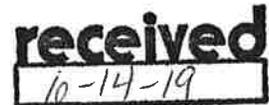


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June 14, 2019



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:

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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 Vendors², 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.

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 and are affiliated with Saint Francis, 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 "affiliated 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 undermine 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 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](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](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.p](http://www.dcf.ks.gov/Agency/CWSTF/Documents/Child%20Welfare%20System%20Task%20Force%20Report.pdf)
[df](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 **fully and finally resolved**. 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.

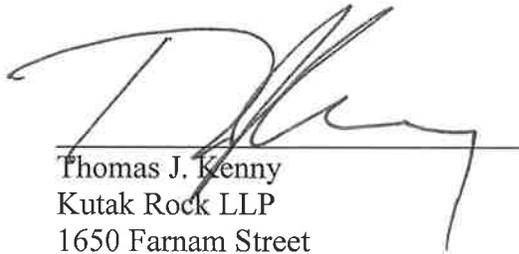
Finally, PromiseShip requests that both DAS and DHHS, and any other involved entities or third-parties, preserve all potentially discoverable information that may be relevant to anticipated potential litigation regarding the procurement process and anticipated award of a contracts to Saint Francis.

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,



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Counsel for PromiseShip

Enclosures

Exhibit

A

Case Management

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

Specialists

| STAFFING ADJUSTMENTS DUE TO CASE MANAGEMENT RATIOS (STATE MANDATED) | | | | |
|---|----------------|-------------|----------|------------------|
| | Number of FTEs | Est. Salary | Est Ben. | Total |
| | 1 | 90,000 | 30% | 117,000 |
| | 2 | 80,000 | 30% | 208,000 |
| | 1 | 80,000 | 30% | 104,000 |
| Directors - Total | 3 | | | 312,000 |
| | 4 | 70,000 | 30% | 364,000 |
| | 1 | 70,000 | 30% | 91,000 |
| | 1 | 70,000 | 30% | 91,000 |
| | 1 | 70,000 | 30% | 91,000 |
| | 1 | 70,000 | 30% | 91,000 |
| | 1 | 70,000 | 30% | 91,000 |
| | 1 | 70,000 | 30% | 91,000 |
| Directors - Total | 10 | | | 910,000 |
| | 1 | 48,000 | 30% | 62,400 |
| | 19 | 48,000 | 30% | 1,185,600 |
| | 3 | 48,000 | 30% | 187,200 |
| | 1 | 48,000 | 30% | 62,400 |
| | 4 | 48,000 | 30% | 249,600 |
| | 1 | 48,000 | 30% | 62,400 |
| | 1 | 48,000 | 30% | 62,400 |
| Supervisors - Total | 31 | | | 1,934,400 |
| | 4 | 42,000 | 30% | 218,400 |
| | 2 | 42,000 | 30% | 109,200 |
| | 3 | 42,000 | 30% | 163,800 |
| | 1 | 42,000 | 30% | 54,600 |
| | 1 | 42,000 | 30% | 54,600 |
| Coordinators - Total | 12 | | | 655,200 |

| | | | | | | | | |
|---|-----|--------|-----|------------|-----|--------|-----|------------|
| 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 |

| PromisesShip Monthly Projected Expense | GRAND TOTALS | | | | | | |
|--|--------------|-----------|-----------|-----------|-----------|-----------|-----------|
| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 |
| Administrative | 428,060 | 436,621 | 445,354 | 454,261 | 463,345 | 464,118 | 464,892 |
| Family Pres | 281,161 | 281,864 | 286,179 | 290,472 | 295,637 | 297,115 | 298,601 |
| Case Management | 1,861,627 | 1,906,498 | 1,937,545 | 1,975,573 | 2,015,085 | 2,018,443 | 2,021,807 |
| Direct Service | 1,063,684 | 892,528 | 905,915 | 919,504 | 935,854 | 949,892 | 964,140 |
| OOH service | 2,307,135 | 1,961,877 | 1,991,306 | 2,021,175 | 2,057,113 | 2,087,970 | 2,119,290 |
| Total Program | 5,513,607 | 5,042,767 | 5,120,945 | 5,206,724 | 5,303,689 | 5,353,420 | 5,403,838 |
| Total Monthly Expense | 5,941,667 | 5,479,388 | 5,566,299 | 5,660,985 | 5,767,035 | 5,817,538 | 5,868,730 |
| Saint Francis Monthly Projected Expense | 136,559 | 313,527 | 329,204 | 345,664 | 362,947 | 381,094 | 400,149 |
| Administrative | | | | | | | |
| Administrative | | | | | | | |
| GRAND TOTALS | | | | | | | |

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Years 1 - 5 Totals | Year 6 | Year 7 | Grand Totals |
|-----------------------|-----------|-----------|-----------|-----------|-----------|--------------------|-----------|--------|--------------|
| 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

Saint Francis Case Management costs per staffing table (conservative salaries & benefits based on state of Nebraska market estimates)

Saint Francis Case Management Personnel costs per cost proposal

7 YR Contract Cost

\$ 86,886,800

\$ 27,229,728

Overall Case management salaries and benefits not included in Saint Francis Proposal

Average Cost Per Year \$ 44,207,188

\$ 59,657,072

\$ 8,522,439

Per Staffing Ratio Requirements

Saint Francis Case Management costs per staffing table (conservative salaries & benefits based on state of Nebraska market estimates)

Saint Francis Case Management Personnel costs per cost proposal

7 YR Contract Cost

\$ 102,047,400

\$ 27,229,728

Overall Case management salaries and benefits not included in Saint Francis Proposal

Average Cost Per Year \$ 55,036,188

\$ 74,817,672

\$ 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

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Currently |
|---------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|---|---|
| Promiseship | | | | | | | | |
| Annual Projected Expense | | | | | | | | |
| Annual Admin | 2,568,361 | 5,239,457 | 5,344,246 | 5,451,131 | 5,560,154 | 5,569,421 | 5,578,703 | 62 FPS 12 Supervisors 25 per FPS |
| Family Pres | 1,686,965 | 3,382,369 | 3,434,151 | 3,485,664 | 3,547,842 | 3,565,380 | 3,583,707 | 1,550 Cases 16 per FPS |
| Case Management | 11,169,762 | 22,877,977 | 23,250,540 | 23,706,881 | 24,181,019 | 24,221,321 | 24,261,689 | 97 |
| Direct Service | 6,382,106 | 10,710,331 | 10,870,986 | 11,034,051 | 11,230,245 | 11,398,699 | 11,569,679 | 6.00 |
| OOH Service | 13,842,807 | 23,542,579 | 23,895,667 | 24,254,102 | 24,685,359 | 25,055,640 | 25,431,474 | 17.00 |
| Total Annual Program | 33,081,640 | 60,513,206 | 61,451,344 | 62,480,697 | 63,644,365 | 64,241,039 | 64,846,050 | 305,334,502 First five years total contract cap Promiseship |
| Annual not to exceed amount | 35,650,001 | 65,752,663 | 66,795,590 | 67,931,929 | 69,204,419 | 69,810,469 | 70,424,753 | |
| | | | | | | | 445,569,716 | |
| Saint Francis | | | | | | | | |
| Annual Projected Expense | | | | | | | | |
| Annual Admin | 1,638,708 | 3,762,324 | 3,950,448 | 4,147,968 | 4,355,364 | 4,573,128 | 4,801,788 | 703.6609459 Promiseship Points |
| Family Pres | 4,096,776 | 9,405,816 | 9,876,108 | 10,369,908 | 10,888,404 | 11,432,832 | 12,004,464 | Corporate Overview |
| Case Management | 7,289,100 | 14,578,200 | 14,578,200 | 14,578,200 | 14,578,200 | 14,578,200 | 14,578,200 | Technical Approach |
| Direct Service | 819,360 | 1,881,168 | 1,975,224 | 2,073,984 | 2,177,676 | 2,286,564 | 2,400,888 | Financial Requirements |
| OOH service | 9,832,260 | 22,573,956 | 23,702,652 | 24,857,784 | 26,132,172 | 27,458,792 | 28,810,728 | Cost Proposal |
| Total Annual Program | 22,037,496 | 48,439,140 | 50,132,184 | 51,909,876 | 53,776,452 | 55,756,388 | 57,794,280 | Oral Interview |
| 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 | Total points |
| | | | | | | | 244,149,960 First five years total contract cap Saint Francis | |

| | Promiseship | 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 | 284.80 | 289.40 |
| Total points | 2,910.79 | 2,907.57 |

Exhibit

B

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)

| <u>Current Workload</u> | <u>Workload Target</u> | <u>OK?</u> | <u>Operational Note</u> |
|-------------------------|------------------------|------------|--|
| 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 | <p>The bidder should demonstrate how it will ensure delivery of Well Supported, Supported or promising practice evidence-based services to the following populations:</p> <ul style="list-style-type: none"> 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 |

Saint Francis Deficiency

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 tool that DHHS uses as its primary tool 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>.

