the ESA case management contract with Saint Francis beyond its current term through February 28, 2023.** To ensure as little disruption as possible to children and families in the ESA, DHHS should continue its efforts to support and supplement services in the ESA and work with Saint Francis to prepare for an orderly transition at the end of the contract. If Saint Francis's performance issues do not improve, earlier termination may be appropriate. The Committee supports earlier termination in the event that DHHS deems such early termination in the best interests of children and families in the ESA.
2. **End the ESA pilot project at the close of the Saint Francis contract and return case management to DHHS.** Due to the contractual nature of the privatized case management model, the State cannot provide long-term stability or avoid disruption to children and families in the ESA under privatized case management. DHHS should begin planning to assume responsibility for case management in the ESA via a phased-in transition. DHHS should determine what functions currently being performed by Saint Francis may be beneficial to maintain through contracts with private organizations and what functions should be performed by DHHS. Additionally, DHHS should provide employment opportunities to Saint Francis workers who would be an asset to DHHS.
3. **Convene a workgroup—including representatives of DHHS, the Legislature, the Courts, providers, and other stakeholders—to develop a shared strategic direction for child welfare in Nebraska.** The Legislature should fund the engagement of a consultant with expertise in child welfare practices to assist the workgroup in developing and implementing a statewide model for child welfare case management and service delivery that facilitates collaboration between providers and DHHS, allows opportunities for providers to innovate, and incentivizes achievement of program goals.
4. **Require DHHS to evaluate Nebraska's Title IV-E claiming efforts and report to the Legislature.** This DHHS-led evaluation should determine why Nebraska lags behind the national average in Title IV-E claiming and what steps may be appropriate to optimize federal reimbursement.
5. **Conduct a thorough evaluation of Nebraska's procurement practices to address potential areas for improvement, including—but not limited to—due diligence, evaluation of cost, accountability for decision-making, and protest procedures.** The Legislature should fund the engagement of a consultant with expertise in government procurement to work with the DAS Materiel Division, its customer agencies, and the Legislature to evaluate current procurement policies and practices and make recommendations for system improvement.

Introduction

Legislative Resolution 29 was introduced by Senator Machaela Cavanaugh during the first session of the 107th Legislature (2021) to provide for the appointment of a special investigative and oversight committee of the Legislature to examine the State's contract with Saint Francis Ministries for child welfare case management services in the Eastern Service Area. The resolution was adopted by a vote of the full Legislature on March 29, 2021.

The enrolled resolution called for the Executive Board of the Legislative Council to appoint a special committee to be known as the Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee of the Legislature. LR29 authorized the special committee to study:

(1) the Department of Administrative Services and Department of Health and Human Services with respect to the award, implementation, and oversight of the Eastern Service Area case management contract;
(2) the circumstances surrounding the creation and submission of the bid by Saint Francis Ministries; and
(3) the placement and quality of care received by the children served by Saint Francis Ministries in the Eastern Service Area.

Formation of the Committee

LR29 provided for the special committee to consist of nine members of the Legislature, including two members of the Health and Human Services Committee. Upon appointment of the special committee, members agreed the committee's work would be aided by the experience of all seven members of the Health and Human Services Committee, which has inherent jurisdiction over child welfare-related matters and which had already taken steps to exercise its oversight duties with respect to the developments in the Eastern Service Area.

Accordingly, the study authorized by LR29 was completed with the involvement of fourteen members of the Legislature, including the members appointed to the special committee and the members of the Health and Human Services Committee. For purposes of this report, the combined members are referred to as a single committee (the "Committee"):

Committee Methodology

Pursuant to LR29, the Committee undertook to understand both (1) the events, circumstances, and decisions that led to the award to Saint Francis Ministries as well as (2) the quality of services being provided by Saint Francis Ministries to children and families in the Eastern Service Area. In order to fully understand these subjects, the Committee also sought historical context, including (3) the history of child welfare privatization efforts in Nebraska and (4) a fuller picture of Nebraska's procurement system.

With these goals in mind, the Committee's approach to its responsibilities under LR29 included: (1) committee educational briefings regarding procurement, the history of child welfare privatization in Nebraska, the financial aspects of privatization, quality data and observations in the Eastern Service Area, and an overview of 2019 ESA procurement; (2) stakeholder surveys; (3) public input in the Eastern Service Area; (4) judicial input; (5) record requests and review; (6) sworn testimony from DHHS, DAS, and Saint Francis; and (7) review of past and current studies related to Nebraska's privatization efforts.

Committee Briefings

On June 18, 2021, the Committee received briefings on privatization history, Nebraska's procurement process, and the 2019 Eastern Service Area procurement:

- Senator Kathy Campbell, former chair of the Health and Human Services Committee provided the historical background on Nebraska's attempts at child welfare privatization, including the Health and Human Services Committee's work on the Legislative Resolution 37 ("LR37") report in 2011.
- Senator Mark Kolterman and his Legislative Aide Tyler Mahood provided an overview of Nebraska's procurement system and recent procurement reform efforts.
- Thomas Kenny, with the law firm Kutak Rock, briefed the Committee on the facts of the 2019 procurement that resulted in the award to Saint Francis Ministries, as well as the subsequent protest and lawsuit brought by the incumbent contractor PromiseShip.

On July 9, 2021, the Committee received briefings on the financial aspects of the current and past privatization contracts and the quality of services currently being provided in the Eastern Service Area:

- Liz Hruska, Legislative Fiscal Analyst, briefed the Committee on the funding and cost structure of privatization contracts historically, as well as the financial aspects of the current ESA contract.
- Jennifer Carter, Inspector General of Nebraska Child Welfare, briefed the Committee on the Office of the Inspector General's monitoring of Saint Francis's overall performance and DHHS's oversight of the contract.
- Monika Gross, Executive Director of the Foster Care Review Office ("FCRO"), briefed the Committee on the data the FCRO has collected comparing the ESA to the rest of the State and observations of the FCRO from its reviews of ESA child welfare cases.

Stakeholder Surveys

Between July 2021 and September 2021, the Committee disseminated an online survey form to foster families, biological families, service providers, members of the legal community, and current and former employees of Saint Francis Ministries, regarding their experiences with Saint Francis Ministries. The Committee received responses from 121 respondents.

Public Listening Session

On August 31, 2021, the Committee held a public hearing at Scott Conference Center in Omaha to receive input from stakeholders—including foster and biological families, service providers, members of the legal community, and others—regarding the quality of services provided by Saint Francis Ministries under the Eastern Service Area child welfare contract.

Judicial Input

Following the August 31 hearing, the Committee met with judges from the Douglas County Juvenile Court and Sarpy County Juvenile Court to discuss judicial perceptions of Saint Francis Ministries' performance and successes and shortcomings of privatized case management in Nebraska.

Record Requests and Review

Between July 2021 and October 2021, the Committee requested, received, and reviewed thousands of pages of records, including internal communications, from DHHS, DAS, and Saint Francis Ministries, related to the 2019 procurement that resulted in the contract with Saint Francis Ministries.

Sworn Testimony from DHHS, DAS, and Saint Francis Ministries

On October 8, 2021, the Committee held a public hearing in Lincoln, at which special counsel Marnie Jensen questioned representatives of DHHS, DAS, and Saint Francis Ministries—under oath—regarding the events and decisions that led to the submission of Saint Francis Ministries' proposal and the subsequent contract award to Saint Francis Ministries.

Past and Concurrent Studies

This Committee's work benefited from its review of some of the many previous studies that have been completed on the subject of child welfare privatization in Nebraska, in addition to two studies completed concurrently with this Committee's work:

Past Studies	Concurrent Studies
• Health and Human Services Committee - LR37 Report: Review, Investigation and Assessment of Child Welfare Reform (December 2011). • Hornby Zeller - An Assessment of Child Welfare (December 2014) • The Stephen Group - Assessment of Outsource Model in Nebraska's Eastern Service Area (May 2019)	• Office of the Inspector General of Nebraska Child Welfare - Special Report on the Eastern Service Area Pilot Project and the Contract with Saint Francis for Child Welfare Case Management Services (September 2021). • Public Consulting Group - Longitudinal Assessment of Child Welfare Privatization in Nebraska (December 2021)

Historical Context

Recent History of Child Welfare Privatization in Nebraska

In 2009, DHHS began an initiative to reform the child welfare system through a privatized "lead agency" model. The decision was one in a series of decisions, dating back to 2002, made in an effort to reform Nebraska's child welfare system in response to Nebraska's performance on its first federal Children and Family Services Review (CFSR).[1] While no states achieved substantial conformity on all seven of the CFSR safety, permanency, and well-being measures, Nebraska did not achieve the standard on any of them in the 2002 review and continued to perform poorly on the 2008 review.[2] Additionally, Nebraska had one of the highest rates of children removed from their homes in the nation.[3]

Nebraska's child welfare system encompassed three components: case management, service coordination and service delivery. Prior to the reform initiative, the State had responsibility for case management and service coordination, but contracted with private entities for service delivery. Under the reform initiative, DHHS would move from contracting directly with 115 private service providers to contracts with six "lead agencies," which would provide service coordination. The lead agencies had the

[1] Helaine Hornby & Dennis E. Zeller, Hornby Zeller Associates, Inc., *An Assessment of Child Welfare in Nebraska* 1 (2014).

[2] *Id.*; Grace S. Hubel et al., *A Case Study of the Effects of Privatization of Child Welfare on Services for Children and Families: The Nebraska Experience* 4–5 (2013).

[3] Appendix A: Written Testimony of Kathy Campbell Before the Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee and the Health and Human Services Committee (June 18, 2021).

responsibility to contract with private entities for service delivery, in addition to providing some services themselves. However, under this initial reform initiative, the State would retain case management.

In July 2009, six lead agencies signed implementation contracts to develop the infrastructure, staffing, and programs necessary to implement the proposed Service Delivery and Service Coordination Contract beginning November 2009, with full implementation by April 2010. The six lead agencies consisted of:

1. Alliance for Children and Family Services;
2. Boys and Girls Home;
3. CEDARS Youth Services;
4. Nebraska Family Collaborative ("NFC");
5. KVC Behavioral Healthcare Nebraska ("KVC");
6. Visanet.

Although the proposed contracts gave the service coordination responsibility to the lead agencies, no funding was provided for this function.[4] Rather, the contracts provided funding only for the services themselves. Additionally, under the contracts, the lead agencies received a set amount regardless of the number of children served or the cost of the services. The lead agencies were required to serve all children assigned to them and had no control over the number of children, the level of needs, or the services ordered by the courts.

Early into the implementation, many speculated that the contract amounts would be inadequate to pay the lead agencies' costs. One of the six lead agencies, Alliance for Children and Family Services, pulled out prior to signing the final contract, citing concerns the contract was not financially feasible. In November 2009, the remaining five lead agencies signed the final contracts, despite concerns the contracts were not adequately funded.

Predictions that the lead agency contracts were underfunded soon proved to be reality. The original contract amount for the 20-month period from November 2009 through June 2011 was a total of $140.5 million for all five lead agencies. Two months later in January 2010, the total was increased by $18.3 million. The need for additional funding would continue through the lives of the respective contracts, highlighting the lack of an appropriate cost analysis from the outset of the initiative.

On April 2, 2010, just two days into the full implementation, CEDARS withdrew, having lost $5.5 million over 20 months from contracts for in-home and out-of-home care, as well as for its preparation and transition to a lead agency. Six days later, Visanet filed for bankruptcy, owing its subcontractors $1.4 million for service delivery. Then, in September 2010, Boys and Girls Home terminated its lead agency contract by mutual agreement with DHHS, leaving NFC and KVC as the only remaining lead agencies. The two agencies shared responsibility for the Eastern Service Area, and KVC also held the contract for the Southeast Service Area.

Transfer of Case Management to Lead Agencies

In October 2010, DHHS distributed an additional $6.3 million to the two remaining lead agencies. That same month, DHHS announced it was developing a plan to transfer the case management function to lead agencies. Lead agencies had argued that they could not control costs unless they had responsibility for

[4] Appendix B: Written Testimony of Liz Hruska Before the Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee and the Health and Human Services Committee (July 9, 2021).

case management. In December 2010, DAS approved the plan to transfer major case management responsibilities to lead agencies, and DHHS eliminated 77 full time employees as a result of the transfer. Over the next nine months, DHHS distributed an additional $19 million to the two lead agencies.

In February 2012, KVC withdrew as a lead agency, having spent $14 million of its own funds since 2009. Only NFC remained as a lead agency, now with responsibility for the entire Eastern Service Area.

In the 2012 session, the Legislature enacted a series of measures in an attempt to address the turmoil in the State's child welfare system, including Legislative Bill 961, which generally required that case management be performed by employees of DHHS, but authorized a "case management lead agency model pilot project" in the Eastern Service Area, allowing NFC to continue providing case management services. This "pilot project" is the authority under which the State continues to contract for privatized case management in the Eastern Service Area today.[5]

NFC/PromiseShip Tenure

By March 2012, NFC was the sole lead agency in Nebraska, and it had assumed responsibility for case management and service coordination for the entire Eastern Service Area. In 2018, NFC began conducting business as PromiseShip, the name by which it will be referred throughout the remainder of this report.

PromiseShip continued to serve as the sole lead agency, providing case management and service coordination in the Eastern Service Area until October 2019, when the transition to Saint Francis Ministries as lead agency began. This seven-year period between 2012 and 2019 represented the greatest stability the State had seen throughout the evolution of its attempts at privatization. This relative stability, however, was undermined by the State's lack of long-term commitment to the lead agency.[6] When PromiseShip's initial contract ended in June 2014, it was followed by a series of three 12-month extensions through June 2017. In 2016, the State issued a Request for Proposal ("RFP") for a new five-year lead agency contract. After announcing its intent to award the contract to PromiseShip, the State subsequently cancelled the RFP and entered into a 24-month emergency contract with PromiseShip.

In addition to the challenges of operating under short-term contracts, PromiseShip faced a challenging relationship with DHHS. A 2019 study commissioned by DHHS and completed by the Stephen Group observed that the relationship was characterized by mistrust, poor communication, lack of collaboration, and unproductive competition between DHHS and PromiseShip.[7] Despite the lack of stability and challenges in PromiseShip's relationship with the state, the outcomes achieved by the lead agency were comparable to those produced by DHHS in other service areas.[8] Additionally, PromiseShip's costs were closely aligned to those of DHHS in the four other service areas.[9]

Notable Past Procurement Challenges

The State's 2019 procurement, resulting in the case management contract with Saint Francis Ministries, should be understood not only in the context of the evolution of child welfare privatization in Nebraska,

---

[5] *See* Neb. Rev. Stat. § 68-1212.

[6] *See* The Stephen Group, *Assessment of Outsource Model in Nebraska's Eastern Service Area: Findings and Recommendations* 6 (2019) ("[T]he ongoing short-term nature of extensions has confounded the vendor's ability to innovate, retain staff, invest in facilities or attempt long-term programming changes.").

[7] *Id.* at 65.

[8] *Id.* at 16 (citing Hornby & Zeller, *supra* note 1).

[9] *Id.* at 55.

but also in the context of the State's challenges with other procurements. Two notable procurement failures in recent history shed light on these challenges: (1) the 2007 procurement for the development of a new Medicaid Management Information System and (2) the 2013–2014 procurement for the development of a new Medicaid Eligibility and Enrollment System.

2007 Medicaid Management Information System Procurement

The Medicaid Management Information System ("MMIS") is the claims-processing and information-retrieval system for the State's Medicaid program. As a result of federal regulations requiring more detailed reporting related to Medicaid, Nebraska, along with many other states, needed to replace or update its MMIS by 2013.

In May 2007, DAS issued RFP 2017Z1, on behalf of DHHS, to select a contractor for the "design, development, implementation, and certification" of a new Medicaid Management Information System (MMIS).[10] Three companies submitted proposals pursuant to RFP 2017Z1, including FourThought Group, Inc. and ACS State Healthcare. On November 21, 2007, DAS issued a letter of intent to award the contract to FourThought Group, Inc., a company from Arizona. Effective May 2008 through November 2012, the final contract was valued at over $45 million, with the option to renew the contract for maintenance and support for an additional $25 million.[11]

In July 2009, only 15 months into the contract with FourThought, DHHS terminated the contract, citing its conclusion that the company "did not have the capacity to deliver the system they proposed." The termination came after the State had paid the contractor more than $6.8 million, 90% of which was paid with Federal funds.[12] Additionally, in August 2009, DHHS reached a settlement agreement with FourThought to pay an additional $4.75 million.[13]

In a 2019 hearing before the Legislature's Government, Military, and Veterans Affairs Committee, Kerry Winterer, who became CEO of the DHHS after the contract was awarded, reflected on his decision to terminate the contract:

> In the case of the MMIS project, that contract was awarded to a small company with little track record and without the resources to fulfill the contract requirements. This became painfully clear to me when I came on, and one of my first actions was to terminate that contract and "return to the drawing board" for the MMIS project, at considerable cost to the state.[14]

In 2021, Mr. Winterer offered a similar observation:

> It became clear when I arrived that the company was unable to implement such a large contract. Our review found that the company had never implemented such a contract

---

[10] Nebraska had previously issued RFP 1158Z1 in December 2015 to select an MMIS contractor, but the RFP was terminated after all four bidders were disqualified.

[11] Appendix C: Nebraska Auditor of Public Accounts, *Attestation Review of the State of Nebraska Information Technology Systems July 1, 2008 through June 30, 2009*, Exhibit B (2009).

[12] *Id.*

[13] *Id.*

[14] Appendix D: Written Testimony of Kerry Winterer on Legislative Bill 21 Before the Government, Military and Veterans Affairs Committee (Feb. 20, 2019).

> and that many of their representations as to having products available to apply to the project were simply not true. The company appeared to be poorly capitalized and understaffed.[15]

While this Committee recognizes that a frustrated losing bidder has its own interest in undermining an award to the winning bidder, it bears noting that ACS State Healthcare filed a protest in response to the FourThought award, arguing that FourThought was not qualified to perform the MMIS contract because (1) it had never been the prime contractor on an MMIS implementation, (2) it was not operating, nor had it ever operated the system it was proposing nor any other MMIS, (3) it had never had the responsibility for a development project of this size, (4) it had no known references that attested to its ability to develop and implement a MMIS, and (5) it had no experience in re-platforming the proposed system into a Net environment as it had proposed to provide to Nebraska.[16]

In denying this section of ACS's protest, DAS simply stated, "DHHS evaluated the responses to RFP 2017Z1 and determined that FourThought Group was the winning bidder. Corporate references were obtained for all three bidders and considered as part of the overall scoring process."[17]

ACS's protest further argued that the State had failed to consider changes to FourThought's technical proposal after the submission of best and final offers. As the RFP process allows, DAS requested best and final offers from the bidders, specifically requesting that bidders consider cost adjustments in the following three areas: (1) retainage amount reduced from 15% to 10%, (2) ongoing license costs and any hardware maintenances cost through FY12, and (3) accurately reflect licensing costs for SharePoint Standard client access license. As ACS argued in its protest, only the reduction in the retainage amount provided a potential cost savings to bidders—in ACS's estimate, it was a cost savings of approximately $200,000. The other two cost adjustments, ACS argued, would be expected to increase a bidder's cost proposal. Accordingly, ACS's adjustments amounted to a slight increase in its proposal from $48,255,680 to $49,067,262 "to account for additional costs associated with increasing licensing and hardware maintenance costs."

By contrast, ACS argued,

> FourThought's adjustment to its Cost Proposal amounted to a decrease of over $7 million dollars from $55,351,400 to $48,976,056, or over 11% of the total cost of its proposal. Under any reasonable proposal scenario, FourThought's $7 million dollar price cut in its [best and final offer] would require FourThought to either significantly reduce its person hours under the MMIS contract or require a reducing staff, shifting the staffing off-shore, reducing scope, significantly changing deliverables and/or time schedules or some combination of these. By ACS's conservative estimates, such a price reduction amounts to an approximately 80,000 person hours' reduction in services under the contract.[18]

[15] Appendix E: Kerry Winterer Position Letter on LB 61 to the Government, Military and Veterans Affairs Committee (March 3, 2021).
[16] Appendix F: Letter from ACS Healthcare to Dep't of Admin. Servs. (Nov. 30, 2007).
[17] Appendix G: Letter from Neb. Dep't of Admin. Servs. to ACS Healthcare (Dec. 31, 2007).
[18] Letter from ACS Healthcare to Dep't of Admin. Servs. (Nov. 30, 2007).

Rather than conducting an appropriate "cost realism analysis" and decreasing FourThought's technical proposal score to account for the change, ACS contended that the State awarded FourThought a final score that was slightly higher than ACS's final score "and not reflective of the true cost for FourThought to perform the contract or lower quality performance that would result from FourThought's reduced cost proposal."[19] In response to this section of ACS's protest, DAS stated, "[t]here were no changes to the technical approach included and neither bidder indicated any resulting changes to their technical proposals."[20]

The MMIS procurement occurred over a decade ago, and this Committee is not in a position to comment on the accuracy or merit of ACS's protest. However, the failed outcome of the MMIS procurement raised certain deficiencies in the procurement system and foreshadowed future procurement issues, including (1) inadequate due diligence into a winning bidder's ability to actually perform the contract, (2) failure to reconcile the cost proposal with the technical proposal after changes by a bidder, and (3) failure to consider the "reasonableness" of a bid (in this case, a change to the bid).

2013–2014 Eligibility and Enrollment Systems Procurement

In October 2013, DAS released RFP 4544Z1 for the development of a modern Medicaid eligibility and enrollment system. At the time, the State's Medicaid eligibility and enrollment system was a function of the nearly 20-year-old Nebraska Family Online Client User System ("N-FOCUS"). Due to changes made by the Affordable Care Act, DHHS determined the State needed to replace its current Medicaid eligibility and enrollment system with a modern solution.

In early 2014, the State announced its intent to award the contract to Wipro, an India-based company that described itself as a global information technology consulting and outsourcing service company. One of the other bidders, Accenture, protested the award to Wipro, arguing, among other things, (1) that Wipro had misrepresented its experience on other projects and (2) that Wipro lacked experience as an actual prime contractor in implementing eligibility and enrollment systems.[21] Accenture's protest argued that Wipro's lack of experience was evident from its bid, which proposed an overall level of effort less than half that of the other competitors, who had actually performed as prime contractors on similar projects, putting the project at risk for quality issues, change orders, and schedule slippage.[22] DAS denied Accenture's protest, and in July 2014, DHHS entered into $80 million contract with Wipro.[23]

In the summer of 2018, DHHS ordered a review of the project, after Wipro requested a fifth amendment to the contract, which, according to the State, would have delayed project completion by two years and added $28 million to the project total.[24] The evaluation, completed by First Data Corp., raised red flags. According to Bo Botelho, legal counsel to DHHS, there was no evidence to support completion of any part

---

[19] *Id.*
[20] Letter from Neb. Dep't of Admin. Servs. to ACS Healthcare (Dec. 31, 2007).
[21] Appendix H: Letter from Accenture to Neb. Dep't of Admin. Servs. (April 2, 2014).
[22] *Id.*
[23] Appendix I: Letter from Neb. Dep't of Admin. Servs. to Accenture (April 23, 2014).
[24] Def.'s Answer and Counterclaim at 8, Wipro Limited, LLC v. State of Nebraska, No. CI 19-676 (Dist. Ct. of Lancaster Cty. 2019).

of the project, despite the four years that had passed since the contract was signed and the more than 200,000 hours of work Wipro reported doing on the project.[25]

In December 2018, DHHS terminated the contract, having paid Wipro $58.6 million.[26] In response, Wipro filed a lawsuit against the State in March 2019, alleging Nebraska had failed to pay $15.5 million for work completed on the project.[27] As of the date of this report, Wipro's lawsuit against the State is ongoing.

In light of the ongoing litigation between Wipro and the State of Nebraska, this Committee abstains from an extended analysis of the procurement decisions that resulted in the award to Wipro. However, it should be noted that the State's counterclaim against Wipro alleges that Wipro secured the award by underbidding the contract price in its initial proposal, and then sought to make up additional funds for this fixed-price project by extending the timeline and increasing the cost structure for the project, "thereby thwarting the letter and spirit of the competitive bidding process."[28] The State additionally alleges that Wipro concealed the fact that it lacked the expertise to complete the project and that the software marketed to the State of Nebraska had not actually been meaningfully tested.[29]

2019 Eastern Service Area Procurement

Pre-Request for Proposal

By the end of 2018, PromiseShip had served as a lead agency in the Eastern Service Area for more than nine years and had been the sole lead agency providing case management in the Eastern Service Area for nearly seven of those years. As discussed previously, PromiseShip's tenure had been under a series of three 12-month contract extensions and a 24-month emergency contract following a failed procurement in 2016.

In October 2018—in preparation for re-bidding the Eastern Service Area lead agency contract—DHHS contracted with the Stephen Group, a government consulting firm, to help it determine the path forward in the Eastern Service Area. The Stephen Group found that should Nebraska continue to use an outsource model in the Eastern Service Area, DHHS should make some important changes in the manner in which it manages the vendor relationship, including:

- Establishing a clear vision for outsourcing that defines success, demands accountability, encourages collaboration and eliminates competition between the State and the lead agency;
- Developing performance-based contract elements, including financial incentives and remedies that drive progress;
- Providing for flexibility in the contract to allow the lead agency to be innovative;
- Promoting accountability through a performance-based contract oversight process; and

[25] Henry J. Cordes, *Massive $8 Million State Computer Contract Halted to Find out if It Works*, Omaha World Herald (Oct. 8, 2018), https://omaha.com/state-and-regional/massive-84-million-state-computer-project-halted-to-find-out-if-it-works/article_0e3e62f9-2292-5f8b-850e-e82f70bd800f.html.

[26] Def.'s Answer and Counterclaim at 10, Wipro Limited, LLC v. State of Nebraska, No. CI 19-676 (Dist. Ct. of Lancaster Cty. 2019).

[27] Wipro Limited, LLC v. State of Nebraska, No. CI 19-676 (Dist. Ct. of Lancaster Cty. 2019).

[28] Def.'s Answer and Counterclaim at 11, Wipro Limited, LLC v. State of Nebraska, No. CI 19-676 (Dist. Ct. of Lancaster Cty. 2019).

[29] *Id.* at 13.

- Improving DHHS engagement and collaboration with the lead agency to solve common problems.[30]

Notable among the Stephen Group's findings was its conclusion that PromiseShip's costs per case were closely aligned with those of DHHS in the four other service areas.[31] For example, in 2017 PromiseShip's average cost per case per month was $300 less than the State's own costs in the four other regions, while in 2018, PromiseShip's average cost per case per month was within $100 of the State's own costs.[32]

In addition to the evaluation, the Stephen Group assisted DHHS with developing a new Request for Proposal for the ESA case management contract, along with a contract monitoring tool and a readiness tool to track the contractor's preparedness to take on case management under the new contract.

Request for Proposal Process

By the beginning of 2019, DHHS had developed a new RFP to procure a five-year contract for case management in the Eastern Service Area. As state agencies are empowered to do, DHHS opted to have the procurement managed by DAS.

As DHHS explained its understanding of the relationship between itself as the bidding agency and DAS in a DAS-managed procurement, DAS is responsible for the integrity of the procurement process, while it is the obligation of the bidding agency to follow that process.[33] DAS, in turn, relies on the program expertise of the bidding agency to develop the RFP and to identify qualified evaluators to score the proposals, with DAS monitoring the evaluation process. As part of the RFP development, the bidding agency decides what criteria is evaluated and what weight to give each of those criteria, including cost.[34] According to the Procurement Manual, "Weights reflect the relative importance of each of the evaluation criteria to the agency. The value of each factor is completely subjective to the Agency based upon its own perception of the need."[35]

Typically, the bidding agency may also provide DAS with a list of prospective vendors who may be appropriate partners. DAS sends the RFP directly to those prospective vendors, in addition to advertising the RFP. DAS then directs the RFP process, including managing the question and answer period, collecting the bids, reviewing proposals for completeness, and forwarding them to the evaluation team for independent scoring.[36] Upon completion of the evaluation process, the bidding agency makes an award

[30] Appendix J: Memorandum from John Stephen, Managing Dir., The Stephen Grp., to Matthew Wallen, Dir. of Div. of Children and Family Servs., Neb. Dep't of Health and Human Servs. (May 8, 2019).
[31] The Stephen Group, *Assessment of Outsource Model in Nebraska's Eastern Service Area: Findings and Recommendations* 54–57 (2019).
[32] *Id.* at 55.
[33] Transcript of Hearing Before the Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee and the Health and Human Services Committee at 51–52 (Oct. 8, 2021) (testimony of Bo Botelho, Gen. Counsel, Neb. Dep't of Health and Human Servs.).
[34] Transcript of Hearing Before the Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee and the Health and Human Services Committee at 51–52 (Oct. 8, 2021) (testimony of Jason Jackson, Dir., Neb. Dep't of Admin. Servs.).
[35] State of Nebraska Procurement Manual § 5.1.8 (2018).
[36] Office of the Inspector Gen. of Neb. Child Welfare, *Special Report: Eastern Service Area Pilot Project and the Contract with Saint Francis Ministries for Child Welfare Case Management Services* 15 (2021).

recommendation to DAS based on the evaluation scores. Generally, DAS does not substitute its judgment for that of the bidding agency, unless the recommendation appears to violate the procurement process.[37]

On January 9, 2019, DAS released RFP 5995 Z1 to identify a qualified bidder to provide full services case management for child welfare services in the Eastern Service Area. On April 4, 2019, DAS opened the proposals submitted in response to the RFP. Two bidders had submitted proposals: the incumbent contractor, PromiseShip, and Saint Francis Ministries of Salina, Kansas. Both bidders were familiar to DHHS. PromiseShip was an expected bidder, as the incumbent case management contractor. Saint Francis Ministries was also a current vendor of DHHS, operating as a child placing agency in the Western and Central Service Areas, however, it was not on the list of prospective bidders that DHHS had prepared and to whom DAS had sent the RFP.[38]

PromiseShip's bid proposed a budget of $341 million over five years to maintain the existing contract for case management services, which DHHS considered consistent with prior and current year expenditures.[39] Saint Francis submitted a bid of $197 million.

As set forth above, a team of evaluators chosen by DHHS evaluated both PromiseShip and Saint Francis's proposals. The evaluation team included representatives from the Foster Care Review Office, the Nebraska Indian Child Welfare Coalition, Nebraska Children and Families Foundation, as well as internal DHHS program and fiscal administrators. The initial evaluation included scoring of each organization's corporate overview, technical approach, financial requirements, and cost proposal. After completion of the initial evaluation criteria, the two organizations' scores were close enough that DHHS determined that oral interviews should be conducted, and on May 9, 2019, DHHS and DAS conducted oral interviews with both PromiseShip and Saint Francis answering questions focused on fiscal management.

Upon completion of the full evaluation process, Saint Francis received a higher total score than PromiseShip, as set forth below:

Final Score Results

	Possible Points	PromiseShip	Saint Francis
Corporate Overview	300	275.83	265.00
Technical Approach	1700	1483.00	1362.17
Financial Requirements	200	153.50	101.00
Cost Proposal	880	506.87	880.00
Total Points before Oral Interview	3080	2419.20	2608.17
Oral Interview	446	294.8	299.4
Total Points	3526	2714.00	2907.57

Cost was the determinative factor in Saint Francis's winning score, as PromiseShip scored higher on its corporate overview, technical approach, and financial requirements—and scored within five points of Saint Francis on the oral interview. The significant difference in cost between PromiseShip's proposal and

[37] Transcript of Hearing Before the Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee and the Health and Human Services Committee at 51–53 (Oct. 8, 2021) (testimony of Bo Botelho, Gen. Counsel, Neb. Dep't of Health and Human Servs.).
[38] *Id.* at 50.
[39] Appendix K: Letter from Dannette Smith and Matthew Wallen to Gov. Pete Ricketts (May 23, 2019).

Saint Francis's proposal was scored mechanically, in accordance with the formula set forth in the RFP Scoring and Evaluation Manual. The lowest bid receives the predetermined maximum points allocated for cost, and the remaining bids are assigned points in accordance with the following formula:

Lowest Cost Submitted ÷ Cost Submitted x Maximum Possible Cost Points = Cost Points to Award. [40]

The cost proposal formula yielded a 373.13 point advantage in favor of Saint Francis based solely on its cost proposal and a total score 193.57 points higher than PromiseShip's. On June 4, 2019, upon DHHS's recommendation, DAS announced its intent to award the contract to Saint Francis Ministries.

Protest and Caseload Clarification

On June 14, 2019, PromiseShip filed a protest with DAS, in response to the State's announcement of its intent to award the contract to Saint Francis Ministries. Among its protest grounds, PromiseShip argued that Saint Francis's bid (1) was unrealistically low and (2) proposed a caseload ratio of 25 cases per worker, in violation of Nebraska law.[41]

Neb. Rev. Stat. § 68-1207 provides that both DHHS and the Eastern Service Area lead agency must maintain caseloads of between twelve and seventeen cases per worker. Saint Francis's bid proposed 62 case managers with a "target case load of 25."[42] Moreover, Saint Francis planned to utilize a "dyad model." As the Office of the Inspector General of Nebraska Child Welfare ("OIG") recently described this distinction:

> The dyad model incorporates both case managers and family support workers into the caseload ratio. This model allowed case managers to have higher caseloads on the theory that there are actually two workers for each case. In Nebraska, however, family support workers have a different role and cannot be counted towards the caseload ratio. Thus, Saint Francis' approach in its bid resulted in caseloads exceeding Nebraska's statutory requirements.[43]

On June 17, three days after receiving PromiseShip's protest, DAS sought clarification from Saint Francis regarding how it would comply with the statutory caseload limit.[44] On June 24, Saint Francis sent a response to DAS, stating that it would switch its proposed model to one that would meet the statutory 12 to 17 ratio, but that in order to make the change, it would need to increase its cost proposal by $15 million for the life of the contract. [45]

Under Nebraska's procurement policy, Saint Francis's request for additional funding could not be granted. While the Procurement Manual contemplates the negotiation of final terms and conditions in the period between the intent to award and contract execution, it also provides that "[n]egotiations cannot increase

---

[40] State of Nebraska RFP Scoring and Evaluation Manual § 2.3 (2017).
[41] Appendix L: Letter from Thomas Kenny, Counsel for PromiseShip, to Doug Carlson, Dep't of Admin. Servs. (June 14, 2019).
[42] Saint Francis Ministries Technical Proposal at 93.
[43] Office of the Inspector Gen. of Neb. Child Welfare, *Special Report: Eastern Service Area Pilot Project and the Contract with Saint Francis Ministries for Child Welfare Case Management Services* 16–17 (2021).
[44] Appendix M: Letter from Annette Walton, Dep't of Admin. Servs., to Tom Blythe, Saint Francis Ministries (June 17, 2019).
[45] Appendix N: E-mail from Tom Blythe, Saint Francis Ministries, to Annette Walton, Dep't of Admin. Servs. (June 24, 2019).

cost to the state[.]"[46] On the heels of Saint Francis's request for an additional $15 million to comply with the statutory caseload limit, DAS and DHHS arranged to meet with Saint Francis leadership in Lincoln on June 26, 2019. The first item on the agenda was "Clarification of Case Management Ratio." During the course of the one-hour meeting, DHHS and DAS came to an agreement with Saint Francis to meet caseload requirements without additional funding. In an e-mail to DAS on June 27, 2019, Saint Francis's then-President and Chief Operating Officer wrote:

> Regarding case ratios of 12–17 cases per case manager: Saint Francis Ministries recognizes the statutory requirement of 12–17 cases per Case Manager. Within our proposal we have identified a total of 116 Bachelor's level staff whose primary responsibility is case management based upon the population served."[47]

While the agreement between DHHS, DAS, and Saint Francis purported to resolve the caseload ratio issue, it is questionable whether the parties truly believed it to be a workable solution. In a hearing before this Committee, William Clark, the current interim Chief Executive Officer of Saint Francis testified that the solution was arrived at during the meeting as a result of a Saint Francis executive moving workers around on the staffing plan in an attempt to identify enough staff to comply with the statutory ratio.[48] A comparison of the staffing plan submitted with Saint Francis's proposal to the staffing plan later posted on DHHS's Eastern Service Area Transition webpage, shows that a number of significant alterations were made to the original staffing plan, including (1) the addition of 24 "therapist/case manager" positions and (2) the addition of case management responsibilities to the job description of 30 existing kinship worker positions.[49] According to Mr. Clark, this alteration then left Saint Francis with a shortage of kinship workers—necessary workers which ultimately had to be added back into the emergency contract between Saint Francis and the State in January 2021.[50]

On July 3, 2019, DAS executed a five-year $197 million contract with Saint Francis. Addendum One to the contract memorialized Saint Francis's agreement to meet the statutory caseload requirements. That same day, DAS sent a letter to PromiseShip, denying its protest and upholding the award to Saint Francis. After the denial of its protest, PromiseShip filed a lawsuit against the State, asking the District Court of Lancaster County to void the State's contract with Saint Francis and enjoin the State from implementing the contract. PromiseShip ultimately sought dismissal of the lawsuit after the court denied its request for a temporary injunction to stop the transition of cases in October 2019, and the lawsuit was dismissed in January 2020. In the meantime, however, PromiseShip's legal challenge added additional uncertainty to the transition of case management to Saint Francis.

In October 2019, case transfers to Saint Francis, originally contemplated to begin in January 2020, began early. A contract amendment was signed on October 25, 2019 to allow Saint Francis to earn up to $29.5

---

[46] State of Nebraska Procurement Manual § 6.18 (2018).
[47] Appendix O: E-mail from Tom Blythe, Saint Francis Ministries, to Annette Walton, Dep't of Admin. Servs. (June 27, 2019).
[48] Transcript of Hearing Before the Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee and the Health and Human Services Committee at 151–54 (Oct. 8, 2021) (testimony of William Clark, Interim President and Chief Exec. Officer, Saint Francis Ministries).
[49] *Compare* Appendix P: Staffing Plan Included in Saint Francis Ministries' Proposal, *with* Appendix Q: Staffing Plan Posted to Dep't of Health and Human Servs.'s ESA Transition Webpage.
[50] *Id.* The emergency contract is discussed in greater detail later in this report.

million during the first year of the contract, up from the $18 million allowed in the original contract to account for the expedited transition. By the end of 2019, cases were fully transitioned from PromiseShip to Saint Francis.

Financial Concerns and Emergency Contract

By spring of 2020, just months into the contract, DHHS projections showed that Saint Francis*'s* monthly spending would exhaust budgeted funding before the end of the fiscal year.[51] This same rate of over-spending continued into the fiscal year 2021, despite DHHS's warning that the lead agency would not be paid more than the do-not-exceed amount of its contract.

In October 2020, Saint Francis announced it was suspending its CEO and COO pending an investigation into a whistleblower complaint alleging financial mismanagement at the organization. An internal investigative report at Saint Francis substantiated these allegations, including the revelations that Saint Francis had failed to bid the Eastern Service Area contract properly, despite warnings by staff to Saint Francis leadership that the bid was flawed.

In November 2020, under new interim leadership, Saint Francis presented its substantial budget shortfalls to DHHS, and DHHS began exploring options to support Saint Francis's expenses.[52] In late January 2021, DHHS and Saint Francis testified to the Legislature's Health and Human Services Committee that they were in the process of negotiating a new contract.[53] The interim CEO of Saint Francis testified that Saint Francis needed an additional $25 million to keep operating in the current fiscal year, along with approximately $10 million to cover the shortfall for the fiscal year that ended June 30, 2020.[54]

By the end of January 2021, DHHS finalized an emergency contract agreement with Saint Francis Ministries to continue providing case management services in the ESA through February 2023 via a reimbursement contract estimated at $68,890,448 in its first year, and $78,362,884 in the later thirteen months. The new contract also reimbursed Fiscal Year 2020 expenses of $10.5 million. The new Saint Francis contract now exceeds PromiseShip's bid by $3.7 million when converted to the same 38-month time period.[55]

Saint Francis Ministries' Performance in the ESA

DHHS Monitoring

Legislative Resolution 29 specifically authorized this Committee to study DHHS's oversight of the ESA contract with Saint Francis Ministries. DHHS oversight of the contract has been robust. As noted by the

---

[51] Appendix R: Written Testimony of Dannette Smith Before the Health and Human Services Committee 4 (Jan. 22, 2021).
[52] *Id.*at 4–5.
[53] Transcript of Hearing Before the Health and Human Services Committee at 6 (Jan. 22, 2021) (testimony of Dannette Smith, Chief Exec. Officer, Neb. Dep't of Health and Human Servs.).
[54] Transcript of Hearing Before the Health and Human Services Committee at 33–35 (Jan. 22, 2021) (testimony of William Clark, Interim President and Chief Exec. Officer, Saint Francis Ministries).
[55] Written Testimony of Liz Hruska Before the Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee and the Health and Human Services Committee (July 9, 2021).

OIG "[a] significant amount of time and resources are invested in, and expended by, DHHS in the monitoring of case management and services in this one service area."[56]

The OIG's report sets forth a detailed account of DHHS's responses to Saint Francis's performance challenges as they arose, including requests for corrective action plans ("CAPs") from Saint Francis. In summary:

- **March 31, 2020:** DHHS sent the first request for CAPs related to (1) the failure to complete case plans within 60 days and (2) the failure to document a child's placement changes within 72 hours in N-FOCUS.
- **April 3, 2020:** DHHS requested a CAP related to court performance issues due to case managers not being present at court hearings and not submitting court reports timely.
- **April 7, 2020:** DHHS requested a fourth CAP related to a failure to use E-Verify for new hires.
- **July 2020:** DHHS requested a hiring plan, outlining Saint Francis's strategies to meet caseload standards and maintain a stable workforce.
- **October 2020:** DHHS requested a CAP to ensure background checks were being conducted on all new employees.
- **January 21, 2021:** DHHS requested two more CAPs from Saint Francis related to caseload ratios and monthly face-to-face contact with youth.[57]

Saint Francis has completed the CAPs related to court performance, use of E-Verify, and background checks. Additionally, it has shown progress with respect to completing case plans within 60 days and monthly face-to-face contact with youth.[58] However, certain performance measures continue to lag significantly. The most recent data available to this Committee showed that only 52.8% of Saint Francis's cases were participating in a monthly family team meeting, despite a goal of 95%.[59] As noted on the September 2021 scorecard, family team meetings are important to provide families and children a voice in their case plan and service delivery.[60] Additionally, the percentage of youth achieving permanency in 12 months has seen a significant downward trend in recent months, at only 28.8% in September 2021, despite a goal of greater than 43.8%.[61] Most critically, as discussed below, Saint Francis continues to not meet the statutory caseload limit.

Caseloads and Recruitment and Retention of Staff

While Saint Francis has struggled with other performance measures, many of these performance issues are the result of worker turnover and high caseloads. High caseloads make it difficult to prepare for court hearings, communicate effectively with children and their families, and complete documentation in a timely manner, among other tasks.

---

[56] Office of the Inspector Gen. of Neb. Child Welfare, *Special Report: Eastern Service Area Pilot Project and the Contract with Saint Francis Ministries for Child Welfare Case Management Services* 23 (2021).
[57] *Id.* at 24–29.
[58] *See* DHHS Division of Children and Family Services Eastern Service Area Quality Performance Scorecard (Sept. 2021), https://dhhs.ne.gov/SFM%20Contract%20Documents/SFM%20Outcomes%20Activities%20Scorecard%20September%202021.pdf.
[59] *Id.*
[60] *Id.*
[61] *Id.*

While Saint Francis made efforts to retain PromiseShip workers and to recruit additional case managers in the Eastern Service Area, Saint Francis struggled to adequately staff cases from the outset of the contract. In January 2020, only 40% of Saint Francis workers had caseloads compliant with the statutory limit of 17 cases per worker.[62] As noted by the OIG, by July 2020, DHHS had requested a hiring plan from Saint Francis that was to outline the agency's strategies to meet caseload standards and maintain a stable workforce for the ESA, due to concerns regarding Saint Francis staff turnover and its ability to meet the caseload ratios set forth in Neb. Rev. Stat. § 68-1207.[63] Saint Francis submitted a plan on September 15, 2020. However, Saint Francis has yet to exceed a 54% compliance rate with the statutory caseload ratio.[64]

Staffing challenges and high turnover are persistent in child welfare. The Covid-19 pandemic further exacerbated staffing challenges, both in the Eastern Service Area and statewide. However, the problem is worse in the Eastern Service Area. As shown in the table below, data compiled by Public Consulting Group found that between January and June 2021, case manager turnover was on the decline within DHHS, while Saint Francis's turnover rate continues to escalate.[65]

Case Manager Turnover, January–June 2021

Month	Count at end of Month	Positions Separating During Month	Monthly Turnover Rate	Six-month Average
DHHS				
January	414	23	5.6%	**5.2% per month**
February	399	25	6.3%	
March	392	26	6.6%	
April	382	21	5.5%	
May	409	17	4.2%	
June	421	13	3.1%	
Eastern Service Area/Saint Francis				
January	121	4	3.3%	**7.2% per month**
February	118	7	5.9%	
March	119	9	7.6%	
April	111	9	8.1%	
May	108	10	9.3%	
June	113	11	9.7%	

High turnover and difficulty recruiting new workers have resulted in Saint Francis's inability to meet caseload requirements. While the State also struggles to achieve 100% compliance with caseload ratios, data from DHHS shows that Saint Francis's rate of compliance is well below that of the other service areas. As the largest service area in the state, Saint Francis's compliance rate significantly impacts the statewide

[62] Appendix S: Eastern Service Area Full Service Case Management Contract Monitoring Summary, Quarter 1, 2020, https://dhhs.ne.gov/SFM%20Contract%20Documents/Saint%20Francis%20Ministries%20Contract%20Monitoring%20Summary.pdf.
[63] Office of the Inspector Gen. of Neb. Child Welfare, *Special Report: Eastern Service Area Pilot Project and the Contract with Saint Francis Ministries for Child Welfare Case Management Services* 24 (2021).
[64] *Id.*
[65] *Id.*

compliance rate of 56.8%. The most comparable service area, Southeast, had a compliance rate of 68.3% for ongoing cases, in contrast to Saint Francis's rate of 40.0%.

Ongoing Caseload Status, September 2021

Service Area	Total Staff	Staff in Compliance	Compliance Rate
Central	31	23	74.2%
Eastern	95	38	40.0%
Northern	23	14	60.9%
Southeast	41	28	68.3%
Western	23	18	78.3%
State	213	121	56.8%

Child Placing Agency License

Saint Francis maintains a child placing agency license through the DHHS Division of Public Health so it can license, approve, and support foster homes. As discussed above, Saint Francis was operating as a child placing agency in other parts of Nebraska prior to its role as the case management contractor in the ESA. While Saint Francis is not the only child placing agency in the ESA, it must be able to license its own foster care homes to fulfill its obligations under the case management contract.[66]

On June 4, 2021, the Division of Public Health placed Saint Francis's child placing agency license on disciplinary probation after multiple compliance checks between September 2020 and February 2021 found that Saint Francis was unable to provide documentation of certain requirements related to its child placing agency license, including its finances, administrative records, foster family records, and placement supervision. The Division of Public Health initially gave Saint Francis until August 1, 2021 to come into full compliance, but then extended the deadline to September 30. On September 30, DHHS announced that as of October 1, it was issuing Saint Francis a probationary license with restrictions for 60 days. During this probationary period, Saint Francis was also restricted from taking on any new referrals of children and families in the ESA. As a result, DHHS employees began performing case management for new cases beginning in October 2021. On December 1, 2021, DHHS announced that Saint Francis's child placing agency license was no long on probation, however, as of the date of this report, DHHS employees continue to supplement case management in the ESA.

Stakeholder Survey Results

Between July 2021 and September 2021, the Committee disseminated an online survey form to foster families, biological families, service providers, members of the legal community, and current and former employees of Saint Francis Ministries, regarding their experiences with Saint Francis Ministries. The Committee received responses from 121 respondents, which included:

- 16 current Saint Francis employees;
- 17 former Saint Francis employees;
- 34 foster families;
- 33 service providers;

[66] Office of the Inspector Gen. of Neb. Child Welfare, *Special Report: Eastern Service Area Pilot Project and the Contract with Saint Francis Ministries for Child Welfare Case Management Services* 30 (2021).

- 20 members of the legal community; and
- 1 biological family.[67]

The survey responses are not intended to be a statistically significant representation of the many individuals and families involved with Saint Francis Ministries in the Eastern Service Area, however, this Committee appreciated and incorporated the input into its thought process as it did with other forms of public input.

Current Saint Francis employees generally viewed Saint Francis favorably. However, around half of the respondents do not handle cases, and approximately one third are not involved with in-home visitation or court hearings in their roles at Saint Francis. Of the eight respondents who do handle cases, four indicated they were handling twenty-four or more cases. Experiences regarding supervisors or feelings of adequacy regarding time or training varied among the respondents.

Former Saint Francis employees generally viewed Saint Francis Ministries unfavorably. Responses indicated that high caseloads had put pressure on different areas of job performance. High caseloads translated into less training, less time to prepare for visitations, and less time to prepare for court hearings.

Foster families for Saint Francis and foster families for other organizations generally viewed Saint Francis Ministries unfavorably. More than half of the foster family respondents disagreed or strongly disagreed that communication with their foster child's caseworker has been responsive, again emphasizing high caseload numbers. Experiences of foster families tended to vary depending upon caseworker, throughout all responses. However, most agreed or strongly agreed that support for medical services for the foster child had been adequate, and that payments had been mostly timely and accurate.

Service providers generally viewed Saint Francis Ministries unfavorably. In their responses, they noted that experiences vary depending upon the caseworker or individuals with whom they interacted in the organization. Some noted high caseloads for caseworkers and noted that high turnover at the case manager level has been a barrier to communication.

Legal community respondents consisted primarily of Court Appointed Special Advocates and guardian ad litems. Most respondents answered that Saint Francis caseworkers attend hearings but noted that delivery of required materials or knowledge of the case was inconsistent or not timely. Some noted that caseworkers seemed overwhelmed, but responses and experiences varied depending on the caseworker. Twelve respondents noted an average of five or more caseworkers over the life of a case.

The Committee received only one survey response from a biological family member, who viewed Saint Francis unfavorably.

The overarching theme that presents itself across the survey responses is the value of caseworkers. Having a well-trained, experienced, competent caseworker can make the difference between having a negative or positive experience with the organization as a whole. Experiences of foster families and the legal community varied greatly depending upon the caseworker. Many comments centered around concerns that caseworkers were some combination of over-worked, under-experienced, or over statutory caseload requirements. Based on responses and comments from foster families and members of the legal

---

[67] *See* Appendix T for a breakdown of survey responses.

community, when a current caseworker leaves, the transition to a new caseworker causes delays in many aspects of the child welfare process. Important knowledge about a case leaves with the old caseworker. These themes from the survey responses reinforce this Committee's observations throughout its work.

Longitudinal View of Eastern Service Area Performance

Saint Francis's performance—and this Committee's recommendations—should be understood in the context of the effects of privatization on quality, innovation, and cost over the past decade of privatization. For a full assessment of this question, see Public Consulting Group's *Longitudinal Assessment of Child Welfare Privatization in Nebraska* (available on the "Reports" section of the Health and Human Services Committee webpage).[68]

Quality

In 2014, the consulting group Hornby Zeller completed a detailed evaluation of the outcomes under Nebraska's case management pilot project and found that the State had experienced no measurable benefit as a result of the pilot and that the outcomes achieved for families and children by the lead agency were no better—nor worse—than those produced by DHHS.[69] In 2019, the Stephen Group report found that Hornby Zeller's conclusion remained true: there are some measures where ESA performs better and others where it performs worse than other service areas.[70]

An important measure of success in child welfare is permanency. The recent evaluation by Public Consulting Group found that in recent years the Eastern Service Area has the lowest rate of successful cases, with success defined as reunification within 12 months or adoption within 24 months.

[68] Public Consulting Group, *Longitudinal Assessment of Child Welfare Privatization in Nebraska* (2021). The evaluation completed by Public Consulting Group was commissioned by Legislative Bill 570 (2021), which was introduced by the Health and Human Services Committee and amended into Legislative Bill 428 (2021).
[69] Helaine Hornby & Dennis E. Zeller, Hornby Zeller Associates, Inc., *An Assessment of Child Welfare in Nebraska* 37 (2014).
[70] The Stephen Group, *Assessment of Outsource Model in Nebraska's Eastern Service Area: Findings and Recommendations* 16 (2019).

Cases with Timely Permanency Outcomes

Region	Case Outcome	SFY 2017	SFY 2018	SFY 2019	Average
Central	Total Cases	382	318	315	
	Successful Cases	140	99	111	
	Percent Successful	**37%**	**31%**	**35%**	**34%**
Northern	Total Cases	439	419	352	
	Successful Cases	138	111	116	
	Percent Successful	**31%**	**26%**	**33%**	**30%**
Western	Total Cases	399	348	344	
	Successful Cases	188	137	136	
	Percent Successful	**47%**	**39%**	**40%**	**42%**
Southeastern	Total Cases	655	578	535	
	Successful Cases	248	153	128	
	Percent Successful	**38%**	**26%**	**24%**	**29%**
Eastern	Total Cases	1620	1532	1464	
	Successful Cases	404	354	297	
	Percent Successful	**25%**	**23%**	**20%**	**23%**

Innovation

Innovation has often been expressed to the Legislature as one of the key benefits of privatization. The Stephen Group identified innovation as a one of the key reasons for outsourcing case management—to "[p]rovide for flexibility to create innovative solutions to meet local needs and to rapidly adapt to changing conditions."[71] Indeed, privatization fostered a culture of innovation and creative thinking about family needs.[72] The 2021 study by Public Consulting Group found, however, that the innovations piloted under privatization have not had demonstrable benefits in the various measures of success, such as timely reunification.[73] Additionally, the study identified a number of ways that innovation can be fostered with or without privatization.[74]

Cost Benefit

Between 2017 and 2020, the Eastern Service Area had the lowest annual cost per out-of-home case compared to the other service areas. In contrast, it had the highest average cost of in-home cases. Even though the cost per out-of-home care case is less, the overall cost is greater because cases in the Eastern Service Area have taken longer to achieve permanency.[75]

---

[71] The Stephen Group, *Assessment of Outsource Model in Nebraska's Eastern Service Area: Findings and Recommendations* 65 (2019).
[72] Public Consulting Group, *Longitudinal Assessment of Child Welfare Privatization in Nebraska* 42 (2021).
[73] *Id.*
[74] *Id.* at 43–44.
[75] *Id.* at 52–54.

Public Consulting Group found that privatization has not produced a lower cost of success, with success defined as reunification within 12 months or adoption within 24 months.[76] Fewer children return home within 12 months or are adopted within two years in the Eastern Service Area compared to the rest of the State.[77] This mitigates savings in the annual cost of care as children stay longer. The three-year average cost of success in the Eastern Service Area is 27% higher than the average of all other service areas.[78]

Federal claiming did increase during the past decade of privatization, however, it cannot be attributed to the Eastern Service Area which had the lowest percentage increase among the service areas.[79] Additionally, according to a report issued in March 2021 by *Child Trends* based on 2018 data, Nebraska is far behind other states in its use of federal reimbursement.[80] Currently, 81% of Nebraska's child welfare funding comes from State and local sources, compared to the national average of 55%.[81]

Findings

1. Privatized case management has led to instability in the Eastern Service Area.

The transition from PromiseShip to Saint Francis Ministries and the subsequent challenges in the Eastern Service Area highlight a fundamental difficulty of a privatized case management system: instability. As the OIG noted in its recent report on the Eastern Service Area,

> [t]urnover and disruption is inherent in a privatized system. With each new RFP process there is the potential for a change in vendor. In addition, companies can fail in the midst of a contract causing additional moments of change. These transitions create disruptions in the child welfare system.[82]

While this disruption is difficult for the State and the lead agency, the most critical consequence is that it leads to disruption in cases and delays permanency for children and families.

While Saint Francis has struggled with a number of performance measures, many of its performance issues can be traced to its difficulty recruiting and retaining workers. Child welfare agencies in general struggle with high turnover rates, however, the uncertainties of the contracting process in a privatized system make it even more difficult to recruit and retain staff.[83] The key to a successful child welfare system is a well-trained, stable workforce. A study in Milwaukee County, Wisconsin found that children who had only one caseworker achieved timely permanency in 74.5% of the cases, as compared with 17.5% of those with two workers, and 0.1% of those with six workers.[84] Similarly, a 2008 study by researchers at the University

---

[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*at 47–50.
[80] *Id.* at 47 (citing Child Trends, Child Welfare Financing Survey SFY2018, State Profiles: Nebraska (2020)).
[81] *Id.*
[82] Office of the Inspector Gen. of Neb. Child Welfare, *Special Report: Eastern Service Area Pilot Project and the Contract with Saint Francis Ministries for Child Welfare Case Management Services* 30 (2021).
[83] Public Consulting Group, *Longitudinal Assessment of Child Welfare Privatization in Nebraska* 40 (2021).
[84] Connie Flower et al., *Review of Turnover in Milwaukee County Private Agency Child Welfare Ongoing Case Management and Staff* 4 (2005), https://uh.edu/socialwork/_docs/cwep/national-iv-e/turnoverstudy.pdf.

of Minnesota found that caseworker turnover correlated with increased placement disruptions.[85] Retention of caseworkers is critical to child safety, placement stability, and timely permanency.

Regardless of who the lead agency contractor is, the relationship between DHHS and the contractor is difficult to manage.[86] As this Committee has heard many times, the State has the ultimate responsibility for children who are removed from their homes, and it cannot contract away its legal obligation. Under a privatized case management model, however, the State loses control of the day-to-day functions that are essential to achieving positive child welfare outcomes. Over the past decade, the result of this outsourcing has not resulted in collaboration between the State and the lead agency, but rather, distrust and unproductive competition.

Saint Francis's current contract ends at the end of February 2023. Under Nebraska law, the contract could be extended for an additional year. On the other hand, it could be terminated earlier than February 2023, either by the State or by Saint Francis. In light of this timeline, the State has an urgent need to plan for the future of the Eastern Service Area.

The most positive reviews of Nebraska's privatization efforts have found that outcomes under privatization are no better—nor worse—than under state management. In this Committee's view, such an outcome does not justify the significant turmoil, uncertainty, and angst that would accompany an attempt to continue privatized case management.

2. Nebraska lacks a strategic direction for child welfare.

From the outset of privatization to today, Nebraska has lacked a unified strategic direction for child welfare. Beginning with the initial service coordination contracts in 2009, the constantly evolving contract models, rapidly failing contractors, and persistent need for additional funding highlighted the State's lack of strategic planning for child welfare reform. As the initiative evolved into a privatized case management contract with a sole lead agency, the lack of shared vision between DHHS and the lead agency inhibited collaboration between the two organizations and hindered success. As the Stephen Group observed, "[t]hrough the years of the contract with the vendor, the lack of a shared vision for outsourcing generally, and between the vendor and the state specifically, has undermined the opportunity to capture the value of the outsource model." Additionally, it noted that,

> [t]he absence of a shared vision of outsource services has led to a breakdown in meaningful collaboration. This has resulted in missed learning opportunities for best practice development, unproductive competition and forcing each party to work to solve problems without the benefit of the experience and insight of the other party.[87]

The lack of a clear vision for child welfare in Nebraska is not specific to privatization, however. As Dannette Smith testified to this Committee, stakeholders have one view, providers have another view, and the

---

[85] Annette Semanchin Jones & Susan J. Wells, *PATH/Wisconsin - Bremer Project: Preventing Placement Disruptions in Foster Care* 30 (2008), https://cascw.umn.edu/wp-content/uploads/2014/07/Path_BremerReport.pdf.
[86] Transcript of Hearing Before the Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee and the Health and Human Services Committee at 49 (Oct. 8, 2021) (testimony of Bo Botelho, Gen. Counsel, Neb. Dep't of Health and Human Servs.).
[87] The Stephen Group, *Assessment of Outsource Model in Nebraska's Eastern Service Area: Findings and Recommendations* 6 (2019).

judiciary has yet another view of how we should serve vulnerable families in Nebraska. Additionally, DHHS's own vision for child welfare shifts over time, due to leadership changes within the department.

This Committee has also heard from providers that they like working with a private lead agency because they have more opportunity to innovate and pilot new programs. This Committee appreciates the strong sector of private providers in Nebraska and suggests that—whatever the model going forward—opportunities for innovation should be a part of the shared vision.

Finally, this Committee finds that the State's lack of vision for child welfare extends to its claiming of federal reimbursement, which lags behind the national average.

3. Nebraska's procurement system has failed to result in adequate diligence into bidders and the reasonableness of their proposals.

The 2019 ESA case management procurement—in addition to the notable procurements discussed above—showcase the challenges Nebraska has faced in awarding large, significant (in both subject matter and dollars) contracts to bidders who ultimately cannot deliver on their proposals. Both the 2007 Medicaid Management Information System procurement and the 2013–2014 Eligibility and Enrollment Systems procurement resulted in the State paying millions of dollars to contractors who provided little value to the State in return.

Like the winning bidders in the other notable procurements, Saint Francis ultimately could not live up to its proposal, and the State was forced to negotiate an emergency contract to avoid disruption to vulnerable children and families in the Eastern Service Area. This Committee's study of the ESA procurement revealed several areas of concern, including accountability for determining responsiveness, assessment of reasonableness, and due diligence.

Accountability for Determining Responsiveness

It concerns this Committee that Saint Francis's bid, which, on its face, proposed a caseload ratio in excess of statutory requirements, was not vetted for responsiveness prior to the PromiseShip protest. The procurement manual provides that "[a] contract may only be awarded to a *responsive* and responsible bidder/supplier."[88] Further, "[a] responsive bid is one that complies with the solicitation in all material respects and contains no material defects." If a bid/proposal does not meet all mandatory terms and conditions, the manual empowers the agency to find the bid non-responsive, reject it, and not evaluate it.[89] While the RFP allowed the State to accept specifically defined deviations, such deviations are not permitted if they conflict with applicable state or federal laws or statutes.[90]

Saint Francis's bid proposed a caseload ratio which did not comply with Nebraska law. Rather than reject the bid as non-responsive, DHHS and DAS allowed Saint Francis to alter their staffing plan to bring their proposal into compliance with Nebraska law—after they had already announced their intent to award the contract to Saint Francis.

Assessment of Reasonableness

Perhaps most concerning to this Committee, with regards to procurement, is that those involved in the process did not perform a meaningful analysis of whether Saint Francis's bid was reasonable. The RFP

---

[88] State of Nebraska Procurement Manual § 6.14.2 (2018) (emphasis added).
[89] *Id.*
[90] Nebraska State Purchasing Bureau RFP Boilerplate at 4.

specifically allowed the State to review the proposals for reasonableness of cost: "The State reserves the right to review all aspects of cost for reasonableness and to request clarification of any proposal where the cost component shows significant and unsupported deviation from industry standards or in areas where detailed pricing is required."[91]

Saint Francis's bid was 40% less than the bid proposed by PromiseShip, yet neither DHHS nor DAS meaningfully probed how Saint Francis could provide such a discount. DHHS particularly was aware the Saint Francis bid was a significant deviation from industry standard, as it had recently received the Stephen Group's findings that PromiseShip's costs were closely aligned with those of DHHS in the four other service areas. Even after Saint Francis said it would need an additional $15 million to comply with statutory caseload requirements, DAS and DHHS opted to move forward with the contract, knowing the contractor's cost proposal was based on a caseload ratio that did not comply with statutory requirements.

In response to this Committee's questions regarding the assessment of reasonableness, DHHS's response indicated that the agency simply followed the process, awarded the contract to the highest-scoring bidder, and took Saint Francis at its word that it could perform the contract for the price in its bid. Dannette Smith testified that DHHS,

> had no reason at that time to believe that they couldn't . . . do the work. We accepted the information that both [the bidders] provided and we went with the organization that was the highest score for that particular bid. At that time, I had no reason to believe that they couldn't do it.[92]

Meanwhile, DAS indicated it applies a definition of reasonableness aimed only at evaluating bids that may be too high: Is the bid more than a reasonably prudent person would have expected to pay under the circumstances?[93] In DAS's practice, there is generally no provision for a reasonableness assessment if the bid is very low in comparison to known costs, industry standard, or other bids.

While this Committee recognizes the agencies' obligation to make wise use of State funds, taxpayers are not served by a system that rewards underbidding. This is especially true when the award tasks a private entity with the sole responsibility for a large segment of the vulnerable children in the State's care. In this case, due diligence—into Saint Francis's ability to adequately perform case management in the Eastern Service Area for the cost it proposed—was lacking. As a result, the State (1) ultimately paid more to Saint Francis than the amount proposed by the incumbent contractor and (2) received less in terms of the quality of services provided to children and families in the Eastern Service Area.

[91] *Id.* at 59.
[92] Transcript of Hearing Before the Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee and the Health and Human Services Committee at 24 (Oct. 8, 2021) (testimony of Dannette Smith, Chief Exec. Officer, Neb. Dep't of Health and Human Servs.).
[93] Transcript of Hearing Before the Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee and the Health and Human Services Committee at 118–19 (Oct. 8, 2021) (testimony of Jason Jackson, Dir., Neb. Dep't of Admin. Servs.).

Recommendations

1. Do not extend the ESA case management contract with Saint Francis beyond its current term through February 28, 2023.

To ensure as little disruption as possible to children and families in the ESA, DHHS should continue its efforts to support and supplement services in the ESA and work with Saint Francis to prepare for an orderly transition at the end of the contract. If Saint Francis's performance issues do not improve, earlier termination may be appropriate. The Committee supports earlier termination in the event that DHHS deems such early termination in the best interests of children and families in the ESA.

2. End the ESA pilot project at the close of the Saint Francis contract and return case management to DHHS.

Due to the contractual nature of the privatized case management model, the State cannot provide long-term stability or avoid disruption to children and families in the ESA under privatized case management. DHHS should begin planning to assume responsibility for case management in the ESA via a phased-in transition. DHHS should determine what functions currently being performed by Saint Francis may be beneficial to maintain through contracts with private organizations and what functions should be performed by DHHS. Additionally, DHHS should provide employment opportunities to Saint Francis workers who would be an asset to DHHS.

3. Convene a workgroup—including representatives of DHHS, the Legislature, the Courts, providers, and other stakeholders—to develop a shared strategic direction for child welfare in Nebraska.

The Legislature should fund the engagement of a consultant with expertise in child welfare practices to assist the workgroup in developing and implementing a statewide model for child welfare case management and service delivery that facilitates collaboration between providers and DHHS, allows opportunities for providers to innovate, and incentivizes achievement of program goals.

4. Require DHHS to evaluate Nebraska's Title IV-E claiming efforts and report to the Legislature.

This DHHS-led evaluation should determine why Nebraska lags behind the national average in Title IV-E claiming and what steps may be appropriate to optimize federal reimbursement.

5. Conduct a thorough evaluation of Nebraska's procurement practices to address potential areas for improvement, including—but not limited to—due diligence, evaluation of cost, accountability for decision-making, and protest procedures.

The Legislature should fund the engagement of a consultant with expertise in government procurement to work with the DAS Materiel Division, its customer agencies, and the Legislature to evaluate current procurement policies and practices and make recommendations for system improvements.

Table of Appendices

Appendix A	Written Testimony of Kathy Campbell (June 18, 2021)
Appendix B	Written Testimony of Liz Hruska (July 9, 2021)
Appendix C	Nebraska Auditor of Public Accounts, *Attestation Review of the State of Nebraska Information Technology Systems July 1, 2008 through June 30, 2009*, Exhibit B (2009)
Appendix D	Written Testimony of Kerry Winterer on Legislative Bill 21 (Feb. 20, 2019)
Appendix E	Kerry Winterer Position Letter on LB 61 (March 3, 2021)
Appendix F	Letter from ACS Healthcare to Dep't of Admin. Servs. (Nov. 30, 2007)
Appendix G	Letter from Neb. Dep't of Admin. Servs. to ACS Healthcare (Dec. 31, 2007)
Appendix H	Letter from Accenture to Neb. Dep't of Admin. Servs. (April 2, 2014)
Appendix I	Letter from Neb. Dep't of Admin. Servs. to Accenture (April 23, 2014)
Appendix J	Memorandum from John Stephen to Matthew Wallen (May 8, 2019)
Appendix K	Letter from Dannette Smith and Matthew Wallen to Gov. Pete Ricketts (May 23, 2019)
Appendix L	Letter from Thomas Kenny, Counsel for PromiseShip, to Doug Carlson, Dep't of Admin. Servs. (June 14, 2019)
Appendix M	Letter from Annette Walton, Dep't of Admin. Servs., to Tom Blythe, Saint Francis Ministries (June 17, 2019)
Appendix N	E-mail from Tom Blythe, Saint Francis Ministries, to Annette Walton, Dep't of Admin. Servs. (June 24, 2019)
Appendix O	E-mail from Tom Blythe, Saint Francis Ministries, to Annette Walton, Dep't of Admin. Servs. (June 27, 2019)
Appendix P	Staffing Plan Included in Saint Francis Ministries' Proposal
Appendix Q	Staffing Plan Posted to Dep't of Health and Human Servs.'s ESA Transition Webpage
Appendix R	Written Testimony of Dannette Smith (Jan. 22, 2021)
Appendix S	Eastern Service Area Full Service Case Management Contract Monitoring Summary, Quarter 1, 2020
Appendix T	Stakeholder Survey Responses

Testimony: Hearing LR 29 – regarding LR 37

Kathy Campbell

Thank you- Sen Arch.

Mr. Chairman and Senators of the Health and Human Services and Select Committees

For the record, I am Kathy Campbell K A T H Y C A M P B E L L

So often when opening on bills on the floor, I would begin with a quote. Today, I will begin with the quote often ascribed to Yogi Berra, esteemed catcher of the NY Yankees:

It's déjà vu all over again!

Ten years ago, LR 37 consumed hours of research and interviews from the HHS Committee as well as our partners to examine the Child Welfare Reform Initiative referred to as Families Matter. While the LR 37 scope was different, there are issues that mirror what you are addressing. As Sen Arch emphasized to me, what the committee will be reviewing is not NEW, but another chapter in child welfare services in Nebraska.

Chapter 1 of LR 37 traces the evolution of child welfare nationally and in Nebraska – an excellent compilation by Kathy Bigsby Moore. Child Welfare services have had a long history of connection with private entities.

Through the 1800's into the early 1900's, philanthropic agencies often took in abused children. Notable charitable organizations were established in Nebraska during that period:

Child Saving Institute – 1892

Nebraska Children's Home Society – 1893

Boys Town – 1917

During the Great Depression, the federal government stepped in with Aid to Dependent Children (ADC) grants to states. This program was established through the Social Security Act of 1935. Nebraska opted into the program the same year. In the ensuing years, there was no comprehensive, coordinated effort to address child safety.

Nationally, and in Nebraska, awareness of the effects of child abuse became prominent in the 1970's. Nebraska changed its reporting law in 1977, mandating every citizen report suspected child abuse and neglect.

Of note, the total responsibility for social service programs was transferred from the counties to the state in 1983.

From the 70's through the early 2000's, Nebraska convened tasks forces and commissions, introduced legislative resolutions and enacted statutes pertaining to child welfare issues.

In 2007 DHHS undertook a privatization initiative to reform the child welfare system through a privatized lead agency model. The proposal was in great part a response to the growing number of children in out-of-home care – foster care. At one point, Nebraska was #1 in the nation with the most children in out of home care.

The objective of the reform was to "flip the pyramid" – to reverse the percentages and eventually serve 70% of children in home and 30% in out of home care.

The child welfare system encompassed three components: case management, service coordination and service delivery. At that point, the state had responsibility for case management and service coordination but contracted with private entities for service delivery.

However, the structure of the reform initiative differed -

(1)DHHS would move from 115 contracts with private entities providing services to contracts with 6 lead agencies.

(2)The state would retain case management.

(3) The lead agencies would provide service coordination, but also could deliver services. The lead agencies had the responsibility to contract with private entities for service delivery.

(4)The initiative would use existing resources, no new dollars were requested. It was understood that the lead agencies may have to infuse their own dollars to cover costs. All but one did – the only for-profit agency did not.

A more Detailed Timeline of Events is in LR 37 Chapter 2 – compiled by the Legislative Performance Audit staff. Significant events were:

July 2009 -six lead agencies signed an implementation contract.

Alliance for Children and Family Services

Boys and Girls Home

CEDARS Youth Services

Nebraska Family Collaborative (NFC)

KVC Behavioral Healthcare Nebraska (KVC) [Kaw Valley Center]

Visanet (a for profit agency)

October 2009 – Alliance for Children and Family Services pulled out even before the final contract signing; indicating the contract was $1 million less than expected.

November 2009 - The remaining five lead agencies signed the final contracts.

April 2010 – CEDARS withdrew – having lost $5.5M over 20 months from contracts for in-home and out of home care and preparation and transition to a lead agency.

Six days later (April 8th) Visanet filed for bankruptcy. Subcontractors are collectively owed $1.4M for service delivery.

September 2010 – by mutual agreement between DHHS and Boys & Girls Home, the lead agency contract was terminated.

October 2010 – DHHS distributed $6.3.M to the two remaining lead agencies.

December 2010 – DAS approved the plan to transfer major case management responsibilities to lead agencies. NE law requires DAS approval IF replacing state workers with employees of private entities.

Lead agencies argued that they could not control costs unless they had responsibility for case management.

Essentially the State is now supporting two systems – case management by the lead agencies and some aspects of case management retained by the department.

January 2011 – DHHS announced a plan to distribute an additional $19M to the lead agencies over the next 9 months.

Providers, judges, advocates, service delivery agencies, foster and bio parents, attorneys were clamoring for the Legislature to do something! The child welfare system was in chaos!

January 14, 2011 – introduction of LR 37 by the HHS Committee to review, investigate, and assess the effect of the child welfare reform initiative implemented by DHHS. Adopted in February on 43-0 vote.

December 15, 2011 – the final LR 37 report was released,

February 2012, KVC withdrew as a lead agency. Only NFC remained as a lead agency.

February 2012, 77 DHHS FTEs were eliminated which dismantled the former infrastructure.

From February through November, the HHS Committee undertook a wide array of research, interviews, correspondence, briefings, surveys and public hearings. Michelle Chaffee, legal counsel to the HHS committee, authored the final report.

I want to acknowledge our partners who took on specific tasks: Legislative divisions - Fiscal, Performance Audit, Ombudsman, and Research; Auditor of Public Accounts, Mike Foley, the Supreme Court and the Court Improvement project, the Foster Care Review Board, Appleseed, Voices for Children, NCSL, DHHS, KVC and NFC.

This comprehensive approach formed the basis for our findings and recommendations.

Eighteen recommendations were the basis of five bills introduced in January of 2012. Several major provisions in the legislation:

- creation of Inspector General of Child Welfare,
- establishment of caseload standards, requirement of annual reports from DHHS regarding child welfare services,
- prohibition of reinstating lead agencies in the service areas except to set forth a pilot continuing the lead agency model in the eastern service area.

The five bills passed all rounds of debate with not one negative vote and were signed into law by the Governor.

Some observations on the Reform Initiative from the LR 37 effort:

There was no involvement of the Legislative or Judicial branches of government.

There was no comprehensive, collaborative strategic plan for child welfare reform.

Privatization did not save money. There was a 27% increase in child welfare costs between 2009 and 2011.

Research indicates that privatization efforts work best when intense monitoring and oversight is provided by the State. It is not enough to just pay attention to the contract process. It is as important to ensure the staff who are overseeing the contracts has the expertise to diligently monitor and evaluate financial data as well as evaluation of program services to meet the needs of children.

There was no readiness assessment of agencies bidding on the lead agency contracts – to review financial stability, management experience, and staff expertise. (Florida pre-bid readiness assessment)

Contracts with lead agencies were not conducted through the usual DAS procedures.

No cost analysis of the existing child welfare system was done prior to the reform effort to ascertain what was the cost basis. In other words, was the State adequately funding the system to begin with?

Case manager turnover was increasing at an alarming rate; children had two, three, four or more case managers in a year! The Foster Care Review Board reported from national research: with one case manager, children achieved permanency in 74.5% of the cases; with two or more, it drops to 17.5 %. With six or more it drops to .1% In the first six months of 2011, 21% of Nebraska children had four or more case managers.

Lead agency subcontractors were not receiving payments in a timely manner or not at all. Subcontractors in the central and western part of the State depleted their reserves and some went out of business, leaving a scarcity of services. What was the liability to the State?

Lead agencies had to serve more children than anticipated at higher levels of care in some cases.

Foster parents were not adequately compensated.

The lead agency contracts were global contracts – lump sum contracts. The lead agencies went from fee based to risk-based contracts. Should the contracts have been based on a case rate structure?

Lead agency contracts were amended with more and more dollars added. The Reform Initiative kept evolving without a STOP to analyze why the costs kept increasing.

Was there a conflict of interest when a lead agency controlled all three components – case management, case coordination, service delivery? Referring cases to its own delivery system.

But most importantly, was the reform creating the permanency needed by children...did we know where they were and how were they doing?

When children are taken out of the home, the State has the responsibility for their protection and safety – it cannot contract that responsibility away ...ever.

One of the most noted child advocates in our country's history was Grace Abbott, Chief of the United States Children's Bureau in the 1930's and one of the architects of ADC. And a Grand Island Nebraska native said:

Justice for all children is the high ideal in a democracy.

Thank you for your commitment to the task ahead.

Good Morning, Senator Arch and members of the Special Investigative Committee and the Health and Human Services Committee. My name is Liz Hruska (Spell), I'm an analyst in the Legislative Fiscal Office.

Child Welfare Privatization History

Child welfare privatization had a rough start from the beginning. The state had good intentions in moving to the privatization model as former Senator Campbell discussed at the last meeting. Nebraska was leading in the rate of children removed from their homes. Also the Department of Health and Human Services had failed most recent federal Children and Family Review. The agency began a multi-year process of improving the child welfare system. Department staff studied other states and looked at best practices.

As former Senator Campbell mentioned. There were six agencies that had signed four-month short-term implementation contracts to develop infrastructure before the full 20-month contracts were signed which went into effect in November 2009. Only five of the six signed the full implementation contract. The Alliance for Children and Family Services in the Central Service Area declined citing fiscal concerns.

Eastern Area
Nebraska Families Collaborative
KVC Behavioral Healthcare Nebraska
Visinet

Southeastern Area
Cedars
KVC Behavioral Healthcare Nebraska
Visinet

Central Area
Boys and Girls Home of Nebraska

Northern Area
Boys and Girls Home of Nebraska

Western Area
Boys and Girls Home of Nebraska

Initial Lead Agency Contract Provisions

The contracts were intended to be public-private partnerships. Although the contracts gave the service coordination responsibility (that is, setting up all treatment and non-treatment services) to the lead agencies, no funding was provided for this function. Funding was for non-treatment services and treatment services order by the courts but not funded by Medicaid.

Additionally, the contracts were always intended to be handled within existing resources. The agency did not ask for additional funding for any part of the welfare reform effort in their budget request. Todd Landry, Children and Family Services Director, stated that no state employees would be laid off. According to Mr. Landry, caseloads were too high which delayed movement toward permanency as the caseworkers did not have adequate time to perform the work. By removing the day-to-day activity of obtaining services for children, the state case managers' time was freed up to move the cases towards permanency.

Contractors were offered the amount appropriated for services only, even though, as mentioned previously, they were required to hire staff and pay for operating expenses. Those costs were required to be paid from funding other sources.

In addition for 12 months after children left the system, the lead agencies had to cover the cost aftercare which had not previously been offered by the state and therefore was not included in the amount that was the basis for the contract amounts.

The contracts were global transfer contracts which are the most "at-risk" type. Under a global transfer contract, the contractor receives a set amount regardless of the number of children served or the level or cost of the services. The lead agencies were required to serve all children assigned to them and had no control of the number of children or their level of needs. The state however maintained final decision-making control

The original contract amount for the 20-month period from November 2009 through June 2011 was a total of $140.5 million for all five lead agencies. Two months later in January 2010, the total was increased by $18.3 million.

The January 2010 amendment changed from a completely at-risk contract to one where agencies would be held harmless at a certain level of loss and capped the amount over costs the agencies could retain.

In reality this was never fully implemented, as lead agencies began to terminate their contracts or have them terminated and additional funding was given to those that remained.

Lead Agency Changes

In March 2010, DHHS terminated the contract with Visinet when it became apparent the agency was not financially sound and could not meet the terms of the contract. Shortly after the Visinet contract was canceled, Cedars gave notice to DHHS that they would terminate their contract as of June 30, 2010, citing a cost of $5.5 million if they continued the contract.

At the end of September 2010, Boys and Girls Home terminated their contract with the state, effective on October 15, 2010. Claims totaling $2,499,342 went through the state claims process in 2012 solely to pay off subcontractors of Boys and Girls Home.

In less than one year after the initial contracts went into effect, only two lead agencies remained, NFC (later renamed PromiseShip) and KVC Behavioral Healthcare.

On October 15, 2010 DHHS announced that an additional $6.3 million would be provided to the two remaining lead agencies. The funds were primarily from freed up General Funds from one-time federal Emergency Temporary Assistance for Needy Families (TANF) funding.

The model of the state having the final authority to make decisions with the lead agencies paying for the services did not prove to be workable. In January 2011, case management was also given to the lead agencies.

This was a confusing time. Although case management became the responsibility of the lead agencies, in a required report to the Department of Administrative Services, DHHS stated that no funding would be provided for case management. Even though in theory no additional funding was provided when the case management function transferred, the two contracts were increased by a total of $19 million. The funding was from the remaining emergency TANF funds, savings from laying off state case managers, the agency's carryover balance and a fund mix change to utilize more federal funding.

Even with the increased funding, both NFC and KVC continued to provide millions of dollars from private funding. At the time the KVC terminated their contract in March 2012, the Lincoln Journal Star reported that they had contributed $14 million from private sources and NFC contributed $7.5 million and anticipated spending an additional $2.0 million in private funds.

A little more than a year after the infusion of $19 million and the transfer of case management, NFC in the Eastern Service Area was the only lead agency remaining. At this point, what had started as a statewide effort to privatize child welfare, was narrowed to a pilot.

In the years that followed, NFC/PromiseShip had increases in their contract. The additional funding was the result of increases in the number of children served for various reasons, either adding a new population as was the case with children in the juvenile justice system; picking up the caseloads from KVC after they terminated their contract or an overall increase in the state ward population.

Stephen Group Report

In anticipation of re-bidding the lead agency contract in the Eastern Service Area, the department contracted with the Stephen Group to perform an assessment of whether the lead agency contract should continue. As part of their report in May 2019, they stated that after reconciling case counts and expenditures with Division of Children and Family Services and PromiseShip (formerly called NFC), they found that the cost per case in the Eastern Service Area to be in alignment with the cost per case in the other four service areas managed by the state.

This information was available to the evaluation teams which reviewed and scored the bids to determine "lowest responsible reasonable" bid.

The key factor in Saint Francis scoring higher than PromiseShip was the difference in the amounts between the two bids. In the cost category, Saint Francis was 373 points higher than PromiseShip, but overall Saint Francis outscored PromiseShip by 192 points as shown in the chart.

Category	Possible Points	PromiseShip	Saint Francis	Difference SFM to PromiseShip
Corporate Overview	300	276	265	(11)
Technical Approach	1700	1,483	1,362	(121)
Financial Requirements	200	156	101	(55)
Cost Proposal	880	507	880	373
Oral Interview	446	295	299	5
Total Points with Oral Interview	3526	2,716	2,908	192

Now I will review the Saint Francis contract.

Initial Saint Francis Contract

The Department of Health and Human Services signed a five-year contract with Saint Francis Ministries on July 2, 2019 to handle child welfare case management services in the Eastern Service Area. Saint Francis' bid of $196.4 million was 64% of the bid submitted by PromiseShip which was $305.3 million. **As shown in the first chart.**

These are the initial bids with two adjustments The PromiseShip bid was for 12 months and SFM was for six. The PromiseShip bid was reduced to six months to be comparable. Start-up costs were not included for either provider. Although both bids had start-up costs, Saint Francis' were substantially higher since they were not providing services in the Eastern Service Area at the time of the bid.

Further contract amendments accelerated the transfer of cases and also provided for additional funding Saint Francis and the amount paid to PromiseShip was adjusted to reflect the acceleration.

The bid submitted by Saint Francis Ministries assumed a higher caseload ratio than state statute allows. The bid assumed a caseload ratio of 25 to 1; state law caps the caseloads depending on the type of case at a maximum of 17 cases per worker.

Before the contract was signed, Saint Francis requested an additional $15 million to comply with the statutory caseload requirement. Had the additional $15 million been included in the original bid, Saint Francis' bid would have been 69% of PromiseShip's.

The request was denied by the Department of Administrative Services. As Tyler Mahood testified in the previous briefing, by law adjustments to a bid once opened cannot be materially altered. Written into the contract was a provision that Saint Francis would comply with the statutory provisions for caseloads "without additional cost."

In the first year, Saint Francis reached the "do not exceed" amount in May 2020 and were not paid again until the new contract year started in July. The drawdown rate in the second year of the contract would have reached the "do not exceed" limit in early February. On January 22nd, the Interim CEO of Saint Francis, William Clark, testified at a hearing before the Health and Human Services Committee that Saint Francis would be out of funding on February 12th.

Current Contract

On January 29, 2021, the Department of Health and Human Services signed a new twenty-five month contract with Saint Francis Ministries for $158.8 million; which is $82.9 million higher than their original contract for the same time period. The new contract started on February 1, 2021 and terminates on February 28, 2023. The chart in the handout coverts the contract from 54 months to a 38-months. **This is shown in the second chart.**

The Saint Francis contract now exceeds the PromiseShip bid by $3.7 million when converted to the same 38-month time period. **As shown in the third chart.**

Per a January 29, 2021 press release issued by the department, the contract estimate is $68.9 million for the first 12 months and $78.4 million for the second 13 months. Program Costs reimbursed 100%. Administrative Costs are capped each year.

Program Costs are all costs incurred and paid to a third party and are projected to be $95.2 million. These costs will be higher or lower as the program costs are fully reimbursed for actual and allowable contracted costs.

The only caps on costs are for Administrative Costs. Administrative Costs are defined as those not included in Program Costs. Those caps are $24.3 million in the first year (February 1, 2021 to January 31, 2022) and $27.7 million in the second year (February 1, 2022 through February 28, 2023). Those costs must be within 5% of the out-of-home costs in the balance of the state. The average cost per child is to be reviewed every six months with the first review by November 1, 2021 and then every six months thereafter.

The contract also included $10,563,174 to cover costs incurred but not reimbursed under the previous contract in May and June of 2020.

The contract is silent on how often payments are made. From February through June, payments have been made twice of a month. Based on the estimate the department provided, average monthly cost in the first twelve months of the current contract is $5.7 million; to date since February payments have averaged $5.6 million a month; very close to amounts projected in the contract.

Funding the Contract Increase

The Department did not request a deficit to cover the additional contract costs in FY 2021 nor an adjustment in the FY 2022 -23 biennium. There are two primary reasons: 1) a decline in cases and 2) budget decisions.

Cases rose 11% in the two years between 2015 and 2017 and continued over the next year to year and a half. Because of this increase, in FY 2018 child welfare had a deficit of $24.7 million with an annualized amount of $31.0 million in FY 2019.

The higher costs were in the base when the FY 2020 and FY 2021 appropriations were set. Subsequently cases declined.

Additionally, although the bid by Saint Francis was lower than PromiseShip's, the full amount of the difference between the two bids was not removed from the appropriation. The difference between the bids was $42 million over the biennium, but only $33 million was reduced.

Senator Arch asked that I review the payment structures of prior lead agency contracts.

Prior Payment Structures

Contract amendments changed the reimbursement structure. The following reimbursement methods were used:

November 2009 – full at-risk contract with no payment of staff or operations; only a "not to exceed" amount for direct services paid in predetermined monthly installments.

January 2010 – Both a floor and ceiling were added to the contracts, placing limits on the potential losses or gains by the lead agencies.

January 2011 – added case management in addition to service coordination. Additional funding of $19 million split between NFC and KVC. However because the lead agencies were already doing service coordination, no additional funding was added due to the case management responsibility.

August 2011 – reimbursement for actual costs with annual limits was put into place.

June 2012 – a combination of a fixed monthly payment plus a case rate based on in-home and out-of-home placements. Also performance based criteria was added.

April 2016 – The variable payment rate changed to a flat daily rate per child regardless of placement type.

October 12, 2016 – Added a stop loss provision limiting losses to a flat amount of $400,000 over the term of the contract and changed the method to a cost-reimbursement payment.

May 2017 – a fixed monthly payment and daily variable rate with monthly prepayments and annual reconciliation. Also required written approval for certain expenditures.

In closing, it is difficult to predict child welfare costs as the state is responsible for any child in need of protection and a safe living environment. The department does not control entry into or exists out of the system and needs vary substantially from child to child.

Contract Cost Comparison Charts

These are the initial bids with two adjustments The PromiseShip bid was for 12 months and Saint Francis Ministries was for six. The PromiseShip bid was reduced to six months to be comparable. Start-up costs were not included for either provider. Although both bids had start-up costs, Saint Francis' were substantially higher since they were not providing services in the Eastern Service Area at the time of the bid.

	PromiseShip Total Five Year	St. Francis Total Five Year	Difference Saint Francis to PromiseShip
Year One	35,650,002	18,025,808	(17,624,194)
Year Two	65,752,656	41,385,589	(24,367,067)
Year Three	66,795,588	43,454,868	(23,340,720)
Year Four	67,931,820	45,627,612	(22,304,208)
Year Five	69,204,420	47,908,992	(21,295,428)
Five-Year Total	305,334,486	196,402,869	(108,931,617)
			64%

Similar to the preceding chart, this one coverts the initial Saint Francis contract to a 38-month contract to compare to the shortened time period in the January 29, 2021 contract.

Curent Contract Average Monthly Cost	
January 1,2020 to February 28, 2023	5,716,524
Total 38-Month Cost	217,227,903
Initial Contract Average Monthly	
Cost January 1, 2020 to June 30, 2023	3,535,569
Total Converted to 38 months	134,351,622
Difference Total Costs over 38 Months Current v. Initial	82,876,281

Saint Francis' contract was shortened from 54 months (January 1, 2020 to June 30, 2024) to 38 months (January 1, 2020 to February 28, 2023). The chart below converts the original PromiseShip bid with the two Saint Francis contract amounts. Note: Saint Francis began taking cases prior to January 1, 2020. The initial contract amount was increased, but to compare like time periods, the figures below use the original contract amounts.

	Months	PromiseShip Bid Converted to 38 Months
January 1, 2020 to June 30, 2020	6	35,650,002
July 1, 2020 to June 30, 2021	12	65,752,656
July 1, 2021 to June 30, 2022	12	66,795,588
July 1, 2022 to February 28, 2023	8	45,287,880
	38	213,486,126
		SFM 38-Month Contract Period
January 1, 2020 to June 30, 2020	6	18,025,808
July 1, 2020 to January 30, 2021	7	41,385,589
February 1, 2021 to January 30, 2022	12	68,890,448
February 1, 2022 to Febrary 28, 2023	13	78,362,884
Retroactive May to June 2020		10,563,174
	38	217,227,903
Difference SFM to PromiseShip Over 38 Months		3,741,777

Prior Payment Structures

Contract amendments changed the reimbursement structure. The following reimbursement methods were used:

November 2009 – full at-risk contract with no payment of staff or operations; only a "not to exceed" amount for direct services paid in predetermined monthly installments.

January 2010 – Both a floor and ceiling were added to the contracts, placing limits on the potential losses or gains by the lead agencies.

January 2011 – added case management in addition to service coordination. Additional funding of $19 million split between NFC and KVC. However because the lead agencies were already doing service coordination, no additional funding was added due to the case management responsibility.

August 2011 – reimbursement for actual costs with annual limits was put into place.

June 2012 – a combination of a fixed monthly payment plus a case rate based on in-home and out-of-home placements. Also performance based criteria was added.

April 2016 – The variable payment rate changed to a flat daily rate per child regardless of placement type.

October 12, 2016 – Added a stop loss provision limiting losses to a flat amount of $400,000 over the term of the contract and changed the method to a cost-reimbursement payment.

May 2017 – a fixed monthly payment and daily variable rate with monthly prepayments and annual reconciliation. Also required written approval for certain expenditures.

Saint Francis Payment Structures

July 2019 – Fixed "Do Not Exceed" amounts by fiscal year

January 2021 – Program Costs which are all costs incurred and paid to a third party are reimbursed 100% of actual and allowable. Administrative costs defined as those not included in program costs and are capped amounts for the first and second years of the contract and must be within 5% of average out-of-home cost in the balance of the state. The average cost per child is to be reviewed every six months with the first review by November 1, 2021 and then every six months thereafter.

STATE OF NEBRASKA INFORMATION TECHNOLOGY SYSTEMS
DEPARTMENT OF HEALTH AND HUMAN SERVICES
MMIS CONTRACT TERMINATION

Per the United States Department of Health and Human Services – Centers for Medicare and Medicaid Services (CMS), for Medicaid purposes, the mechanized claims processing and information retrieval system which Nebraska and other states are required to have is the Medicaid Management Information System (MMIS). MMIS is an integrated group of procedures and computer processing operations developed at the general design level to meet principal objectives such as the Title XIX program control and administrative costs, service to recipients, providers and inquiries; operations of claims control and computer capabilities; and management reporting for planning and control.

In October 1972, Public Law 92-603 was enacted in which Section 235 provided for 90% Federal Financial Participation (FFP) for design, development, or installation, and 75% FFP for operation of State mechanized claims processing and information retrieval systems approved by the U.S. Department of Health and Human Services Secretary.

Federal regulations requiring more detailed reporting relating to Medicaid must be implemented by 2013. As a result of the updated requirements needed, many states are in the process of replacing or updating their MMIS. To comply with the Federal regulations, the State of Nebraska's Department of Health and Human Services (DHHS) through the Department of Administrative Services State Purchasing Bureau issued a Request for Proposal (RFP) on December 15, 2005. All bids were rejected on June 20, 2006. A second RFP (2017Z1) was issued on May 2, 2007, with 3 companies issuing proposals. On November 21, 2007, a letter of intent to award the contract to FourThought Group, Inc. (FTG) was issued.

DHHS contracted with FTG to provide the design, development, implementation, certification, and maintenance and support of a new MMIS for the period effective May 1, 2008, through November 30, 2012, with the option to renew for 3 additional years for maintenance and support. The total contract was for $70,478,106. A portion of the total contract was for maintenance and support beyond 2012, the total for the time period of May 1, 2008, through November 30, 2012, was $45,087,674.

In July 2009, DHHS terminated the contract with FTG because the company could not deliver the system as needed. On August 21, 2009, DHHS signed a settlement agreement with FTG which required DHHS to pay FTG a total of $4,750,000. Below is a table showing the payments made to FTG during the contract period and the settlement. Payments to FTG were paid with Federal funds (90%) and State Funds (10%).

	DHHS Cash/MMIS Fund (State Funds)	Federal Funds	Total Payments
Payments to FTG July 2008 through June 2009	$ 688,118.85	$ 6,193,069.77	$ 6,881,188.62
Settlement Payment in August 2009	475,000.00	4,275,000.00	4,750,000.00
Totals	$ 1,163,118.85	$ 10,468,069.77	$ 11,631,188.62

STATE OF NEBRASKA INFORMATION TECHNOLOGY SYSTEMS
DEPARTMENT OF HEALTH AND HUMAN SERVICES
MMIS CONTRACT TERMINATION

DHHS has finalized documents to CMS to identify and explain termination of contract. CMS has been provided details of deliverables received from FTG to support payments. DHHS has indicated that while the Federal government may not seek reimbursement for this contract; it may impact future Federal dollars as related to subsequent approval for similar work products.

When asked, "What specific values/deliverables did the State get from FTG for the money spent?" DHHS provided the following response: "The deliverables paid under this project fall under two categories: those that provided value during and within the context of the project and those that provide a valuable basis for future work products. Within the context of the project, deliverables such as the work plan, schedule, status reports, and project control, quality management and project management plans were necessary for management of the project. Additional deliverables such as the deployment, testing, development and configuration management plans and environments provided value primarily tied to the specific solution proposed in the project (e.g., the technical architecture and environment), although in some cases, also provide useable information in any context. Other deliverables such as the requirements validation, business process descriptions, gap analyses, and data conversion plans and products contain useful information and will provide a basis for future work products."

When asked, "What DHHS plans to do to meet the requirements of the Feds," DHHS provided the following response: "Throughout the project and during closure activities, DHHS communicated with officials from the Centers for Medicare and Medicaid Services (CMS). A request for federal funding for planning and preparation activities has been submitted to CMS. Planning will include strategies to meet existing federal mandates and will provide the opportunity to incorporate recent state and federal initiatives and reforms such as health information technology/health information exchange."

As of the date of this report, DHHS is still waiting on confirmation of acceptance or denial of the above noted plan and verification that the Federal government will not seek reimbursement of the Federal funds spent on the contract with FTG.

TESTIMONY ON LB 21
GOVERNMENT, MILITARY, AND VETERANS AFFAIRS COMMITTEE

February 20, 2019

Kerry T. Winterer
Former CEO, Nebraska Department of Health and Human Services

Good Afternoon Chairman Brewer and members of the Government, Military, and Veterans Affairs Committee:

I am here today to testify in favor of LB 21. This bill would change the process of contract procurement in the state of Nebraska to provide that the contested case provisions of the APA would apply to the awarding of state contracts as they now do to decisions made by other administrative agencies.

I want to address the bill from my perspective as the head of a state agency. As I am sure you are aware, DHHS is the largest department in state government and, due to the nature of its services, is routinely involved with DAS in soliciting bids and executing contracts, many of which are very large. The Department cannot do its work without an efficient, effective, and unbiased contracting process.

Let me tell you about the process as it exists based on my experience. For large contracts there is almost always a protest by one or more unsuccessful bidders. Because the protest process begins and ends inside DAS with the Director having the final decision on the merits of the protest, and protests are rarely upheld, the protester is very rarely satisfied with that decision. This leaves the protester looking for the next step of appeal. In Nebraska there is none as the process currently exists. For smaller contracts, the protest may end there, but for larger contracts the protester has more incentive to try to find other alternatives to continue the protest.

This often results in the protester attempting to find a legal theory to get into court since there is no independent right to appeal to a court. This may include arguing the protester has standing as a taxpayer or some other equally tenuous argument. The result frequently is a protracted period of motions and hearings and other procedures as the protester attempts to find the right formula for pursuing its claim in court.

From the agency's point of view, this protracted period is a period of uncertainty. Although the contract has been awarded and probably executed, we would always be "looking over our shoulder" watching the litigation proceed and concerned that the court might determine the contract award was not valid with serious consequences for delivery of our services. This could mean that some steps of implementation would be delayed waiting for the litigation to be finished.

An example of this situation is a contract for a new Medicaid Management Information System (MMIS) which was signed prior to my tenure at DHHS but was being implemented when I arrived. The state at that time was embroiled in a lawsuit brought by an unsuccessful bidder which took about two years to resolve at which time the lawsuit was settled. During that time even though the Department was implementing the contract, there was always uncertainty as to the contract's future due to the pending lawsuit.

Another concern from the contracting agency's perspective is the need to be able to rely on the soundness of the procurement process and that it yields the most qualified contractor and best contract for the benefit of the state. I have no concern about the expertise of the staff of DAS, but the fact is there is little or no effective outside or objective review of the criteria and process that results in awarding a bid. And, because a protest is decided solely by the Director of DAS, there is no objective evaluation of the merits of a protest.

In the case of the MMIS project, that contract was awarded to a small company with little track record and without the resources to fulfill the contract requirements. This became painfully clear to me when I came on, and one of my first actions was to terminate that contract and "return to the drawing board" for the MMIS project, at considerable cost to the state.

Providing a route for review will provide an expeditious process for a bid protest to be finally resolved in a matter of months rather than years and will provide an objective review of the bid process and award for the benefit of bidders and the people of the state of Nebraska. The bill provides that the administrative hearing must occur within 60 days of the filing of the protest.

I don't know what DAS' position on this change may be. I do know after speaking with a former Director of DAS that he very much disliked the role of deciding these protests, feeling ill equipped to understand fully the issues raised in the protest and that, without some compelling argument, he had no reason to differ with his staff who had made the award decision. In his case, he would have welcomed another stage of objective appeal.

Some may be concerned that this will greatly increase the amount of litigation against the state. This bill applies only to contracts over $5 million. But whatever litigation results will in my view provide more credibility to the procurement process as well as providing encouragement for there to bidders who may now be discouraged about the current process. And litigation may well decline in the future as court precedents are set and potential protesters may be better able to evaluate their prospects for a successful appeal.

In the long run I have no doubt that this will greatly improve the fairness of the procurement process and yield better results.

Thank you for your time and attention, and I will be happy to answer any questions you may have.

Via Email

March 3, 2021

Senator Tom Brewer, Chairman
Senators Blood, McCollister, Halloran, Sanders, Hansen, Hunt, Lowe
Government, Military and Veteran Affairs Committee

Re: LB 61 Position Letter

Dear Members of the Committee:

I am submitting this position letter for your consideration regarding your hearing on LB 61 introduced by Senator Kolterman. I am out of town on the hearing date, and I am sorry I am not able to be present to testify in person. I support passage of this measure. Please include this in the hearing record.

This is one of the most important pieces of legislation that will be considered by the Legislature this session. It allows for certain appeal rights in the process of awarding state contracts for services exceeding ten million dollars. Unlike many states, there is no right in Nebraska for an unsuccessful bidder on a state contract to appeal a contract award decision. Appeal rights in Nebraska end with a meeting with the Director of Administrative Services who has the final say in the contract award. It is rare for a contract award to be overturned by the Director.

This bill provides for independent review of procurement decisions made by the state through administrative review under the Administrative Procedure Act and potentially court review.

You will probably hear from the Department of Administrative Services or other agencies that the procurement process works as it is and need not be changed. Based on my experience, they are simply wrong, and I can provide you with at least two real examples of how the current process resulted in awarding flawed contracts and the loss of millions of state dollars.

I served as CEO of the Department of Health and Human Services from August of 2009 until December of 2014. When I first arrived, the Department was trying to implement a contract that had been awarded for a new MMIS (Medicaid Management Information System) software system. This system is critical since it serves as the claims management system for all Medicaid claims in the state.

Implementation at that time was clearly in trouble and one of my first tasks was to resolve this problem. The contract exceeded $50 million. It had been awarded through the existing procurement process to a small software company. It became clear when I arrived that the company was unable to implement such a large contract. Our review found that the company had never implemented such a contract and that many of their representations as to having products available to apply to the project were simply not true. The company appeared to be poorly capitalized and understaffed.

Based on our review, I decided to terminate the contract for nonperformance, and it was terminated. By then the State had paid the contractor several million dollars in payments required under the contract. To my knowledge this contractor, which no longer exists, was not retained by any other state or entity to implement a system of this nature.

Another example is a contract with which I was not involved but can evaluate based on my experience at the Department. This is the contract between the State and St. Francis Ministries to provide child welfare services in the Eastern Service Area. You are no doubt aware of difficulties in the administration of this contract.

Contracts with lead private contractors to privatize the state's child welfare services were being signed as I came to the Department. Implementation was troubled, and we lost all the contractors in three of the five service areas within months after the contracts were signed, and ultimately had only one remaining contractor in the Eastern Service Area, Nebraska Families Collaborative (later known as PromiseShip). The fundamental problem from the very beginning was that the contracts did not provide enough money for them to perform the services required.

We were able to keep the remaining contractor only through negotiating increased payments as we could, usually at contract extension time, based on the contractor's documented expenses.

Then came time to solicit bids for a new contract. PromiseShip submitted a bid based on its experience providing these services for 10 years. St. Francis submitted a bid which was some 60% of the bid submitted by PromiseShip, who my understanding scored higher on all other measures for awarding the bid. Anyone who understood the history of child welfare privatization in Nebraska, including those at DHHS, should have known that it would not be possible to provide the required services for that amount. Yet, St. Francis was awarded the contract. And now the Department is paying the price and has signed an emergency contract providing for $147 million to be paid through February 2023. I believe the total amount to be paid to St. Francis now exceeds the amount bid by PromiseShip, proving the point.

In both cases, the current process did not identify significant problems with the winning bidders' qualifications or its proposal which then resulted in a flawed contract award decision. Providing a right to appeal an award decision will provide a means for an independent review and a judgment as to the reasonableness of a contract award. This provides necessary protection to the State of Nebraska and its taxpayers against awarding contracts to unqualified or unscrupulous contractors in the future.

Thank you for your attention. If I can be helpful in any way, please contact me. My contact information is below

Kerry T. Winterer
kwinterer@cox.net
402-578-4343

Confidential Treatment Requested

A C S

HAND DELIVERY

Steve Sulek
Acting Administrator
Department of Administrative Services (AS)
Materiel Division
301 Centennial Mall South, Mall Level
PO Box 94847
Lincoln, NE 68509-4847

Carlos Castillo
Director
Department of Administrative Services
State Capitol, Room 1315
Lincoln, NE 68509

Re: Protest by ACS State Healthcare, LLC
Under Request for Proposal Number 2017Z1: Medicaid Management Information System

Dear Administrator Sulek:

ACS State Healthcare, LLC ("ACS") hereby protests the State of Nebraska's intent to award a contract to FourThought Group, Inc. ("FourThought") under Request for Proposal Number 2017Z1 ("RFP") for a new Medicaid Management Information System ("MMIS"). The award of a contract to FourThought under the RFP would violate the RFP and Nebraska law (and potentially federal law) by contracting with a party that has a conflict of interest, has been provided with an unfair advantage in the bidding process, and is far less as qualified than ACS to perform a very significant MMIS contract requiring extensive experience and technical skill. Such an award would be arbitrary and capricious and inconsistent with applicable law. For the reasons set forth below, ACS protests any award to FourThought and requests that the Nebraska Department of Administrative Services ("Department") refrain from any negotiations or award to FourThought pending resolution of this protest. ACS further requests that as a result of FourThought's inability to perform the MMIS

Government Solutions
1800 M Street, NW • Washington, DC 20036
202.378.2600 • 202.378.1800 (fax)

contract and ACS' position as the contractor next in line for award, the Department award the MMIS contract to ACS.

TIMELINESS

This protest is timely filed under Section T.1. of the Services Vendor Manual, State of Nebraska Administrative Services, Materiel Division—State Purchasing Bureau (September 2007) and the Standard Conditions and Terms of Contractual Services Solicitation and Offer, because it is filed within ten (10) calendar days after the intent to award decision was posted to the internet. The State Purchasing Bureau posted the intent to award decision on the internet on November 21, 2007.

BACKGROUND

1. In June 2004, the Department awarded a contract to GovConnect, Inc.("GovConnect") to provide consultant services to assist the Department to procure and develop a new MMIS, or enhance the current MMIS ("GovConnect Contract"). Under the GovConnect Contract, GovConnect "identified and conducted cost/benefit analysis on alternatives and provide recommendations for MMIS enhancement, in-house development, replacement, and/or fiscal agent procurement and prepared an Advance Planning Document (APD), Request for Proposal (RFP) and a Proposal Evaluation Plan (PEP).

2. In July 2004, FourThought and GovConnect entered into a subcontract under the GovConnect Contract and FourThought provided consulting services under the GovConnect Contract to the state of Nebraska.

3. On information and belief, as part of its performance of its subcontract, FourThought was involved in the Department's internal discussions and decisions regarding the development of a new or enhanced MMIS, and had access to the internal data and documents created for and by the Department for purposes of developing a RFP for a new or enhanced MMIS.

4. GovConnect's and FourThought's services under the GovConnect Contract were extensively utilized and facilitated the Department's issuance of RFP 1158Z1 for the development and implementation of a new MMIS.

5. The RFP contemplated a significant contract to develop and implement a new MMIS for Nebraska.

6. On December 15, 2005, the Department issued RFP 1158Z1 and received proposals from four bidders including FourThought and ACS.

7. After receiving and evaluating proposals, the Department disqualified two bidders and ended the procurement because no bids fell within the amount appropriated for the MMIS project. The Department rejected FourThought's proposal because of a conflict of interest or the appearance of a conflict of interest arising from FourThought's performance of consulting services under the GovConnect Contract. A second bidder's proposal was rejected for non-compliance with federal

Government Solutions
1800 M Street, NW • Washington, DC 20036
202.378.2600 • 202.378.1800 (fax)

law. Apparently, ACS' and another bidder's proposals were rejected for exceeding the amount appropriated for the MMIS project.

8. In June 2006, FourThought filed a letter of grievance and protest alleging that the Department had made an erroneous decision in finding that FourThought had a conflict of interest. No response by the Department to FourThought's protest letter has been made public.

9. On October 18, 2006, FourThought filed suit in the District Court of Lancaster County, Nebraska against various officials in the Department involved in the decisions under RFP 1158Z1 claiming violation of state procurement statutes, denial of due process and deprivation of rights under the United States Constitution. As relief, FourThought sought, among other things, award of the contract under RFP 1158Z1. FourThought's suit was dismissed by the District Court and Court of Appeals.

10. In the Complaint filed by FourThought against the Department and several Department employees, FourThought claimed the Department's determination that FourThought had a disqualifying conflict of interest was "erroneous, careless and arbitrary." Complaint at ¶ 36. In the litigation, the Department vigorously defended its determination of FourThought's disqualifying conflict of interest, and convinced the District Court and the Court of Appeals to dismiss FourThought's claims with prejudice. On August 23, 2007, the Court of Appeals entered judgment, affirming the District Court's dismissal of all of FourThought's claims. Attached as Exhibits 1 is the Complaint, and the decisions of the District Court and Court of Appeals.

11. On information and belief, during the litigation of FourThought's suit against Department officials, FourThought requested, and the Department provided it, more than 1700 internal Department documents related to the preparation of RFP 1158Z1 and evaluation of the proposal submitted in response to RFP 1158Z1.

12. From March 2007 to July 2007, ACS submitted multiple requests for information under the Nebraska Public Records Act, Neb. Rev. Stat. § 84-712, to obtain information related to RFP 1158Z1 in order to better understand the reasons RFP 1158Z1 was cancelled. Each request was denied by the Department except that the Department provided ACS some score sheets and evaluation forms on July 2, 2007. A chronology of ACS's requests for information is attached as Exhibit 2 to this letter, and discussed further below.

13. On May 2, 2007, the Department issued RFP 2017Z1, which in all material respects represented a reissuance of RFP 1158Z1. RFP 2017Z1 included certain formatting changes and other updates but sought the same services and system as were requested by the Department under RFP 2017Z1. When Kay Anders, the ACS Solutions Architect reviewed the two RFPs, she concluded that:

> In comparing the work that ACS did for the Nebraska response we found that the **2 RFPs were not materially different** as far as our solution was concerned. The comparison showed that the 2nd version had been enhanced to provide detail on areas and to add detail on the processes of the procurement and the implementation as opposed to the system and tools to be introduced.

Government Solutions
1800 M Street, NW • Washington, DC 20036
202.378.2600 • 202.378.1800 (fax)

The biggest change that we made for the 2^{nd} response was the inclusion of McKesson software. In addition ACS had changed their tool in some instances that is being used in our organization. The use of these tools across the organization provides various incentives to the State of Nebraska.

ACS was able to review the responses prepared before and introduce more detail as well as update the response with new functionality that had been added to our system or new tools that we had used for the company. In addition our proposal staff used updated versions of windows and reports for the proposal.

A general comparison of the two RFP requirements is attached as Exhibit 3 to this letter.

14. RFP 2017Z1 including the following provisions regarding evaluation of proposals:

K. PROPOSAL EVALUATION

The State will conduct a fair, impartial and comprehensive evaluation of all proposals in accordance with the criteria set forth below. The criteria for determining a responsible bidding shall include bit not be limited to:

1. The ability, capacity and skill of the bidder to deliver and implement the system or project that meets the Requirements of this request for Proposal;
2. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
3. Whether the bidder can perform the contract within the specified time frame;
4. The quality of the bidder performance on prior contracts;
5. Such other information that may be secured and that has a bearing on the decision to award the contract; and
6. Cost.

UU. BEST AND FINAL OFFER

The State will compile the final scores for each proposal, technical and cost. The award may be granted to the highest scoring responsive and responsible bidder. Alternatively, the highest scoring bidder or bidders may be requested to submit best and final offers. If best and final offers are requested by the State and submitted by the bidder, they will be evaluated (using the stated criteria), scored and ranked by the Evaluation Committee. The award will then be granted to the highest scoring bidder. However, a bidder should provide its best offer in its original proposal. Bidders should not expect that the State will request a best and final offer.

15. Proposals under RFP 2017Z1 were submitted by FourThought, ACS and Goldstone Technologies Ltd and received by the Department on August 9, 2007.

Government Solutions
1800 M Street, NW • Washington, DC 20036
202.378.2600 • 202.378.1800 (fax)

24. On information and belief, FourThought does not have the qualifications or staff size to bid on the NE MMIS. FourThought's lack of qualifications are evidenced by the following facts which ACS states on information and belief:

FourThought has never been the prime contractor on a MMIS implementation;

FourThought is not operating, nor has it ever operated the system it is proposing nor any other MMIS;

FourThought has never had the responsibility for a development project of this size;

FourThought has no known references that have attested to its ability to develop and implement a MMIS;

FourThought has no experience in re-platforming the proposed system into a Net environment as they are proposing to provide the state of Nebraska.

According to Dun and Bradstreet, FourThought has only 55 employees, is in the business of "business consulting" and had net sales of $3.6m. *See*, Dun and Bradstreet Report dated November 17, 2007 (attached as Exhibit 4.)

BASIS FOR PROTEST

1. **<u>FourThought has a Conflict of Interest that Precludes it Award of a Contract under RFP 2017Z1.</u>**

During the evaluation of the original RFP for the new MMIS system, the Department correctly determined that FourThought had a conflict of interest or appearance of a conflict of interest as a result of its performance under the GovConnect Contract. The Department took the appropriate action and rejected FourThought's proposal on these grounds. The Department should make the same determination here.

During its performance under the GovConnect Contract, FourThought had special access to the internal discussions, data, and processes of the Department and the specific staff involved in developing the original RFP and RFP 2017Z1 and in evaluating the proposals under these RFPs. ACS did not have this special access. While FourThought argued it had no conflict because it was not the prime contractor under the GovConnect Contract, it actively participated in the development of the original RFP and worked hand-in-hand with GovConnect is this regard; the Department's determination that FourThought had a disqualifying conflict despite its status as a mere subcontractor was a correct application of Nebraska law. This unique relationship with and involvement with a contractor which assisted the Department under a contract that served as the springboard for RFP 1158Z1 created a conflict or the appearance of a conflict that precluded FourThought from award under RFP 1158Z1. Since there is no material difference between RFP 1158Z1 and RFP 2017Z1, the same disqualifying conflict exists under RFP 2017Z1 and precludes FourThought from award. This conflict cannot be cured by canceling one RFP and issuing a second for virtually the same requirements. The special access FourThought had to internal Department

Government Solutions
1800 M Street, NW • Washington, DC 20036
202.378.2600 • 202.378.1800 (fax)

deliberations, contract specification, and decision-making provided FourThought a patently unfair advantage in bidding on both RFPs, and disqualifies at from and on RFP 2017Z1.

The contract awarded under RFP 2017Z1 represents a contract "for services subject to federal law, regulation, or policy" or "contracts involving state or federal financial assistance passed through by a state agency to a political subdivision." Neb. Rev. St. § 73-507. Because of the federal involvement in such contracts, federal regulations govern the procurement selection process. The Code of Federal Regulations (CFR) 45 C. F. R. § 74.43 states the following with respect to conflicts of interest:

> The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, *contractors that develop or draft grant applications, or contract specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. . . .*

45 C. F. R. § 74.43 (emphasis added). In *Medco Behavioral Care Corp. of Iowa v. State, Dept. of Human Services*, 553 N.W.2d 556 (Iowa 1996), the Supreme Court of Iowa upheld the disqualification of the successful bidder for a state Medicaid managed mental health care contract. *Id.* at 568-569. The *Medco* court held the disqualification was warranted by the "appearance of impropriety that tainted the procurement process" as a result of the bidder's connection with a contractor that assisted the state in a policy analysis that served as springboard for the state's request for proposals (RFP) and further an indirect connection between bidder's cosubsidiary and the company that actually prepared the RFP. *Id.* Even though no actual improper sharing of information between the bidder and its contacts was established, the court found the appearance of impropriety arising from the bidder's connections with insiders that helped superintend the process for receiving and evaluating bids could not be mitigated. *Id.*

As with RFP 1158Z1, the law requires that the Department reject FourThought's proposal under RFP 2017Z1 on a basis of a conflict of interest. Because FourThought has a conflict of interest in cannot receive an award under RFP 2017Z1. ACS submits that, in light of these facts, any decision to award the contract to FourThought would be arbitrary and capricious, inconsistent with Nebraska Statutes and regulations, and made upon unlawful procedure.

2. <u>The Procurement Selection Process under RFP 2017Z1 was not Open and Fair as Required By Nebraska and Federal Law</u>

ACS has been unfairly treated by the Department due to the repeated denial of relevant information to ACS, while at the same time providing such information to FourThought. The Department denied ACS information both in the form of timely access to documents and access to Department officials. ACS believes this significantly disparate access to relevant information has severely prejudiced ACS, and has given FourThought an unfair advantage in the bidding process. In addition, ACS believes the denials of its requests for information may violate the Nebraska Open Records Act, at Neb.Rev.Stat. § 84-712.

A. Access to Department Representatives

In the time period between the two RFPs, ACS attempted to engage with the State of Nebraska to learn about their lessons learned from the first RFP. ACS approached Richard Nelson, to have executives from ACS visit with Department executives on November 7, 2006. Mr. Nelson originally accepted the meeting, then canceled "due to the FourThought legal action." Mr. Nelson advised as follows:

> You may be aware that FourThought, Inc. has filed suit against me and others in the District Court of Lancaster County, Nebraska, as a result of the decision to not award a contract to them for the MMIS system. Since you firm was also a bidder on that contract, I feel it would be inappropriate to discuss with you anything dealing with MMIS. Normally, I would be happy to visit with any vendors or potential vendors under conditions that do not violate our state procurement processes. I do not believe a meeting with you that excluded discussion of MMIS or any proposed RFP would violate those procurement standards. However, a meeting such as you have proposed is awkward at this time . . . I have concluded that it is prudent to cancel our meeting.

Again in late January 2007, ACS requested a meeting with Chris Peterson, who is now the CEO of the Nebraska DHHS. ACS has been informed, through its consultant that, because of ACS' status as a potential bidder the Department would not meet with ACS. This is the same direction that was given to Dick Nelson, who preceded Mr. Peterson.

B. Access to Documentary Information

Because the Department officials refused to speak with ACS, ACS requested relevant information relating to the first procurement from the State in February 2007. ACS' requests for information began on February 21, 2007, when Roger Linnell, ACS Vice President, submitted a FOIA request to the ACS Bid Desk (Pedro Carroll) for documentation related to the *Nebraska MMIS Replacement System* procurement, RFP Number 1158Z1, issued on 12/15/05 by the Nebraska Department of Administrative Services on behalf of the Department of Health and Human Services (DHHS) Finance and Support. Materials requested included (1) Bidders' cost proposal (incl. BAFO), (2) Evaluation forms for technical proposals, and (3) Evaluation forms for cost proposals, for all bidders who submitted proposals in response to the 2005 RFP (ACS, FourThought Group, Infocrossing and CNSI).

As per the ACS Bid Desk FOIA process, the FOIA request was submitted via email to INPUT, a resource used to submit and manage FOIA requests on behalf of ACS. INPUT received some of the materials that ACS requested, including the BAFOs and cost proposals submitted by ACS, CNSI and Infocrossing. Neither the BAFO nor the cost proposal submitted by FourThought Group was made available. Despite repeated attempts by INPUT to secure the evaluation forms from the State, ACS was not able to receive them via INPUT.

The score sheets and evaluation forms were finally received by Roger Linnell through Cline Williams law firm, based in Lincoln, Nebraska.

Representatives from the State of Nebraska contacted by INPUT regarding this FOIA request, listed in order of contact made by INPUT, include:

Ruth Gray
Contracting Officer
Office: 402-471-2401
Fax: (402) 471-2089
Email: matpurc@notes.state.ne.us

Don J. Medinger
DAS Materiel Administrator
301 Centennial Mall South, P.O. Box 94847
Lincoln, NE 68509-4847
Office: (402) 471-2401
Fax: (402) 471-2089

Department of Health and Human Services
PO Box 95026
Lincoln, NE 68509-5026
Office: (402) 471-3121

Mark Mitchell
Email: mark.mitchell@hhss.ne.gov

Judi Angel, Secretary
Materiel Purchasing Division
Office: (402) 471-2401
Fax: (402) 471-2089

Sharon Zimmerman
Administrative Assistant
DAS Materiel State Purchasing Bureau
Office: (402) 471-4123
Fax: (402) 471-2089
Email: szimmer@notes.state.ne.us

Jenifer Roberts Johnson
Office: (402) 471-5278

Attached as Exhibit 2 is a spreadsheet identifying ACS' efforts to obtain relevant documentation. From February, 2007 through the end of June, 2007 the State did not provide any of the information ACS requested. During this time period, the Department made no legally sufficient objection to providing the requested documents. Only after ACS employed the law firm of Cline Williams did ACS receive any information. During that process, it is ACS' understanding that that while ACS was being denied access to the State and the State was refusing to give ACS any information, they had provided FourThought over 1700 pages of material. We understand that the information included documentation relevant to FourThought's bid on the second RFP.

Unfortunately, while FourThought had this material for over a year, ACS was given the one document (score sheets and instructions) only a month before its proposal was due to be submitted. And the score sheets were received over 4 months after ACS made a formal request, and 2 months after the second RFP had been released. ACS believes the improper withholding of requested documents not only made the bidding process incurably unfair, but that it also violated the Nebraska Open Records Act. ACS, by separate letter, renews its requests for all relevant documents relating to the bidding process. Further, under Nebraska law all agency directors "shall be responsible for maintaining accurate documentation of the process used for selection of all contracts for services[.]" Neb. Rev. Stat. § 73-505.

FourThought's exclusive access to the Department's internal processes during its performance under the GovConnect Contract and to more than 1700 documents related to the MMIS procurement during its litigation against Department officials, undermined the openness and fairness of the selection process.

Nebraska and federal law require that procurement selection be fair, open, and free. When FourThought worked with GovConnect in the development of RFP 1158Z1 and was provided exclusive access to numerous documents and other confidential Department information and deliberations related to the MMIS procurement, it created and unlevel playing field. ACS did not have the "insider" access to the Department and its prime contractor responsible for developing the MMIS requirements. Further, ACS was repeatedly denied the same access that was provided to FourThought. As noted by the *Medco* Court "[p]ersons or enterprises bidding on public contracts must do so on a level playing field . . . [b]ecause of the *appearance* of a conflict of interest, it will not suffice to tell other bidders not to worry because of the niceties of self-structured embargoes." *Medco* at 568-569. The lack of openness and unfairness created by FourThought's exclusive access to the Department and RFP information cannot be mitigated and FourThought must be precluded from award of the MMIS contract.

FourThought, when it decided to become involved with and profit from the GovConnect Contract made this choice; it chose then to limit its involvement in the RFP process to being a consultant. It cannot profit in both ways, and bootstrap it special advantages as a consultant with GovConnect to becoming a bidder on the very RFP it helped design.

ACS believes the improper withholding of requested documents made the bidding process incurably unfair. ACS submits that, in light of these facts, any decision to amend the contract to FourThought would be arbitrary and capricious, inconsistent with Nebraska Statutes and regulations, and made upon unlawful procedure.

3. FourThought is not the Lowest Responsible Bidder Because it is Not Qualified to the Perform the MMIS Contract

FourThought does not have the requisite qualifications and has not submitted a proposal that meets the requirements of RFP 2017Z1. RFP 2017Z1 states that the criteria for determining a responsible bidder includes "[t]he ability, capacity, and skill of the bidder to deliver and implement the system or project that meets the requirements of this Request for Proposal" and "[t]he quality of bidder performance on prior contracts."

FourThought (1) has never been the prime contractor on a MMIS implementation, (2) is not operating, nor has it ever operated the system it is proposing nor any other MMIS, (3) has never had the responsibility for a development project of this size, (4) has no known references that have attested to its ability to develop and implement a MMIS, and (5) has no experience in re-platforming the proposed system into a Net environment as they are proposing to provide the state of Nebraska. For these reasons, FourThought is not a responsible bidder, and any decision to award the contract to FourThought was arbitrary and capricious and inconsistent with Nebraska Statutes and regulations.

4. <u>FourThought is not the Lowest Responsible Bidder Because the Department Failed to Consider Changes to FourThought's Technical Proposal after Submission of BAFO's</u>

RFP 2017Z1 states at Section UU "[i]f best and final offers are requested by the State and submitted by the bidder, they will be evaluated (*using stated criteria*), scored and ranked by the Evaluation Committee." RFP 2017Z1 at Section UU (emphasis added). The RFP stated six criteria for determining a responsible bidder and five of the six criteria addressed a bidder's technical qualifications. RFP 2017Z1 at Section K.1-5. Only of the criteria addressed a bidders cost to perform the contract. RFP 2017Z1 at Section K.6. The RFP clearly requires the Department to evaluate both technical and cost criteria after bidders submit BAFO's. Nevertheless, after receiving BAFO's from FourThought and ACS, the Department changed each bidder's cost proposal but made no changes to each bidder's technical proposals. Based on a significant price reduction in FourThought's BAFO that could not be accounted for in the changes requested by the Department, the Department did not properly evaluate FourThought's or the other bidder's technical proposals after the BAFO's were submitted.

In its request to the bidders for BAFO's, the Department requested that bidders consider cost adjustments in the following three areas: (1) Retainage amount reduced from 15% to 10%, (2) Ongoing License Costs and any hardware maintenances cost through SFY12 and (3) accurately reflect licensing costs for SharePoint Standard Client Access Licenses from the State of Nebraska. Only the reduction in the retainage amount provided a potential cost savings to bidders in form of interest on the additional amount not retained by the Department. Under the MMIS contract the total saving would be approximately $200,000. The other two cost adjustments would be expected to increase a bidder's cost proposal.

ACS submitted its BAFO and made appropriate adjustments based on the Department's request. ACS' adjustments amounted to a slight increase in its original proposal from $48,255,680 to $ 49,067,262 to account for additional costs associated with increased licensing and hardware maintenance costs. By contrast, FourThought's adjustment to its Cost Proposal amounted to a decrease of over $7 million dollars from $55,351,400 to $48,976,056, or over 11% of the total cost of its proposal. Under any reasonable proposal scenario, FourThought's $7 million dollar price cut in its BAFO would require FourThought to either significantly reduce its person hours under the MMIS contract or require a reducing staff, shifting the staffing off-shore, reducing scope, significantly changing deliverables and/or time schedules or some combination of these. By ACS's conservative estimates, such a price reduction amounts to an approximately 80,000 person hours reduction in services under the contract

Instead of conducting an appropriate cost realism analysis and adjusting the proposal scoring to decrease FourThought's technical proposal score to correspond to the increase in its cost proposal score resulting from the over $7 million dollar cost reduction, the Department gave FourThought credit for it's cost reduction and left FourThought's technical proposal score unchanged. Notably, while FourThought's original cost proposal was $7,095,720 higher than ACS', after having the

Government Solutions
1800 M Street, NW • Washington, DC 20036
202.378.2600 • 202.378.1800 (fax)

opportunity to review ACS' original cost proposal and to submit a BAFO, FourThought's cost proposal was now $91,206 lower than ACS. This resulted in FourThought receiving a final proposal score that was slightly higher than ACS's final score and not reflective of the true cost for FourThought to perform the contract or lower quality performance that would result from FourThought's reduced cost proposal. Had the Department properly reevaluated the technical scores after receiving BAFO's, FourThought's technical proposal score would have decreased to reflect at least an 11% decrease in FourThought's cost to perform the MMIS contract. The Department's failure to properly evaluated FourThought's technical proposal was arbitrary and capricious and prejudiced ACS's proposal by unfairly scoring FourThought's proposal higher than ACS's.

5. **FourThought violated the RFP by Failing to Submit a Proposal that was Arrived at Without Effort to Preclude the State of Nebraska from Obtaining the Lowest Possible Competitive Price.**

If ACS did not change its technical proposal in its BAFO to correspond to the 7 million dollar reduction in its cost proposal, such a cost reduction without a change in the technical aspects of the proposal suggest that FourThought did not submit its original proposal without an effort to ensure that the State of Nebraska obtained the lowest competitive. The Standard Conditions and Terms of Contractual Services Solicitation and Offer included in the RFP states that the bidders signatures guarantees that the prices quoted have been arrived at "without effort to preclude the State of Nebraska from obtaining the lowest possible competitive price." RFP 2017Z1 at Page ii. FourThought's inflated original cost proposal provided FourThought with the opportunity to assess the cost proposals of other bidders after the initial proposal submission and sizes it cost proposal in its BAFO to those submitted by other bidders. This opportunity was not afforded to ACS since ACS complied with the requirements and did not submit an inflated cost proposal. FourThought's violation of the RFP gave FourThought an unfair advantage over other bidders and undermine the competitive selection process.

F. Potential Consequences to State of Erroneous Award of Bid to FourThought

ACS believes the consequences to Nebraska of an erroneous award to FourThought could be severe, and would include the following:

- Provider disappointment, lack of trust in system that doesn't work or has serious flaws, and getting paid late or not at all, due to design, development and implementation (DDI) problems by FourThought for the new MMIS.
- Bad press from any failure and anger by providers, legislators, governor, etc.
- American Medical Association, CMS, or other provider organizations involved and creating a stir in the press and politically.
- Additional costs to Nebraska to reprocure the MMIS a third time for a new MMIS RFP to replace the one FourThought tried to design, develop and implement.
- Additional costs to Nebraska to extend staff's operation of the current MMIS if implementation is late. The current system is obsolete and may require more Nebraska's staff to operate than a new state of the art MMIS already operating in another state successfully and certified by CMS.

- CMS questions, concerns and future doubts of Nebraska's ability to procure a qualified vendor.
- Accusations that Nebraska steered the award to FourThought purposefully.
- CMS questions, concerns and doubts of FourThought's ability to succeed in this line of business (DDI of an MMIS).

REQUEST FOR DOCUMENTS

ACS reserves the right to amend this protest based on the discovery of any relevant information contained in the documents requested. Further, ACS requests that the Department refrain from making a decision on this protest and from awarding a contract to FourThought until such documents have been provided to ACS and ACS has had an opportunity to amend it protest based on any relevant new information discovered in the documents. That ACS has requested but have not received, and any additional records ACS requests today. We further request

RELIEF REQUESTED

FourThought's conflict of interest in this case cannot be mitigated and FourThought failed to provide a proposal that meets the requirements of the RFP. Based on the scoring summary provided by the Department, ACS is the next highest rated bidder. Therefore, ACS requests that the Department eliminate FourThought from the competition as a non-responsible and non-responsive bidder and award the MMIS contract to ACS. We further request that all negotiations with FourThought cease until the issues raised in this protest letter have been addressed in full.

To the extent the Department does not eliminate FourThought on the basis of a conflict of interest, ACS requests that the RFP be resolicitated to remove the taint from FourThought's exclusive access to "inside" information and its submission of an inflated initial bid.

ACS requests a hearing with representatives of the Department.

We look forward to discussing this matter with you and to a resolution that is satisfactory to the Materiel Division and ACS, and maintains the integrity of Nebraska's competitive selection process. Please let us know if we can provide additional information to assist in your review and consideration of our protest.

Christopher T. Deelsnyder
Managing Director and
Senior Vice President

Government Solutions
1800 M Street, NW • Washington, DC 20036
202.378.2600 • 202.378.1800 (fax)

STATE OF NEBRASKA

Dave Heineman
Governor

DEPARTMENT OF ADMINISTRATIVE SERVICES
Carlos Castillo
Director
Suite 1315, State Capitol
Lincoln, Nebraska 68509-4664
Phone (402) 471-2331

December 31, 2007

Mr. Christopher T. Deelsnyder
Senior Vice President
Government Solutions
1800 M Street, NW
Washington, DC 20036

Re: Protest by ACS State Healthcare, LLC; RFP 2017Z1 for MMIS

Dear Mr. Deelsnyder:

This letter is provided in response to the protest letter tendered by ACS. Please review and consider the responses set forth below.

Background

The following responses to the "background" paragraphs in the protest are provided below. The numbers identify the paragraphs in the protest to which responses are made. It may be assumed, for purposes of this response, that those paragraphs which are left out contain accurate statements; however, the State reserves the right to modify or amend this response or any statements made herein in the future should further investigation become necessary.

3. The documents that were developed and resulted in the Alternative Analysis referred to by ACS are public records. The recommendations and actual Analysis documentation from the previous Alternative Analysis were also posted for public viewing at http://www.dhhs.ne.gov/med/mmis. In addition, FourThought Group did not participate in the alternatives analysis or development of RFP 2071Z1.

11. In response to public records requests received from FourThought Group and from their counsel, DHHS produced a number of documents related to RFP 1158Z1.

12. DHHS did not receive any public records requests from ACS related to the MMIS project in March 2007 or July 2007. However, in April 2007, May 2007 and June 2007, DHHS responded to public records requests from Input, apparently filed on behalf of ACS. DHHS was unaware of any connection between Input and ACS. DHHS received four undated requests for public information from Input.

The first request was for public information "pertaining to the information on the MMIS requirement (Solicitation RFP 1158Z1) awarded to CNSI, Infocrossing, ACS, FourThought Group." As no award had been made in regard to RFP

1158Z1, Interim Director Dr. Joann Schaefer responded to the request on April 20, 2007 indicating that since no award was issued and all bids were rejected DHHS was not in possession of any documentation related to the award of the contract. In addition, the letter indicated "Should you wish to request similar information pertaining to the non-award of RFP 1158Z1 please submit a letter indicating such."

The second request for public information was responded to by Interim Director Dr. Joann Schaefer on May 1, 2007. This request was for information "pertaining to the contract awarded for the Medicaid State Plan requirement Section 4.19 of the State Plan." Because Medicaid did not have such a contract in place, Dr. Schaefer, in her letter, indicated again that "[DHHS] is not in possession of the documents that you have requested and further stated "Should you wish to request information related to a specific contract or a specific provision of Nebraska's Medicaid State Plan please submit a letter clearly outlining what you are requesting."

A third request was faxed to a Mike Mitchell with Health and Human Services. Mr. Mitchell forwarded the letter on to the DHHS Legal Division to obtain the response of Vivianne Chaumont, Director of the Division of Medicaid & Long-Term Care. The letter again requested "information on the MMIS requirement (Solicitation RFP 1158Z1) awarded to CNSI, Infocrossing, ACS, FourThought Group. Director Chaumont responded to the request on May 17, 2007, indicating "You have requested information pertaining to the MMIS requirement award. There was no award issued for RFP 1158Z1, in fact all bids were rejected. Therefore, [DHHS] is not in possession of any documentation related to an award of RFP 1158Z1."

A fourth request, again undated, was routed to the Medicaid Division. Input requested "Section 4.19 of the Medicaid State Plan, particularly Sec 4.19b." The program staff responded directly to Input by providing that portion of the Medicaid State Plan. This would have been on or around June 7, 2007.

13. DHHS made significant and deliberate efforts to undertake the issuance of a new MMIS RFP, that being RFP 2017Z1. DHHS hired an independent party, Richard Sansbury, to assist it in completing a new Alternatives Analysis based on potential changes in the needs of the State and the changes in the MMIS industry (i.e. new or changed technology). An entirely new Alternatives Analysis was completed prior to the issuance of RFP 2017Z1, which resulted in a number of changes to the RFP requirements. In addition, the length of the project was significantly expanded and functionality requirements were removed, reduced and added. DHHS staff spent many months reviewing every aspect of the RFP, in light of the new Alternatives Analysis and other changes, and developed the new RFP 2017Z1.

Some examples of the changes that were made include the following: (1) DHHS reviewed and determined that the project time frame for validation, design, and development would be extended to two years, which was four months more than had originally been provided (based on its observation of what other states were doing with comparable projects); (2) the Acceptance Testing phase was increased from 16 weeks to 52 weeks; (3) parallel testing was given more emphasis; (4) the Acceptance Testing Scope of Work Task was extensively expanded; (5) the "Go Live" date for the system was similarly adjusted from 24 months to 36 months; (6) Operational Readiness language was added to the Implementation Scope of Work Task; (7) the six months for certification support following "Go Live" was changed to six months of certification support following Implementation Assurance Support; (8) Nine months of maintenance and support assistance following the completion of implementation was extended to twelve months maintenance and support following completion of the Implementation Assurance Support with options for up to three additional one-year increments; (9) Provider Implementation Support was significantly enhanced; (10) There were significant changes to the Maintenance and Support Task, with time frame extended from 9 months to 12 months and staff was increased four to a team. Not all of the significant changes are listed here.

The fact that the vendor chose to make only slight changes in its response to the RFP does not in any way reflect the State's effort in developing the new RFP. In addition, it does not take into account the reorganization of DHHS that occurred between the non-award of RFP 1518Z1 and RFP 2017Z1, in that a new leadership team was in place supervising DHHS' requirements. Ultimately, DHHS was seeking an MMIS solution.

14. DHHS conducted its review of the RFP proposals in accordance with the terms listed in K. Proposal Evaluation and UU. Best and Final Offer.

21. DHHS did not request any changes to the technical components through its BAFO posting, only cost adjustments.

22. The changes requested through the BAFO were cost changes only.

23. Reevaluation of the technical component was not necessary based on the fact that there were no changes requested or indicated by the bidders to the technical component of the proposal. The requests in the BAFO related directly to cost.

24. FourThought Group provided the highest scoring proposal. The proposal reflected an acceptable approach to providing Nebraska's MMIS solution.

Basis For Protest

The following responses to the "basis for protest" portion of the protest are provided below. The State reserves the right to modify or amend this response in its entirety in the future should further investigation become necessary.

1. FourThought has a Conflict of Interest that Precludes its Award of a Contract under FRP 2017Z1.

Response:

DHHS took appropriate steps to start the MMIS project anew following the non-award of RFP 1158Z1. DHHS engaged an independent party to conduct a new Alternatives Analysis and assessed the needs of the State with a thorough evaluation prior to the issuance of RFP 2017Z1.

The information related to the analysis completed under RFP 1518Z1 was public information and the assessment and results were posted on-line as noted in the response to paragraph 3. The Alternatives Analysis completed for RFP 1518Z1 was not utilized in developing RFP 2017Z1. Only a certain number of viable alternatives can be considered by DHHS in assessing its MMIS needs. Each of these alternatives was explored by Richard Sansbury, an independent consultant, alongside DHHS personnel prior to the development of RFP 2017Z1. The evaluation of DHHS' needs and the resultant RFP 2017Z1 were completed wholly by Mr. Sansbury and DHHS personnel without the input or involvement of any of the vendors that submitted bids for RFP 2017Z1.

There were a number of differences between RFP 1518Z1 and RFP 2017Z1. Material changes were made related to functionality and the length of the project was significantly increased. Due to the fact that DHHS was attempting to procure an MMIS system, many of the RFP requirements were the same. However, many significant changes were made related to the functionality of the system, and the length of the project was significantly increased. MMIS systems must contain specific functionality in order to execute the purpose for which it is designed. DHHS did not simply cancel RFP 1518Z1 and re-issue the same RFP as ACS contends.

A new Alternatives Analysis and RFP development were undertaken by DHHS prior to the issuance of RFP 2017Z1. Mr. Sansbury assisted DHHS in performing its Alternatives Analysis. He was not associated with any of the bidders and he continues to work with DHHS on the MMIS project. DHHS staff completed the development of the new RFP. None of DHHS staff involved with the development of the new RFP was associated with any of the bidders. Hence, there is no conflict or appearance of an organizational conflict of interest related to RFP 2017Z1.

In addition, DHHS believes that the award of the contract related to RFP 2017Z1 is supported by the scoring documents and is consistent with Nebraska Statutes and Regulations.

An Iowa Supreme Court case is cited. Iowa law does not control in Nebraska. Neb. Rev. Stats. § 73-507 does not make federal law applicable to a contract awarded under the RFP in question. The State's position is that it has followed applicable law in relation to the instant RFP process.

2. <u>The Procurement Selection Process under RFP 2017Z1 was not Open and Fair as Required By Nebraska and Federal Law.</u>

Response:

The selection process in which DHHS participated related to RFP 2017Z1 was open and fair as required by law. ACS has not been unfairly treated, as they contend, but through its own mishandling and miscommunication failed to submit a request for the records in question. DHHS clearly indicated to Input, the apparent representative for ACS related to public records request, that what had been requested did not exist. They were also informed that if they wanted information related to the non-award of RFP 1518Z1 they could request such information. Again, DHHS representatives responding to the requests from Input were unaware of any relationship between ACS and Input until this protest was filed. Had Input submitted a request for information asking for documents in the DHHS' possession, the request would have been granted; in contrast, FourThought Group's earlier requests related to RFP 1518Z1 were for documents that were within DHHS' possession. There was no intent on behalf of DHHS to withhold public information from ACS. On the contrary, the letters issued back to Input specifically reference that there was no award for the MMIS project, but gave Input the option to request the information related to the non-award. DHHS did not provide any type of advantage to FourThought Group related to this or any procurement. It should be noted that DHHS is in the process of accumulating information related to a public records request by ACS, which requested information that was actually in DHHS' possession.

A. During the pendency of the litigation that ensued related to the non-award of RFP 1518Z1, DHHS representatives did not meet with any vendor representatives related to the MMIS project. However, DHHS representatives did provide vendors the option of submitting any issues they wished to have addressed by the Directors in writing. This was in an effort to maintain a record of communications with the MMIS involved vendors during that time frame, given the fact that litigation was on-going.

B. The MMIS vendor selection process was fair and open. Each Public Records Request where public records existed were treated the same. FourThought Group did not have "insider" access to any information. Only information that resulted as a matter of public record or that was on file for public review at the District Court and Court of Appeals were available to any other interested party. The notes attached to ACS's protest as Exhibit 2 do not provide an accurate reflection of the information that was provided to Input, as outlined above in DHHS' response to paragraph 12.

3. FourThought is not the Lowest Responsible Bidder Because it is Not Qualified to Perform the MMIS Contract.

Response:

DHHS evaluated the responses to RFP 2017Z1 and determined that FourThought Group was the winning bidder. Corporate references were obtained for all three bidders and considered as part of the overall scoring process.

4. FourThought is not the Lowest Responsible Bidder Because the Department failed to Consider Changes to FourThought's Technical Proposal after Submission of BAFO's

Response:

The BAFO requested that bidders submit specific cost related information. There were no requested changes to the technical approach nor were then any changes to the technical approach indicated by the bidders. Specifically, DHHS through DAS, requested Best and Final Offers from FourThought Group and ACS. DHHS requested the bidders to resubmit a new cost proposal that included Schedules A through E, informed the bidders of a change in the Retainage amount, and clarified the time frame for consideration of Ongoing License Costs. There were no changes to the technical approach included and neither bidder indicated any resulting changes to their technical proposals.

In addition, there is no reference in the RFP or the BAFO requiring DHHS to evaluate both technical and cost criteria after bidders submit BAFOs, as ACS contends. This would not be the requirement, particularly when only the cost proposal has changed and the technical proposal has remained the same.

5. FourThought Violated the RFP by Failing to Submit a Proposal that was Arrived at Without Effort to Preclude the State of Nebraska from Obtaining the Lowest Possible Competitive Price.

Response:

The State disagrees that FourThought violated the bidding process or was able to obtain an advantage over competing bidders.

The request for documents has been handled by the Nebraska Department of Health and Human Services, to which it was addressed.

The decision is to deny the protest. Your concerns about the bidding process giving rise to the protest are sincerely appreciated.

Sincerely,

Carlos Castillo, Jr.
Director
Administrative Services

Steve Sulek
Acting Administrator
Materiel Division

CC:PG

Appendix H

accenture

Accenture LLP
[illegible]
Suite [illegible]
Austin, TX 78746
www.accenture.com

April 2, 2014

VIA ELECTRONIC MAIL SUBMISSION

Bo Botelho, Administrator
Material Division Administrator
Nebraska Department of Administrative Services
Nebraska State Purchasing Bureau
P.O. Box 94847
Lincoln, Nebraska 68509-4847

RE: RFP Number 4544Z1; *Replacement of current Medicaid Eligibility and Enrollment (E&E) System with a modern COTS-based Eligibility and Enrollment Solution (EES) that Meets the CMS Seven Standards and Conditions*; Notice of Protest/ Grievance

Dear Administrator Botelho:

Under the process specified by the Nebraska Department of Administrative Services, State Purchasing Bureau, ("the Department"), Accenture LLP ("Accenture") hereby submits this Notice of Intent to protest the award of RFP 4544Z1 ("the RFP") to Wipro LLC ("Wipro"). Accenture further requests a meeting with the Materiel Division Administrator to present our concerns with this award for your consideration.

After reviewing the Wipro Proposal Response to the RFP ("Wipro Proposal"), we have identified two primary areas of the Department's evaluation that, taken as a whole, fail to illustrate substantial and material evidence to support the Award. In particular, we believe the Wipro Proposal failed to comply with the RFP's mandatory requirements. Consequently, we believe that the Department should have disqualified Wipro as an eligible bidder. A summary of our concerns are outlined below:

1) Corporate Overview – Prior Projects

Section V.A.3.h of the RFP requires bidders to "*provide a summary matrix listing the* ***bidder's*** *previous projects similar to this Request for Proposal in size, scope and complexity*". The RFP further requires in subsection (i) that a "*Bidder must provide narrative descriptions to highlight the similarities between* ***their*** *experience and this Request for Proposal*" (*emphasis added*).

- In Wipro's RFP response, they provided three reference projects to demonstrate their corporate experience. Of these three and to be best of our knowledge and belief, Wipro had no role as either the prime contractor or as a subcontractor on two of the submitted projects, specifically North Carolina and South Carolina

- For one of the references, the North Carolina Families Accessing Services through Technology (NC FAST), Accenture is the prime contractor providing the systems integration work including Project Management, Design, Development and Implementation services to implement the solution. Wipro provides its reference based on the work done on that project by IBM. In fact, North Carolina has a separate contract with IBM for time & material resources to support the project. We believe that Wipro's statement that IBM was "Performing project management" is misleading.

- Furthermore, we note that, while the RFP allows bidders to provide references from their subcontractors in addition to their own, we believe that it was the intent of the RFP to establish whether a bidder is qualified to perform the role as a ***prime contractor*** for the implementation effort of the Nebraska EES Project.

- Wipro's Proposal lacks support for a conclusion that it is truly qualified. At Page III-46 of Wipro's proposal, Wipro reports that IBM's contribution "*represents 10-15% of the total number of hours projected in our workplan*".

- This level of IBM contribution to the final delivery effort is inconsistent with the use of IBM qualifications to substantiate Wipro's ability to meet the requirements of a prime contractor. Indeed, two of the three references Wipro provided represent qualifications of IBM alone, as Wipro did not participate in those projects. And, in both of these reference projects, IBM did not lead the system implementation effort. We therefore believe that Wipro failed to meet the test of a qualified prime contractor to implement the EES Project.

2) Corporate Overview – Prior Direct Experience

We have also identified a second category of deficiencies contained within Wipro's Proposal. In particular, these include Wipro's lack of experience as an actual prime contractor in implementing eligibility and enrollment solutions. These include the following:

- Failure to provide key staff with hands-on experience implementing HS or eligibility/enrollment solutions or with actual experience with the product they proposed. We have found through our own experience that having experience with the product is critical to project success.

- Inadequate testing approach and level of effort for something as complex as Medicaid eligibility. Eligibility for Medicaid is highly visible publically and thus requires adequate and thoughtful testing.

- An overall level of effort less than half that of the other competitors who proposed and who have actually performed as a prime contractor in this space. This puts the project at risk for quality issues, change orders and schedule slippage.

* * *

In contrast to Wipro's approach, Accenture took our responsibility as a potential prime contractor very seriously as we developed our proposal, evaluated and sized our solution and prepared for the possibility that we might be chosen as your partner. Here, Accenture believes that Wipro's failure to accurately portray their experience and solution model left the evaluation team unable to adequately assess the risk of their proposed approach or potentially disqualify them for their lack of relevant experience leading a complex eligibility implementation.

At bottom, Accenture believes that all of the foregoing illustrates that there was little if any substantial and material evidence contained in Wipro's Proposal to support the Department's Award. We submit this Notice of Intent to protest to persuade the Department to reconsider its award.

We look forward to discussing this with you in detail in our requested meeting. At that time, we will provide you with additional detail to assist you in your ongoing decision-making process regarding this critical program for the citizens of Nebraska.

Respectfully Submitted,

Deb L Morris

Debora L. Morris
Managing Director and
Global Executive Director, Accenture Integrated Eligibility
Accenture LLP

cc: David M. McCurley, Global Managing Director, Health and Public Service, Accenture Software
Andrew T. Lindsey, Managing Director, Health & Public Service, North America Sales
C. Ben Foster, Senior Director of Legal Services, Global Transactions, Accenture LLP

NEBRASKA AdministrativeServices

Appendix I

Gerry A. Oligmueller
Acting Director

Dave Heineman, Governor

April 23, 2014

COPY

Debora L. Morris, Managing Director and
Global Executive Director
Accenture LLP
1501 South MoPac Expressway, Suite 300
Austin, TX 78746

Re: RFP No. 4544Z1, Medicaid COTS-based Eligibility and Enrollment Solution
Protest of Award

Dear Ms. Morris:

We are in receipt of your letter dated April 2, 2014, as your protest of the Intent to Award in connection with RFP No. 4544Z1. Per our telephone conversation of that same date you indicated that it was Accenture's desire to receive a first level written response from the Materiel Administrator and NOT skip steps 1 and 2 of our Protest Procedure. For this reason, we are providing this written response and have not contacted you to schedule a meeting. After careful review and consideration of the matter, we find as follows:

Accenture states that Wipro has failed to comply with the RFP's mandatory requirements. Please see the enclosed Mandatory Requirements Checklist, which clearly indicates that Wipro LLC did, in fact, meet the mandatory requirements. The Mandatory Requirements items to be included were:

1. Request for Proposal for Contractual Services form signed in ink;
2. Executive Summary;
3. Corporate Overview;
4. Technical Approach; and
5. Cost Proposal.

Accenture has expressed concern regarding the Prior Projects identified by Wipro. Please note that Section V.A.3.h. of the RFP states that Bidders must provide narrative descriptions to highlight the similarities between their experience and this Request for Proposal. Subparagraph ii. further states:

> ii. Contractor and subcontractor(s) experience must be listed separately. Narrative descriptions submitted for subcontractors must be specifically identified as subcontractor projects."

Page III-9 of Wipro's technical proposal clearly identifies which projects were Wipro's and which were IBM's. The State has evaluated the RFP on the cumulative skills and experiences of the prime contractor and subcontractors, and thus Accenture's belief that the intent of the RFP is to establish whether a bidder is qualified to perform the role as a Prime Contractor is not accurate.

Accenture further expressed concern regarding the experience of Wipro. Again, the RFP was evaluated by many factors, including the cumulative skills and experiences of the prime contractor and subcontractors. The Agency is the subject matter expert and is in the best position to determine its own needs. DAS must defer to the Agency's expertise and knowledge of its service needs.

Materiel Division ° Bo Botelho, Administrator
Administrative Services • 1526 K Street, Suite 130 • P.O. Box 94847 • Lincoln, Nebraska 68509-4847 • Phone: 402-471-6500 • Fax: 402-471-2089

Absent some clear error, impropriety or wrongdoing, DAS must rely on the judgment of the Agency's evaluators. Based upon the information provided, I find no reason to reject the Award as evaluated by the Agency. Thus, the contract award will stand and the protest submitted by Accenture LLP is denied.

We thank you for your interest in doing business with the State of Nebraska.

Sincerely,

Bo Botelho, General Counsel and
Materiel Administrator
Administrative Services

cc: Peter Kroll, Buyer - State Purchasing Bureau
Kerry Winterer, Director - DHHS
Ruth Vineyard, Deputy Director - DHHS - Medicaid & Long-Term Care
Gerry A. Oligmueller, Acting Director - Administrative Services

BB:jls
Enclosure

RFP 4544Z1 Mandatory Requirements Checklist
Eligibility and Enrollment Solution (EES)
Opening Date/Time: January 21, 2014, 2:00 PM CENTRAL TIME

	Bidder	Mandatory Requirements							
		Request for Proposal for Contractual Services form signed in ink	Executive Summary	Corporate Overview	Technical Approach	Cost Proposal	Certificate of Insurance	Proprietary Information	Comments
1	Infosys	✓	✓	✓	✓	✓		✓	
2	Engesi Point Inc	✓	✓	✓	✓	✓		✓	
3	Unisys Corporation	✓	✓	✓	✓	✓		✓	
4	accenture llp	✓	✓	✓	✓	✓			
5	wipro llc	✓	✓	✓	✓	✓			
6	maricRis, llc	✓	✓	✓	✓	✓			
7									
8									
9									
		Reviewed By: S Thompson M Thompson			Date: 1/21/2014				

THE
STEPHEN
GROUP

Memo To: Mathew T. Wallen, Director, DCFS, Nebraska DHHS
Fr: John Stephen, Managing Director, The Stephen Group
Re: Assessment of The Outsource Model in Eastern Service Area: Executive Summary
Da: May 8, 2019

SCOPE AND METHODOLOGY

The Nebraska Department of Health and Human Services (DHHS) Department of Children and Family Services (DCFS) contracted with The Stephen Group (TSG) to perform an assessment of whether the Department should continue to outsource case management for in- and out-of-home cases in the Eastern Service Area (ESA). In addition to the insource vs. outsource feasibility study, TSG was also tasked with:

- Evaluating the existing service delivery system for services in the ESA and recommend a future state model;
- Defining the outsourced service delivery vision; and,
- Conducting impact analysis and providing recommendations for the path forward for the state.

TSG designed a comprehensive review to collect information using the following approaches:

- Review of prior audits, studies, and reports on the Nebraska child welfare system and the outsource in the ESA.
- Review of the existing contract, extensions, and amendments in Nebraska.
- Review of other state best practices in child welfare contracting.
- Review of financial, operational, and performance data from DHHS and PromiseShip.
- Interviews with DHHS and PromiseShip:
  - DHHS: Leadership, State office contract management and continuous quality improvement staff.
  - PromiseShip: Administrators, internal management across key functional areas, supervisors and FSR caseworkers.
- Meeting with the DHHS Division of Behavioral Health.
- Focus groups, process mapping, and analysis of the case transition process with DHHS and PromiseShip administrative, supervisory, and frontline caseworker staff from Douglas and Sarpy Counties.
- Interviews with key stakeholders, including the State's Inspector General, judges, county attorneys, state and county CASA officials, guardian ad litems, the Foster Care Review Board, the Nebraska Family Support Network, Project Harmony.
- Meetings with child welfare providers including facilitating a group call with providers operating in state-run and outsourced regions and individual provider interviews with the Nebraska Children's Home Society, Capstone BH Services, and Cedars.

After extensive review, TSG provides the following findings and recommendations that will be highlighted in the final report.

FINDINGS

Some common themes emerged throughout TSG's research related to gaps with the current outsource model. These include:

- A lack of clear vision for the State's objectives related to the outsource has made it difficult for the vendor and stakeholders to operate.
- A historical lack of collaboration between the State and vendor has prevented information and data sharing and undermined opportunities for innovation and development of system best practices.
- Uncertainty around the future of the contract has made it difficult for the vendor to make business decisions, invest in new services, and retain staff. The short-term incremental extensions undercut the vendor's ability to make long-term investments.
- The existing contract between the State and vendor has little focus on performance, and very few financial incentives to encourage innovation or drive performance improvement. The contract offers limited ability for the vendor's flexibility and experimentation, which are the primary benefits of using an outsource model.
- An inconsistent approach to contract management/monitoring which has prevented the State from realizing the full benefit of this model. TSG found state quality assurance, contract monitoring, and program staff to be extremely knowledgeable and creative in identifying potential ways to improve oversight of the contract but for various contractual and other reasons, they have not been able to follow through with those approaches.

Despite these challenges, the current ESA vendor has been able to achieve comparable cost and performance outcomes to the other four in-source service areas.

- After reconciling case counts and expenditures with DCFS and PromiseShip, TSG finds that the cost per case in the ESA is in alignment with the cost per case in all five service areas.
- Performance outcomes have improved significantly statewide (including in state-run and PromiseShip Service Areas) over the last several years. Performance outcomes, especially in the areas measured by the federal Administration for Children and Families Children's Bureau, have improved due to interventions such as implementation of the state's continuous quality improvement program and leadership provided by the state and PromiseShip. When it comes to specific measures, the finding conclusion of the 2014 Hornby Zeller report remains true: there are some measures where ESA performs better and others where it performs worse than other service areas.

The vendor has also been able to create a larger array of services than are available in other service areas. The ESA has a more robust supply of providers than the rest of the state and PromiseShip built some innovative services in response to the needs of the children and family it serves, through collaboration with providers in the Service Area. DHHS may consider evaluating whether any of the new services created by PromiseShip can be replicated in other regions. There are areas for improvement in terms of increasing alignment of expenditures with prevention services and services that are approved for Title IV-E funding under the FFPSA. In addition, the vendor is not maximizing federal funds because many IV-E eligible children have been placed with unlicensed kinship caregivers who are not eligible for federal funds.

Although the contract requires the vendor to follow strict adherence to all DHHS regulations and operating manuals, the vendor identified several innovations when given the chance. These will be discussed in more detail in the final report.

DCFS, PromiseShip and stakeholders spoke of the disruption of outsourcing but also the beneficial system reforms it has brought. They spoke positively of recent efforts between the state and vendor to improve collaboration and to create environment that will allow children and families to see the benefits of the outsource model more fully.

If the goals of outsourcing are to produce superior results and innovation, in constructing a different relationship with the future vendor and through improved financial and performance management of the contract, DCFS could see lower costs and improved outcomes. This could also allow Nebraska to fully realize the promise of an outsourcing model.

RECOMMENDATIONS ON THE PATH FORWARD

Based on what the existing vendor has been able to achieve and despite the obstacles that have emerged in the current outsource model, TSG recommends that should Nebraska continue to use an outsource model in the ESA, DCFS should make some important changes in the manner in which it manages the vendor relationship, which could allow the state to realize the benefits of outsourcing more fully.

Vision

The State needs a clear vision for outsourcing that defines success, demands accountability, encourages collaboration and eliminates competition between the State and the Subrecipient. This vision should lay the foundation how the parties will work together, how performance will be measured and focus on improving outcomes and reducing costs through innovation and efficiency.

DCFS should also engage ESA stakeholders around this vision. This is critical if Nebraska desires to create a community-based care model where the community takes ownership and accountability for child welfare outcomes, as Florida and other states have done.

Contract

The contract between the State and vendor must live up to this vision and ensure the vendor delivers better performance through clearly-defined objectives and metrics. The contract should include performance-based elements including financial incentives and remedies that drive progress. TSG reviewed other state performance-based child welfare contracts and past iterations of the DHHS/NFC (PromiseShip) contract and identified a number of best practice elements that would improve Nebraska's service delivery, which will be included in the final report. Some examples include more financial controls such as submission of an annual Cost Allocation Plan and monthly financial reporting, requiring the vendor to develop an array of services to meet federal FFPSA requirements, requiring the vendor to develop a Stakeholder Engagement Plan, and requiring the vendor to develop a transition plan to ensure continuity of services.

In finalizing a new contract, TSG recommends that the State balance the desire to be prescriptive with flexibility to allow the Subrecipient to be innovative. While there are many state and federal requirements that any vendor must meet, if the State truly desires innovation, it must provide the vendor with the opportunity to try things differently.

Contract Oversight

DCFS should develop a performance-based contract oversight process that is aligned with new contract requirements and promotes accountability. DCFS should develop a cross-functional Quality Assurance Team, charged with contract oversight. Led by a contract manager, this Team should include resources from across the Department, including contract monitoring, quality assurance/continuous quality improvement, and finance. This team will ensure collaboration and coordination internally, allow for the sharing of financial and performance data, and improve the flow of information between DCFS and the Subrecipient. This Team should engage the Subrecipient regularly to share monitoring findings and to discuss operational and strategic goals with the vendor.

Collaboration

TSG finds that there are many opportunities for DCFS to improve how it engages and collaborates a vendor to solve common problems. TSG offers several recommendations for how collaboration could be beneficial including through a reinstitution of quarterly state and vendor regional continuous quality improvement meetings, in establishing joint CQI activities which could allow the vendor's CQI resources to augment the state's resources, through joint financial management, and in development of a joint case transfer protocol, which could lead to efficiencies for state and vendor staff.

Engagement of Other DHHS Divisions

DHHS should create a Child Welfare Leadership Team, consisting of representatives from all divisions (DCFS, Division of Medicaid and Long-Term Care, Division of Behavioral Health, and Division of Developmental Disabilities) to improve planning, coordination, and service development for children and families. This will require focus on managed care contract procurement to focus on high needs, behavioral health and the integration of medical records. DHHS should improve data sharing across all divisions to focus on meaningful outcomes.

May 23, 2019

The Honorable Pete Ricketts
Governor of Nebraska
P.O. Box 94848, State Capitol
Lincoln, NE 68509-4848

Dear Governor Ricketts,

The Nebraska Department of Health and Human Services (DHHS), Division of Children and Family Services (CFS) worked with the Department of Administrative Services to conduct a procurement for case management services for the Eastern Service Area (ESA), which is comprised of Douglas and Sarpy counties. To help inform the process, CFS contracted with The Stephen Group (TSG) to perform an assessment of the current case management model in Nebraska and to help inform the RFP requirements. In addition, TSG was also assisted the Department with recommends for a future state model; assisted the Department to better define the outsource service delivery vision; and to conduct an impact analysis and provide recommendations for the path forward for the State of Nebraska.

A summary some of the key TSG findings and recommendations are as follows:

- DHHS/CFS vision for success for an outsource model has consistently changed, creating an ongoing challenge to determine success or failure;
- A historical lack of collaboration between the State and vendor has prevented information and data sharing and undermined opportunities for innovation and development of system best practices;
- Existing outsource contract lacks meaningful accountability provisions and performance standards;
- Any future outsourced model should develop a clear vision, performance standards and accountability with clear targets and incentives and remedies that will drive quality case management and child/family safety; and
- Data and financial reporting standards must be synthesized to improve collaboration and cost accounting needs to be regularly reviewed with clear data sets on cost allocation to maximize fiscal responsibility.

With a better understanding of the service delivery system in the ESA and a clear articulation of performance expectations; CFS initiated a competitive process for case management services for the ESA. DAS issued a performance based RFP on January 9, 2019 and final scores for the respondents were tabulated on May 10, 2019. The performance-based RFP includes earned performance incentives and retainage on identified key performance measures, and remedies for non-performance. In addition, the RFP requires the vendor to develop a "Community Engagement Plan" that highlights collaborative relationships with traditional and non-traditional community partners and extends linkages to all stakeholders. The CFS contract management team will introduce new contract monitoring processes that include on and offsite reviews to not only focus on administrative requirements, but also practice and outcomes. The contractor will also be held responsible for the successful implementation of the Families First Prevention Services Act (FFPSA) in the ESA.

Two bids were received in response to the RFP. The incumbent, PromiseShip submitted a bid that lacked innovation and creativity, and essentially presented as a continuation of the existing contractual arrangement. The PromiseShip budget proposed was consistent with prior and current year expenditures. A second bid was received from St. Francis Ministries (SFM), headquartered in Topeka, Kansas. SFM's proposal demonstrates a significant level of success in other jurisdictions, including Arkansas, Oklahoma, Kansas, Texas, and Western Nebraska. SFM proposed a reasonable transition plan and demonstrated a commitment to partnering with the State and successfully implementing FFPSA. The budget submitted is significantly lower than the incumbent, $145 million less over the five-year term ($341M vs. $196M).

DHHS was pleased to receive multiple bids in response to the RFP. Having multiple bids is an important aspect of facilitating a competitive process to make an award in the ESA for case management services. The Department recommends awarding the ESA case management contract to the winning bidder, St. Francis Ministries. SFM's proposal offers a unique opportunity for the State to engage a true partner to collaboratively work toward the goals of improved outcomes for children and families, while doing so in a reasonable financial manner. Furthermore, DHHS recommends commencing with the attached communications and operations transition plans to ensure a seamless transition for the children and families in the ESA

We welcome the opportunity to further discuss the TSG final report, RFP process, and DHHS' recommendation at your earliest convenience.

Sincerely,

Dannette R. Smith
Chief Executive Officer
Department of Health and Human Services

Matthew T. Wallen
Director
Division of Children and Family Services

Appendix L

KUTAKROCK

Kutak Rock LLP
The Omaha Building | 1650 Farnam Street, Omaha, NE 68102-2103
office 402.346.6000

Thomas J. Kenny
402.231.8769
thomas.kenny@kutakrock.com

received
10-14-19

June 14, 2019

VIA HAND DELIVERY AND
ELECTRONIC MAIL (DOUG.CARLSON@NEBRASKA.GOV)

Doug Carlson, Administrator
Materiel Division
Nebraska Department of Administrative Services
1526 K Street, Suite 130
Lincoln, NE 68508

Re: Protest by PromiseShip of June 4, 2019 Notice of Intent to Award for Request for Proposal No. 5995 Z1

Dear Administrator Carlson:

This correspondence constitutes the formal, written protest on behalf of PromiseShip regarding the Department of Administrative Services' ("DAS'") Notice of Intent to Award, dated June 4, 2019 ("Award Notice"), which expressed DAS' intent to award a contract, in response to DAS' Request for Proposals Number 5995 Z1 (the "RFP"), for Full Service Case Management for Child Welfare Services, to apparently successful bidder Saint Francis Community & Residential Services, Inc. ("Saint Francis"). PromiseShip's point of contact for this protest is:

Thomas J. Kenny
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
402-346-6000
Thomas.Kenny@KutakRock.com

For the reasons set forth below, the Award Notice is contrary to Nebraska law, is contrary to the best interests of Nebraska's child welfare population and is likely to severely impair the provision of child welfare services in the State. Further, had Saint Francis' proposal been responsive or compliant with fundamental terms of the RFP and Nebraska law, its costs would have been far greater and PromiseShip would have had the highest scoring proposal. Accordingly, PromiseShip requests that the Award Notice be reversed, that Saint Francis be disqualified as a non-responsive and non-responsible bidder and that PromiseShip be awarded the contract pursuant to the terms of the RFP.[1]

TIMELINESS

This Protest is timely filed pursuant to the terms of the RFP, Section I.U., and the Nebraska Administrative Services, Materiel Division–State Purchasing Bureau, Standard Protest/Grievance Procedures for Vendors[2], because it is filed within ten (10) business days of the posting of the Notice of Intent to Award. The Notice of Intent to Award was posted and made available to the public on June 3, 2019.[3]

BACKGROUND

DAS released RFP Number 5995 Z1 on January 9, 2019.[4] The RFP was intended to identify a "qualified bidder" to which DAS would award a contract to provide Full Service Case Management for Child Welfare Services. Proposals submitted in response to the RFP were opened on April 4, 2019. Two bidders, PromiseShip and Saint Francis, submitted proposals in response to the RFP.

The RFP represented that the "State reserves the right to evaluate proposals and award subawards in a manner utilizing criteria selected at the State's discretion and in the State's best interest." RFP, § I.Q. The RFP provides that "Proposals shall conform to all instructions, conditions, and requirements included in the RFP." RFP § I.A. "Proposals may be found non-responsive if they do not conform to the RFP." RFP § I.A. The RFP authorized DAS to *reject* any proposal, withdraw an Intent to Award, or *suspend* any bidder from bidding for "violation of the terms and conditions" of the RFP. RFP § I.K (permitting rejection of non-compliant bids). The RFP explicitly required the proposals to comply fully with Nebraska and federal law. RFP § V.I. In fact, the RFP confirmed that first step in evaluating bids should have been to determine if certain mandatory requirements were met, including the responsiveness of the proposal. RFP § I.O.

In evaluating proposals, the RFP stated that the "State will conduct a *fair, impartial, and comprehensive evaluation* of all proposals in accordance with the criteria set forth below." RFP § I.Q. The RFP required all bidders to "guarantee compliance" with the provisions in the RFP, by certifying through a responsible officer the "Request for Proposal for Contractual Services form" appended to the RFP. *See,* RFP § I.I. and Request for Proposal for Contractual Services Form.

---

[1] On June 4 and 5, 2019, PromiseShip submitted multiple public records requests to both DAS and DHHS, many of which remain pending and unfulfilled. As such, the issues raised in this protest are based on the information currently or publicly available to PromiseShip and PromiseShip reserves the right to supplement after DAS/DHHS produce all records responsive to PromiseShip's public records requests.

[2] Incorporated into the RFP and available at: http://das.nebraska.gov/materiel/purchase_bureau/docs/vendors/protest/ProtestGrievanceProcedureForVendors.pdf.

[3] Despite being dated June 4, 2019, the Award Notice was posted and PromiseShip received notice of the Award Notice on June 3, 2019.

[4] All documents discussed in this Background section are available on the DAS Website for RFP 5995 Z1, at: http://das.nebraska.gov/materiel/purchasing/5995/5995.html

Evaluation would be conducted by an "Evaluation Committee," consisting of "individuals selected at the discretion of the State." RFP § I.P.

Bidders were also required to disclose "any and all judgments, pending or expected litigation, or other real or potential financial reversals, which might materially affect the viability or stability of the organization." RFP § VI.A.2.b. The RFP further required that all bidders disclose and describe whether "the bidder or any proposed subcontractor has had a contract / subaward terminated for default during the past ten (10) years." RFP § VI.A.2.g. Based on such disclosures, DAS committed to "evaluate the facts" and "score the proposal accordingly." *Id.* The RFP additionally required bidders disclose whether, within the past ten (10) years, "the bidder has had a contract / subaward terminated for convenience, non-performance, non-allocation of funds, or any other reason," along with a requirement the bidder "describe fully all circumstances surrounding such termination." *Id.* Nebraska law prohibits bidders from providing misleading description of their performance, or "half truths." *See infra.* at § C.1.

In addition to, and incorporated into the main RFP, DAS also released various attachments, including Attachment Six, the Business Requirements Traceability Matrix ("Traceability Matrix"). The instructions for the Traceability Matrix required bidders to "indicate how the bidder intends to comply with the requirement" reflected in the matrix and "the effort required to achieve that compliance." RFP, Attachment Six, Traceability Matrix. The instructions noted that "[i]t is not sufficient for the bidder to simply state that it intends to meet the requirements of the RFP." Failure to provide full explanation would be deemed "non-responsive and the bid may be rejected." *Id.* Ultimately, the RFP and its attachments required bidders to provide sufficient explanation of their proposals and required from to fully describe their compliance with mandatory RFP provisions.

On June 3, 2019, DAS posted the Award Notice and a copy of the Final Evaluation Document. The Award Notice stated DAS' intent to award a contract under the RFP to Saint Francis. Saint Francis scored first in the evaluation, with a total score of 2907.57 points out of an available 3526 points. PromiseShip finished second in the evaluation, with a score of 2714.00 points. Excluding scoring of the cost proposals submitted with the bids, PromiseShip received higher technical scores for its proposal, totaling 2207.13 points, compared to 2027.57 points for Saint Francis.

PROMISESHIP'S BACKGROUND AND QUALIFICATIONS FOR CONTRACT UNDER RFP 5995 Z1

As a locally established and operated nonprofit organization, PromiseShip is focused on serving the unique needs of children and families in the greater Omaha metro area. PromiseShip brings years of experience providing child welfare case management and service coordination for Nebraska's Eastern Service Area serving children and families in Douglas and Sarpy counties. Since its founding, PromiseShip has served the complex needs of more than 20,000 children and their families referred by DHHS for abuse and neglect issues. During that time, PromiseShip has helped move the Eastern Service Area from one of the worst performing areas in the state to one of the best, helping increase the overall state's performance on federal measures.

Findings in a recent report by The Stephen Group on the "Assessment of the Outsource Model in Eastern Service Area" (May 2019), commissioned by DHHS, found that despite challenges in the state's current outsource model, the current vendor (i.e., PromiseShip) "has been able to achieve comparable cost and performance outcomes to the other four in-source service areas." Specifically, The Stephen Group found that the cost per case in the ESA is in alignment with the cost per case in all five service areas, proving that PromiseShip delivers services at a cost that is comparable to those provided by the state. The report also found that performance outcomes have improved significantly statewide (including in state-run and PromiseShip Service Areas) over the last several years.

PromiseShip is also considered a valued partner in the community as evidenced by broad support from professionals and families alike. According to independent interviews with various stakeholders conducted by The Stephen Group, positive aspects of working with PromiseShip included: being more data driven and flexible than DCFS; able to think out of the box in working with families; able to look beyond the menu of services; there is not a one size fits all approach; willing to bring providers to the table; and not as rigid as the state when it comes to services needed.

Over the past ten years, PromiseShip has been awarded five contracts and subawards with the State of Nebraska, including the current subaward to provide case management services for ongoing child welfare cases in Douglas and Sarpy counties. Today, PromiseShip employs 337 dedicated, caring staff who live and work in the Omaha metro area and who are highly skilled and educated professionals. PromiseShip uses a collaborative approach to provide child welfare case management and service coordination for children and families served in the Eastern Service Area. Building on the successful ten year public-private partnership between PromiseShip and DHHS is essential to continued effective case management and service coordination to ensure the best possible outcomes for children and families in Nebraska.

SUMMARY OF PROTEST GROUNDS

The Award Decision must be reversed for numerous reasons. First, an award to Saint Francis would be unlawful and would award an essential child welfare contract to a bidder whose proposal fails to comply with Nebraska child welfare statutes or address Nebraska's child welfare needs, as outlined in the RFP. For example, Nebraska law prohibits the 25 to 1 caseworker ratio Saint Francis proposes, and any expenditure of tax dollars on such an unlawful contract would be illegal and would threaten the safety of our State's children. *See* Neb. Rev. Stat. § 68-1207.

Saint Francis' proposal represents that it would be the lower cost provider by a wide margin. Saint Francis only achieves this irresponsibly low bid, however, by (a) violating Nebraska statutes establishing required minimum levels of service; (b) by submitting a non-responsive proposal, including by omitting RFP-required information. If Saint Francis had complied with Nebraska law as to its caseworker ratio and other requirements, its costs would have been far higher and PromiseShip would have prevailed in the scoring. The lack of responsive information contained in the Saint Francis proposal, in fact, makes it impossible for the State, or anyone else, to state with certainty how its costs were calculated, other than by understaffing (as it has in Kansas), thus depriving DAS of the ability to exercise its discretion in evaluating the proposal.

The Award Decision is arbitrary, capricious and contrary to law for numerous other reasons. DAS failed to qualitatively review Saint Francis' cost proposal, mathematically assigning cost proposal scores, without ensuring that the proposed costs are realistic in light of the technical proposals. In fact, Saint Francis' cost proposal is unrealistically low. Saint Francis' technical proposal, moreover, clearly fails to meet numerous of the RFP's requirements, including:

- statutorily-mandated caseworker ratios
- statutory requirement that a maximum of 35% of the services may be performed directly by Saint Francis, and all others must be subcontracted or provided by other qualified organizations
- failure to identify any of the subcontractors it will utilize to perform these important services
- statutory requirement that 51% of its Board be comprised of Nebraska residents, who are independent
- Nebraska Public Service requirements for the provision of transportation services

Saint Francis is not a responsible bidder, and has provided only misleading half-truths relating to services provided in Kansas, where the State Legislature and other oversight bodies have repeatedly criticized its practices, including housing foster children overnight in Saint Francis' offices, having more than 764 children subjected to one-night placements during a 6 month period in 2018, employing insufficient caseworkers, exceeding the State's recommended limit of 30 caseworkers per child, and other serious performance deficiencies. Further calling into question its responsibility, Saint Francis' proposal also appears to have failed to disclose multiple cost-increasing amendments obtained on its Kansas contracts, amendments which appear to have substantially increased the State's costs far above and beyond its original proposed cost.

Non-responsive portions of Saint Francis' proposal were so numerous that many of them have been included in an appendix to this document. These additional areas of non-responsiveness, taken together, demonstrate a flagrant disregard of RFP requirements, and include provisions which either ignore the RFP requirement, or simply claim the requirement will be met, somehow, and in violation of RFP provisions which prohibit the bidder from simply stating that it "intends to meet the requirement."

For these and multiple other reasons, as described below and in the attached Appendix, the Award Decision must be reversed and the contract under the RFP awarded to PromiseShip as the sole remaining responsive, responsible bidder.

I. AN AWARD TO SAINT FRANCIS WOULD BE ARBITRARY, CAPRICIOUS AND WOULD VIOLATE NEBRASKA LAW

A fundamental principle of Nebraska law provides that State administrative agencies cannot act in an arbitrary or capricious manner. *Pierce v. Douglas County Civil Service Com'n*, 275 Neb. 722, 729, 748 N.W.2d 660, 666 (2008). Under Nebraska law:

> A decision is arbitrary when it is made in disregard of the facts or circumstances and without some basis that would lead a reasonable person to the same conclusion.

> An action taken by an administrative agency in disregard of the facts or circumstances of the case and without some basis which would lead a reasonable and honest person to the same conclusion is arbitrary and capricious as a matter of law. A capricious decision is one guided by fancy rather than by judgment or settled purpose; such a decision is apt to change.

In re Proposed Amendment to Title 291, Chapter 3, of the Motor Carrier Rules and Regulations, 264 Neb. 298, 310-11, 646 N.W.2d 650, 660 (2002). Moreover, the Nebraska Supreme Court has held that State procurement decisions may be subject to judicial review if the State acts "arbitrarily." A procuring agency is also not permitted to exercise its contracting discretion in a manner contrary to state statute. *Rath v. City of Sutton*, 267 Neb. 265, 287, 673 N.W.2d 869, 889 (2004) ("Contracts let in contravention of this rule, i.e., in contravention of §§ 17–918 and 18–507, are illegal and can be enjoined.").

An award to Saint Francis would be arbitrary, capricious, and violate Nebraska law in multiple ways, discussed below. In particular, Saint Francis' cost proposal is unrealistic, Saint Francis' proposal fails to comply with Nebraska law in multiple particulars, Saint Francis' proposal was non-responsive to the RFP, and Saint Francis is a non-responsible bidder with significant performance and other issues which disqualify it. In total, an award to Saint Francis would be illegal and would put Nebraska's vulnerable child welfare population at risk.

A. Saint Francis' Cost Proposal Is Unrealistic, Its Score Was Arbitrarily Inflated And PromiseShip Was Prejudiced By DAS Failure To Qualitatively Review Cost Proposals.

The RFP provides "[t]he State reserves the right to review all aspects of cost for reasonableness and to request clarification of any proposal here the cost component shows significant and unsupported deviation from industry standards . . ." RFP § VII.A. Saint Francis' cost proposal was lower only because it failed to include all necessary services to meet the RFP requirements and failed to account for all associated costs.

As set forth more fully in Section B.1, *infra*, Saint Francis' cost proposal assumes a caseload of ***25 cases per case manager in violation of Nebraska law***. Assuming a caseload of 16 cases per case manager, as required, and including salary and benefits costs for *all* proposed staff, Saint Francis' cost proposal would increase by over $55 Million over five years, and over $75 Million over seven years. If Saint Francis had included a sufficient number of case managers and supervisors in its cost proposal, PromiseShip would have outscored Saint Francis. See Exhibit A.

Analysis of the costs proposed by Saint Francis, particularly when compared with historical data for services provided in the various Nebraska service areas, reflects how unrealistically low the Saint Francis bid is. As noted by the Stephen Group, in a recent report commissioned by DHHS, the cost per case for the Nebraska system, statewide, was **$3,000 in 2017 and $3,100 in 2018.**[5] *See* Assessment of Outsource Model in Nebraska's Eastern Service Area: Findings and Recommendations ("Stephen Group Report"), Table 26, p. 55. Reviewing the Saint Francis proposal, for years one and two, and dividing the cost proposed by Saint Francis with the number

[5] For the Eastern Service Area, cost per case was $2,900 in 2017 and $3,200 in 2018.

of children served in the service area under the proposed contract (15,948), Saint Francis would propose a cost per case of only ***$1,130*** **in year one and** ***$1,650*** **in year two.**[6] The suggestion that Saint Francis can provide the requested services for almost one-third of the 2018 statewide cost per case amount is fanciful at best and should have put DAS on notice that its proposal was fatally flawed.[7]

A risk of awarding a contract based on lower cost is, in addition to choosing lower quality for proposed cost savings, that the proposed cost will not be met and additional funds will have to be expended to ensure services are provided. Such appears to be the case in Kansas where Saint Francis' contract with Kansas has been amended multiple times to increase the monthly case rate Saint Francis is paid and for significant additional payments to be made to Saint Francis. In fact, in 2018, Saint Francis informed Kansas that it would not be able to continue performance on its foster care contract unless Kansas increased its case rate and made a one-time payment of $816,600. *See* Amendment Ten to Saint Francis Kansas Contract. This followed Amendment Nine to that contract in which a payment of $1,086,193 was made to Saint Francis to cover "excess reported costs." *See* Amendment Nine to Saint Francis Kansas Contract.[8] Based on the history in Kansas, and Saint Francis' unrealistically low bid, it is irrational for DAS to conclude that the savings proposed by Saint Francis will be realized and DAS will have sacrificed a clearly superior technical bid from PromiseShip for the fallacy of imagined savings.[9]

A bid that is unrealistically low may indicate it is non-responsive. *Mark Dunning Industries, Inc. v. United States*, 2019 WL 1891817, at *10–14 (Fed.Cl. 2019) ("Dunning argued that Zero Waste's bid was unrealistically low and omitted some of the required work . . . A low price may . . . be evidence of a mistaken or defective bid"). "[A] proposal that, on its face, leads an agency to the conclusion that an offeror could not and would not comply with [an RFP requirement] is technically unacceptable and may not form the basis for an award." *Centech Grp.*, 554 F.3d at 1038 (internal citations and quotations omitted).

---

[6] For point of reference, PromiseShip's proposed cost per case in year one is $2,235 and for year two is $2,620. There is nothing in Saint Francis' bid to suggest it can credibly offer services of anywhere near the quality required at such a cost per case basis. As such, Saint Francis' bid must either fail to fully account for the requirements of Nebraska's child welfare system or the cost proposal, more likely, fails to account for all of the costs that will exist.

[7] It is noteworthy that under the prior (cancelled) procurement for these services, both vendors that bid, PromiseShip and Magellan Choices for Families, LLC, submitted bids for all service years that were greater than $70 million per year, for services similar to those at issue here. PromiseShip's cost proposal here proposed cost savings even over those bids, but was in line with the historical costs associated with providing the relevant services. Saint Francis' cost proposal ($18m in year one) is entirely out line with the historical data reflecting the actual costs to provide necessary services, as reflected in this and the prior procurement.

[8] Review of the publicly available information regarding Saint Francis' contract history in Kansas calls into question the accuracy of Saint Francis' representations in its proposal, in Table Co-2, on page 15 of its Technical Proposal, that there was no change in the original budgets for its Kansas contracts. The Wichita Region Contract #37610 commenced in July 2013 and is currently in force. During this 6 year period, there have been 13 Amendments with 8 of those Amendments increasing the Case Rate from the initial $1,496 to $2,102 per case per month, a 41% increase. In addition to the monthly case rate increases, there have been 3 lump sum payments totaling $1,644,069. It was stated in Amendment 10, dated December 19, 2018, that the state made a onetime payment of $816,600 to St Francis so that St Francis would not *surrender the contract* for the remainder of the fiscal year.

[9] Detail regarding Saint Francis' Kansas contracts and its various amendments increasing payments made to Saint Francis are available at: https://da.ks.gov/purch/Contracts/Default.aspx/00000000000000000037680.

Hyperion, Inc. v. United States, 115 Fed.Cl. 541, 550–56 (Fed.Cl. 2014) is instructive. In *Hyperion*, the unsuccessful bidder argued the other, lower priced bidders submitted proposals that showed they would be unable to comply with a "Limitations on Subcontracting" requirement. *Hyperion*, 115 Fed.Cl. at 550-52. The limitation required that offerors agree "[a]t least 50% of the cost of the contract performance incurred for personnel shall be expended for employees of" the offeror. Hyperion argued "a proposal in response to this solicitation can *only* meet the requirement by self-performing at least some installation work in Jordan." *Id.*

The court acknowledged that "a proposal that, on its face, leads an agency to the conclusion that an offeror could not and would not comply with the subcontracting limitation is technically unacceptable and may not form the basis for an award." *Id.* The court first examined the lowest cost proposal (TCSC's), which "included a detailed price breakdown." *Id.* at 552-53. The government argued that the spreadsheet summarizing labor costs according to CLIN number "affirmatively demonstrates that TCSC would comply with the 50% self-performance requirement." *Id.* The court disagreed finding "[f]urther inquiry into the spreadsheets underlying this summary, however, reveals an apparent mis-categorization of labor as a material cost." *Id.* The court noted the "labor costs are suspiciously low." *Id.* The court found:

> It is readily apparent, on the face of TCSC's proposal, that it would not and could not comply with the limitations on subcontracting incorporated into the solicitation, and the [agency] should have found its proposal to be technically unacceptable.
>
> . . .
>
> The salient question in this respect is whether [TCSC]'s proposal demonstrates that it would comply with the 50% self-performance requirement, not whether it could.

Id.

The court conducted a similar analysis with respect to the second lowest bidder and concluded its proposals also "demonstrate[d] a significant likelihood that [it] would not comply with the limitation on subcontracting, and it was irrational for the [government] to find otherwise." *Id.* The court found "Hyperion has demonstrated that it was prejudiced by the [agency]'s unreasonable determination that the other offerors' proposals facially complied with the limitation-on-subcontracting provision" and further if "the [agency] had acted reasonably by inquiring into these shortcomings . . . Hyperion would have had a substantial chance of receiving the contract." *Id.* Based on its analysis, the Court set aside the contract award. *Hyperion*, 115 Fed.Cl. at 557.

Here, Saint Francis' cost proposal is unrealistically low, for numerous reasons, including its failure to provide for adequate staffing to fulfill the case management requirements. The Cost Proposal form, immediately under "Firm Name" states that, "Bidder shall provide their total cost to meet the requirements of this RFP." The requirements of the RFP cannot be met with an annual budget of $18M in year one (2020). There is not even enough money in the cost proposal to cover the staffing levels it committed to provide in its technical approach. Moreover, the cost component shows significant and unsupported deviation from industry standards and historical data as demonstrated by the Stephens Report.

In addition, it appears DAS failed to review Saint Francis' costs for reasonableness, as set forth in the RFP, and that the Evaluation Committee failed to evaluate how Saint Francis could provide the services proposed in its cost proposal, given the representations in its technical proposal; indeed, it appears the evaluators did not analyze the proposed costs in light of the proposed services, but arbitrarily and separately scored each portion of the proposal in a vacuum.

PromiseShip's proposal reflects its deep understanding and knowledge of Nebraska's child welfare population, needs and environment, along with the costs and range of services needed by the State's child welfare population. PromiseShip would have outscored Saint Francis if Saint Francis had included the required number of case managers and subcontractors in its cost proposal. The Award Decision should be reversed.

B. The Award Decision Should Be Reversed Because DAS Made No Meaningful Comparison Of The Proposals, And Instead Converted This Greatest Benefit Procurement Into A Lowest Cost Competition

By promising to make an award in the "State's best interest,", the RFP set forth a "greatest benefit standard", a standard DHHS failed to follow. *See* 48 C.F.R. § 2.101 ("Best value means the expected outcome of an acquisition that, in the Government's estimation, *provides the greatest overall benefit* in response to the requirement.") (emphasis added).

In analyzing "best interests" or "greatest benefit, an agency must make a "reasoned" and "meaningful comparison" of the proposals. *Tenica & Associates, LLC v. United States*, No. 15-785C, 2015 WL 5544429, at *1-3 (Fed. Cl. Sept. 1, 2015) ("agency's source selection decision failed to make a reasoned comparison of [the] proposals or [to] articulate why [the] award to the selected firm was reasonable."); *FirstLine Transp. Sec., Inc. v. United States*, 100 Fed. Cl. 359, 375-86 (2011) (failure to "compare the competing proposals in any meaningful way" was arbitrary and capricious").

Moreover, the decision must represent his or her *independent judgment* and the reasons for that judgment must be *adequately documented. Id.* (noting these as the "two principal requirements embodied in FAR 15.308"). *See also DynCorp Int'l LLC*, B-289863, B-289863.2, 2002 CPD ¶ 83, 2002 WL 1003564, at *4 (Comp. Gen. May 13, 2002) ("Although source selection officials may reasonably disagree with the ratings and recommendations of evaluators, they are nonetheless bound by the fundamental requirement that their independent judgments be reasonable, consistent with the stated evaluation scheme and adequately documented."). When analyzing best value, "evaluation of quotations is not limited to determining whether a quotation is merely technically acceptable; rather, quotations should be further differentiated to distinguish their relative quality under each stated evaluation factor by considering the degree to which technically acceptable quotations exceed the stated minimum requirements or will better satisfy the agency's needs." *US Info. Techs. Corp.*, B-404357; B-404357.2, 2011 CPD ¶ 74, 2011 WL 1349211, at *6 (Comp. Gen. Feb. 2, 2011).

In other words, before a decision is made to award the contract to the lower priced proposal that received a lower technical score, **the decision maker must make a meaningful**

consideration of whether the cost premium required to award to the technically superior proposal outweighs whatever cost savings may be had. *See Mcr Fed., Inc.*, B-280969, 1998 WL 953965 at *4 (Comp. Gen. Dec. 14, 1998) ("Where there is inadequate supporting rationale in the record for a decision to make award to a lower-priced offeror with a lower technical ranking notwithstanding a solicitation's emphasis on technical factors, we cannot conclude that the agency had a reasonable basis for its decision.").

FirstLine Transp. Sec., Inc. v. United States, 100 Fed. Cl. 359 (2011), is instructive. In *FirstLine*, the court found the agency's decision was arbitrary and capricious where it improperly used a lowest cost standard to evaluate a best-value procurement:

> In minimizing the importance of non-price factors, the [agency] deviated from the requirements of the RFP, which *required a best-value procurement*. Instead, the government has essentially conducted this procurement on a *lowest-price technically acceptable basis*. For that reason, the [Agency's] analysis and subsequent award . . . was arbitrary, capricious, and not in accordance with law.

FirstLine, 100 Fed. Cl. at 379 (emphasis added); *see also ITT Fed. Servs. Corp. v. U.S.*, 45 Fed. Cl. 174, 194 (1999) ("In that case, the Comptroller General sustained a protest where the SSA's award decision was inconsistent with the RFP's evaluation scheme, which identified price as a secondary consideration to technical merit."); *Femme Comp Inc. v. United States*, 83 Fed. Cl. 704 (2008) (comparison of proposals on the basis of a single factor alone is insufficient in a best-value analysis); *Serco, Inc. v. United States*, 81 Fed. Cl. 463, 499 (2008) ("examination of the tradeoff exhibits . . . reveal[ed] that, but for a few select passages, they simply reiterate descriptions of the procurement and adjectival ranking and discriminator information found in the technical evaluation portion of the source selection documents.").

Here, it appears DAS made no meaningful comparison of the proposals, but instead awarded the contract to the bidder that promised the lowest cost. Indeed, based on the woeful inadequacy of Saint Francis' proposal, its non-responsiveness, its non-responsibility and its apparent ignorance of the legal requirements or service requirements sought by the RFP, it appears that DAS failed to " make a meaningful consideration of whether the cost premium required to award to the technically superior proposal outweighs whatever cost savings may be had." To date, there has been no "documentation" of any meaningful analysis of whether the claimed cost savings in the Saint Francis bid outweigh the clear technical superiority of PromiseShip's proposal. Based on PromiseShip's review of available materials, it does not appear that the evaluators reviewing the cost proposals had any awareness that Saint Francis' costs were lower solely because it ignored or rejected multiple RFP and statutory requirements. The Award Decision was arbitrary and capricious and must be reversed.

C. Saint Francis's Proposal Was Not Responsive To The RFP, Resulting In An Arbitrarily Inflated Score And Should Be Disqualified.

RFP 5995 Z1 contained a number of provisions that required bidders to fully respond to, and to provide sufficient information to evaluate, the manner and extent to which the bidder's proposal conformed to the requirements of the RFP and resulting contract. The Traceability Matrix, for example, required bidders to describe "how the bidder intends to comply" with the requirements contained in the RFP. *See* RFP, Attachment Six, Traceability Matrix instructions.[10] The RFP instructions also directed that bidders should clearly identify the areas of the RFP they are responding to in the relevant sections of their proposals. *See* RFP § VI. Failure to follow the RFP instructions, and to identify the sections being responded to, subjected bidders to potential disqualification. *Id.*

1. An Award To Saint Francis Would Violate Nebraska Law And Saint Francis' Proposal Is Non-Responsive For Its Violation Of The Caseload Requirements Of Neb. Rev. Stat. § 68-1207.

The RFP, among other things, required that an awarded "Subrecipient must abide by all policy requirements of Nebraska Administrative Code; applicable state and federal statutes and regulations; any other applicable codes; applicable program guidance and administrative memos; and applicable written policy directives and interpretations from, or as directed by, DHHS." RFP § V.I. One such statute, Neb. Rev. Stat. § 68-1207, establishes a maximum caseload management ratio that must be met by child welfare providers. Specifically, that section provides, in relevant part:

> (1) The Department of Health and Human Services ***shall*** supervise all public child welfare services as described by law. . . . Caseloads ***shall range between twelve and seventeen cases*** as determined pursuant to subsection (2) of this section . . .
>
> (2) Caseload size shall be determined in the following manner: (a) If children are placed in the home, the family shall count as one case regardless of how many children are placed in the home; (b) if a child is placed out of the home, the child shall count as one case; (c) if, within one family, one or more children are placed in the home and one or more children are placed out of the home, the children placed in the home shall count as one case and each child placed out of the home shall count as one case; and (d) any child receiving services from the department or a private entity under contract with the department shall be counted as provided in subdivisions (a) through (c) of this subsection whether or not such child is a ward of the state . . .

Neb. Rev. Stat. § 68-1207 (emphasis added).

The caseload requirements applicable to the contract to be awarded were addressed by DAS in Questions and Answers ("Q&As") during the procurement process. In particular, Question 5 from the Q&As requested information about where to find caseload requirements, in which bidders were directed to Neb. Rev. Stat. § 68-1207. Question 54 requested information regarding penalties for failing to meet the caseload requirements and bidders were again directed to the statutory requirement.

[10] The clarity of the instructions for Attachment Six cannot be in dispute. In fact, during the Question and Answer period for the RFP, DHHS was asked to clarify whether "bidders [are] expected to provide detailed responses to each of the Business Requirements directly within Attachment Six?" *See* Q&A No. 91. In response, DHHS simply stated "[y]es."

The Nebraska Unicameral has determined caseload standards to be a critical consideration, not to be ignored as Saint Francis has done. In 2012, the Unicameral passed LB 961 to establish caseload criteria, and has directed DHHS to submit annual reports on the subject. *See* Neb. Rev. Stat. § 68-1207. DHHS and the Inspector General of Nebraska Child Welfare have issued reports on this caseload criteria in recent years. As of May 2019, DHHS reported data on caseload compliance and determined PromiseShip's level of compliance to be 98.4%, approximately the level it attained the prior year as well. Against this backdrop, however, Saint Francis proposed a caseworker ratio grossly non-compliant with Nebraska law, and indeed reflects no awareness of Nebraska legal requirements.

In violation of these clear statutory and RFP requirements, Saint Francis submitted a bid that proposed meeting a *target* caseload of **25 cases per case manager.**[11] *See* Saint Francis Technical Proposal at p. 93. Only two other portions of Saint Francis' proposal reference caseloads, on page 103 of its Technical Proposal, where Saint Francis refers to its prior answer, and on page 139, in which it discusses caseworker information, including a citation to a report on the DHHS website that is focused **exclusively** on caseload ratio.[12]

An award to Saint Francis, and a contract providing for a ratio of 25 cases per case manager, would be in violation of Nebraska law and Saint Francis' proposal fails to comply with the RFP requirements, which required compliance with all state laws. Further, awarding such a contract, in violation of a statute that imposes a direct obligation on DHHS ("The Department of Health and Human Services *shall* . . ."), exceeds the authority granted to DAS and DHHS under Nebraska law. *See Murray v. Neth*, 279 Neb. 947, 952, 783 N.W.2d 424, 430 (2010) ("An administrative body has no power or authority other than that specifically conferred by statute or by construction necessary to accomplish the plain purpose of the act."); *Project Extra Mile v. Nebraska Liquor Control Comm'n*, 283 Neb. 379, 399, 810 N.W.2d 149, 165 (2012) (an agency cannot expand its statutory mandate).[13] Such an award, made in contravention of state statutes, would also constitute an illegal expenditure of taxpayer funds and would be subject to injunction. *See Rath*, 267 Neb. at 287, 673 N.W.2d at 889.

Saint Francis, whose bid outscored PromiseShip only as a result of its non-responsive and unlawful cost proposal was permitted to alter its staffing plans, and to employ fewer necessary employees, providing it an additional and improper apparent cost advantage. Had Saint Francis complied with § 68-1207, and complied with the statutorily-mandated caseload ratio, it would have

---

[11] The fact 25 caseworkers is identified as a "target," suggesting that caseloads will be greater even than that, is additionally concerning regarding continuation of the level of care currently provided to Nebraska's child welfare population. As discussed below, Saint Francis' experience in Kansas shows that its caseworker ratios there were even higher, and were over 30:1. See infra, at 18.

[12] The fact Saint Francis was clearly aware of the DHHS *Children and Family Caseload Status* Report, which includes multiple data points demonstrating the caseload requirements and the amount of staff necessary to perform the required duties, but still failed to meet the caseload requirement, calls into question Saint Francis' ability or intent to meet the needs of the Nebraska child welfare program.

[13] In addition to being contrary to law, Saint Francis' proposed caseload ratios fly in the face of DHHS' own stated goal to lower caseload ratios *even further*, as reported by DHHS to the Nebraska legislature. *See* http://dhhs.ne.gov/Documents/CW%20Briefing%20PP%20Presentaiton.pdf. In fact, DHHS has been engaged with a working group to achieve this goal. *See* Exhibit B, DRAFT: CFS Workload Calculation Methodology. It is simply inconceivable that DAS would choose to award a contract to a bidder who was unable to meet the higher statutory caseload requirement, given DHHS' own stated belief that further reductions are necessary.

been required to provide additional staff to meet that ratio, which would have clearly affected its ability to provide the services required under the contract for the cost it proposed. DHHS cannot, post-award, require Saint Francis to correct or amend its proposal to meet the statutory caseload requirement. PromiseShip, which submitted a proposal that both recognized and complied with the statutory requirement, has already been severely prejudiced by DAS actions thus far in accepting and rewarding Saint Francis' unlawfully low bid.

Saint Francis' bid, because it fails to comply with Neb. Rev. Stat. § 68-1207, was non-responsive to the RFP's requirement of compliance with state and federal laws. DAS' award to Saint Francis, as a result, is itself illegal under Nebraska law and must be rescinded. DAS has no legal authority to make an unlawful award, nor to authorize the unlawful expenditure of tax dollars. The Award Decision must be reversed.

2. Errors in the Saint Francis' Cost Proposal Prejudiced PromiseShip

As discussed above, Saint Francis proposed a caseload ratio of 25 to 1. Such a ratio, in addition to violating Nebraska law, enabled Saint Francis to underbid its cost proposal, and explains for its apparent scoring advantage over PromiseShip. Had, for example, Saint Francis proposed to meet the statutory caseload ratio, it would have been required to hire additional staff, both caseworkers and supervisors. Based on the historical cases, in order to lower its caseload ratio from 25 to 1, to 16 to 1, as is typical currently in Nebraska, and which complies with the relevant statute, Saint Francis would be required to add at least 35 additional caseworkers and 7 additional supervisors. Were those additional costs included in the Saint Francis cost proposal, it would have affected the relative scoring of both proposals given the equation used to calculate cost proposal scores.[14] As has been established above, Saint Francis *only* outscored PromiseShip due to its lower cost proposal, having been outscored on *all* technical aspects of the proposals. Because its cost proposal is inherently flawed, DAS' scoring of that cost proposal was objectively incorrect and caused the Award Decision to be arbitrary and contrary to law.

In addition to failing to account for additional staff that will be required to meet the Nebraska statutory requirements applicable to lead agencies, it also appears that Saint Francis did not account for the salaries and benefits to be paid to the casework staff it actually *did* include in its proposal as submitted. Using conservative estimates for salaries and benefits, it appears that the Saint Francis cost proposal fails to account for over $44 million in case management salaries and benefits over a five-year contract term and over $60 million for a potential seven year term just for the staff already proposed.[15] It also appears that in calculating its costs for the first year, Saint Francis likely calculated costs for a six-month period, not a full year.

Ultimately, had Saint Francis included the required number of caseworkers and supervisors, and calculated its costs for the full five-year period, instead of an apparent four and a half year period, its costs would have been significantly higher and the difference in cost between it and PromiseShip much lower. *See* Exhibit A. Under those circumstances, even given the

[14] It is not apparent the extent to which any qualitative analysis of cost proposals took place, or the extent to which subject matter experts, such as Evaluation Committee members, had access to the cost proposals to consider whether the services being proposed were consistent with the costs being articulated in the cost proposal.
[15] As noted previously, when additional staff are added to meet the statutory caseload requirement, the gap in Saint Francis' proposal balloons to $55 million over five years and $75 million over seven years.

ostensible cost advantage Saint Francis might still have had in the scoring of cost proposals, PromiseShip's greater technical scores likely would have resulted in PromiseShip being the higher scoring bidder. *Id.*

3. Saint Francis' Proposal Fails To Demonstrate Compliance With Neb. Rev. Stat. § 43-4204.

a. Corporate Governance

In addition to the statutory caseload requirement established in Neb. Rev. Stat. § 68-1207, another statutory section, Neb. Rev. Stat. § 43-4204 governs the provision of child welfare services to be provided under the RFP.[16] Among other requirements, section 43-4204 requires that a lead agency have "a board of directors of which at least *fifty-one percent* of the membership is comprised of *Nebraska residents* who are *not employed by the lead agency or by a subcontractor* of the lead agency." Neb. Rev. Stat. § 43-4204(2)(a). This requirement is explicitly referenced in the RFP, *see* section VI.A.2.a., as well as in applicable Nebraska law.[17]

PromiseShip, as reflected in its proposal and based on its prior experience in Nebraska, undoubtedly meets this requirement. But Saint Francis, because it is bidding on behalf of an entity that does not yet exist, and is not Nebraska-based, did not meet the requirement at the time its proposal was submitted. Moreover, it did not "describe how it will comply" with that statutory section. RFP § VI.A.2.a ("The bidder should describe how it will comply with the requirements of the governing board and financial liquidity as described in Neb. Rev. Stat. § 43-4204.").

Despite the instruction to "describe how" it would comply with these corporate governance requirements, Saint Francis' proposal does nothing more than simply vaguely claim it will later comply, without any additional explanation provided. The totality of Saint Francis' non-responsive description of how it will comply is to state, "Saint Francis will comply with this statutory requirement if awarded the subaward." Saint Francis Technical Proposal at 1. A simple declaration of intent to comply, without any description of *how* it will comply, is insufficient under the terms of the RFP. *See, e.g.*, RFP, Attachment Six, Traceability Matrix instructions ("It is not sufficient for the bidder to simply state that it intends to meet the requirements of the RFP.").

Saint Francis further states "Saint Francis has identified a number of individuals who are residents of Nebraska <u>and are affiliated with Saint Francis</u>, the Episcopal Church, or both with sufficient experience in child welfare, health care, and nonprofit management to serve as board members of the new entity." *Id.* Simple residence in Nebraska, by itself, is not sufficient, however. In addition to being a resident of Nebraska, section 43-4204 requires that the fifty-one percent of Nebraska resident board members also be independent. *See* Neb. Rev. Stat. § 43-4204(2)(a) ("are not employed by the lead agency or by a subcontractor"). Saint Francis, by failing to describe how it intends to structure the board to be created for the new entity, further fails to demonstrate how these unnamed individuals "<u>affiliated</u> with Saint Francis, the Episcopal Church, or both," could possibly meet the level of independence required under the law. Indeed, Webster's dictionary

---

[16] Required compliance with Neb. Rev. Stat. § 43-4204 is directly referenced in the RFP itself at Section V.I.4.c.

[17] DHHS further reiterated this requirement during the Q&A period. In response to a question of whether a non-Nebraska vendor may establish an "advisory board," in lieu of a board of directors, DHHS again noted the statutory requirement of Neb. Rev. Stat. § 42-4204. *See* Q&A No. 60.

defines "affiliated" as "closely associated with another typically in a dependent or subordinate position."[18]

Saint Francis' proposal similarly fails to address the liquidity requirements to be met as part of the readiness review mandated by Neb. Rev. Stat. §43-4204(2)(b). Instead of proposing a financially sound board, composed of independent Nebraskans, Saint Francis offers a "guarantee" of its Kansas parent corporation, it nowhere describes how this guarantee will be provided, how contractually a non-bidder would be bound to guarantee anything, or any attempt to comply with Nebraska statute. Indeed, by including such a promise or guarantee, Saint Francis suggests that the contracting entity itself is not financially responsible or able to perform the contract.

b. Thirty-Five Percent Limitation

In addition to the corporate governance requirements of Neb. Rev. Stat. § 43-4204, that section also requires that "[a] lead agency used after April 12, 2012, shall . . . (c) Have the ability to provide directly or by contract through a **local network of providers** the services required of a lead agency. A lead agency ***shall not directly provide more than thirty-five percent of direct services required under the contract.***" (emphasis added). Saint Francis' proposal suggests it is neither aware of such a requirement, nor that it has any plan in place to comply with that requirement.

Saint Francis' proposal does not clearly identify or describe those services for which it intends to utilize subcontractors or other resources. Saint Francis' proposal is plainly deficient in describing which services it will provide directly, and which it will seek to have provided by other sources. This means Saint Francis has failed to describe how it will comply with Nebraska law, but also denied the Evaluation Committee relevant information about how services would be provided and by whom. Whether the ambiguity of Saint Francis' proposal was by design, or simply the result of indifference to or ignorance of the statutory requirements applicable to the services it seeks to provide, neither DAS nor DHHS can lawfully award a contract to it under this RFP with confidence that these statutory requirements will be met.

Given the statutory limitation imposed on the provider to be awarded a contract under the RFP, DAS' failure to ensure compliance with these statutory sections reflects an arbitrary and capricious procurement process that does not comply with the competitive bidding requirements imposed under Nebraska law. Because Saint Francis has not demonstrated compliance with the statutory obligations imposed by the Legislature, an award to Saint Francis is improper under Nebraska law and must be reversed.

4. Saint Francis' Proposal Fails To Demonstrate Compliance With The RFP Requirements Regarding Use Of Subcontractors

The RFP, at section A.2.j, required that bidders disclose specific information regarding any subcontractors they intended to use if awarded the contract. Specifically:

[18] *See* https://www.merriam-webster.com/dictionary/affiliated.

If the bidder intends to subcontract / subaward, any part of its performance hereunder, the bidder should provide:

i. name, address, and telephone number of the subcontractor(s) / Second Tier Subrecipient(s);
ii. specific tasks for each subcontractor(s) / Second Tier Subrecipient(s);
iii. percentage of performance hours intended for each subcontract / subaward; and
iv. total percentage of subcontractor(s) / Second Tier Subrecipient(s) performance hours.

RFP § A.2.j. This requirement was again noted during the Q&A period of the RFP. In response to the question of whether "proposed sub-contracted licensed child placing agencies (LCPA's) need to be identified in the proposal," DHHS simply responded "[y]es." *See* Q&A No. 62.

Moreover, Nebraska statute limits the services a contractor may directly perform up to only 35% of the required services, meaning the remainder must be provided by subcontractors. Neb. Rev. Stat. §43-4204 ("A lead agency shall not directly provide more than 35% of direct services required under the contract."). Thus, under Nebraska law, the majority of direct services must be provided by subcontractors, yet Saint Francis fails to provide the State virtually any information about its subcontractors, or even that it has any awareness of this statutory requirement.

Despite the clarity of this instruction, Saint Francis provides ***none*** of the information called for by the RFP regarding its proposed use of subcontractors.[19] While this, by itself, makes Saint Francis' proposal non-responsive, and deprived DAS and the Evaluation Committee of information it rightfully should have considered in evaluating the strength of Saint Francis' bid, it also prevents a full analysis of the extent to which Saint Francis intends to perform the contract itself, versus to the extent to which it will subcontract the work. As noted, these glaring omissions prevent DAS from enforcing compliance with the statutory restrictions placed on child welfare lead agencies in Neb. Rev. Stat. § 43-4204.

Not only does Saint Francis fail to demonstrate compliance with the statutory requirement that it only provide 35% of the services under the contract, it also fails to provide relevant information that would allow an evaluator to determine the extent to which Saint Francis could comply with that requirement. In fact, it is challenging to determine how Saint Francis could meet the statutory limitation in section 43-4204 based on a review of its proposal. Saint Francis' proposal offers almost no information as to what a provider network might look like were it awarded the contract, and does not explain which services will be subcontracted, let alone any of the categories of information required about proposed subcontractors to be used. Similarly, it identifies no specific costs relating to this RFP requirement. The non-responsiveness of the Saint Francis proposal simply makes it impossible for DAS or anyone else to determine which services will be provided by Saint Francis directly and which services will be provided by other entities.

[19] In fact, despite the answer to Q&A No. 62, Saint Francis *did not* list the LCPAs it proposed to use. There can be no doubt that Saint Francis was required to do so, that it knew it was required to do so and that it still chose *not* to do so. An award under such circumstances would reflect that compliance with RFP requirements is not actually necessary in Nebraska, which will certainly undermind future procurements.

Unfortunately nothing in the materials currently available to PromiseShip suggests that the Evaluation Committee could have determined Saint Francis complied with these requirements or conducted any meaningful review of the proposals with the statutory limitation imposed by Neb. Rev. Stat. § 43-4204 in mind, meaning any resulting contract would allow Saint Francis to violate Nebraska law. The Award Decision, in this respect as well, was made using an arbitrary and capricious process that did not comply with the RFP or statute.

5. Saint Francis' Proposal Fails To Demonstrate Compliance With The RFP's Transportation Requirements And Nebraska Public Service Commission Regulations.

The RFP also required that a successful bidder be responsible for providing "all in-state and out-of-state transportation related to the Subrecipient's primary business of serving children and families." RFP § V.E.2. It required that the successful bidder have a plan to provide transportation that "complies with all applicable Public Service Commission regulations and requirements." *Id.* In an apparent effort to comply with this requirement, Saint Francis proposes to hire 45 full and part time drivers to provide transportation to children in care. *See* Saint Francis Technical Proposal at p. 94.[20] Nowhere in its proposal, however, does Saint Francis in any way address how its plan would comply with the Nebraska Public Service Commission ("PSC") requirements or, if it were denied a certificate to provide transportation services by the PSC, how it would otherwise comply with the RFP requirement. Its proposal also identifies no associated costs related to becoming PSC certified.

The Nebraska PSC regulates the provision of transportation by "common carriers" and "contract carriers" in Nebraska. Both "common" and "contract" carriers are those who provide passenger transportation services "for hire." *See* Neb. Rev. Stat. § 75-302. Because Saint Francis would be provide transportation services as part of its contract with DHHS, per the terms of the RFP, it is likely subject to the PSC's regulation and would be required to receive certification from the PSC. *See* Neb. Rev. Stat. § 75-303 (defining scope of PSC regulation) and Neb. Rev. Stat. §§ 75-309 and 309.01 (penalizing operation without certificate). Despite this, Saint Francis' proposal does not even acknowledge, let alone provide a plan for, obtaining the required certifications from the PSC before it would be able to legally provide the transportation services it proposes to comply with the terms of the RFP.

The requirement that entities contracting with DHHS to provide child welfare services, such as those in the RFP, must comply with PSC regulations has been recognized by the Nebraska Attorney General. In an August 2010 Attorney General Opinion, the Nebraska Attorney General stated its conclusion that "the Contractors are engaged in providing transportation services as part of a contract for which they receive compensation to provide a number of services, including transportation. Under those circumstances, we conclude that the Contractors are not exempt 'private carriers,' but, rather, are engaged in contract carriage of persons 'for hire' and thus subject

[20] While Saint Francis' actual plan for transportation is, like its other plans, unclear, it appears that Saint Francis seeks to develop its own professional "fleet" of drivers who will provide transportation under the contract, in lieu of subcontracting transportation services, as is currently done. This again calls into question its commitment to complying with Neb. Rev. Stat. § 43-4204, in addition to failing to acknowledge the role of Nebraska's PSC.

to the Commission's regulatory jurisdiction." Nebraska Attorney General Opinion No. 2010-010, Aug. 24, 2010.[21]

PSC licensure and attaining compliance with the PSC requirements, moreover, are not automatic. In order to receive the required certification, a proposed contractor must apply for certification with the PSC. *See* Neb. Rev. Stat. § 75-310. The PSC then publishes notice that the application has been filed, giving the opportunity for persons to protest the application. *Id.* A certificate may only be granted without a hearing if no objections are received. *Id.* If objections are received (as they almost always are), a hearing must take place to demonstrate entitlement to a certificate under the standards established in Neb. Rev. Stat. § 75-311. Absent a plan from Saint Francis describing how its transportation services would work, and on what grounds it would seek certification from the PSC, it is impossible for PromiseShip to determine, and would have been impossible for DAS to determine had it considered it, whether Saint Francis would be likely to receive the needed certificate.

The RFP directed bidders that they would be required to provide a plan for complying comply with any applicable PSC regulations. In order to provide transportation services directly under its contract, Saint Francis would be required to acquire a certificate from the PSC, using the PSC's process. Saint Francis' proposal fails to account for this need, does not provide any explanation for how it will meet the need, and how it will do so in a timely manner, thus putting its ability to provide required services into question. Further, given the lack of any plan to accomplish the required certification, Saint Francis cannot have considered any costs related to certification in its cost proposal for administrative costs. DAS, by failing to address this flaw in Saint Francis' proposal, and awarding a contract to it without ensuring it would be able to meet the transportation needs of the contract, puts the success of the program into question

Ultimately, DAS and DHHS, before awarding a contract to a bidder under the RFP, were minimally required to ensure that all such bidders meet the minimum requirement of compliance with Nebraska law, *see, e.g.*, RFP § I.O.4.a. and § V.I.4. Review of Saint Francis' proposal reflects multiple areas in which it either fails to provide sufficient detail to ensure compliance, or specifically includes noncompliant proposals, which, if accepted, would violate Nebraska statutes. Because Saint Francis' proposal fails to demonstrate compliance with Nebraska law, it is non-responsive to the RFP, and the Notice of Intent to Award a contract to such a non-complaint bidder, must be rescinded.

D. Saint Francis Is Not A Responsible Bidder

Nebraska law directs, in determining the responsibility of a bidder, among other things "the following elements ***shall*** be given consideration":

> (b) The ***character, integrity, reputation, judgment***, experience, and efficiency of the bidder;...
>
> (d) The *quality of **performance of previous contracts***;

[21] Available at: https://ago.nebraska.gov/sites/ago.nebraska.gov/files/docs/opinions/AG%20Opinion%202010-010.pdf.

> (e) The *previous and existing compliance by the bidder with laws relating to the contract*; ... [and]
>
> (k) Such other information as may be secured having a bearing on the decision to award the contract.

Neb. Rev. Stat. § 81-161 (emphasis added).

The Nebraska Supreme Court has made clear that "[r]esponsibility . . . is not merely a synonym for a bidder's pecuniary ability . . . [R]esponsibility also pertains to a bidder's ability and capacity to carry on the work, his equipment and facilities, his promptness, and the quality of work previously done by him, his suitability to the particular task, and such other qualities as are found necessary to consider in order to determine whether or not, if awarded the contract, he could perform it strictly in accordance with its terms" *Rath v. City of Sutton*, 267 Neb. 265, 283, 673 N.W.2d 869, 886 (2004) (internal citations omitted).

"In making a responsibility determination," the agency must determine, among other things, that the contractor has "a satisfactory record of *integrity and business ethics*." . . . *Matter of: B & B Med. Servs., Inc.*, Comp. Gen. Dec. B-407113.3 (June 24, 2013), 2013 WL 3486867, at *3 (*citing* 48 C.F.R. §§ 9.103(a), (b); 9.104-1(a), (d)); *see also Interior Contractors, Inc. v. Bd. of Trustees of Newman Mem'l Cnty. Hosp.*, 185 F. Supp. 2d 1216, 1226–27 (D. Kan. 2002) ("We conclude that the word 'responsible' in the phrase 'lowest responsible bidder' was used by the Legislature in the sense in which it had long been interpreted by the courts and text-writers, and must be held to imply *skill, judgment, and integrity* necessary to the faithful performance of the contract, as well as sufficient financial resources and ability").

In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer must make a determination of nonresponsibility. *Id.*; see also Lawrence Shire, Note, *Government Contracts – Nonresponsibility Determinations – The Federal Government Violates a Contractor's Due Process Liberty Interest by Failing to Provide Prior Notice And an Opportunity to Rebut Charges Contained in Nonresponsibility Determinations Based on Lack of Integrity – Old Dominion Dairy Products, Inc. v. Secretary of Defense, 631 F.2d 953 (D.C. Cir. 1980)*, 50 Geo. L. Rev. 90, 92 n.28 (1981–82) (*quoting Domco Chem. Corp.*, 48 Comp. Gen. 769, 771 (1969)) (Integrity means "uprightness of character, moral soundness, honesty, probity and freedom from corrupting influence or practice.").

1. Saint Francis' Failures To Disclose Relevant Adverse Facts About Its Prior Performance Demonstrate It Is Not A Responsible Bidder

As noted above, bidders were required to disclose "any and all judgments, pending or expected litigation, or other real or potential financial reversals, which might materially affect the viability or stability of the organization." RFP § VI.A.2.b. The RFP further required that all bidders disclose and describe whether "the bidder or any proposed subcontractor has had a contract / subaward terminated for default during the past ten (10) years." RFP § VI.A.2.g. Based on such disclosures, DAS committed to "evaluate the facts" and "score the proposal accordingly." *Id.* The RFP additionally required bidders disclose whether, within the past ten (10) years, "the bidder has had a contract / subaward terminated for convenience, non-performance, non-allocation of funds, or any other reason," along with a requirement the bidder "describe fully all circumstances surrounding such termination." *Id.*

In Nebraska, a legal duty to disclose arises when "necessary to prevent his partial or ambiguous statement of the facts from being misleading." *Griffith v. Drew's LLC*, 860 N.W.2d 749, 758-59, 290 Neb. 508, 516-17 (Neb. 2015). "To reveal some information on a subject triggers the duty to reveal all known material facts." *Knights of Columbus Council 3152 v. KFS BD, Inc.*, 791 N.W.2d 317, 331-32, 280 Neb. 904, 922-23 (Neb. 2010).

"A statement that is true but partial or incomplete may be a misrepresentation, because it is misleading when it purports to tell the whole truth and does not." *Zawaideh v. Nebraska Dept. of Health and Human Services Regulation and Licensure*, 792 N.W.2d 484, 497-98, 280 Neb. 997, 1012-13 (Neb. 2011). "For instance, a statement that contains only favorable matters and omits all reference to unfavorable matters is as much a false representation as if all the facts stated were untrue." *Id.* "So when such a statement is made, there is a duty to disclose the additional information necessary to prevent it from misleading the recipient." *Id.*

"[A] partial or fragmentary statement that is materially misleading because of the party's failure to state additional or qualifying facts . . . is fraudulent." *Knights of Columbus Council 3152 v. KFS BD, Inc.*, 791 N.W.2d 317, 331-32, 280 Neb. 904, 922-23 (Neb. 2010) "Fraudulent misrepresentations may consist of half-truths calculated to deceive, and a representation literally true is fraudulent if used to create an impression substantially false." *Id.*

Saint Francis relied heavily on its contract performance in Kansas to persuade DAS evaluators that it was qualified to perform in Nebraska, and repeatedly referenced and described its work there as positive, well received and valuable for the State and the population it served. *See* Saint Francis Technical Proposal at 4 ("In the Kansas Wichita Region, we have succeeded in finding at least one responsible adult connection for 90.6% of youth aging out of foster care in FY18."); p. 5 ("Saint Francis is currently contracted to provide foster care reunification, adoption, and child placement services in Kansas and has successfully held this status since 2000 . . . We provide direct services to children and families throughout 75 of Kansas's 105 counties and serve the remaining counties with community-based services."); p. 43 ("During our six (6) years of serving the Wichita Region, Saint Francis has never missed or refused a single referral, and we were able to implement the seamless transition of these services within a timely manner.").

Saint Francis' representations of its Kansas experience, however, were at best a half-truth, and at worst, a misleading description of those services. Indeed, by concealing the long-standing, and documented drumbeat of adverse legislative, agency and media criticism in Kansas, the proposal failed to accurately describe its Kansas experience, and misled DAS and its evaluators. Saint Francis' proposal is thus non-responsive, and its conduct renders it a non-responsible bidder. It should be disqualified.

The litany of issues apparent in Saint Francis' Kansas performance is significant. For example, the Kansas Legislative Division of Post Audit (LPA) has previously audited and criticized Saint Francis' performance.[22] In its 2016-2017 Report, for example, LPA found that

[22] The Report is available at http://www.kslpa.org/media/files/reports/media/files/temp/r-17-006.pdf.

Saint Francis had not "employ[ed] enough case management staff," and some "had high caseload levels." *Id.* at 9.[23]

In response to media attention and repeated concerns about the "churning of foster care patients, and one-night placements in contractor offices (among other things) the Kansas Legislature in 2018 directed the Secretary to establish a task force to study the system. [24] In January 2018, a legislatively-mandated task force prepared a Report of the Child Welfare System Task Force to the Kansas Legislature (2018 Report).[25] The 2018 Report was prepared pursuant to legislative direction to study the Kansas child welfare system. *Id.* The Report described that Saint Francis had challenges employing sufficient case management staff, and exceeded the State's recommended limit of 30 cases. *Id.* at 8. The Task Force further reported concerns about "excessive caseloads" and s that "increasing numbers of children and youth who are forced to sleep overnight in child placement agency offices." *Id.* at 24-25.

These problems continued into 2019, as outlined in the next year's Report of the Child Welfare System Task Force to the Kansas Legislature (2019 Report).[26] The 2019 Report noted that "DCF and contractors are **still working to address the issue of one-night placements.**" *Id.* at 20. The 2019 Report noted that the matter is under review by the child welfare compliance unit. *Id.* at 22.

Not only has the Kansas Legislature expressed deep concerns about Saint Francis' practices and chronic understaffing, but its conduct has led to widespread negative publicity, class action litigation, and other litigation. For example, according to the Wichita Eagle, "[a]bused and neglected children" have reportedly been "sleeping overnight in the offices of Kansas foster care contractors," among other "serious problems" with the "troubled child welfare system" in Kansas.[27] The Kansas City Star reported the number of missing Kansas foster kids doubled in two

---

[23] This conclusion would be consistent with Saint Francis' proposal to violate Nebraska law and employ insufficient case management staff under this contract, as well.

[24] The Report is available at: http://www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2018CommitteeReports/child_welfare_sys_tf-cr.pdf. Further symptomatic of Saint Francis' practice of understaffing and underbidding state contracts are allegations of misconduct by its employees. *See e.g., Barnes v. St. Francis Community Services*, Case No. 16-1281-EFM-GLR, 2017 WL 2666099, at *2 (D.Kan. June 21, 2017) ("St. Francis knew or should have known that Dolph had been disciplined and/or terminated from his previous social work job for sexual misconduct issues. St. Francis did not monitor Dolph's communications with Barnes. In addition, St. Francis' high levels of turnover and chronic short staffing led to inadequate supervision and one-on-one visits that were not monitored"); *Miles v. Weed et al*, 2018-CV-000182, ¶¶ 35, 37 (D. Ct. Saline County, Kansas) ("Notwithstanding the provisions of the placement agreement, [] Saint Francis negligently and illegally removed or allowed the children to be removed from Plaintiff's home . . . R.S.M was so distraught that workers were considering whether or not she needed to be taken to the hospital for emergency care").

[25] The 2018 Report is available at: http://www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2017CommitteeReports/child_welfare_sys_tf-cr.pdf.

[26] The 2019 Report is available at: http://www.dcf.ks.gov/Agency/CWSTF/Documents/Child%20Welfare%20System%20Task%20Force%20Report.pdf

[27] *See* John Hanna, *Kansas Again Keeping Foster Kids in Offices*, Wichita Eagle, May 17, 2019, available at https://www.kansas.com/news/politics-government/article230534164.html. Apparently one bidder sought to bring the practice of housing foster children in offices to Nebraska. In the Q&A period for the RFP, the question was asked "[c]ould the subrecipient have dedicated space within an office to serve as temporary housing or have access to an

years, during Saint Francis' tenure, leading "Kansas lawmakers [] expressing outrage and calling for action."[28]

In late 2018, a class-action lawsuit was filed against Kansas in federal court, by numerous foster parents, relating directly to case management services provided by Saint Francis and the other Kansas child welfare contractor, KVC. *See McIntyre, et al. v. Colyer, et al.* (No. 18-CV-2617) (2018) (D. Kansas). Among other things, the suit details the experiences of children who "[i]n a repetitive, destabilizing cycle" are "**regularly forced to sleep for a night or several nights anywhere a bed, couch, office conference room, shelter or hospital can be found.**" *McIntyre*, Complaint, Case No. 18-CV-2617.[29] "For days, weeks, or even months at time, they spend their nights in these short-term placements and their days in agency offices waiting to find out where they will sleep next, only to repeat the same cycle again" *Id.* The *McIntyre* suit contains other highly troubling allegations relating to the performance of Saint Francis. For example:

- Kansas' Child Welfare System Task Force received testimony in April 2018 that many foster children "without permanent placement do not know from night-to-night where they will be staying. They are literally packing a suitcase and moving every morning," and "**they frequently have no idea where they will be sleeping that night.**" This practice amounts to an inherent deprivation of shelter and is de facto homelessness. According to testimony by Defendant Meier-Hummel to the Child Welfare System Task Force, Saint Francis, one of the two DCF lead contractor agencies in Kansas, subjected **764 children to one-night placements from April to September of 2018.**

- To perform these essential functions, as noted in a state audit report in April 2017, "[i]t is important [that] case management staff have **reasonable caseloads**, so they can provide each child the quality of services and individual attention they need." Professional standards, as promulgated by the Child Welfare League of America, recommend that foster care caseworkers have workloads that range from **twelve to fifteen children per caseworker** in order to fulfill their responsibilities. Standards of the Council on Accreditation recommend that caseworkers have workloads between **eight and fifteen children**, depending on the level of need of the children.

- An April 2017 state audit report found that, in Kansas, "[c]ase managers' maximum **caseloads frequently exceeded 30 cases** during fiscal years 2014-2016." Subsequent reports reveal that workloads have continued to increase. A media report in November 2017 found that caseworkers responsible for as many as **forty-three and fifty-seven children** found it impossible to complete each monthly visit as well as case plans, court hearings and meetings with families. That same month, a local magistrate judge explained

apartment, condo, home for supervision if placement isn't found for youth within the 3-hour required timeframe?" Q&A No. 67. DHHS indicated that such activities would not be acceptable in Nebraska and that the subrecipient would instead need to work with Project Harmony for triage in such situations.

[28] *See* Hunter Woodall and Jonathan Shorman, *Number of Missing Kansas Foster Kids Doubled Over Two Years*, Kansas City Star, October 14, 2017, available at https://www.kansascity.com/news/politics-government/article178817256.html.

[29] Complaint available on PACER.

to the Child Welfare System Task Force that "[c]aseworkers are carrying enormous caseloads that prevent the attention these kids require."

The *McIntyre* plaintiffs seek wide-ranging declaratory and injunctive relief, and significant, material changes in the provision of foster care services, in order to provide adequate foster care consistent with state and federal standards, as well as attorneys' fees. At this early stage of the case, Saint Francis has not been formally joined as a party to the suit, nor have any substantive decisions been made by the Court.

Kansas data for State Fiscal Year ("SFY") 2018 reported a *thirty percent increase* in instability from 2016 and more than double the federal CFSR standard. *See McIntyre* Complaint at ¶ 119. Saint Francis allegedly subjected 764 children to one-night placements from April to September of 2018. *Id.* at ¶ 120. This has been directly tied to Saint Francis's unreasonable caseloads, which an April 2017 state audit report found was frequently more than double (and often triple) the allowable ratio. Subsequent reports reveal that workloads have continued to increase. Yet, in fiscal year 2016, "about $154 million" was paid to Saint Francis and another state contractor "to provide placement (reintegration, foster care, and adoption) and case management services."

Saint Francis has drastically underbid the RFP by failing to include the cost to obtain the necessary case managers and subcontractors over the life of the contract, virtually ensuring its services will be inadequate with—as in Kansas—tragic consequences for both the State and its residents. The award to Saint Francis is not in the best interests of the State of Nebraska and should be overturned.

RIGHT TO SUPPLEMENT AND STAY OF AWARDS

DAS' Award Notice was issued on June 3, 2019. The next day, PromiseShip, through counsel, submitted multiple public records requests to both DAS and DHHS in an attempt to fully consider whether DAS' evaluation of the proposals complied with the terms of the RFP and Nebraska law, or whether a protest was required. As of the date of this written protest, June 14, 2019, no documents or materials have been received from DAS or DHHS. DHHS has confirmed receipt of PromiseShip's request and set a target of July 1, 2019, for its response. DAS has confirmed receipt and identified a likely response date of June 14, 2019. Because PromiseShip has not yet received records relevant to fully examining the propriety of the procurement, PromiseShip expressly reserves its right to supplement this protest upon further review of relevant records.

PromiseShip respectfully requests that the State delay finalizing **any** contracts with Saint Francis until such time as PromiseShip's protest has been **<u>fully and finally resolved</u>**. As DAS has acknowledged in response to prior protests, "each award is subject to a protest and review process" intended to "protect the process and ensure an open and fair bidding process." DAS correctly stated that the protest procedure "allows bidders to raise concerns with the process, and point out any flaws or omissions which may have or potentially could have adversely impacted the award." As the range of issues identified in this protest demonstrates, significant questions persist regarding the integrity and fairness of this procurement. As such, any award before the protest process has had an opportunity to conclude would not be in the best interests of the State and would be inconsistent with the spirit and letter of Nebraska's laws governing competitive bidding. Therefore, PromiseShip requests that DAS **confirm in writing** that it will not execute any contracts with Saint Francis until all of PromiseShip's protest rights have been satisfied.

PromiseShip, in addition, requests that DAS and DHHS stay, or suspend, any other activities to implement any agreement Saint Francis, in order to avoid any unnecessary confusion, particularly given the need for PromiseShip to participate in any anticipated transition.

Finally, PromiseShip requests that both DAS and DHHS, and any other involved entities or third-parties, preserve all potentially discoverable information that may be relevant to anticipated potential litigation regarding the procurement process and anticipated award of a contracts to Saint Francis.

RELIEF REQUESTED

Based on the foregoing, PromiseShip respectfully requests that DAS withdraw its Notice of Intent to Award a contract under the RFP to Saint Francis. PromiseShip respectfully submits that it has demonstrated that it is the contractor with the greatest ability to provide high-quality services to the State and that Saint Francis' failures in its proposal deem it a non-responsive, non-responsible bidder.

In order to facilitate DAS' full and fair review of this Protest, PromiseShip is available to meet with representatives of the Materiel Division regarding issues raised in this protest. It is PromiseShip's hope that reconsideration of the flaws apparent in the current process will assist DAS in maintaining the integrity of Nebraska's competitive selection process and will result in the continued success of Nebraska's child welfare system. Please let us know if we can provide additional information to assist in your review and consideration of this Request.

Respectfully submitted,

Thomas J. Kenny
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
402-346-6000
Thomas.Kenny@KutakRock.com
Counsel for PromiseShip

Enclosures

Exhibit
A

Case Management

	PER SAINT FRANCIS' RESPONSE / SUBMISSION TO RFP				STAFFING ADJUSTMENTS DUE TO CASE MANAGEMENT RATIOS (STATE MANDATED)			
	Number of FTEs	Est. Salary	Est Ben.	Total	Number of FTEs	Est. Salary	Est Ben.	Total
Asst. Vice President of Services	1	90,000	30%	117,000	1	90,000	30%	117,000
Professional Staff								
Attorney	2	80,000	30%	208,000	2	80,000	30%	208,000
IT Security Administrator	1	80,000	30%	104,000	1	80,000	30%	104,000
Directors - Total	3			312,000	3			312,000
Directors								
Reintegration / Adoption / Independent Living	4	70,000	30%	364,000	4	70,000	30%	364,000
Kinship	1	70,000	30%	91,000	1	70,000	30%	91,000
Support Services	1	70,000	30%	91,000	1	70,000	30%	91,000
Placement / Transportation	1	70,000	30%	91,000	1	70,000	30%	91,000
Family Preservation	1	70,000	30%	91,000	1	70,000	30%	91,000
PI / QA Director	1	70,000	30%	91,000	1	70,000	30%	91,000
Foster Care Homes Director	1	70,000	30%	91,000	1	70,000	30%	91,000
Directors - Total	10			910,000	10			910,000
Supervisors								
Child Placement Coordinator Supervisor	1	48,000	30%	62,400	1	48,000	30%	62,400
Case Management Supervisors	12	48,000	30%	748,800	19	48,000	30%	1,185,600
Support Staff Supervisor	3	48,000	30%	187,200	3	48,000	30%	187,200
Clinical Utilization Supervisor	1	48,000	30%	62,400	1	48,000	30%	62,400
Kinship Supervisor	4	48,000	30%	249,600	4	48,000	30%	249,600
PI/QA Supervisor	1	48,000	30%	62,400	1	48,000	30%	62,400
FCH Recruiter Supervisor	1	48,000	30%	62,400	1	48,000	30%	62,400
FCH Supervisor	1	48,000	30%	62,400	1	48,000	30%	62,400
Supervisors - Total	24			1,497,600	31			1,934,400
Coordinators								
Placement Coordinators	4	42,000	30%	218,400	4	42,000	30%	218,400
Independent Living Coordinator	2	42,000	30%	109,200	2	42,000	30%	109,200
Transportation Coordinator	3	42,000	30%	163,800	3	42,000	30%	163,800
PI / QA Coordinator	1	42,000	30%	54,600	1	42,000	30%	54,600
Education Coordinator	1	42,000	30%	54,600	1	42,000	30%	54,600
Technology Coordinator	1	42,000	30%	54,600	1	42,000	30%	54,600
Coordinators - Total	12			655,200	12			655,200

Specialists

Case Managers	62	38,000	30%	3,062,800	97	38,000	30%	4,791,800
Clinical Utilization Provider Relations	5	38,000	30%	247,000	5	38,000	30%	247,000
Kinship Workers	30	38,000	30%	1,482,000	30	38,000	30%	1,482,000
Clinical Utilization Specialist –								
Medicaid Liaison	2	38,000	30%	98,800	2	38,000	30%	98,800
X-Treme Recruiters	2	38,000	30%	98,800	2	38,000	30%	98,800
FCH Recruiters	3	38,000	30%	148,200	3	38,000	30%	148,200
FCH Workers	8	38,000	30%	395,200	8	38,000	30%	395,200
Trainers	3	38,000	30%	148,200	3	38,000	30%	148,200
Specialists - Total	115			5,681,000	150			7,410,000
Support								
Family Support Worker	31	28,000	30%	1,128,400	31	28,000	30%	1,128,400
Data Entry	12	28,000	30%	436,800	12	28,000	30%	436,800
Support Staff	12	28,000	30%	436,800	12	28,000	30%	436,800
Transportation Drivers	24	28,000	30%	873,600	24	28,000	30%	873,600
Parent Support Workers	8	28,000	30%	291,200	8	28,000	30%	291,200
Customer Care Workers	2	28,000	30%	72,800	2	28,000	30%	72,800
Support Total	89			3,239,600	89			3,239,600
Grand Totals – Annual Amounts	254			12,412,400	296			14,578,200
Grand Totals – Monthly Amounts				1,034,367				1,214,850

PromiseShip

Monthly Projected Expense	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	GRAND TOTALS
Administrative	428,060	436,621	445,354	454,261	463,346	464,118	464,892	3,156,652
Family Pres	281,161	281,864	286,179	290,472	295,637	297,115	298,601	2,031,029
Case Management	1,861,627	1,906,498	1,937,545	1,975,573	2,015,085	2,018,443	2,021,807	13,736,578
Direct Service	1,063,684	892,528	905,915	919,504	935,854	949,892	964,140	6,631,517
OOH service	2,307,135	1,961,877	1,991,306	2,021,175	2,057,113	2,087,970	2,119,290	14,545,866
Total Program	5,513,607	5,042,767	5,120,945	5,206,724	5,303,689	5,353,420	5,403,838	36,944,990
Total Monthly Expense	5,941,667	5,479,388	5,566,299	5,660,985	5,767,035	5,817,538	5,868,730	40,101,642

Saint Francis

Monthly Projected Expense	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	GRAND TOTALS
Administrative	136,559	313,527	329,204	345,664	362,947	381,094	400,149	2,269,144

Family Pres	341,398	783,818	823,009	864,159	907,367	952,736	1,000,372		5,672,859
Case Management	136,559	313,527	329,204	345,664	362,947	381,094	400,149		2,269,144
Direct Service	68,280	156,764	164,602	172,832	181,473	190,547	200,074		1,134,572
OOH service	819,355	1,881,163	1,975,221	2,073,982	2,177,681	2,286,566	2,400,894		13,614,862
Total Program	1,365,592	3,135,272	3,292,036	3,456,637	3,629,468	3,810,943	4,001,489		22,691,437
Total Monthly Expense	1,502,151	3,448,799	3,621,240	3,802,301	3,992,415	4,192,037	4,401,638		24,960,581

Annual Amount Comparison

Cost Proposals - Annual amounts

PromiseShip

Projected Expense	Year 1	Year 2	Year 3	Year 4	Year 5	Years 1 - 5 Totals	Year 6	Year 7	Grand Totals
Administrative	5,136,720	5,239,452	5,344,248	5,451,132	5,560,152	26,731,704	5,569,416	5,578,704	37,879,824
Family Pres	3,373,932	3,382,368	3,434,148	3,485,664	3,547,644	17,223,756	3,565,380	3,583,212	24,372,348
Case Management	22,339,524	22,877,976	23,250,540	23,706,876	24,181,020	116,355,936	24,221,316	24,261,684	164,838,936
Direct Service	12,764,208	10,710,336	10,870,980	11,034,048	11,230,248	56,609,820	11,398,704	11,569,680	79,578,204
OOH service	27,685,620	23,542,524	23,895,672	24,254,100	24,685,356	124,063,272	25,055,640	25,431,480	174,550,392
Total Program	66,163,284	60,513,204	61,451,340	62,480,688	63,644,268	314,252,784	64,241,040	64,846,056	443,339,880
TOTAL ANNUAL EXPENSE	71,300,004	65,752,656	66,795,588	67,931,820	69,204,420	340,984,488	69,810,456	70,424,760	481,219,704
Check Amount per RFP Response	71,300,004	65,752,656	66,795,588	67,931,820	69,204,420		69,810,456	70,424,760	**481,219,704**
$ DIFFERENCE	0	0	0	0	0		0	0	0

Saint Francis

Projected Expense	Year 1	Year 2	Year 3	Year 4	Year 5	Years 1 - 5 Totals	Year 6	Year 7	Grand Totals
Administrative	1,638,708	3,762,324	3,950,448	4,147,968	4,355,364	17,854,812	4,573,128	4,801,788	27,229,728
Family Pres	4,096,776	9,405,816	9,876,108	10,369,908	10,888,404	44,637,012	11,432,832	12,004,464	68,074,308
Case Management	1,638,708	3,762,324	3,950,448	4,147,968	4,355,364	17,854,812	4,573,128	4,801,788	27,229,728
Direct Service	819,360	1,881,168	1,975,224	2,073,984	2,177,676	8,927,412	2,286,564	2,400,888	13,614,864
OOH service	9,832,260	22,573,956	23,702,652	24,887,784	26,132,172	107,128,824	27,438,792	28,810,728	163,378,344
Total Program	16,387,104	37,623,264	39,504,432	41,479,644	43,553,616	178,548,060	45,731,316	48,017,868	272,297,244
TOTAL ANNUAL EXPENSE	18,025,812	41,385,588	43,454,880	45,627,612	47,908,980	196,402,872	50,304,444	52,819,656	299,526,972
Check Amount per RFP Response	18,025,808	41,385,589	43,454,868	45,627,612	47,908,992		50,304,442	52,819,664	**299,526,975**
$ DIFFERENCE	4	(1)	12	0	(12)		2	(8)	(3)

PromiseShip Minus Saint Francis - Amount Saint Francis bid lower than PromiseShip

Projected Expense	Year 1	Year 2	Year 3	Year 4	Year 5	Years 1 - 5 Totals	Year 6	Year 7	Grand Totals
Administrative	3,498,012	1,477,128	1,393,800	1,303,164	1,204,788	8,876,892	996,288	776,916	10,650,096
Family Pres	(722,844)	(6,023,448)	(6,441,960)	(6,884,244)	(7,340,760)	(27,413,256)	(7,867,452)	(8,421,252)	(43,701,960)
Case Management	20,700,816	19,115,652	19,300,092	19,558,908	19,825,656	98,501,124	19,648,188	19,459,896	137,609,208

Direct Service	11,944,848	8,829,168	8,895,756	8,960,064	9,052,572	47,682,408	9,112,140	9,168,792	65,963,340
OOH service	17,853,360	968,568	193,020	(633,684)	(1,446,816)	16,934,448	(2,383,152)	(3,379,248)	11,172,048
Total Program	49,776,180	22,889,940	21,946,908	21,001,044	20,090,652	135,704,724	18,509,724	16,828,188	171,042,636
Annual not to exceed amount	53,274,192	24,367,068	23,340,708	22,304,208	21,295,440	144,581,616	19,506,012	17,605,104	181,692,732

Per Current Proposal	Per year average	5 YR Contract Cost	7 YR Contract Cost
Saint Francis Case Management costs per staffing table (conservative salaries & benefits based on state of Nebraska market estimates)	$ 12,412,400.00	$ 62,062,000	$ 86,886,800
Saint Francis Case Management Personnel costs per cost proposal		$ 17,854,812	$ 27,229,728
Overall Case management salaries and benefits not included in Saint Francis Proposal		$ 44,207,188	$ 59,657,072
Average Cost Per Year		$ 8,841,438	$ 8,522,439

Per Staffing Ratio Requirements	Per year average	5 YR Contract Cost	7 YR Contract Cost
Saint Francis Case Management costs per staffing table (conservative salaries & benefits based on state of Nebraska market estimates)	$ 14,578,200.00	$ 72,891,000	$ 102,047,400
Saint Francis Case Management Personnel costs per cost proposal		$ 17,854,812	$ 27,229,728
Overall Case management salaries and benefits not included in Saint Francis Proposal		$ 55,036,188	$ 74,817,672
Average Cost Per Year		$ 11,007,238	$ 10,688,239

	5 YR Contract Cost	7 YR Contract Cost
Saint Francis Case Management costs per cost proposal	17,854,812	27,229,728
PromiseShip Case Management costs per cost proposal	116,355,936	164,838,936
	98,501,124	137,609,208

Cost and Scoring With Correct Caseload Ratios

PromiseShip

Annual Projected Expense	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Annual Admin	2,568,361	5,239,457	5,344,246	5,451,131	5,560,154	5,569,421	5,578,703
	-	-	-	-	-	-	-
Family Pres	1,686,965	3,382,369	3,434,151	3,485,664	3,547,642	3,565,380	3,583,207
Case Management	11,169,762	22,877,977	23,250,540	23,706,881	24,181,019	24,221,321	24,261,689
Direct Service	6,382,106	10,710,331	10,870,986	11,034,051	11,230,245	11,398,699	11,569,679
OOH service	13,842,807	23,542,529	23,895,667	24,254,102	24,685,359	25,055,640	25,431,474
Total Annual Program	33,081,640	60,515,206	61,451,344	62,480,697	63,644,265	64,241,039	64,846,050
Annual not to exceed amount	35,650,001	65,752,663	66,795,590	67,931,829	69,204,419	69,810,460	70,424,753
							445,569,716

Saint Francis

Annual Projected Expense	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Annual Admin	1,638,708	3,762,324	3,950,448	4,147,968	4,355,364	4,573,128	4,801,788
Family Pres	4,096,776	9,405,816	9,876,108	10,369,908	10,888,404	11,432,832	12,004,464
Case Management	7,289,100	14,578,200	14,578,200	14,578,200	14,578,200	14,578,200	14,578,200
Direct Service	819,360	1,881,168	1,975,224	2,073,984	2,177,676	2,286,564	2,400,888
OOH service	9,832,260	22,573,956	23,702,652	24,887,784	26,132,172	27,438,792	28,810,728
Total Annual Program	22,037,496	48,439,140	50,132,184	51,909,876	53,776,452	55,736,388	57,794,280
Annual not to exceed amount	23,676,204	52,201,464	54,082,632	56,057,844	58,131,816	60,309,516	62,596,068

Currently	62	FPS
	12	Supervisors
Caseload size	25	per FPS
Number of cases	1,550	Cases
Caseload per statute	16	per FPS
FPS Needed	97	
FPS/sup	6.00	
Supervisors needed	17.00	

A 305,334,502 First five years total contract cap PromiseShip

B/A x 880 703.6609459 PromiseShip Points

		PromiseShi	Saint Francis
Corporate Overview		275.83	265
Technical Approach		1,483.00	1,362.17
Financial Requirements		153.50	101.00
Cost Proposal		703.66	880.00
Oral Interview		294.80	299.40
Total points		2,910.79	2,907.57

B 244,149,960 First five years total contract cap Saint Francis (May only be 4 1/2 years)

Exhibit
B

DRAFT: CFS Workload Calculation Methodology

Revised December 3, 2018

GUIDING ATTRIBUTES

- Continuity of case management for families is a high priority.
- Workload standards are a best practice that serves as a diagnostic tool that provides a frame of reference for the Division's operational performance. As an operational guide, workload standards should not be seen as a compliance standard but as an avenue of insight for management and oversight entities.
- At times, workload standards may be exceeded for operational and other reasons. Management shall be aware of such instances and can provide an explanation for the overage. That said, improved thresholds and performance expectations make such overages a rare occurrence.
- With a more accurate and tailored approach to establishing workload it is hoped that teammates will have increased time to participate in self-care and professional development activities.

SERVICE TYPES AND TARGET LEVELS

Hotline:
All intakes handled within 24 hours.

Assessments:
No more than 11 active assessments per 1 worker at any given time with no more than 6 new assessments assigned during a one month period.

- Each case has a workload value of 1.

Ongoing:
No more than 10 active cases per case carrying CFS worker, with no more than 15 children total.

- Each case has a workload value of 1, unless:
  - If Court Supervised, add .5 value.
  - If an ICPC case, value is a total of .25.
  - If a Courtesy Worker, value is a total of .25.

Supervision:
1 supervisor per 6-7 case carrying CFS workers.

PERFORMANCE STATEMENT

It is the performance goal of the Division of Children and Family Services to have at least 90% of casework-eligible caseworkers meeting the above targets on a 30-day rolling average basis.

DEFINITIONS

24 hours
24 continuous hours from the time the call is received until the intake is handled.

Active Assessments
All open and active assessments, including intake, out of home, and Assessment of Placement Safety and Suitability (APSS). This is a rolling number. Assessments assigned the previous month are carried over and counted toward the total number.

Active Case
A case, regardless of placement (in-home or out-of-home), that is open and active. This is a rolling number. Cases assigned the previous month are carried over and counted toward the total number.

One Month Period
A rolling 30-day timeframe.

HOW DOES THIS WORK? AN EXAMPLE

Caseworker A

9 active assessments workload

- 7 intakes
- 1 Out of Home
- 1 APSS

9 ongoing cases workload

- 8 cases (+8); 15 children total
- 1 is Court Supervised (+.5)
- Courtesy Worker on 2 other cases (+.5)

Current Workload	Workload Target	Ok?	Operational Note
9 active assessments	≤11	Yes	Could handle 2 more assessments
9 active ongoing cases	≤10	Yes	No more cases. While under 10 cases, maxed out at 15 children.

APPENDIX
ADDITIONAL EXAMPLES OF NON-RESPONSIVENESS IN SAINT FRANCIS' PROPOSAL

Req #	Requirement	Comply
CNT-1	**The bidder should describe a plan of how it will develop, implement, manage and deliver a continuum of evidence based models used in the context of the service continuum that will be available for children and families, in both court and non-court cases, in order to achieve the permanency goals identified while delivering ongoing case management.**	X

Saint Francis Deficiency

Despite representing that it complied with this requirement, Saint Francis does not "describe a plan of how it will develop, implement, manage and deliver a continuum of evidence based models." Likewise, Saint Francis' proposal does not address the requirement as it relates to both court and non-court cases. Saint Francis' proposal response to this requirement from the Traceability Matrix is identical to its response to UTZ-1 on p. 184 of its proposal, but there is no mention of how Saint Francis manages the continuum of evidence based models. Most of Saint Francis' response relates only to the credentialing and placement processes, not continuum of services. There is nothing in Saint Francis' response to CNT-1 that mentions evidence-based models, continuum of services, court and non-court cases, or permanency goals, much less the development, implementation, management, and delivery of such models. Saint Francis' proposal is non-responsive to this RFP requirement.

Req #	Requirement	Comply
CNT-2	**The bidder should describe a plan to ensure at least 30% of prevention services will meet the criteria for Well Supported, Supported, or promising practice evidence based services, as outlined in FFPSA, in its service continuum for the first year, at least 40% of prevention services will meet the criteria for Well-Supported, Supported or promising practice evidence based services, as outlined in FFPSA in the second year, and 50% or more of prevention services will meet the criteria for Well-Supported, Supported or promising practice evidence based services as outlined in the FFPSA in years following.**	X

Saint Francis Deficiency

Saint Francis provides no response to this requirement, but simply repeats the question, contrary to the clear instructions for the Traceability Matrix, i.e. "[i]t is not sufficient for the bidder to simply state that it intends to meet the requirements of the RFP." Saint Francis provides no detail as to how it intends to meet the requirement other than to state that it is "invested in researching services" intended for the requirement to be met.

Req #	Requirement	Comply
CNT-3	**The bidder should describe a plan of how it will prevent children from being removed from the family home by developing, implementing, managing, and delivering a continuum of evidence-based services, including all Well-Supported services, as outlined in the FFPSA, as well as supports, that will be available for children and families, 24 hours a day, 7 days a week, 365 days a year, during the time that DHHS is conducting the Initial Assessment of safety and risk.**	X

Saint Francis Deficiency

Saint Francis provides no response to this requirement and provides no information on how it will accomplish the goal of preventing children from being removed from the family home. This RFP provision relates to family preservation, or Intensive Family Preservation ("IFP") services. When speaking to IFP, IFP is a concept and as such, must be evidence based. There must be a model associated with IFP that is considered to be evidence based; mentioning IFP in and of itself does not provide information to the Evaluation Committee as to what model will be used. Saint Francis' proposal is non-responsive to this RFP requirement.

Req #	Requirement	Comply
CNT-4	**The bidder should demonstrate how it will ensure delivery of Well Supported, Supported or promising practice evidence-based services to the following populations:** **a. Children ages birth to five** **b. Infants born with and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from pre-natal drug exposure, or a Fetal Alcohol Spectrum Disorder** **c. Children who have intellectual disability, Autism Spectrum Disorder, or who demonstrate behaviors consistent with children who have an intellectual disability** **d. Children who have been exposed to domestic violence** **e. Children who have extensive histories of trauma** **f. Children who have limited connections with supportive adults** **g. Youth that intersect both the child welfare and juvenile justice systems** **h. Youth identified as survivors of sex trafficking** **i. Youth who are near the age of majority and preparing to transition into adulthood**	X

Saint Francis Deficiency

Saint Francis' proposal only partially addresses this requirement, identifying well supported, supported, or promising practices for only a subset of the requirements addressed in the RFP. Namely:

e. Children who have extensive histories of trauma
d. Children who have been exposed to domestic violence
i. Youth who are near the age of majority and preparing to transition into adulthood
g. Children who intersect both the child welfare and the juvenile justice system

Saint Francis ignores, and fails to demonstrate, how it will ensure well supported, supported, or promising practices for the other RFP requirements:

a. Children ages birth to five
b. Infants born with and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from pre-natal drug exposure, or a Fetal Alcohol Spectrum Disorder
c. Children who have intellectual disability, Autism Spectrum Disorder, or who demonstrate behaviors consistent with children who have an intellectual disability
f. Children who have limited connections with supportive adults
h. Youth identified as survivors of sex trafficking

In reviewing Saint Francis' response, it identifies programs that are available in the community (i.e., Project Everlast; Bridges to Independence), but fails to describe its own approach or plan for providing the required services. Saint Francis' proposal is non-responsive to this RFP requirement.

Req #	Requirement	Comply
CNT-5	**The bidder should describe a plan on how it will assess gaps in service array for the populations served and said plan shall include how it proposes to fill these gaps in services. Gaps in service means that needed services for families are not available due to capacity issues or there are no Second Tier Sub recipients or subcontractors in the area that provide needed services.**	X

Saint Francis Deficiency

Saint Francis provides statistics on poverty, visitation, transportation, ACES, cultural competency, and various types of providers by simply extracting information directly from various providers' websites. Its proposal fails to "describe a plan to assess the gaps in those services and fails to provide any plan for bridging those gaps. Saint Francis' response is plainly not responsive to the requirement of the RFP.

Req #	Requirement	Comply
ENG-2	**The bidder should include a plan of how it will engage in meaningful consultation, collaboration and coordination with federally recognized tribes to support children and families with tribal affiliations.**	X

Saint Francis Deficiency

Requirement ENG-2 directs bidders to "include a plan" for how they will engage with federally recognized tribes. Saint Francis' response provides information regarding its experience working with tribes in Nebraska and other communities, but does not "include a plan" for how it will, as a lead agency, collaborate and coordinate in that role. Saint Francis fails to indicate it even knows who the specific federally-recognized tribes are in Nebraska (not mentioning any of them), let alone provide a "plan" for engaging in "meaningful consultation, collaboration, and coordination" with them. Saint Francis' proposal is non-responsive to this RFP requirement.

Req #	Requirement	Comply
IVE-2	The bidder should describe a plan of how it will collect, validate and submit eligibility-related documentation.	X

Saint Francis Deficiency

This RFP requirement is directly related to ensuring that clients who are Title IV-E eligible are determined to be eligible to assist with the drawdown of federal funds; as the RFP recognizes, federal funding and eligibility are significant objectives for the State managing this important task. *See* RFP § V.B.10 ("Title IV-E foster care funds are an important funding source for states . . . the DHHS goal is to maximize the amounts of Title IV-E funds claimed." *See also* RFP § II.J (Remedies for Noncompliance); RFP § V.H.1.a (Cost Allocation Plan). This requires some action and activity on the part of the case manager to ensure various activities are done so that DHHS is able to claim IV-E funding. Saint Francis fails utterly to "describe a plan" to ensure necessary steps are taken, but simply discusses the licensing of foster homes. Saint Francis also fails completely to describe any plan to ensure that individuals are eligible, which is a critical component for FFPSA funding. Saint Francis' proposal is non-responsive to this RFP requirement.

Req #	Requirement	Comply
PPF-1	**The bidder should describe its knowledge of public and private funding options available for the population served including program rules and the application process and a plan to maximize public and private funding operations.**	X

<u>Saint Francis Deficiency</u>

Saint Francis' proposal fails to "describe its knowledge" of Nebraska Medicaid, federal qualifying health centers, Region VI, or private insurance. In failing to do so, moreover, Saint Francis fails to demonstrate compliance with the requirement in RFP § V.A.9.e., requiring that bidders "[u]tilize appropriate funding sources, such as private pay from the family, private insurance provided by the family, Medicaid, or Behavioral Health Regions for treatment services for 100% eligible individuals." Saint Francis' proposal is non-responsive to this RFP requirement.

Req #	Requirement	Comply
PPF - 2	**The bidder should describe a plan of how it will assist eligible families with accessing the services and supports offered through DHHS's Division of Children and Family Services Economic Assistance Programs such as SNAP; LIHEAP; Medicaid, TANF, and EA.**	X

Saint Francis Deficiency

This requirement of the RFP requires bidders to "describe a plan" for assisting families as described. Saint Francis again fails to provide a "plan" for such assistance, but instead simply lists the services identified on the the DHHS website. Simply referring to website materials already available from DHHS itself does not constitute a "plan" for a lead agency to provide such services on behalf of clients; indeed, Saint Francis makes a mockery of yet another important RFP request. Saint Francis' proposal is non-responsive to this RFP requirement.

Req #	Requirement	Comply
PPF - 3	**The bidder should describe a plan to ensure an application is made through ACCESS Nebraska for both public assistance and Medicaid prior to discharge of a child or family.**	X

Saint Francis Deficiency

This RFP section requires a plan prior to discharge. The Saint Francis proposal ignores this requirement, failing completely to describe its plan or how it would handle applications being made through ACCESS prior to discharge, or that such a requirement exists. Saint Francis' proposal is non-responsive to this RFP requirement.

S	Requirement	Comply
PBC-1	**The bidder should provide a plan on how it will enter into performance-based contracts with subcontractors to incentivize improved performance outcomes. The bidder must state a percent of the expenditures that will be performance based.**	**X**

Saint Francis Deficiency

Saint Francis' response to this section of the RFP fails to describe a plan for how Saint Francis will use incentive-based subcontracts to improve performance outcomes. Saint Francis fails to describe how it will work with subcontractors or how its subcontracts will be used to incentivize improvements in the measures listed within the RFP (*see* RFP § V.E.7.a.). Saint Francis' proposal is non-responsive to this RFP requirement.

Req #	Requirement	Comply
CQI-1	**The bidder should describe its understanding of continuous quality improvement principles and its Continuous Quality Improvement approach to monitor and evaluate the quality of services, including services provided by subcontractors.**	X

Saint Francis Deficiency

Saint Francis' response to this section does appear to acknowledge the CQI-1 requirement, but Saint Francis does not incorporate the necessary elements required from Section V of the RFP. Saint Francis provides little information in its response regarding performance indicators **(and no mention of the indicators identified in the RFP)**; service and service provision; and how CQI is used within the service array. Saint Francis' proposal is non-responsive to this RFP requirement.

Req #	Requirement	Comply
CQI-2	**The bidder should describe how Continuous Quality Improvement will be used to meet or exceed state and federal performance indicators and outcomes that are detailed in Section V, subdivision L of this RFP.**	**X**

Saint Francis Deficiency

Saint Francis does not describe how CQI is used to meet or exceed performance indicators. These indicators are clearly defined and identified in Section V of the RFP. There are 24 performance measures listed and the response lacks specificity as to how CQI will be used, other than to state:

> *we will utilize Nebraska's described outcomes listed in Section V, subsection L to build processes and reports. Those reports will then be distributed and made available to program staff who will use these reports to monitor the success of the program in meeting performance indicators and outcomes. When a performance measure or outcome is in decline, or when improvements are desired, a PI process is implemented*

Saint Francis did not address the state and federal performance indicators and the outcomes that are detailed in Section V, subdivision L of the RFP.

Req #	Requirement	Comply
YTH-4	**The bidder should describe its understanding of normalcy activities, the activities importance, and strategies that promote normalcy for youth in its care through the use of the Reasonable and Prudent Parent Standard [Preventing Sex Trafficking and Strengthening Families Act, at 5 U.S.C. §§ 552, 20 U.S.C. § 1001, 25 U.S.C. § 450b, 28 U.S.C. § 1738B and 534, 42 U.S.C. §§ 1301, 1315] when making decisions involving the participation of the youth in age or developmentally-appropriate activities that provide opportunities for youth to grow emotionally, socially and developmentally and to have the most family like experience possible.**	X

Saint Francis Deficiency

Saint Francis' response to this requirement is non-responsive. Saint Francis does not provide its understanding of normalcy activities, their importance, etc., but simply discusses the training it intends to provide.

Req #	Requirement	Comply
CSM-1	**The bidder should describe its philosophy on case management and the on-going case management model that it plans to utilize to effectively serve all populations involved with child protection cases. The description shall include any Well-Supported, Supported or evidence-based models that are used. The bidder should describe its understanding of statutory requirements related to the provision of case management. The bidder should describe its knowledge of and ability to coordinate services across various state and community programs available to children/families.**	X

Saint Francis Deficiency

Saint Francis' proposal fails to demonstrate an understanding of the assessment tool SDM (Structured Decision Making) or the framework of SOP (Safety Organized Practice) that are critical components of DHHS philosophy.

With respect to SOP, the use of SOP is mentioned exactly twice in the Saint Francis proposal, with no explanation of Saint Francis' understanding of SOP or that it knows how, and has a plan, to implement it. Implementation of SOP is a significant undertaking and represents a significant programmatic shift for DHHS. The Saint Francis Implementation plan makes no mention of training SOP or that implementation of the DHHS SOP model will require a minimum 12-month roll out. *See, e.g.*, Saint Francis Technical Proposal at p. 47, Table T1-1.A (SOP not listed in implementation timeline).[1] SOP is, in fact, a priority for DHHS, as evidenced by its discussion in DHHS' most recent legislative briefing, which appears to have been ignored in awarding a contract to Saint Francis.[2]

With respect to SDM, the Saint Francis proposal fails to demonstrate understanding of SDM as the assessment took that DHHS uses as its primary took across the state to determine the safety and risks for a family. The RFP explicitly required bidders to plan for use of the SDM assessment model. RFP § V.C.2.c. Saint Francis' proposal is not clear as to its process for accepting and case managing cases with High Risk & Safe SDM assessment findings. *See* Saint Francis Technical Proposal at 54, 142. Saint Francis appears only to consider safety and risk with respect to an on-going case, but does not appear to address those factors at the time of intake.

---

[1] Likewise, Saint Francis fails to account for the costs of SOP implementation, which will be borne by the contractor awarded the Eastern Services contract.

[2] Available at http://dhhs.ne.gov/Documents/CW%20Briefing%20PP%20Presentaiton.pdf.

NEBRASKA

Good Life. Great Service.

DEPT. OF ADMINISTRATIVE SERVICES

June 17, 2019

St. Francis Community & Residential Services, Inc.
President/Chief Operating Officer
Tom Blythe
509 E. Elm Street
Salina, KS 67401
E-mail: Tom.Blythe@st-francis.org

Dear Mr. Blythe,
Pursuant to the Request for Proposal 5995-Z1 ("RFP"), and the Intent to Award posted on June 3, 2019, the State of Nebraska ("State") and St. Francis Community & Residential Services, Inc. ("St. Francis") (collectively, "parties"), have a number of final items to negotiate and include, via addendum, in the final Subaward between the parties. These portions of the RFP were reserved for negotiation after an Intent to Award was posted. Thus, the State has enclosed a proffered "Addendum One to Contract" ("Addendum"), along with attachments containing the State's proposals for these sections.

Two additional items also require a response from St. Francis.

First, Neb. Rev. Stat. § 68-1207 requires that caseloads for the provision of child welfare service case management "shall range between twelve and seventeen cases." The RFP, further, requires provision of services consistent with this statute. The State requires a clarifying response from St. Francis (1) Verifying that will comply with this requirement; and (2) Describing how it will meet the requirements of this statute and the RFP. Clarification of this requirement may be ultimately included in the Addendum.

Second, proper transition from the State's current vendor to St. Francis is essential for the safety of the children in care. The State understands that a transition shorter than six-months (as originally provided for in the RFP) may be necessary to ensure the best outcomes for children involved. The State is thus proposing that St. Francis be prepared to transition by October 1, 2019, although with the understanding that the date, at this point, is not firm, and is still subject to successful completion of a readiness review (see Article V. Paragraph G of the RFP). Further definition of the Operational Start Date is included in the proposed Addendum.

Please provide a response to these proposals, in writing, as soon as feasible. If a meeting or teleconference of the parties is required to discuss any particular items, please contact Annette Walton at 402-471-1428 or Nancy Storant at 402-471-0974.

Sincerely,

Annette Walton

Annette Walton
Buyer III
Department of Administrative Services

Attachment

From:	Tom Blythe
To:	Walton, Annette; Diane Carver
Cc:	Storant, Nancy
Subject:	Re: Clarification: 5995 Z1 Full Service Case Management RFP
Date:	Monday, June 24, 2019 4:48:47 PM
Attachments:	image001.png

Dear Ms. Walton,

This letter will serve as response to the request below. Saint Francis provides reunification services utilizing a dyad approach. Each family is assigned a team consisting of one case manager and one family support worker who together coordinate the care for 25 children in out of home placement. Utilizing the dyad approach results in each worker responsible for 50% of the tasks and responsibilities required to successfully reintegrate children back into the home.

Saint Francis understands Neb. Rev. Stat. 68-1207 requires caseloads for the provision of child welfare service case management "shall range between twelve and seventeen cases." While Saint Francis believes our model meets the standard as outlined above, Saint Francis will switch our proposed model to a case management staffing model which would provide one case manager for 12 – 17 cases. In order to make this change Saint Francis will need to increase our cost proposal by $15m for the life of the contract. While this does increase our overall budget request, Saint Francis knows our proposal provides a quality service at a discounted rate.

Tom Blythe
President/Chief Operating Officer

Saint Francis MINISTRIES

Providing healing and hope to children and families

Office 785.914.5280 | Cell 785.488.6254
509 E. Elm Street | Salina, KS 67401 | SaintFrancisMinistries.org

From: "Walton, Annette" <annette.walton@nebraska.gov>
Date: Monday, June 24, 2019 at 7:53 AM
To: Diane Carver <Diane.Carver@st-francis.org>, Tom Blythe <Tom.Blythe@st-francis.org>
Cc: "Storant, Nancy" <nancy.storant@nebraska.gov>
Subject: Clarification: 5995 Z1 Full Service Case Management RFP

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good afternoon,

The State of Nebraska, Department of Health and Human Services needs clarification from St. Francis on the following issue:

Neb. Rev. Stat. § 68-1207 requires that caseloads for the provision of child welfare service case management "shall range between twelve and seventeen cases." The RFP, further, requires provision of services consistent with this statute. The State requires a clarifying response from St. Francis (1) Verifying that will comply with this requirement for a caseload of 1 worker per 12 to 17 cases; and (2) Describing how it will meet this requirement without any increase in the costs included in the bid.

Annette Walton | Buyer III C.L.S.S.Y.B.
Materiel Division – State Purchasing Bureau
Nebraska Department of Administrative Services
1526 K St. Ste. 130 Lincoln, NE 68508
OFFICE 402-471-1428
annette.walton@nebraska.gov
das.nebraska.gov | Facebook | Twitter

1

From: Tom Blythe <Tom.Blythe@st-francis.org>
Sent: Thursday, June 27, 2019 5:30 PM
To: Walton, Annette <annette.walton@nebraska.gov>
Subject: Re: Summary of Meeting

Annette,

Thank you for this information. We will review and respond ASAP.

Regarding NFOCUS: SF does not have any concerns using Citrix for accessing NFOCUS.

Regarding case ratios of 12-17 cases per case manager: Saint Francis Ministries recognizes the statutory requirement of 12-17 cases per Case Manager. Within our proposal we have identified a total of 116 Bachelor's level staff whose primary responsibility is case management based upon the population served. The numbers below allows for Saint Francis Ministries to meet the intent of the statute without additional cost to our proposal.

- 62 to provide service to children in out of home placement
- 30 to provide Case Management to youth placed in Kinship Homes
- 24 to serve children maintained in their own homes

Regarding Appendix 3 – Critical Incident Report 2019-05: SF does not have any concerns related to Critical Incident Report 2019-05.

Tom Blythe
President/Chief Operating Officer

Saint Francis
MINISTRIES

Providing healing and hope to children and families

Office 785.914.5280 | Cell 785.488.6254
509 E. Elm Street | Salina, KS 67401 | SaintFrancisMinistries.org

From: "Walton, Annette" <annette.walton@nebraska.gov>
Date: Wednesday, June 26, 2019 at 5:10 PM
To: Diane Carver <Diane.Carver@st-francis.org>, Tom Blythe <Tom.Blythe@st-francis.org>
Subject: FW: Summary of Meeting

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Please provide the attached summary of the Clarification meeting with your team. I've also attached the email with the original Addendum One to Contract that was sent earlier.

Please provide a response as soon as possible. Please let me know if you have any questions.

Annette Walton | Buyer III C.L.S.S.Y.B.
Materiel Division – State Purchasing Bureau
Nebraska Department of Administrative Services
1526 K St. Ste. 130 Lincoln, NE 68508
OFFICE 402-471-1428
annette.walton@nebraska.gov
das.nebraska.gov | Facebook | Twitter

current staff in key positions start located in Attachment R. Position (Job) Descriptions for roles to be hired start on Table WRK-1.A below.

Table WRK-1.A Position/Job Descriptions

TITLE	FTE	CAPACITY	EXPERIENCE	ROLE
Asst. Vice President of Services	Full-Time 1 Staff	Master's degree in Social Work or related degree required.	5 years minimal of child welfare direct service experience.	Administer and manage the Regions service delivery and contract outcomes
Directors: Reintegration/Adoption/IL: Kinship: Support Services: Placement/ Transportation: Family Preservation	Full-Time 4 Staff 1 Staff 1 Staff 1 Staff 1 Staff	Master's degree in Social Work or related degree required.	4 years minimal of child welfare direct service experience	Administer and manage the service delivery and contract outcomes in specific departments
Child Placement Coordinator Supervisor	Full-Time 1 Staff	Bachelor's Degree, Master's degree preferred	3 years minimal child welfare direct service experience	Supervises placement coordinators and ensures that youth referred to the agency are placed in accordance with SFCS regulations and contract requirements.
Placement Coordinators	Full-Time 4 Staff	Bachelor's Degree, Master's degree preferred	1 year minimal child welfare direct service or related experience	Responsible for processing child placement referrals and placement.
Case Management Supervisors	Full-Time 12 Staff	Bachelor's Degree, Master's degree preferred	3 years minimal child welfare direct service experience	Supervises case management staff and ensures that appropriate services are being received.
Case Managers	Full-Time 62 Staff Target case load of 25	Bachelor's Degree, Master's degree preferred	1 year minimal child welfare direct service or related experience	Coordinating and delivery of appropriate services and level of care for youth.
Family Support Worker	Full-Time 31 Staff	HS diploma or GED	1 year minimum child welfare direct service or related experience	Provide direct home services to support case plan goals

Support Staff Supervisor	Full-time 3 Staff	Bachelor's degree preferred	1 year minimal child welfare support service related experience	Supervises support services; transportation, receptionist, file management, data entry, fleet and facilities
Data-Entry	Full-Time 12 Staff	HS diploma or GED required	Minimum of 6 months experience working in data entry or related experience	Responsible for data entry and report functions
Support staff	Full-Time 12 Staff	HS diploma or GED required	Minimum of 6 months experience working in teams and the public or related experience	Responsible for receptionist duties and support services such as case filing, copying and scanning documents
Drivers	Full Time or Part Time 45 Staff	HS diploma or GED required	Minimum of 6 months experience working in teams and the public or related experience	Responsible for safe transport of children and/or families for placement and appropriate services
Clinical Utilization Supervisor	Full-time 1 Staff	MSW or equivalent	1 year minimal child welfare support service related experience	Supervises clinical utilization and provider relations staff to assure quality of services.
Clinical Utilization Provider Relations/	Full-Time 5 Staff 1-In home 1 reint serv 1 placement 2 clinical UR	Bachelor's Degree, Master's degree preferred	3 years minimal child welfare direct service experience	Responsible for provider agreements for placement and services. Monitors quality of services and develops full array of services for children and families.
Kinship Supervisor	Full-Time 4 Staff	Bachelor's Degree, Master's degree preferred	3 years minimal child welfare direct service experience	Supervises kinship and ICPC staff and ensures that appropriate services are being received
Kinship Workers	Full-Time 30 Staff	Bachelor's Degree preferred	1 year minimal child welfare direct service or related experience	Coordinating and delivery of appropriate services in kinship and ICPC homes
Attorney	Full-Time 2 Staff	Juris Doctorate	1 year minimal child welfare legal experience. Licensed to practice in NE	Provides legal support to case management teams and liaison with court personnel

Clinical Utilization Specialist – Medicaid Liaison	Full-Time 2 Staff	Master's degree in Social Work or related degree required.	1 year minimal child welfare clinical or related services	Clinical utilization, discharge planning for high needs youth
Parent Support Workers	Full-Time 8 Staff	Support staff with HS diploma or GED	1 year minimal child welfare direct service or related experience	Direct support to reintegration families; skill building
Independent Living Coordinator	Full-Time 2 Staff	Bachelor's Degree	1 year minimal child welfare direct service or related experience	Direct support to youth aging out of foster care; skill building
Transportation Coordinator	Full-Time 3 Staff	HS diploma or GED required	Minimum of 6 months experience working in teams and the public or related experience	Schedule and coordinate transportation requests
PI/QA Director	Full-Time 1 Staff	Master's degree in Social Work, organization leadership or related degree required.	4 years minimal child welfare o other direct service or QA/PI experience	Administer and manage quality assurance, data and contract outcomes in specific departments. Manages continuous quality improvement
PI/QA Supervisor	Full-Time 1 Staff	Master's degree in Social Work, organization leadership or related degree required.	3 years minimal child welfare o other direct service or QA/PI experience	Supervises and quality assurance, data and contract outcomes in specific departments. Supervises continuous quality improvement plans
PI/QA Coordinators	Full-Time 1 Staff	Bachelor's Degree	1 year minimal child welfare direct service or related QA/PI, case read experience	Conducts case reads, supports direct service supervisors with data management
Customer Care	Full-Time 2 Staff	HS diploma or GED	Minimum of 6 months experience working in teams and the public or related experience	Provides customer concern supports
Trainers	Full-Time 3 Staff	Bachelor's Degree in social work Master's degree preferred	2 year minimal child welfare clinical or related services	Provides Program training and ongoing coaching

Education Coordinator	Full-Time 1 Staff	Preferred Bachelor's degree in social services or education	2 years minimal child welfare or education experience	Provides support to youth to meet education goals
Technology Coordinator	Full-Time 1 Staff	Bachelor's Degree in IT, Computer Science, or a related field	10 years' experience in technology sector. Supervisory experience preferred	Purchase, setup, configuration, design of IT-related hardware, software, and related, as needed for service and reporting per the contract
Security Administrator	Full-Time 1 Staff	Bachelor's Degree in IT or a related field	5 years working in IT field with information security	Oversees and evaluates network configuration and related software/hardware and conducts related background checks and reporting
X-Treme Recruiter	Full-Time 2 staff	Bachelor's Degree	1 year minimum child welfare direct service or related experience	Provides extensive kinship search and connections for children in out-of-home placement
Foster Care Homes (FCH) Director	Full-Time 1 staff	Master's degree in Social Work or related degree required.	4 years minimum child welfare direct service experience	Administer and manage the NE Region 1 service delivery and contract outcomes in specific departments
FCH Recruiter Supervisor	Full-Time 1 staff	Bachelor's degree in Social Work, Master's degree preferred	2 years' supervisory experience or 3 years' post-grad direct service experience	Supervision, coordination and training of recruiters; assign & track recruitment database
FCH Recruiters	Full-Time 3 staff	Bachelor's degree in Human Services field	Two years' experience child welfare direct service;	Engage communities & individuals, piquing interest in foster & adoptive families
FCH Supervisor	Full-Time 1 staff	Bachelor's degree in Social Work, Master's degree preferred	Two years' experience in child placement, child welfare direct services	Direct support and supervision of foster care homes staff
FCH Workers	Full-Time 8 staff	Bachelor's degree in Social Work or Human Services field	Two years' experience child welfare direct service;	Support resource families in providing safe, secure care for children in out-of-home placement

e. Staff Policies and Procedures

https://dhhs.ne.gov/ESA%20Transition%20Documents/Saint%20Francis-%20Nebraska%20Staffing%20Matrix.pdf

Proposed Organization Structure, Staff, Capacity and Procedures: Nebraska

TITLE	FTE	CAPACITY	EXPERIENCE	ROLE
Regional Vice President of Services	Full-Time 1 Staff	Master's degree in Social Work or related degree required.	5 years minimum of child welfare direct service experience.	Administer and manage the Regions service delivery and contract outcomes
Directors: Reintegration/Adoption/IL: Kinship: Support Services: Placement/ Transportation:	Full-Time 4 Staff 1 Staff 1 Staff 1 Staff	Master's degree in Social Work or related degree required.	4 years minimum of child welfare direct service experience	Administer and manage the service delivery and contract outcomes in specific departments
Child Placement Coordinator Supervisor	Full-Time 1 Staff	Bachelor's Degree, Master's degree preferred	3 years minimum child welfare direct service experience	Supervises placement coordinators and ensures that youth referred to the agency are placed in accordance with SFCS regulations and contract requirements.
Placement Coordinators	Full-Time 4 Staff	Bachelor's Degree, Master's degree preferred	1 year minimum child welfare direct service or related experience	Responsible for processing child placement referrals and placement.
Case Management Supervisors	Full-Time 12 Staff	Bachelor's Degree, Master's degree preferred	3 years minimum child welfare direct service experience	Supervises case management staff and ensures that appropriate services are being received.
Case Managers	Full-Time 62 Staff Target case load of 12-17	Bachelor's Degree, Master's degree preferred	1 year minimum child welfare direct service or related experience	Coordinating and delivery of appropriate services and level of care for youth.
Family Support Worker	Full-Time 31 Staff	HS diploma or GED	1 year minimum child welfare direct service or related experience	Provide direct home services to support case plan goals
Support Staff Supervisor	Full-time 3 Staff	Bachelor's degree preferred	1 year minimum child welfare support service related experience	Supervises support services; transportation, receptionist, file management, data entry, fleet and facilities
Data-Entry	Full-Time 12 Staff	HS diploma or GED required	Minimum of 6 months experience working in data entry or related experience	Responsible for data entry and report functions
Support staff	Full-Time 12 Staff	HS diploma or GED required	Minimum of 6 months experience working in teams and the public or	Responsible for receptionist duties and support services such as case filing, copying and scanning documents

			related experience	
Drivers	Full Time or Part Time 45 Staff	HS diploma or GED required	Minimum of 6 months experience working in teams and the public or related experience	Responsible for safe transport of children and/or families for placement and appropriate services
Clinical Ulitilization Supervisor	Full-time 1 Staff	MSW or equivalent	1 year minimum child welfare support service related experience	Supervises clinical utilization and provider relations staff to asure quality orf services.
Clinical Utilization Provider Relations/	Full-Time 5 Staff 1-In home 1 reint serv 1 placement 2 clinical UR	Bachelor's Degree, Master's degree preferred	3 years minimum child welfare direct service experience	Responsible for provider agreements for placement and services. Monitors quality of services and develops full array of services for children and families.
Kinship Supervisor	Full-Time 4 Staff	Bachelor's Degree, Master's degree preferred	3 years minimum child welfare direct service experience	Supervises kinship and ICPC staff and ensures that appropriate services are being received
Kinship Workers	Full-Time 30 Staff	Bachelor's Degree, Master's degree preferred	1 year minimum child welfare direct service or related experience	Coordinating and delivery of appropriate services in kinship and ICPC homes Coordinating and delivery of appropriate services and level of care for youth.
Attorney	Full-Time 2 Staff	JD	1 year minimum child welfare legal experience. Licensed to practice in TX	Provides legal support to case management teams and liaison with court personnel
Clinical Utilization Specialist – Medicaid Liaison	Full-Time 2 Staff	Master's degree in Social Work or related degree required.	1 year minimum child welfare clinical or related services	Clinical utilization, discharge planning for high needs youth
Parent Support Workers	Full-Time 8 Staff	Support staff with HS diploma or GED	1 year minimum child welfare direct service or related experience	Direct support to reintegration families; skill building
Independent Living Coordinator	Full-Time 2 Staff	Bachelor's Degree	1 year minimum child welfare direct service or related experience	Direct support to youth aging out of foster care; skill building

Transportation Coordinator	Full-Time 3 Staff	HS diploma or GED required	Minimum of 6 months experience working in teams and the public or related experience	Schedule and coordinate transportation requests
PI/QA Director	Full-Time 1 Staff	Master's degree in Social Work, organization leadership or related degree required.	4 years minimum child welfare o other direct service or QA/PI experience	Administer and manage quality assurance, data and contract outcomes in specific departments. Manages continuous quality improvement
PI/QA Supervisor	Full-Time 1 Staff	Master's degree in Social Work, organization leadership or related degree required.	3 years minimum child welfare o other direct service or QA/PI experience	Supervises and quality assurance, data and contract outcomes in specific departments. Supervises continuous quality improvement plans
PI/QA Coordinators	Full-Time 1 Staff	Bachelor's Degree	1 year minimum child welfare direct service or related QA/PI, case read experience	Conducts case reads, supports direct service supervisors with data management
Customer Care	Full-Time 2 Staff	HS diploma or GED	Minimum of 6 months experience working in teams and the public or related experience	Provides customer concern supports
Trainers	Full-Time 3 Staff	Bachelor's Degree in social work Master's degree preferred	2 year minimum child welfare clinical or related services	Provides Program training and ongoing coaching
Education Coordinator	Full-Time 1 Staff	Preferred Bachelor's degree in social services or education	2 years minimum child welfare or education experience	Provides support to youth to meet education goals
Technology Coordinator	Full-Time 1 Staff	Bachelor's degree in IT, computer science or related field	10 years' experience in technology sector, supervisory experience preferred	Purchase, setup,, configuration, design, of IT-related hardware, software, and related, as needed for services and reporting per the request.
Security Administrator	Full-Time 1 Staff	Bachelor's degree in IT, computer science or related field	5 years' working in the IT field with information security	Oversees and evaluates network configuration and related software/hardware and condcuts related background checks and reporting.

X-Treme Recruiter	Full-Time 2 staff	Bachelor's Degree	1 year minimum child welfare direct service or related experience	Provides extensive kinship search and connections for children in out-of-home placement
Foster Care Homes (FCH) Director	Full-Time 1 staff	Master's degree in Social Work or related degree required.	4 years minimum child welfare direct service experience	Administer and manage the TX Region 1 service delivery and contract outcomes in specific departments
FCH Recruiter Supervisor	Full-Time 1 staff	Bachelor's degree in Social Work, Master's degree preferred	2 years' supervisory experience or 3 years' post-grad direct service experience	Supervision, coordination and training of recruiters; assign & track recruitment database
FCH Recruiters	Full-Time 3 staff	Bachelor's degree in Human Services field	Two years' experience child welfare direct service; PRIDE leader preferred	Engage communities & individuals, piquing interest in foster & adoptive families
FCH Supervisor	Full-Time 1 staff	Bachelor's degree in Social Work, Master's degree preferred	Two years' experience in child placement, child welfare direct services	Direct support and supervision of foster care homes staff
FCH Workers	Full-Time 8 staff	Bachelor's degree in Social Work or Human Services field	Two years' experience child welfare direct service; PRIDE trainer	Support resource families in providing safe, secure care for children in out-of-home placement
Family Preservation Director	Full-time 1 staf	Master's degree in Social Work or related degree required.	4 years minimum of child welfare direct service experience	Administer and manage the service delivery and contract outcomes in specific departments
Admision Coordinator	.5 staff PT	High School or equivalent degree is required	Preferred previous office experience	Provides program supports and clericial duties to office staff
Clinical Services Director	.5 staff PT	Master's degree in Social Work or related degree required.	2 years minimum of child welfare direct service experience	Administer and manages the clinical practices within the program and fidelity to th model
Clinical Supervision	3 staff	Master's degree in Social Work or related degree required.	2 years minimum of child welfare direct service experience	Supervises therapist/case management staff and ensures that appropriate services are being received.

Therapist/Case Mnaager	24	Bachelor's degree in Social Work or Human Services field or Master's degree in Social Work or related degree required.	1year minimum of child welfare direct service experience or related experience	Implements an evidence based practice to provide therapy and/or case management for in home services
Program Assistant	1.5 Staff	High School or equivalent degree is required	Preferred previous office experience	Provides program supports and clericial duties to office staff

Testimony

By Dannette R. Smith

NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES

NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES

DHHS Briefing on the Eastern Service Area
Health & Human Services Committee
January 15, 2021

Dannette R. Smith, Chief Executive Officer
Department of Health and Human Services

(TESTIMONY 1)

Good afternoon, Chairperson Arch and members of the Health and Human Services Committee. My name is Dannette R. Smith (D-A-N-N-E-T-T-E R S-M-I-T-H). I am Chief Executive Officer for the Department of Health and Human Services. My team and I are here to provide an update on child welfare case management services in the Eastern Service Area, comprised of Douglas and Sarpy Counties. You will also hear from Stephanie Beasley, Director of the Division of Children and Family Services, who will provide information on program oversight.

You should have a binder with documents we will be referencing as we go along. I ask that you please hold questions until we have completed our presentation.

In addition to providing updates, I am here to acknowledge your concerns and address key questions you have for me related to Saint Francis Ministries and the future of child welfare in the Eastern Service Area, or ESA.

A bit of background: Omaha-based organization PromiseShip was the case management services provider in the ESA from 2009 to 2019. In 2019, nearing the end of their contract, DHHS, under the guidance of the Department of Administrative Services, prepared for a new procurement.

Fifteen months ago, I appeared before this committee during our transition from PromiseShip to Saint Francis Ministries, an organization based in Salina, Kansas. Saint Francis prevailed in the 2019 procurement process and was selected to provide services in the Eastern Service Area, beginning in January 2020. A phased transfer of cases started in October 2019.

Saint Francis remains the ESA contractor for child welfare case management services. But as you know, in November 2020, two tenured Saint Francis executives were removed, along with their contracted general counsel, after an internal investigation found evidence of serious financial mismanagement in Kansas. The President/CEO and COO, who had worked closely with DHHS over the past year and a half, were found responsible for the financial misconduct.

To our knowledge, Saint Francis' financial mismanagement revolved around their operations in Kansas. We have processes in place to ensure proper expenditure of federal funds for the benefit of children in Nebraska. Further, we have no evidence of misuse of any funds from the State of Nebraska.

I am disappointed and appalled that the State of Nebraska and DHHS are caught in the middle of the Saint Francis organizational crisis. I know many people are questioning the decisions of the Department. In the midst of this, I've been introspective and examined the child welfare landscape across the country. And I always look for strategies we can use to improve. For the past few months, I have questioned, "What did I or we miss? What should I or we have done differently?"

I have considered our contracting decision from a variety of different angles. Each time, I arrive at the same conclusion: in contracting with Saint Francis, we made the best decision we could at the time, given what we knew and the options in front of us. What we didn't know was that with Saint Francis, we were dealing with two executives whose trustworthiness and integrity were less than impeccable.

I am encouraged by the commitment, transparency and action exhibited by the new executive team at Saint Francis. And I am confident that they share our greatest priority: to do what is in the best interest of children and families of Nebraska.

Today Director Beasley and I will address several topics:

1) explain how we got to this point;
2) address concerns about the Department's decision-making and transparency;
3) provide detail on the Saint Francis budget, expenses and contract terms;
4) detail how DHHS has worked with Saint Francis over the course of the first year of their contract;
5) explain outstanding concerns related to their management of child welfare cases;
6) describe our path forward.

Start of the Saint Francis contract

By the summer of 2019, DHHS was ready to award the new contract for ESA case management services. Through the written evaluation and oral interviews, Saint Francis Ministries scored higher than PromiseShip and was selected as the new vendor. An intent to award was issued in June 2019, marking the beginning of the transition. I will provide more detailed information on the procurement process later in my testimony.

Contract finalization

Negotiating final terms with Saint Francis included clarifying their ability to achieve the Department's goals and to meet statutory requirements, like caseload numbers. Former Saint Francis Ministries Chief Operating Officer Tom Blythe confirmed the organization's ability to comply with these requirements within their contract amount. A copy of that correspondence is in your binder, tab 1. With that conversation resolved, a five-year contract was finalized on July 3, 2019.

Also on July 3, 2019, DHHS convened its first weekly ESA transition team executive briefing. See tab 2 in your binder for samples of briefing agendas.

Pre-contract support

Through 2019, a seamless transition with minimal impact on children and families was our ultimate goal. To achieve this, the Department created a team to work with both PromiseShip and Saint Francis to facilitate the handoff.

The DHHS transition team included dozens of Department teammates guiding and directing numerous operational elements of the transition related to financial management, human resources, information technology, contract management, quality management, service coordination and communications.

In preparation for case transfer, the Department developed a review tool to determine overall readiness, as well as ensure financial, functional and structural preparedness. A copy of that readiness tool is in your binder, tab 3. This tool was developed with guidance from the Stephens Group, a national child welfare consulting firm.

As CEO, I relied on the readiness tool and the ESA transition Gantt chart to make certain we were on course and managing each detail within our control. The Gantt chart showed the major activities planned through the case manager transition, from procurement in spring 2019 to the first full quarter of Saint Francis' case management in calendar year 2020. It displayed activities that were behind schedule, which allowed me to work with the team to course correct as necessary. See tab 4 in your binder for a copy of the Gantt chart.

To ensure a smooth, careful transition of cases, CFS developed a phased transfer of cases over the course of several weeks, prior to January 1, 2020. The case transfers began in October 2019. I led this phased approach based on my experience as a contractor in child welfare. The phased approach helped the entire system shift with us, and it made sure cases and children received the care and attention they needed.

Partnership through transition

For several months during the Saint Francis transition, I took an active role in the management of CFS operations. I served as interim director of the division from September 2019 to February 2020, when Stephanie Beasley joined DHHS.

In addition to holding weekly meetings with the transition teams, I also met regularly with Saint Francis executives. As part of their two-day visit with stakeholders in Omaha and Lincoln on September 18-19, 2019, I met with the COO and the Regional Vice President, who was chosen to lead operations in the Omaha office. Our first biweekly executive meeting was held September 23, 2019. I continued to meet with the executives until Director Beasley assumed those responsibilities, including an in-person meeting with the team in Omaha on February 7, 2020. See tab 5 in your binder for a copy of that meeting agenda.

In these executive meetings, my team and I offered guidance and direction to the local leaders but also demanded attention on areas critical to the success of the ESA, including court performance, consistent supervision of case managers, and sufficient staffing to achieve caseload standards. As Director Beasley will explain, those areas continue to warrant our attention, even though Saint Francis has made strides in some key areas.

Growing concern

Within Director Beasley's first few months, she too shared concerns with me on the new vendor's program performance and financial management. To some extent, performance hiccups are expected during a vendor's first year. Child welfare case management is incredibly complex, and despite comprehensive planning and collaboration with Saint Francis, some performance gaps developed. Those continue to be addressed through standard contract monitoring and oversight, which Director Beasley will detail in her testimony.

The financial concerns were another matter. By spring 2020, we saw that Saint Francis was spending at a monthly rate that would exhaust budgeted funding before the end of fiscal year 2020. The same rate of over-spending carried into fiscal year 2021, which began July 2020.

DHHS leadership was clear and consistent with Saint Francis: they would not be paid more than the do-not-exceed amount of their contract, which was based directly on their RFP bid amount. Also consistent was their monthly spending – if that trend continued, they would be out of funds for this fiscal year by February 2021. Director Beasley and her staff addressed these fiscal concerns in their monthly executive meetings but through the first quarter of current fiscal year, saw no changes in expenditure patterns.

On October 7, 2020, I met with Father Bobby Smith, former President/CEO of Saint Francis. I reiterated the do-not-exceed amount of the contract, and he assured me his organization would not need to request more funds. He also assured me they would "eat" the expenses in excess of their contract amount for fiscal year 2020.

Fr. Bobby Smith committed to do the work Saint Francis was contractually obligated to provide.

Notification to DHHS

On October 28, 2020, three weeks after that conversation with Fr. Bobby Smith, I learned that he and COO Tom Blythe had been suspended pending an internal investigation. My first thought was about the safety of the children in our care. I needed to know the nature of the investigation.

We quickly discovered Saint Francis had received a whistleblower complaint alleging financial mismanagement. William Clark would be the Interim CEO.

My initial call with Mr. Clark on October 28, 2020, was followed by another conversation on November 3, 2020. He expressed his commitment to Nebraska and the children under his charge. On November 12, 2020, he and his team met with me formally for the first time. I was joined by Director Beasley, Chief Financial Officer Michael Michalski and our General Counsel Bo Botelho. Mr. Clark outlined budget shortfalls and options for DHHS to consider. The cumulative budget shortfalls were consistent with what we had projected.

On November 23, 2020, 11 days after our meeting with Mr. Clark, Saint Francis officially removed Fr. Bobby Smith and Tom Blythe following the investigation into financial mismanagement. The contracted general counsel was also removed.

My team and I met again with the new Saint Francis executive team on December 10 and December 21, 2020, as well as Friday, January 8, 2021. Mr. Clark continues to be transparent and action-oriented.

Our next steps

With disclosure of the true financial picture at Saint Francis, our team at DHHS determined our next steps. As always, the best interest of children guided our decisions. We must make sure Saint Francis has the resources it needs to provide high-quality case management services to children and families in Douglas and Sarpy Counties.

We continue to meet regularly with Mr. Clark and his team. Starting in January and February 2021, we are increasing the frequency and intensity of our meetings with Saint Francis leadership and executive teams.

DHHS issued a letter to Saint Francis detailing intent to negotiate contractual terms and ensure their case management services are paid. Director Beasley will discuss performance expectations as we move forward with the new team at Saint Francis.

Now I will provide more information and context on the 2019 procurement, Saint Francis' expenditures, funding, and contract details.

The procurement

Contracting for a case management lead agency is permitted in the Eastern Service Area. From 2009-2019, DHHS had contracted these services to PromiseShip, formally known as the Nebraska Families Collaborative.

To provide context on the historical ESA case management finances, I've included a handout showing PromiseShip's expenditures, tab 6 in your binder. You'll notice that in 2019, DHHS provided over $69 million to PromiseShip, and over $71 million the year before. Except for that final year, PromiseShip's expenditures grew steadily each year of their contract.

In calendar year 2018, nearing the end of PromiseShip's last two-year contract, DHHS, under the guidance of the DAS, prepared for a new procurement. The Stephen Group was hired to measure the effectiveness of Nebraska's outsourcing model and whether it was meeting the Department's goals of economic efficiency and improved outcomes for the children and families. While the report identified both successes and shortcomings, it also provided guidance for improving the privatization model going forward.

The Department used these recommendations to create a request for proposal to attract a vendor that could deliver high-quality case management and child protection services that strengthen families. That request for proposal was released roughly two years ago, in January 2019. The state received only two proposals, from PromiseShip and Saint Francis Ministries.

RFP evaluation

DAS oversaw a scoring and evaluation panel that included representatives from the Foster Care Review Office, the Nebraska Indian Child Welfare Coalition, Inc., Nebraska Children and Families Foundation, as well as our own DHHS program and fiscal administrators. A team of eight reviewers evaluated the written proposals from both organizations. Included in the written proposals was the required submission of audited financial statements, and both organizations met that requirement.

PromiseShip and Saint Francis Ministries were then invited to oral interviews. These interviews focused on predetermined questions around fiscal management. The DHHS written and oral interview panels included financial and audit managers.

In June 2019, after tabulation of the predetermined scoring criteria, DAS posted an intent to award identifying Saint Francis as the awardee. PromiseShip protested the award and DAS upheld the decision in July 2019.

Transition

While finalization of the contract was occurring, our team was preparing for a transition of providers. This transition included DHHS team members going to the Saint Francis headquarters in Kansas on September 16, 2019, to perform a financial systems audit.

The audit included a review of separation of funds, financial controls, separation of duties, protocols for provider receivables and payables, understanding of federal/state/local/community funding sources, and open discussion related to cost allocation methodology options. Saint Francis accounting staff also performed a financial system walkthrough and were able to provide live examples and documentation of adherence to Generally Accepted Accounting Principles.

Cases began to transition from PromiseShip to Saint Francis in October 2019, and by January of 2020, all cases had transitioned to Saint Francis.

Financial management/monitoring

As part of the RFP and contract requirements, the CFS team worked with Saint Francis to define the monthly prepayment request process and the timing of financial reporting. Each month, Saint Francis is to report a Statement of Activities, a Statement of Functional Expenses, a Statement of Financial Position, an Aging Report, a Cash Flow Statement, and a journal of all transactions in that month. CFS finance utilizes these reports to audit transactions and ensure expenditures are actual and allowable.

We pay Saint Francis each month based on their estimated needs for the month, and then reconcile actual expenses within 60 days. This is a pay-as-you-go model to ensure they have sufficient cash flow.

I've provided you a handout titled "Saint Francis Summary of Costs," tab 7 that outlines the contract years, the allowable amount per the contract, and the payments to Saint Francis Ministries. This illustrates that in "Year 1," or fiscal year 2020, Saint Francis reached their contractual do-not-exceed amount in May 2020. That is shown in the first red box on the handout. It is estimated that $10.5 million of incurred expenses went uncompensated.

Now look at "Year 2" on the handout. State payments to Saint Francis started in July 2020. Through December 2020, Saint Francis has received $33.1 million and is projected to hit their do-not-exceed amount in February 2021, represented by the second red box. This signifies an approximate $25.3 million contractual shortfall for this state fiscal year. ***For comparison to the PromiseShip RFP, this expense would put Saint Francis at $66.7M compared to PromiseShip's Year 2 proposal of $65.8M – a $1M gap. These numbers are in line with PromiseShip's expenditures, as seen in handout #5.***

Appropriations

I will now address appropriations and where funding is available to cover these two shortfalls – for fiscal year 2020 and fiscal year 2021 – and funding sustainability going into the new biennium. You may reference the handout in tab 8.

The handout, Program 354, Child Welfare, shows two remaining balances, after appropriations and financial obligations. The yellow box shows that for fiscal year 2020, we have sufficient funding to cover Saint Francis' $10.5 million shortfall. The green box shows that for fiscal year 2021, even with an additional $25 million for Saint Francis, the remaining fund balance is over $10 million. We believe we are appropriated enough funds to pay Saint Francis for their actual Eastern Service Area expenses going forward without seeking additional funds from the Legislature.

Emergency contract

Our next step will be to negotiate an emergency contract with Saint Francis. This contract would increase the amount paid to the vendor, and we have the available funding to manage. We will continue to enforce financial oversight requirements that all expenses be actual and allowable. We will continue to perform monthly and annual reconciliations of expenses incurred to revenues paid. An emergency contract and continued vendor relationship with Saint Francis will allow for a continuity of care and stability for our youth and families in the Eastern Service Area.

<u>Key questions</u>

Question 1: Why didn't DHHS attend the interim hearing on December 16, 2020?

I was not able to attend for two primary reasons: First, DHHS continues to lead the State's response to Covid-19, and I am actively involved in day-to-day operations of the Division of Public Health, in partnership with Dr. Gary Anthone. In December 2020, we were coming out of a major surge of cases in Nebraska and preparing for the next critical phase, vaccine rollout.

Second, our understanding of the Saint Francis situation and how best to address their budget and contract concerns have continued to evolve. The information we provide today is significantly more developed that what we could have provided a month ago.

Additionally, and to reiterate, we did not instruct Saint Francis not to attend the hearing.

Question 2: Why did we sign the contract with Saint Francis if we knew it was underbid?

We did not know it was underbid. No one here knew. As it turns out, only a few people at Saint Francis knew – including two executives, who allowed their bid to move forward despite knowing the cost was too low. Those executives have been removed.

We heard from many people who believed Saint Francis had underbid the contract. This was based on comparison with what PromiseShip was paid for delivering the same services. But many people also believed PromiseShip was *over*-paid for their services. Plus, we had an audit report that outlined numerous examples of excessive, disallowed spending. A sample of that audit report is your binder, tab 9.

Cognizant of people's concerns about the Saint Francis bid, our Department performed significant due diligence around Saint Francis' understanding and ability to meet caseload ratio requirements. This would be a major driver of their expenses. As I explained earlier, we received assurance from the COO that they understood the caseload requirements and would meet them within their contract amount.

Based on our prior experience with Saint Francis, a CFS provider in western Nebraska since 2012, we had no concerns about their leadership or integrity. We believed they would do good work because of their precedence working in the western part of the state, as well as their national reputation.

Please understand that purchasing case management services is not like buying a computer, or even a car. There is no standard price for what you are trying to buy. The costs for contracted case management services involve a wide range of variable factors, and we must be fluid and flexible in our contracting. In addition, we have little ability to control costs of child welfare services. If a child or family qualifies for a service, we provide it. If a judge orders a service, we provide it. In Nebraska, we pay our providers.

With consideration of the extensive procurement process, the evaluation results and the bidder's reputation and assurances, signing a contract with Saint Francis Ministries appeared to be in the best interest of DHHS and the State of Nebraska's children and families.

As for the procurement process, working closely with DAS, I know we adhered to the State's structure and protocols. The process left us with a few options:

1. Reject the bid and start the procurement all over. Given that we received just two responses to the RFP, this option may not have produced a different result.
2. Reject the bid and enter into an emergency contract with PromiseShip to maintain continuity in the ESA.
3. Accept the outcome of the process, which is what we did. This resulted in awarding the contract to Saint Francis.

Saint Francis had an option as well: they could have withdrawn their bid because, unbeknownst to us, it was too low to support their costs. They chose not to do that.

Question 3: What did we know and when did we know it?

As I shared, we were paying close attention to Saint Francis' spending throughout 2020. I had a direct conversation with the former CEO in October 2020. By November 2020, we found out two executives had mismanaged finances, incurred millions of dollars in questionable costs unrelated to our contract, and deceived their board of directors for well over a year. In that same month, in communication with the Interim CEO, we also confirmed the contract amount was not sufficient to meet their expenses in the Eastern Service Area.

In late December 2020, we learned more about the financial challenges facing Saint Francis. By mid-November, we had begun exploring options to support the vendor's actual expenses for case management services. Those options continue to be assessed.

DHHS responded to media inquiries and issued statements about Saint Francis on October 30, November 19 and December 16, 2020.

For reference, there have been two whistleblower complaints related to Saint Francis finances. The first, which led to the suspension of their executives, was submitted to the organization on October 21, 2020. A separate, earlier whistleblower letter was submitted to the Kansas Department for Children & Families in November 2019. However, we didn't become aware of that letter until December 2020.

Question 4: Why are we continuing the contract?

Saint Francis provides comprehensive case management services in the Eastern Service Area. They employ approximately 280 employees in Omaha and serve more than 1,900 children. They have the expertise and infrastructure to carry out the services we require. Moreover, their new leadership team has demonstrated commitment, transparency and willingness to tackle big challenges. They continue to right-size their

Omaha operations to serve the children and families of eastern Nebraska, and we continue to intensely monitor their work.

To maintain continuity of services, we are pursuing a new agreement with Saint Francis, subject to negotiation. Our legal team has advised that a new contract is required, as opposed to an amendment to the current contract. Terms and conditions are still being developed.

Question 5: Finally, why not just bring the cases into DHHS?

DHHS is not currently prepared to serve the Eastern Service Area. Any move away from continuing to contract with Saint Francis would risk disruption for children and families, caseworkers and clinical providers. Any other option would require many months of transition work to once again carefully shift a system. At this time, continuing to contract with Saint Francis allows us to focus on children and families.

In the coming months we will continue to evaluate their performance and provide intensive oversight to ensure children and families are receiving what they need.

Thank you for the opportunity to provide context on our history with Saint Francis Ministries, our recent conversations with their new executive team, and the Department's decision-making with regard to the Eastern Service Area.

Director Beasley will now describe how the Division of Children and Family Services provides oversight and guidance for Saint Francis.

Appendix S

NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES

Pete Ricketts, Governor

Saint Francis Ministries
Attn: Jodie Austin, Regional Vice President
3311 N. 93rd St.
Omaha, NE 68134

RE: Eastern Service Area Full Service Case Management
Contract Monitoring Summary
Quarter 1, 2020

The foundation for the Eastern Service Area (ESA) contract is the provision of services by Saint Francis to be able to offer case management, a continuum of case oversight quality community/paid services and evidence-based or well-supported services in responsive to the needs of the families served. The Contract Monitoring team, with the assistance of The Stephens Group, developed a compliance tracking system that covers 12 performance areas and contains 112 items over the first quarter, January through March 2020. Below is a summary of Saint Francis' contract compliance in the 12 performance areas.

A. **Case Transfer/Assessment**

Informal reports from Service Area Administrator, Camas Holder, indicate no issues noted from the Service Area during this quarter regarding the transfer of cases. Contract Monitoring is currently establishing a system to track Saint Francis' timely response to referrals from DHHS as a well as capacity for services, interventions and strategies to address safety concerns identified by DHHS. Improvement in areas of tracking are needed in order

B. **Case Management/Supervision** – Saint Francis has provided policies and procedures related to case management and supervision. Saint Francis is in the process of training all case managers and supervisors in the Safety Organized Practice Model. This training will be captured in ongoing training files.

Items of concern within this performance areas are:

- CQI data indicated less than 95% of children have received monthly caseworker visits for January, February, and March.
- Case Plans not completed within 60 days. A corrective action plan has been requested.
- Saint Francis Policies, that guide when a child is placed out of the home, were complete except for items "l." and "m." in the Contract Monitoring Tool (ESA Contract Monitor Tool April 2020). Saint Francis provided work instruction for licensing approved homes has recently been implemented in practice.
- Caseload size and ratios indicated 40% within standards for January, 39% for February, 47% for March. A corrective action plan will be needed in order to recruit and retain case management positions.
- ICPC team reported 5 violations and 2 concerns during this reporting period.
- Twenty five files reviewed for PFR, 3 files out of compliance with transportation requirements, two of the issues were corrected after the review and are now in compliance.

- Out of the 9 PIP items, 5 did not meet the statewide target.
- Although the Tribal consultation process is outlined in the Quarterly Report, the Contract Monitor was unable to determine the level of Saint Francis engagement with tribes for this quarter. The Contract Monitor is currently waiting for tribal information from Central Office.

C. **Service Array** - Saint Francis provided policies and procedures related to its service array for the Eastern Service Area.

Items of concern in the performance area include:

- Saint Francis has not implemented any FFPSA services to this point in the Eastern Service Area through contract with any agencies. Although Saint Francis is in process of contracting for FFPSA services, no referrals have been made at this time for services;
- Central Office indicated out of 14 NYTD surveys that needed to be administered and reported for this quarter, Saint Francis was able to report that seven were completed;
- CQI data indicated 56.6% children placed in relative/kinship homes in January, 57.4% in February, and 58.2% in March. This is below the target of 58.5%;
- DHHS has requested a copy of a subcontract template from Saint Francis to determine if its contractual requirements in place as indicated in C5 of the Contract Monitoring tool. To date, DHHS has not received a reponse to this request.

D. **Service Monitoring** - Saint Francis sub-contractors are monitored for contract compliance and are required to submit supporting documentation. No performance issues by Saint Francis subcontractors were noted in the Quarterly Report. Network monitoring surveys have been developed and will be distributed to subcontractors starting April 2020. The Contract Monitor will review results at next quarterly report. Saint Francis has delayed file reviews for subcontractors due to the COVID-19 situation. Additionally, Saint Francis coordinating efforts with DHHS Contract Monitoring to jointly conduct file reviews.

E. **Educational Opportunities** - Saint Francis has provided policies and procedures that demonstrate an effort to ensure educational opportunities and attainment, including maintaining and achieving educational outcomes for children it serves through case management.

F. **Community Engagement** – Saint Francis' community engagement efforts and meetings were mentioned in the Quarterly Report however a specific listing of community-based organizations was not included. A Resource Guide was referenced in the Quarterly Report, but was not provided. The Contract Monitor requested the Resource Guide from Saint Francis on 4/20/20 but the Resource Guide has not been provided to DHHS to date. Data was provided by CQI team regarding Saint Francis' community engagement. This performance item (F1), may need further clarity to determine details on community resources.

G. **Resource Family/Foster Parent Homes** –
Items of concern for this performance area include:

- Saint Francis did CQI data indicated an average of 1359 children in foster care for the review period with an average bed capacity of 2400. This indicates each child in foster care has a bed available however does not meet the contractual requirement of 2 licensed beds per foster child in ESA.
- Saint Francis has more work to do with its subcontractors to build foster homes to meet the needs of historically difficult to place children.

Despite the low percentage in this performance area, Saint Francis has had some noted successes in this area.

- According to reports from DHHS Foster Care staff, home studies completed by Saint Francis and its subcontractors met the requirements for compliance with all laws, policies and contractuals requirements.
- Saint Francis developed a number of emergency placement homes in response to concern with overnight stays at the Project Harmony Triage Center. This type of placement allows for a more family like setting and support for youth who have high behavior and placement needs.
- Saint Francis added Professional Foster Care to their array with 25 foster homes currently providing this service.

H. **Workforce** – The file review conducted on 3/31/20 revealed no issues with documentation of staff meeting educational requirements or training. The Saint Francis Case Manager Competency Assessment is detailed and was included in staff files. The Saint Francis initial employment policy was provided to the Contract Monitor and the Quarterly report detailed the processes in place regarding hiring and retention efforts.

Item of concern: Saint Francis is experiencing a turnover rate in staff higher than the national average during this review period: 42% in January, 49% in February, and 41% in March. Connected with this concern is that Saint Francis is not providing separation notices to DHHS to terminate NFOCUS access.

I. **Maximizing Public and Private Funds** – Saint Francis provided policies and procedures for assisting families by accessing Public and Private funds. DHHS is currently working with Saint Francis on reporting system for any issues with any Medicaid Managed Care Organization that was non-compliant.

Items of concern:

- Saint Francis did not provide data for families who were offered services through Economic Assistance programs and Medicaid, and did not report out on exercised diligence in increasing the array of non-paid service providers.

- The Saint Francis Quarterly report lacked details regarding array of non-paid service providers. The Quarterly Report made reference to ESA Resource Guide, this has been requested by DHHS to determine compliance.

J. **Utilization Management** - Saint Francis will provide a summary of its Utilization Management practices and system in the annual report.

K. **Administrative Review** – Saint Francis has policies in place to ensure compliance with DHHS established policy to report abuse and neglect, emergent issues, risks to child safety, and critical incident information. Saint Francis has produced documentation showing rate of grievances for the quarter and has follows a standard complaint and grievance process and practice within its organization.

Items of concerns:

- Vendor Performance Report submitted to the Department of Administrative Services – Issues regarding timeliness and completeness of monthly financial reporting by Saint Francis as required under 86793 O4; Saint Francis' failure to follow the prescribed terms of the Business Associate Agreement within the DHHS agreement for Full-Service Case Management.
- Saint Francis is experiencing problems with timely payment to subcontractors.

- Saint Francis needs to provide documentation detailing all expenses during the quarter and expenses have been reviewed for reasonableness and allowability
- The first file review revealed that files in the sample were missing the E-verify at time of the file review on March 31, 2020. A corrective action plan was requested on and April 7, 2020 and was received on on April 20, 2020.
- Saint Francis hasn't completed any file reviews of their subcontractors at time of quarterly report due to COVID-19 situation .

L. **Information Systems** - Contractor has documented policies and procedures related to appropriate privacy and security safeguards for its employees accessing information systems and information created, collected, processed and stored by and on behalf of DHHS under the terms and conditions defined in the contract.

Other general requirements reviewed this period, including any related to compliance with most recently updated and agreed to Operations Manual:
Court Performance – Court reports submitted timely to court and all legal parties; change of placement notices submitted timely to court and all legal parties; consulting with DHHS Legal staff regarding court cases when issues arise.

Conclusion:
In an overall view of Saint Francis' performance, there are several areas that are acceptable but warrant attention by Saint Francis. While corrective action plans have been requested for performance issues, it should be noted that there are 14 items within the monitoring tool, shown in the table below, that are marked as **"Needs Attention, out of compliance".**

B. Case Management/ Supervision	1. Contractor has demonstrated that 95% of children have received monthly caseworker visits.
B. Case Management/ Supervision	3. Contractor has demonstrated that it has completed case plans within 60 days, as required by contract.
B. Case Management/ Supervision	13. Contractor has demonstrated that it has the staffing capacity to be in compliance with state statutes and has reported caseload size and supervisory caseload ratios in aggregate form to DHHS upon request (See Neb. Rev. Stat. §68-1207).
B. Case Management/ Supervision	15. Contractor has policies and procedures in place to assure compliance with the Interstate Compact on the Placement of Children (ICPC) and has demonstrated that it has complied with all the provisions of the ICPC for any child placed from ESA to another state during the review period.

B. Case Management/ Supervision	17. Contractor will contribute and provide documentation to show they are participating in the identified items in the Nebraska Child and Family Services Review Program Improvement Plan: • Item 2: Services to Family to Protect Children In-Home • Item 3: Risk and Safety Assessment and Management • Item 4: Stability of Foster Care Placement • Item 5: Permanency Goal for Child • Item 6: Achieving Permanency • Item 12: Needs and Services • Item 13: Child and Family Involvement in Case Planning • Item 14: Caseworker Visits with Child • Item 15: Caseworker Visits with Parents
C. Service Array	4. Contractor has documentation to demonstrate that its FFPSA compliant service array is available and utilized for the following populations: • For children and families, 24 hours a day, 7 days a week, 365 days a year, during the time that DHHS is conducting the Initial Assessment of safety and risk; • Children ages birth to five (5); • Infants born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder. Bidder's Response; • Children who have a developmental disability, Autism Spectrum Disorder, or who demonstrate behaviors consistent with children who have a developmental disability; • Children who have been exposed to domestic violence; • Children who have extensive histories of trauma; • Children who have limited connections with supportive adults; • Youth that intersect both the child welfare and juvenile justice systems; • Youth identified as survivors of sexual abuse and/or sex trafficking; • Youth who are near the age of majority and preparing to transition to adulthood
C. Service Array	8. Contractor has policies and procedures in place that support relative and kinship homes in the ESA and, as a result, have demonstrated an increase in percentage of children and youth placed in kinship homes
C. Service Array	10. Contractor has shown sufficient documentation that it has administered and reported on the National Youth in Transition Data (NYTD) Survey

G. Resource Family/Foster Parent Homes	1. Contractor has documentation that it has developed a sufficient capacity of foster care home families including relative and non-relative caregivers and resource families, that are available to foster and adopt children in the ESA upon immediate notice by DHHS and has met established agreed upon performance targets.
G. Resource Family/Foster Parent Homes	2. Contractor has demonstrated compliance with or exceeding the contractual requirement of 2 licensed beds per foster child in the ESA
G. Resource Family/Foster Parent Homes	3. Contractor has documentation that it has developed and implemented specific strategies to recruit foster care home families for historically difficult to place children (teenagers and children with medical and behavioral challenges) and has retained an adequate number of resource families and foster parents in the ESA that meet the unique and special needs of children and children's caretakers under the contract to reduce placement disruption and use of triage.
I. Maximizing Public and Private Funds	2. Contractor has produced documentation and evidence that it has assisted eligible families with accessing the services and supports offered through DHHS's Division of Children and Family Services, Economic Assistance Programs such as SNAP; LIHEAP; Medicaid, TANF, and EA and that families have applied for such services and services available from non-profit and community organizations prior to utilization of State General Funding for payment of services
I. Maximizing Public and Private Funds	6. Request documentation from the Contractor verifying the efforts made to increase the array of non-paid service providers available to the Contractor for the service period. Obtain a list which should include at a minimum the following information: • Types of services sought • Efforts/contacts made • Strategies used (community forums, webinars, agency specific meeting, etc.)
I. Maximizing Public and Private Funds	7. Contractor has produced documentation that it has exercised diligence in increasing the array of non-paid service providers

These items will require increased monitoring and it is expected that Saint Francis will take concrete steps to improve these items for the next quarterly review. Saint Francis should also be prepared to provide regular updates until these items come into compliance.

DHHS is dedicated to the partnership with Saint Francis and continuous communication in these performance areas will be important for the success of not only Saint Francis, but the families served through this agreement.

Ross Manhart | *DHHS Administrator I*
CHILDREN & FAMILY SERVICES

Nebraska Department of Health and Human Services

CC: Stephanie L. Beasley, Director
Lori Harder, Deputy Director
Doug Beran, Deputy Director
Erin Yardley, Deputy Director
Camas Holder, Service Area Administrator
Bryan Gilliland, Financial Auditor
Lucas Atkinson, Contract Administrator
Cori Ulane, Contract Monitor