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Health and Human Services Committee and LR29 Committee October 8, 2021  
Rough Draft

**ARCH:** Well, good morning and welcome to today's hearing before the LR29 Committee and the Health and Human Services Committee. My name is John Arch. I represent the 14th Legislative District in Sarpy County, and I serve as the Chair of the LR29 Committee and the HHS Committee. Members of the Health and Human Services Committee are sitting to my left, and members of the LR29 Committee are sitting to my right. And I would like to invite the members of both committees to introduce themselves, starting on my right with Senator Clements.

**CLEMENTS:** Thank you, Mr. Chairman. I'm Rob Clements from Elmwood. I represent District 2, which is Cass County and eastern Lancaster.

**KOLTERMAN:** I'm Senator Mark Kolterman, representing District 24, which is Polk, York, Seward, and the western part of Butler County.

**WILLIAMS:** Matt Williams from Gothenburg, representing Legislative District 36.

**M. CAVANAUGH:** Machaela Cavanaugh from Omaha, representing west-central Omaha, Douglas County.

**MURMAN:** Dave Murman from Glenvil. I represent seven counties along the Kansas-Nebraska border to the south.

**DAY:** Good morning. I'm Jen Day. I represent Legislative District 49, which is in northern-central Sarpy County.

**ARCH:** Our introductions have changed just a little bit after redistricting. Our, our, our districts have changed slightly-- well, some dramatically, right? On my right is special counsel to the committee, the LR29 Committee, Marnie Jensen. To her immediate right is committee counsel Paul Henderson. Also assisting the committee today is committee counsel T.J. O'Neill, as well as our committee clerk Geri Williams, and legislative pages Kate and Peyton this morning. This joint hearing of the LR29 Committee and the Health and Human Services Committee is one in a series of hearings these committees have had to fulfill our oversight responsibilities under LR29, which authorized the study of the award implementation and oversight of the state's child welfare contract with Saint Francis Ministries. The committee has been busy over the last few months with this work. On June 18, we had a briefing on the historical context of child welfare privatization in Nebraska and an overview of the state's procurement process, as well as the PromiseShip protest and subsequent lawsuit. On July 9, we had a briefing regarding the financial aspects

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of the current contract with Saint Francis, as well as an overview of the financial aspects of previous privatization contracts. Additionally, we received briefings regarding the quality of the services being provided in the Eastern Service Area. On August 31, we held a public hearing in Omaha to receive further public input on the quality of services currently being provided by Saint Francis Ministries. The purpose of today's hearing is for the committee to gain a better understanding of what happened during the procurement process back in 2019 which led to the award to Saint Francis Ministries. The committee will hear from invited testimony only today in the following order: first, the CEO of the Department of Health and Human Services, Dannette Smith; second, general counsel for DHHS, Bo Botelho; third, Jason Jackson, the director of the Department of Administrative Services; and finally, the interim president and CEO of Saint Francis Ministries, Bill Clark. Today's hearing is going to look a little different than a typical committee hearing. Each testifier will be placed under oath, and that's simply because of the seriousness of the subject matter we're dealing with today. The reason for the seriousness is really twofold: first, because we're talking about the safety and well-being of vulnerable Nebraska children for which the state is responsible; and second, because the committee's work involves the accountability for a significant state investment in a private contractor. So I appreciate the willingness of each of the witnesses today to provide testimony under oath. In the interest of having a productive hearing, some of the topics we'll be covering were provided to the witnesses in advance, so I also want to thank them for their work to prepare for this hearing today. I, I, I just want to reiterate that the purpose of this hearing is to gain an understanding. That's really what's-- what-- what the questions involved help the committee understand and appreciate that. The general structure we'll follow for each witness will be, first, the administration of the oath, followed by brief opening remarks by the witness. Then we'll proceed with questioning by the committee's special counsel Marnie Jensen. The questioning by counsel will be followed by an opportunity for committee members to ask questions. And finally, each witness will be given the opportunity to make any additional remarks they would like to provide. I should note that in the case of Mr. Botelho, we'll forgo opening remarks as I understand that CEO Smith will make the opening remarks on behalf of the Department of Health and Human Services. However, Mr. Botelho will have an opportunity to make additional remarks at the conclusion of the questions for him. It's unlikely we'll conclude the hearing this morning, so the committee will plan to break for an hour around noon

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and resume the hearing after a lunch break. I also plan to take a short break mid-morning and in the afternoon as needed. Finally, I'll remind the committee members and anyone else in the room to please silence your cell phones. With that, we'll begin today's hearing with testimony from the CEO of the Department of Health and Human Services, Dannette Smith. Ms. Smith, thank you for being here today.

**DANNETTE SMITH:** Thank you.

**ARCH:** You may come to the table. As I mentioned a few minutes ago, your testimony today will be under oath, so if you could please raise your right hand. Do you swear or affirm that the testimony you're about to give to this committee is the truth, the whole truth, and nothing but the truth?

**DANNETTE SMITH:** Yes, sir.

**ARCH:** Thank you. Marnie, any items to note before Ms. Smith begins her brief opening remarks?

**MARNIE JENSEN:** Yes, I think I will note just some additional housekeeping that I hope I won't have to repeat throughout the day, but I might for those participating here. Good morning, Ms. Smith. As the Chairman just noted, my name is Marnie Jensen. I'm with the law firm of Husch Blackwell, and I am special counsel to the LR29 Committee. I think I warned you in advance, we're going to stay fairly structured with your testimony this morning, and I am going to limit some portions of the testimony to ensure that we get through all four witnesses. So while we're not exactly running a timer up here, it might be necessary from time to time just to keep us on task, and don't think me rude if I interrupt you to redirect or refocus us. I'm also going to ask that your responses to the questions be direct and succinct, although I understand that's not always possible to be succinct with the topics that we're dealing with. But again, if I interrupt you to refocus us, that, you know, is really just to keep the hearing moving. So with that, Ms. Smith, I think, if you have opening remarks or testimony, we're-- do you have opening remarks or testimony?

**DANNETTE SMITH:** I do.

**MARNIE JENSEN:** OK. And with that, I would ask that you do limit the opening testimony to no more than 10 minutes.

**DANNETTE SMITH:** Yes.

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**MARNIE JENSEN:** And then we will proceed with the questioning.

**DANNETTE SMITH:** Sounds good.

**MARNIE JENSEN:** Go ahead.

**DANNETTE SMITH:** Good morning, Chairperson Arch, members of the Special Investigation and Oversight Committee, and members of the Health and Human Services Committee. My name is Dannette Smith, Dannette R. Smith, D-a-n-n-e-t-t-e, middle initial "R.," last name Smith, S-m-i-t-h. I am the chief executive officer for the Department of Health and Human Services. I am here today to provide information on child welfare case management services in the Eastern Service Area, ESA. I came to DHHS on February 25, 2019. By that time, a new request for proposal for the Eastern Service Area case management had been released, and that date was January 9, 2019. During my first several months with DHHS, my top priorities were: number one, guiding the department's response to the flooding of 2019; number two, stabilizing youth rehabilitation treatment centers; number three, ensuring Medicaid expansion was on track; number four, ensuring that ESA procurement was managed fairly and in alignment with state laws and guidelines; and finally, overseeing the development of the new benefit enrollment platform, now known as iServe Nebraska. As-- by September 2019, I was supervising the Division of Children and Family Services, CFS, following the resignation of the former division director Matthew Wallen. I also oversaw the transition of cases from PromiseShip to Saint Francis Ministries. I've-- I used a phased approach to transition cases beginning on October 23, 2019. Saint Francis assumed full responsibilities for cases on January 1, 2020. I continued to supervise CFS until a new division director was hired. Stephanie Beasley joined the department on February 20, 2020. I am proud of the work being done by the child welfare system on behalf of children and families across the state. In 2021, Nebraska ranked number seven in overall child well-being in the annual Kids Count ranking by the Annie E. Casey Foundation. This is up two positions from number nine in 2020. Kids Count is the leading source of comprehensive child welfare being information in the nation. I am also pleased to report that Nebraska's overall child welfare outcomes have improved significantly in the past two decades. In the early 2000s, the federal Children's Bureau performed its first comprehensive review of child welfare outcomes. Nebraska scored poorly across the board, like most of the states in the United States. Today, Nebraska has just one area of underperformance compared with the federal standard, and that particular area is placement stability. Now I would like to provide an

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update for you on the Eastern Service Area. As you know, effective October 1, 2021, Saint Francis Ministries is operating under a probationary, restricted child-placing agency license for 60 days. CFS is assuming all new referrals in the ESA to ensure that children and families of Nebraska receive the needed support. While Saint Francis has shown improvement in key areas, the decision to restrict new referrals is in the best interest of children and families. This allows Saint Francis the time to work with DHHS to correct deficiencies and build appropriate staffing. The probation period ends November 30, 2021. Since transitioning cases to Saint Francis, DHHS has worked tirelessly to provide contract oversight and guidance. CFS has convened daily, weekly, monthly meetings to address a wide range of matters affecting services to children and families in the Omaha area. The department carefully monitors the performance of Saint Francis, and in 2021 the department has paid close attention to a few critical matrixes, included, but not limited to, caseloads, monthly visits with children, and court performance. Saint Francis continues to fall short of required caseload ratio compliance. This means many of the caseworkers carry more than the maximum number of cases as defined in Nebraska statute. This is predominantly due to understaffing. Caseload compli-- compliance result-- results for August of 2021 show improvements, with 45 percent of the case managers in compliance with statutory caseload ratios, up from a low of 31 in June of 2021. Unfortunately, Saint Francis's robust hiring campaign kicked off too late to realize the results for most of 2021. With many new st-- employees still in training, their caseload ratio-- ratio compliance remains very low. For now, Saint Francis is utilizing some supervisors as case managers to help deliver quick casework and including frequent visits to children. Monthly face-to-face contact with children is an important way to ensure safety and well-being of children. The federal standard is 95 percent of children must be visited by their caseworker each month. Through the first half of 2021, Saint Francis's performance was in the high 80s to low 90s. However, they exceeded the 95 percent mark in July and August of 2021. When staffing is adequate and children and families are being visited routinely, caseworkers are able to provide good representation of children in court. Court performance cannot be reduced to one number, and there is no standardized measure outcome. But good court performance helps ensure families receive the right support and children are able to achieve timely permanency. Poor court performance can mean children linger in the child welfare system longer than needed. CFS and DHHS's legal team track when a court date is missed, whether a court worker-- whether a caseworker is unprepared, whether a

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case plan is delivered to the judge late or not at all, and whether the court order is out of compliance. CFS then requires a detailed review and mitigation plan from Saint Francis. The department has also provided court guidance to Saint Francis. The department will continue to pay close attention to an array of matrixes to ensure the safety and well-being of children. My staff and I remain committed to serving children and families in the Eastern Service Area and all across Nebraska. Thank you for the opportunity to testify. I will now address your questions from the committee.

**MARNIE JENSEN:** Thank you, Ms. Smith. And this morning, my questions are-- I will attempt to organize them by topic, although I suspect your answers will cause us to jump around. So don't, don't feel constrained to the topic. But I am going to begin this morning with some background questions. With your opening remarks, you mentioned that you started, you joined the Nebraska Department of Health and Human Services, which I can guarantee I will shorten to DHHS--

**DANNETTE SMITH:** OK.

**MARNIE JENSEN:** --or even just HHS this morning, so we know what we're talking about here. Prior to your joining that department on February 25, 2019, what was your experience with child welfare?

**DANNETTE SMITH:** Yes, I have over 25 years of experience. I've worked across the nation in terms of direct supervision as well as oversight supervision.

**MARNIE JENSEN:** And at the time you joined DHHS as CEO, where did the Eastern Service-- Service Area contract stand? I know you mentioned, you know, the January 9 date with the RFP, but where-- who held the contract and what was the status of the-- the RFP or the rebid?

**DANNETTE SMITH:** OK. At that time, PromiseShip was the contractor, and the RFP had already been launched, and I believe that date was January 9, 2019.

**MARNIE JENSEN:** OK. I'm going to jump us back a little bit. What steps did you take to prepare for our hearing here this morning?

**DANNETTE SMITH:** Well, I had an opportunity to read historically about privatization here in Nebraska from 2009, and then I also took a cursory review of the procurement manual.

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**MARNIE JENSEN:** OK. Thank you. Did you or, to your knowledge, anyone at DHHS share or discuss the-- the questions and topics that were provided to you in advance of this hearing with any representatives of Saint Francis?

**DANNETTE SMITH:** No, we have not.

**MARNIE JENSEN:** And before this hearing, Ms. Smith, your office received a request for information from the LR29 Committee through counsel. Are you aware of that?

**DANNETTE SMITH:** Yes, I am.

**MARNIE JENSEN:** And what did you especially, but also your office, do to identify, review, and then provide documents to the committee?

**DANNETTE SMITH:** So once we received your request, my staff member who handles public record requests, the Office of Legislative Services, coordinated and disseminated the information to the needed divisions to be able to get you the information you needed back on time.

**MARNIE JENSEN:** Thank you. Are you aware of any instances where what-- what may have been responsive documents to the committee's requests were destroyed prior to those requests being received?

**DANNETTE SMITH:** I am not aware of that occurring.

**MARNIE JENSEN:** Do you believe that DHHS has fully cooperated with the committee's requests for information?

**DANNETTE SMITH:** Yes, I do.

**MARNIE JENSEN:** All right, so-- so moving on from kind of those background questions, I'm going to talk a little bit about the prebid or pre-RFP process. What role did HHS play in the development of the RFP?

**DANNETTE SMITH:** Well, DHHS provided the technical support and expertise to the RFP process. The RFP, though, was already completed before I got here. And again, that was January of 2019.

**MARNIE JENSEN:** But you-- you understand that-- that your-- that HHS did provide technical support in the-- the development of the RFP?

**DANNETTE SMITH:** Yes.

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**MARNIE JENSEN:** In your first six months at HHS, what was your impression of the department's relationship with PromiseShip?

**DANNETTE SMITH:** Prior to me arriving, I had a colleague who knew David Newell, and she was instrumental in introducing David and I. And I had hoped that that would begin a good working relationship, which I believe, you know, it did while he was here. I also continued to work with the CEO, who, after David left, was making the transition between PromiseShip and Saint Francis. But when I got here, it was-- it was sensed that the relationship was strained in that there was poor communication. I had heard also from stakeholders that there was concern that there were-- there was funding that was given to PromiseShip and the results for children and families didn't meet the mark. But again, I tried very hard to work along with the-- the leadership of PromiseShip, and I know that, as best as possible, CFS did as well.

**MARNIE JENSEN:** Ms. Smith, I think you just mentioned that you had heard that the results didn't meet the mark. Were-- did you hear that within DHHS or from external stakeholders?

**DANNETTE SMITH:** I would say, Ms. Jensen, that it was from both.

**MARNIE JENSEN:** Thank you. Some more questions kind of in this area with respect to the relationship with PromiseShip. Did you have an understanding-- I think you used the word "strained," but whether it was a good partnership between PromiseShip and the state?

**DANNETTE SMITH:** My sense was it was a strained partnership. A lot of it was based on poor communication. There was concerns around getting financial documents to understand how the spending was occurring, those types of things, was my understanding.

**MARNIE JENSEN:** Thank you. Did you have an understanding about PromiseShip's view of the relationship and the partnership? Did you meet with them and gain an understanding of whether-- what I think the Stephen report characterized as a culture of distrust, whether that went both ways?

**DANNETTE SMITH:** I think it went both ways. I think for the time, the short time that David was here, I think we tried to figure out how at least we could get along. But it was strained, strained.

**MARNIE JENSEN:** So I'm going to jump us right into-- and-- and for the committee's sake, and for those of you listening, there are some

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topics that we're-- we're planning to cover with Ms. Smith and some topics that we're planning to cover with Mr. Botelho. And so we're trying to be mindful of the time for the hearing today. And so if it seems as though I might be skipping something, I hope I'm not, but I don't intend to, so--

**DANNETTE SMITH:** So, Ms. Jensen, my voice is heavy and it's echoing. Is that a problem? Can people hear me OK?

**MARNIE JENSEN:** I can hear you just fine.

**DANNETTE SMITH:** OK. OK. I know my voice is heavy, and so sometimes it reverberates.

**ARCH:** This room-- this room is difficult too.

**DANNETTE SMITH:** OK, OK, I just want to make sure that you don't think I'm not mindful.

**MARNIE JENSEN:** It's fine for me. Can you hear me OK?

**DANNETTE SMITH:** Yeah, I can. I can.

**MARNIE JENSEN:** Fantastic. So talk-- I'm gonna jump us right into the decision-making process on the RFP. What was your understanding of which agency bore the ultimate responsibility for the fairness, and I will also use the term legality, of the RFP process? Was that DAS or DHHS?

**DANNETTE SMITH:** It was my understanding that DAS bore the responsibility--

**MARNIE JENSEN:** What is--

**DANNETTE SMITH:** --of the procurement process.

**MARNIE JENSEN:** Pardon me. What is the basis for that understanding?

**DANNETTE SMITH:** I saw that in the manual--

**MARNIE JENSEN:** OK.

**DANNETTE SMITH:** --in the--

**MARNIE JENSEN:** So you were-- did you review the manual when you joined us?

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**DANNETTE SMITH:** I did not.

**MARNIE JENSEN:** So did you have an un-- I'll maybe just go back in time. When you joined the department as CEO, did you have an understanding then of who bore that responsibility?

**DANNETTE SMITH:** I'm not sure I did.

**MARNIE JENSEN:** And-- and a similar question, although it is different, what agency, as between DAS and DHHS, did you understand bore the ultimate responsibility for making the award decision; not for the process, but who was making the decision?

**DANNETTE SMITH:** So DAS bears the responsibility of announcing the award. They have that responsibility of the award. DHHS made the recommendation to DAS about the award.

**MARNIE JENSEN:** So I'm going to press you a little bit on that answer, if I may. So you said, I think, that DAS announced the decision. So is it fair to limit that to they were simply the communicator of the decision on a website to the public, or did they make the decision?

**DANNETTE SMITH:** So what I'm saying is the final decision comes from DAS.

**MARNIE JENSEN:** OK.

**DANNETTE SMITH:** DHHS makes the recommendation to DAS.

**MARNIE JENSEN:** If I was going to use some maybe presidential terminology, where did the buck stop with respect to the decision?

**DANNETTE SMITH:** Well--

**MARNIE JENSEN:** Was it with DHHS or DAS?

**DANNETTE SMITH:** The-- the final decision rests with DAS. It was DHHS that made the recommendation-- recommendation to them.

**MARNIE JENSEN:** Thank you. I-- that's obviously a very important--

**DANNETTE SMITH:** Yes.

**MARNIE JENSEN:** --you know, issue in our investigation.

**DANNETTE SMITH:** Yes.

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**MARNIE JENSEN:** So I apologize for pressing you a-- a little bit more there. And I'm going to do it one more time. Do you believe, and-- and let me ask it differently. Did you believe when you joined, in that first six months, that the buck stopped with you and DHHS on that decision, even if ultimately DAS was the technical decider?

**DANNETTE SMITH:** Yes, I did.

**MARNIE JENSEN:** Thank you. All right. So I'm going to move us on kind of to the RFP process. What steps did-- and I am going to say you, but I would like you to answer on behalf of the department, if you're able, OK? So what steps did you as DHHS take to ensure that the department had done its due diligence into that decision, that recommendation ultimately to award the contract to Saint Francis?

**DANNETTE SMITH:** OK. I'd like, Ms. Jensen, to name four steps that I believe the department took. The first thing that we did was we made sure that we used the DAS procurement manual and Nebraska statutes to guide our due-- our due diligence. The agency followed the process and my central procurement office had the expertise, and they were working on making sure that that process was good. The second one that we-- the second step that we took is we selected and we trained and evaluated a team consisting of DHHS team members, as well as stakeholders, external stakeholders, who were going to actually do the review and make sure that they understood their role and responsibility for reviewing the proposal. A group of DHHS finance teammates conducted oral interviews, as well, with each of the bidders to examine their financial management. After scoring, DHHS ordered a media review for the highest-scoring bidder, and that was Saint Francis. And then finally, DHHS conducted an on-site financial review on site at Saint Francis in Salina, Kansas, on September 16, 2019.

**MARNIE JENSEN:** Thank you. So I think you just answered this, but specifically as to Saint Francis, you mentioned the on-site review.

**DANNETTE SMITH:** Yes.

**MARNIE JENSEN:** You mentioned, I think more generally, the oral interviews which occurred with all of the-- both, I should say, both of the bidders.

**DANNETTE SMITH:** Yes, that's correct.

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**MARNIE JENSEN:** Anything else specific to Saint Francis's financial situation that the department did, other than what you've already mentioned?

**DANNETTE SMITH:** This is all I can think of for right now.

**MARNIE JENSEN:** Maybe I can jog your memory with another question or maybe another thought or concept with another question. What due diligence, if any, did DHHS do with respect to Saint Francis's performance in particular with finances in other states?

**DANNETTE SMITH:** We did not look at any other performance issues. We went solely by the RFP that they gave us, which was their work history, their performance, how they felt they did in other states. Now one thing I would say, Ms. Jensen, is that we had a history with Saint Francis from 20-- 2012, and they serve many of our constituents over to the western part of the state. We had not had any problems with performance or finances. As part of the review of the process, I know that staff reviewed, as part of their bid, their financial records as well. That was done as part of the process.

**MARNIE JENSEN:** And ju-- just for clarity of the record, the experience that the state had with Saint Francis in the western part of the state, was-- that-- that was not case management experience, though, correct?

**DANNETTE SMITH:** No, it wasn't. I think they provide, I think, family support work. But yet again, they are licensed as a child-placing agency and our-- our relationship with them was good and there weren't any concerns at that time.

**MARNIE JENSEN:** I'm-- I'm going to try to clarify the time frame of that on-site review that you did with Saint Francis. I think you mentioned that was-- may-- maybe you didn't mention the time, but that was in September of 2019?

**DANNETTE SMITH:** That's right. That's right.

**MARNIE JENSEN:** And so that was after the intent to award.

**DANNETTE SMITH:** That is correct.

**MARNIE JENSEN:** And actually, was it after even the contract was signed?

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**DANNETTE SMITH:** No, it was after-- it was after the contract was signed, I believe.

**MARNIE JENSEN:** I'll-- I'll-- it's not a gotcha.

**DANNETTE SMITH:** OK.

**MARNIE JENSEN:** I won't-- I won't try to trick you here. My-- my information is that the contract was signed on July 3--

**DANNETTE SMITH:** Right.

**MARNIE JENSEN:** --2019.

**DANNETTE SMITH:** That's right.

**MARNIE JENSEN:** So that financial on-site review occurred after.

**DANNETTE SMITH:** After, that is correct.

**MARNIE JENSEN:** I'm going to ask you about what has been termed, I think, in other briefings, a "media review" that was done with respect to Saint Francis. Are you familiar with that term [INAUDIBLE]

**DANNETTE SMITH:** I am, yes.

**MARNIE JENSEN:** And as I understand it, so that we're on the same page, there was maybe a packet of information that had been collected with what maybe my grandmother would call clippings, newspaper clippings and other, other information provided of, you know, I think it's fair to characterize, issues that Saint Francis had had with performance from-- everything from, you know, kids sleeping on floors, I think Mr. Kenny talked about earlier this year, to maybe some financial issues. So we're talking about the same media review packet, right? Have you seen this?

**DANNETTE SMITH:** I don't think so. I have not seen it.

**MARNIE JENSEN:** OK, you've never seen the Saint Francis media review packet that-- that was provided to HHS in the RFP process?

**DANNETTE SMITH:** I have not seen that.

**MARNIE JENSEN:** Oh, OK, then I probably don't have a lot of questions for you about it. But I think my question is-- I'm going to ask it anyway. Assuming what I just said is true, that there was a media

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review and a packet prepared, whether you've seen it or not, do you have any information about what led to that media review being prepared?

**DANNETTE SMITH:** Yes.

**MARNIE JENSEN:** OK.

**DANNETTE SMITH:** OK.

**MARNIE JENSEN:** Why-- why don't you talk about what led to that?

**DANNETTE SMITH:** Yeah, it's just good business practice to do a media review of somebody that you're contracting with. The media review packet that I saw did not raise anything that would suggest that there was something substantial going on. And-- and to be honest with you, Ms. Jensen, I look for things that point to harm of a child. The media review that we did, I did not see the things that you are stating to me, so that's why my face looks the way it does.

**MARNIE JENSEN:** Oh, OK, thank you. That's-- thank you for clarifying.

**DANNETTE SMITH:** And, you know, just to add--

**MARNIE JENSEN:** Sure.

**DANNETTE SMITH:** --in a media review, I-- I've not only done it for contractors, but when I'm going to employ executives, I've done it for them as well. It's just good practice.

**MARNIE JENSEN:** So maybe a sort of informal background check?

**DANNETTE SMITH:** Yes.

**MARNIE JENSEN:** Yeah, yeah. Do you know who at HHS analyzed the media review packet once it was provided?

**DANNETTE SMITH:** So DHHS ordered a media review on the highest-score bidder. DHHS, and this is my team, we collaborated and looked at the media review. The former director of communications is the one that did it for us.

**MARNIE JENSEN:** And who was that? Do you know that person's name?

**DANNETTE SMITH:** Matthew Litt.

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**MARNIE JENSEN:** Within HHS, understanding that maybe my characterization you don't agree with in terms of that media review, but with the media review that you saw, did you personally have any concerns with Saint Francis?

**DANNETTE SMITH:** I did not at that time.

**MARNIE JENSEN:** After the media review was, I guess, performed and disclosed-- sorry, after the media review was performed, did you come to understand that Saint Francis was having significant issues in Kansas with its case management?

**DANNETTE SMITH:** I did not, no.

**MARNIE JENSEN:** At the time of-- I'm just going to say in 2019, so I'll limit us to 2019, were you aware of a class action lawsuit that had been filed against Saint Francis with respect to its-- a number of things, but including its case management?

**DANNETTE SMITH:** I think I might have heard about that.

**MARNIE JENSEN:** OK. Do you-- does it-- was there any discussion within HHS about that class action as it related to the award to Saint Francis?

**DANNETTE SMITH:** I don't think so.

**MARNIE JENSEN:** OK. Going to take us back to that decision to award to Saint Francis now again. So we-- we talked about, I think, already that it was DAS who ultimately, you know, communicated that and was the decider. Do you know who, and so instead of saying DAS, do you know who at DAS ultimately was the final decision maker?

**DANNETTE SMITH:** I do not know.

**MARNIE JENSEN:** Did you understand that there was a person who made that decision?

**DANNETTE SMITH:** I don't think so. I thought it was just the department.

**MARNIE JENSEN:** OK. Did you come to understand that PromiseShip had filed a protest with respect to that?

**DANNETTE SMITH:** Yes.

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**MARNIE JENSEN:** OK. When did-- how did you learn that a protest had been filed?

**DANNETTE SMITH:** I think through the general counsel.

**MARNIE JENSEN:** Of HHS?

**DANNETTE SMITH:** Yes, uh-huh.

**MARNIE JENSEN:** Mr. Botelho?

**DANNETTE SMITH:** Uh-huh.

**MARNIE JENSEN:** OK. What input did HHS have, whether that was you or anyone in HHS, to deny that PromiseShip protest?

**DANNETTE SMITH:** Well, the protest was worked through with my general-- with my central procurement team. That's who worked with DAS on the protest.

**MARNIE JENSEN:** OK, so I'm trying to just get a little bit more detail, you know, on--

**DANNETTE SMITH:** OK.

**MARNIE JENSEN:** --on kind of how that worked, for lack of a better term, right, what input DHS was really giving to DAS, and we've seen some communications between, I think it's pro-- Walklin, Mr. Greg Walklin at DHHS, and Annette Walton at DAS, where there was, for instance, a draft letter provided by, you know, your department to them, which would have denied the protest. So I'm trying to get a feel for was that denial of the protest really a-- a recommendation and really a-- it sounds pejorative, and I don't mean it that way, but a shadow decision within HHS that then was just given to DAS?

**DANNETTE SMITH:** I don't believe so.

**MARNIE JENSEN:** OK, tell--

**DANNETTE SMITH:** The way that I--

**MARNIE JENSEN:** --tell me a little bit more.

**DANNETTE SMITH:** Yeah, the way I take it, Ms. Jensen, is that the two departments were working together.

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**MARNIE JENSEN:** OK.

**DANNETTE SMITH:** That's how I take it.

**MARNIE JENSEN:** OK, so your understanding was really that was a joint effort.

**DANNETTE SMITH:** Well, again, DAS has the sole responsibility to respond to the protest, which you hear me saying is that I believe that my department was providing them the necessary information to make the decision.

**MARNIE JENSEN:** That's helpful.

**DANNETTE SMITH:** That's what I want-- want to communicate.

**MARNIE JENSEN:** Did-- are you familiar with that communication between Mr. Walklin and Ms. Walton that I referenced? It was in June of 2019.

**DANNETTE SMITH:** I don't think so.

**MARNIE JENSEN:** Within HHS-- well, let me ask it this way. I think you testified earlier that it was your view that ultimately DHHS made that recommendation to award to Saint Francis.

**DANNETTE SMITH:** Yes.

**MARNIE JENSEN:** Was that your recommendation as CEO?

**DANNETTE SMITH:** It was. It was.

**MARNIE JENSEN:** So what-- what advice-- I'm not asking for legal advice here, but what advice from all of the teams you've been mentioning to us this morning did you receive from within your department regarding whether the state should award that contract to Saint Francis?

**DANNETTE SMITH:** I think we made sure that we understood the scoring, how we got to the scoring, that they indeed could do the job that was being requested of them. There were multiple conversations about it. But again, we went with the organization that had the highest score.

**MARNIE JENSEN:** I don't want to simplify it too much. Is it fair to say that the decision really was-- just came down to the score? It was who's got the highest score, that's who we will pick?

**DANNETTE SMITH:** I wouldn't say that.

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**MARNIE JENSEN:** OK.

**DANNETTE SMITH:** I would say that there was great thought that went-- there was great discussion and thought that went into it.

**MARNIE JENSEN:** OK, so in-- in addition to the score, and you said great thought and deliberation, and-- and again, I'm just trying to get as much detail as we can, you know, what other things were considered specifically, you know, relating to that recommendation other than the score?

**DANNETTE SMITH:** Well, I think, again, we looked at the financials, the oral interviews that each one of them did, and we really tried to make a good decision in terms of who we thought could serve children and families. And I'm sorry if it looks like I'm skating, but I'm not.

**MARNIE JENSEN:** No, no, not at all, not at all. I'm just-- it's my job just to get into the details. Maybe the committee already thinks I'm too into the details, so you all can stop me any time, but I'm trying to get as much information as we can as we move toward, you know, the committee's final report here. So what about other stakeholders? Forget about what information you received within your department. Did you receive input from other stakeholders relating to the decision to recommend Saint Francis?

**DANNETTE SMITH:** Yes, I did. I got a lot of feedback after the award.

**MARNIE JENSEN:** OK.

**DANNETTE SMITH:** OK.

**MARNIE JENSEN:** So after the intent to award, I would suggest, external stakeholders were providing--

**DANNETTE SMITH:** Yes.

**MARNIE JENSEN:** OK.

**DANNETTE SMITH:** Yes.

**MARNIE JENSEN:** Tell-- tell me kind of, if you can, generally, what that-- what that input was, describe it.

**DANNETTE SMITH:** There was concern about whether or not they could indeed do the-- the work for the bid price in their proposal.

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**MARNIE JENSEN:** OK. And we are definitely moving into that. So you have led me, segued perfectly. So let's talk about what, I think it's fair to say, is a significant difference in cost between the bids of Saint Francis and PromiseShip, which you will agree were the only two bidders in this process, correct?

**DANNETTE SMITH:** Correct.

**MARNIE JENSEN:** OK, so what did you understand to be the rationale for how Saint Francis could achieve a cost that was essentially 40 percent below the cost, the actuals that PromiseShip had been, I guess, providing?

**DANNETTE SMITH:** Each bidder provided a bid based on their own technical response to the proposal. DHS [SIC] would be unable to determine if Saint Francis's bid was too low or PromiseShip's was too high. At that time, there was no thought or belief that Saint Francis just could not do the job. That was the number that they put in the bid, and we believed that they could do the work.

**MARNIE JENSEN:** OK, so with-- with respect to that difference, did you con-- did you personally have knowledge of the Stephen Group's report and findings with respect to PromiseShip's costs at the time of the bid?

**DANNETTE SMITH:** Yeah, not at that time, because I think I got the Stephens [SIC] Group report later.

**MARNIE JENSEN:** OK.

**DANNETTE SMITH:** Their final report, I think, was in May or something like that.

**MARNIE JENSEN:** OK.

**DANNETTE SMITH:** Yeah.

**MARNIE JENSEN:** So at-- at the time-- well, let me-- let me step back and I'll ask it more generally. At the time of seeing those two bids and seeing such a stark difference, DHS-- HHS did not question whether Saint Francis could do the-- the task at hand for the cost provided?

**DANNETTE SMITH:** We-- remember, I said earlier there was a lot of discussion.

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**MARNIE JENSEN:** OK.

**DANNETTE SMITH:** There was a lot of discussion as to whether they could or not.

**MARNIE JENSEN:** When you reviewed-- it sounds like you did eventually review the Stephen Group's report.

**DANNETTE SMITH:** Yes.

**MARNIE JENSEN:** Did that impact your view of PromiseShip's costs or Saint Francis's costs?

**DANNETTE SMITH:** It didn't at that time.

**MARNIE JENSEN:** Did you believe, at the time of the intent to award, that PromiseShip-- and you, I mean the department, OK, so not-- I might ask for your personal view as well. But did the department believe that PromiseShip was being overpaid?

**DANNETTE SMITH:** I think there were times where that was a thought.

**MARNIE JENSEN:** When you testified before, I believe it was just the HHS Committee and not also the LR29 Committee in January of this year, you, I believe, talked about the audit report that the State Auditor's Office had put out in 2018. Was that considered as part of the RFP award to Saint Francis?

**DANNETTE SMITH:** I don't think so.

**MARNIE JENSEN:** OK. Did you have an understanding at HHS that the Saint Francis award was-- sorry, the Saint Francis bid, the RFP response, was somehow taking into account the Families First Act, as we call it, that there would be some, to use a-- some synergies provided or maybe some-- some change in services that might come about as a result of-- of that federal law?

**DANNETTE SMITH:** Yes, um-hum, yes.

**MARNIE JENSEN:** OK. Can you talk about that a little bit?

**DANNETTE SMITH:** And I'll be honest with you, Ms. Jensen, I can't go into great detail. But I know that the former director, Matt Wallen, was, and Lori Harder, were prepared to work alongside with Saint

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Francis on some of the new and innovative programs that we would have to administer as part of FFPSA.

**MARNIE JENSEN:** And I'll-- and I'll-- understanding, maybe, your information is a little limited by your intro there on your last answer, but did you have an impression of whether either Saint Francis or PromiseShip was taking into account the Families First legislation with respect to its bid response?

**DANNETTE SMITH:** I don't know. And I guess the-- the-- the question that I'm answering, Ms. Jensen, is that I know that once the award occurred, my staff worked alongside of Saint Francis to make sure that they knew that part of their responsibility was the FFPSA.

**MARNIE JENSEN:** OK.

**DANNETTE SMITH:** That's-- that's really what I'm trying to communicate. I'm sorry if I'm--

**MARNIE JENSEN:** No, no, thank you for being clear. So-- so I'm-- I'm going to ask a few questions here about the transition from PromiseShip to Saint Francis. Who ultimately made the decision to expedite the transition of cases from PromiseShip to Saint Francis? And-- and I will use my words. That was expedited, right, from January 2020, as expected, to October 2019? Who made that decision?

**DANNETTE SMITH:** I made that decision.

**MARNIE JENSEN:** Why?

**DANNETTE SMITH:** I made that decision because I wanted to make sure that we were transitioning 1,500 children over time. Also, PromiseShip at the time was losing staff. And so it was trying to create a balance between the staff at PromiseShip and then transitioning the cases over to Saint Francis. Ms. Jensen, what I didn't want to have happen is that we would lose kids in the transition. So every week we staffed-- my staff, PromiseShip, and Saint Francis, they staffed approximately 250 to 280 children every week by worker, by team of cases, to ensure that each child moved over to Saint Francis in a timely manner and that there was somebody there to receive them. Here's what I've experienced in my career. I've had situations when I was a private and both when I was in government where a private agency may have failed, and the state says, well, you're going to take the cases. They would give us a cascade of cases, 200, 500 cases, sometimes 700 cases, and tell us, your contract starts in January, you start with case

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management. But by the time I get all the cases, I don't know where the kids are. I don't know if the kids are safe. The paperwork is in disarray. I didn't want Saint Francis to start off that way. I had the responsibility of 1,500 children in Eastern Service Area. I wanted to make sure that 1,500 children got to Saint Francis in the right way, particularly after we were losing staff. And in addition to that, thank God I did that, because February and March of that year, the pandemic started.

**MARNIE JENSEN:** So what was, at the time-- thank you for that very robust answer there, Ms. Smith. What, at the time that you made that decision, what was the status of the statutorily required readiness assessment, right? At the time the first case transferred, what was the status of that readiness assessment?

**DANNETTE SMITH:** Well, the readiness assessment was still in place. It was still in progress. But here's what we did, Ms. Jensen. We tried to make sure that the following areas were completed, and these are all around safety issues for kids, because we wouldn't have moved if they hadn't have got these things in area done: safety and best interest of the child, the family well-being and case sta-- stability. Again, we did the phased approach so that we could make sure that we could account for each child and that we did it with good thought and intention. That was the whole purpose of doing it. The remaining items that had to be done for the readiness assessment had more to do with documentation-- documentation and some business acumen things. But the safety issues, we wanted to make sure those were taken care of first.

**MARNIE JENSEN:** Did the-- understanding your last answer, did the status of the readiness assessment and review impact that transition of cases one way or the other?

**DANNETTE SMITH:** Yeah, I don't believe it did. I felt like it really set Saint Francis up for success, to be honest with you. We were monitoring them with that readiness assessment all during the transition.

**MARNIE JENSEN:** I don't-- I don't want-- I don't mean this is an argumentative question, but I think--

**DANNETTE SMITH:** No, no.

**MARNIE JENSEN:** --I think Saint Francis would perhaps, based on what we've seen over the last few weeks especially, would disagree, right,

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that they were set up for success? So I'll give you an opportunity to maybe respond to that, right?

**DANNETTE SMITH:** Yeah.

**MARNIE JENSEN:** But the decision you made to-- to expedite the case transfer was intended to set them up for success. You know, do you-- do you believe it did?

**DANNETTE SMITH:** I believe it did and let me tell you why. There are two factors in child welfare that can set up the demise of a child welfare agency. Number one, not having enough and appropriate paperwork in order and having it organized, that's number one. And then the second one is the loss in responsibility of children under their care. The reason why we did that early transition, and I don't know if I would call it expedited, but, OK, early transition, is because, again, I did not want them to start in January with 1,500 cases and not have an understanding of where each one of those children lie. And that's why we did it. Failure, I have seen and I have experienced in my own career, boxes of-- of cases that come over, foster parents haven't been talked to, children haven't been talked to. You have a disaster. I believe us doing that transition early set Saint Francis up for success--

**MARNIE JENSEN:** Thank you.

**DANNETTE SMITH:** --at least in the short term.

**MARNIE JENSEN:** Thank you. Ms. Smith, I am-- I am going to kind of bounce back to a little bit more discussion on-- on the cost differentials between the two bids and just maybe try to get down to a little bit more detail in terms of just your knowledge. I know we're going to speak with Mr. Botelho about this during his testimony, as well, but maybe just some general questions. Do you agree that the RFP at least allowed the department to review bids for reasonableness of cost?

**DANNETTE SMITH:** Yes.

**MARNIE JENSEN:** And-- and I'll ask you another kind of foundational question. Do you believe that the department or the state is obligated-- is-- is obligated to actually perform a sort of reasonableness assessment with respect to cost?

**DANNETTE SMITH:** Yes.

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**MARNIE JENSEN:** What does reasonable in this context mean to DHHS, right? And-- and maybe let me just-- well, I'll stop there. What does reasonable mean in this context of comparing these two bidders that are 40 percent, you know, different?

**DANNETTE SMITH:** I think looking at both of the proposals, seeing where there's differences and whether or not it's on actual cost.

**MARNIE JENSEN:** OK. Are you aware of what criteria, if any, that the department, DHHS, applied relating to reasonableness of these two bids?

**DANNETTE SMITH:** My understanding was certainly the scoring of the bids, but also the oral interviews was a way to really look at the finances, not necessarily the bids but the finances. That's my understanding.

**MARNIE JENSEN:** So in those reviews of the finances that you just described, how did you come to understand that it was indeed reasonable for Saint Francis to be able to provide the services detailed in their RFP for the price they told you they were going to do it for?

**DANNETTE SMITH:** I had no reason at that time to believe that they couldn't do-- that they couldn't do the work. We accepted the information that both of them provided and we went with the organization that was the highest score for that particular bid. At that time, I had no reason to believe that they couldn't do it.

**MARNIE JENSEN:** One-- one last question with respect to the case transition, and I-- I'm-- I don't mean this question to be insulting in any way, but was there any discussion or correlation, or I can think of maybe several other words, but between the decision to expedite cases and the PromiseShip litigation and what impact those transitions would have?

**DANNETTE SMITH:** No, the-- it was simply about safety of children. It had nothing to do with the litigation at all. I was just trying to make sure that we were accounting for children and doing it correctly.

**MARNIE JENSEN:** Just a few more questions before I turn the-- the questioning over to Chairman Arch and the committee. When you were here in January of this year, and I think I have captured it accurately in my quote, but if-- your testimony is sitting to your right. You-- you testified that we did not know it was underbid, we're

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speaking for the department, and that no one at DHHS knew that it was underbid. Do you remember--

**DANNETTE SMITH:** Yes. I remember that.

**MARNIE JENSEN:** After 10 months of your own investigation, probably with the help of the committee sort of forcing you to do your own investigation, do you still believe that is true, that no one at DHHS knew that this contract had been underbid?

**DANNETTE SMITH:** I don't believe that we knew.

**MARNIE JENSEN:** Do you believe today-- again, a lot more knowledge since January, a lot more knowledge since January. Do you believe today that someone, anyone at DHHS, at least suspected that Saint Francis had underbid, particularly in consideration of that additional \$15.1 million request and that clarification meeting? Do you think it's fair that maybe someone in the department suspected there was an underbid situation?

**DANNETTE SMITH:** I think we had a lot of discussion about it. That's what I would say to you, Ms. Jensen. There was a lot of discussion. I can't necessarily pinpoint that there was one person that said stop.

**MARNIE JENSEN:** OK. Thank-- thank you for your candor there. I'm going to ask maybe just one more question in-- in this area because some, and I think I would consider myself in this group with the work that I have been doing as special counsel, find it just somewhat unbelievable that, and I really mean that in the true sense of the word, the literal sense of the word "unbelievable," that nobody at DHHS knew or suspected or thought, wow, this contract looks really underbid and we've had this meeting and they asked for more money, and then they magically didn't ask for more money. So I just would like to give you an opportunity to respond to folks, frankly, like me, who really are sitting in the chair thinking, how did you at DHHS really not know, not suspect, not--

**DANNETTE SMITH:** You know--

**MARNIE JENSEN:** --think about this?

**DANNETTE SMITH:** --I think we were so busy following the procurement process. And again, we were trying to make sure-- Ms. Jensen, let me go back. There had been a failed RFP process back in 2017, OK, where things had gotten thrown out. I think we were so conscientious in

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trying to follow the procurement process and make sure that we followed everything to the letter of the law. That's what I think really happened.

**MARNIE JENSEN:** Yeah, thank you. Thank you for that candor. So with that, I don't-- I don't have any questions at this point. I'm going to turn the questioning over to Chairman Arch. I know he's got some questions, and then he'll allow the committee to ask theirs. Chairman.

**ARCH:** Thank you. Thank you. Thank you for being here and for your candor in these-- in these responses. I-- I-- I want to take the-- my-- my questions are perhaps on-- on a-- I say a broader perspective, a little bit of a higher-- a little bit of a higher level. One of the things that we heard in our first hearing when we talked about history of DHHS and procurement predates you by ten years. But we saw that there-- that there has been a history of decision making that has gone through-- through those ten-year periods where, back to the MMIS and some of the failed RFPs and some of the decisions on Wipro and all of-- all of those decisions. I think the committee heard in that testimony and was concerned that there is a-- a pattern. And when-- when we see something like that, we say, well, if that's the case, names change, dates change, it's-- it's not related to one particular person in all of this, we, of course, start talking about process. We talk-- we talk about, do we have a decision-making process in statute, in the procurement manual that supports good decision making? And-- and I don't think it's unreasonable for us to ask that question, and I-- and I guess I'd like your thoughts on that. You said-- you said that this-- I mean, you were very focused on the process of the procurement and following that and making sure, which I'm not surprised, because in the past when that wasn't done, then there were lawsuits and all the rest, so we want, like to avoid those. Does-- does our current procurement process support good decision making from your perspective?

**DANNETTE SMITH:** I think the procurement process supports, as best as it can, the services that we try to procure. That's-- that's what I think. I think it-- it supports the best pro-- process possible.

**ARCH:** OK. And I-- and I guess, I mean, we're-- we're going to continue to question that and try to understand that because, of course, the history, it-- it-- it-- you know, you're--

**DANNETTE SMITH:** And-- and you know, Senator Arch, here's what's different. Wipro, MMIS, those are all technology. And I think what we

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are doing is also having a procurement process that tries to meet the needs of human services. And so again, I think we were so driven on following the process.

**ARCH:** Right.

**DANNETTE SMITH:** OK.

**ARCH:** Right. And I-- and I would tell you, from the perspective of the committee as we-- as we take a look at it, if that's our-- if-- if that's what we say brought us to this decision, which 20/20 hindsight, retrospect and looking back, you say, well, had we known, perhaps it would have been a different decision, but if the process brought us there, then we'll continue to examine the process, if that's-- if-- if that's what brought us there, because we don't-- you know, of all the things that we as a committee want to make sure in the future, is we want to make sure that our process supports good decision making, and that's, you know, so that we don't find ourselves in investigative committees and looking back at-- at decisions. I have one question on clarification. In your-- in your opening remarks, and this is totally unrelated to some of this, but in your opening remarks, you-- you referenced the probationary license that-- that has been issued now for Saint Francis. You-- you-- you said the probationary period ends November 30, 2021. Can you-- can you explain what that means? It ends regardless of whether they clear deficiencies or, you know, what-- what does that mean?

**DANNETTE SMITH:** Yes, it just simply means that by that time we're-- we hope that they're in full compliance and that we will be evaluating next steps.

**ARCH:** OK.

**DANNETTE SMITH:** That's what that means.

**ARCH:** Next step could be the-- the-- the extension of a probationary period with restrictions as it is now? Next step, what--

**DANNETTE SMITH:** Senator Arch, I'm going to be honest with you, I don't know at this point. But what we are committed to doing is to see where they are and that they are at compliance--

**ARCH:** OK.

**DANNETTE SMITH:** --by that time.

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**ARCH:** OK.

**DANNETTE SMITH:** You know, one comment I wanted to make to you about the Wipro and all of that.

**ARCH:** Yeah.

**DANNETTE SMITH:** I think one-- one thing that is a lesson learned for DHHS is that certainly would have done a better job at the beginning of our RFP process. And what I mean by that is-- and I'm a part of this, this whole situation. I think our RFP process could have led to how we looked at the procurement, in a-- in a way, and that would afford us differently.

**ARCH:** And is-- is that in the-- is that in the scoring? Is that-- what-- is there any--

**DANNETTE SMITH:** I don't--

**ARCH:** --anything in particular that--

**DANNETTE SMITH:** Yeah, so-- so what I'm real-- what I'm really referencing is that, as I've kind of went over this in my head and, as you know, sought resolution about this from a leadership perspective, there was a need to do a couple of things, in my mind, you know, and to really enhance. Wasn't here when the RFP was launched. Probably would have done the RFP different, but I wasn't here. And that's nothing against the leadership that was here, but had we done some visioning around what it was that we were planning to do with this new RFP, since we had one in 2017 that failed, what was the practice model going to look like, what were we going to be asking people throughout the state or the Eastern Service Area to do, what were they going to perform, how were they going to do the practice, you know. We in child welfare do family-centered practice, and so what does-- who does that? Who participates in the practice? And then the third is kind of a fiscal model. How do we pay for that? And then the fourth is, once you have the vision of child welfare, once you have the practice model for child welfare and the finance model, now I can put my RFP together and figure out, does that RFP match the procurement?

**ARCH:** OK. That's help--

**DANNETTE SMITH:** So there's some ways--

**ARCH:** That's helpful.

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**DANNETTE SMITH:** --that I would have thought differently.

**ARCH:** It-- I mean, what I-- I don't want to-- I don't want to put words in your mouth, but what I hear you saying is that RFP, once that RFP is set, you're-- you're-- you follow the--

**DANNETTE SMITH:** We--

**ARCH:** I mean, that's the document.

**DANNETTE SMITH:** In this instance, Senator Arch, we followed it.

**ARCH:** Right.

**DANNETTE SMITH:** OK.

**ARCH:** And so if it's a bad RFP, then the process, the process continues, but-- and you may get to the end where there were several options, I think, that you had at the end where you could-- and-- and that has occurred with other-- with other contracting efforts where you pull it back, you put an emergency extension, you-- you have a number of options at the end, but once that RFP starts, it-- it's-- it drives it. OK. So-- so I also-- I also want to hear your-- your comments on how we are-- how we are structured within government and the role of DAS and, in your particular case, the role of the DHHS. But it-- DAS, of course, applies to other agencies in-- in our state government as well. They are the procurement; they are the technical, the technical experts. As I read the procurement-- as I read the procurement manual, I understand that it is at the discretion of the department whether or not to use DAS in some of these purchases. There could-- you can do that within the department. In this particular case, I know that it occurred before you were here. You-- but the decision was made to use DAS. Am I-- am I correct in-- in that understanding?

**DANNETTE SMITH:** That is correct, and I thought there was a dollar amount that triggered us working with DAS.

**ARCH:** OK.

**DANNETTE SMITH:** And so that occurred.

**ARCH:** OK. All right. And-- and as you've testified, you have testified that the-- that the relationship is that you make recommendations, DAS is that final decision making, but from what I-- what I heard your

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testimony to be, is that honestly, if DA-- DHHS recommends, DAS needs a good reason not to approve?

**DANNETTE SMITH:** I don't think I quite said that.

**ARCH:** No, I understand you didn't.

**DANNETTE SMITH:** I think-- I think what I said was I-- we make the recommendation and they make the ultimate decision.

**ARCH:** OK. All right. OK. Do you think that the-- do you think that the RFP, as it was-- as it was issued, do you think that that was-- was part of the issues right now that even Saint Francis faces in their-- in their ability to be successful in this contract? Does the RFP set them up for success? Did the RFP hinder them? Was there-- was-- did that have an impact on their performance, how the RFP was-- was-- was written and drafted?

**DANNETTE SMITH:** So I wouldn't say that, Senator Arch. I would say that perhaps we weren't-- there has to be extreme clarity, and sometimes in organizations-- I'm going to speak to the past because I wasn't here--

**ARCH:** Right.

**DANNETTE SMITH:** --for the development of the RFP. But I know in other RFPs there is a lot of clarity of what the expectation is. And here's what the-- what I mean by that. What are we purchasing? What are we buying? What are we asking for that vendor to do for the department? It seems oftentimes we-- in my previous experiences, we have defined that for the vendor and the vendor decides whether or not they can actually do the work. We don't allow the vendor to say-- to tell us whether they can, whether they can't. We define that. There's some things that we want to have accomplished that supports children and families, that supports the pro-- the-- the practice. And so we're asking the vendor, can you do the work that we need to get done? Here's what we want to buy. So I think RFPs have to provide a level of clarity and understanding so that the bidder understands what they're getting into.

**ARCH:** Yeah, I think-- yeah. Thanks, that's helpful. You-- you mentioned the term "vendor," and-- and that's-- that's something else that we've been discussing within the committee, is this relationship in the Eastern Service Area, do you-- do you characterize that as a vendor relationship? Do you characterize that as a subgrantee? I know that there's-- there has been discussion and we've had these

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discussions with-- amongst ourselves where-- where you as a state cannot delegate the responsibility of providing care. You-- that rests with the state. CMS makes that, I think, very clear. What is that relationship to this entity, Saint Francis Ministries? How would you characterize that relationship?

**DANNETTE SMITH:** The rel-- the relationship should be almost an appendage to--

**ARCH:** In a what?

**DANNETTE SMITH:** An appendage to the--

**ARCH:** OK.

**DANNETTE SMITH:** --to the department.

**ARCH:** OK.

**DANNETTE SMITH:** It is working in our stead. It is working on behalf of us, the ability to see the vision of the department. And that's why, as I said in my past experiences, the vision of what child welfare and the services and the practices that are needed are very clear in that RFP process so that that subcontractor understands the role that they have under the guise of the state and in partnership, as-- as-- as appropriate or as possible that it can be. That role has to be clearly defined.

**ARCH:** You know, from what I hear you saying, it-- it sounds as though that that relationship is certainly more than an independent contractor. But they-- but they stand in the shoes of the state in providing those services. Am I-- is that-- is that a fair--

**DANNETTE SMITH:** They stand in the shoes with us. So example, when I was in Chicago, I was a private provider there. DCFS, Department of Fa-- Children and Family Services, was the state, and we did a lot of work for the state on their behalf. But it was-- I was a subcontractor, but I knew that I was an appendage to them, that I spoke sometimes for them in the work that we did.

**ARCH:** Yeah.

**DANNETTE SMITH:** Now I couldn't go out of the guise of it, but I spoke many times for them in the work that I was doing in child welfare.

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**ARCH:** That-- that sounds like a very difficult relationship to maintain, to establish, to maintain, to be-- to be successful. Is that-- is that mischaracterization or is that--

**DANNETTE SMITH:** I think the-- as I said earlier, in my previous experiences, it has to be clearly defined. And again, it goes back to what are we purchasing. It has to be clearly defined, and the accountabilities have to be clearly defined, and there has to be good communication between that state or government entity with its subcontractor.

**ARCH:** Yeah, this sounds like it-- a-- a different relationship than simply the purchasing of services.

**DANNETTE SMITH:** Exactly.

**ARCH:** OK. Well, you know, I-- I have one closing question, but I want the committee to also have an opportunity here. I-- I do have one other question. Knowing what you know now, would your recommendation be the same?

**DANNETTE SMITH:** No, I do not believe that we would come to the same recommendation. I probably-- and I've already shared it, I would take a different approach on the RF-- RFP--

**ARCH:** OK.

**DANNETTE SMITH:** --totally different approach.

**ARCH:** OK. All right. I'll-- I'll pause there. I just have-- I just have one last question. But if the committee has any questions, we could-- you can ask those at this point, OK? Senator McKinney, you-- please.

**McKINNEY:** Thank you. Thank you for your testimony. One-- I think I have a couple questions, but the first: Through the process of deciding who to pick between PromiseShip and Saint Francis, what didn't the department like about PromiseShip and what did you like about Saint Francis that PromiseShip didn't have?

**DANNETTE SMITH:** I don't know if it was necessarily a like. It was truly looking at the score. I don't want to make this be that it was a personal decision between the department and PromiseShip. I don't think it was that at all. It was looking at the proposals in their totality.

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**McKINNEY:** OK. So my second question, do you think the scoring system is flawed?

**DANNETTE SMITH:** You know, in all procurement processes, there's opportunities to strengthen.

**McKINNEY:** If-- if you could strengthen it, what would you do if you-- if you had authority to make that recommendation?

**DANNETTE SMITH:** Well, what-- what I said, you know, to Senator Arch's question, I would go all the way back to the beginning, Senator McKinney, because I really would like to have taken a different look at the RFP process, which I think could have informed how we procure.

**McKINNEY:** All right.

**DANNETTE SMITH:** OK.

**McKINNEY:** Thank you.

**DANNETTE SMITH:** Um-hum, thank you.

**ARCH:** Senator Kolterman.

**KOLTERMAN:** Thank you, Senator Arch. And thank you for testifying today. I-- my staff and I have been doing a lot of work on the procurement process, and as we've-- as a result, we've done a very deep dive into what's transpired with this particular contract. We're talking about a \$197 million contract over a five-year period, which is not chump change to the state of Nebraska. It's an expensive item. But I was troubled a little bit, and correct me if I'm wrong, when you started out, when you first gave your testimony this morning, I believe you indicated that you had put together a team inside DHHS to evaluate the contracts, what to look for, what not to look for, and that team made the recommendations to you. Is that an accurate statement?

**DANNETTE SMITH:** So what I was saying is that we had a team of evaluators. They included people from the department and some key stakeholders who evaluated the proposals.

**KOLTERMAN:** And I believe that--

**DANNETTE SMITH:** And there was some training attached to that.

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**KOLTERMAN:** OK. And I believe you also indicated that one of the individuals, I think you said his name was Matthew Litt, was the communications director at the time. Was he on that committee?

**DANNETTE SMITH:** I don't think so.

**KOLTERMAN:** OK, but then you also indicated that he had done a media review.

**DANNETTE SMITH:** Yes, sir.

**KOLTERMAN:** OK, so that media review, did-- did that become part of the evaluation that you had? Now you indicated you didn't read the media review. Is that accurate?

**DANNETTE SMITH:** Not the ones that she indicated.

**KOLTERMAN:** The media--

**DANNETTE SMITH:** We did one.

**KOLTERMAN:** Me--

**DANNETTE SMITH:** The department did one.

**KOLTERMAN:** You-- you authorized a media review--

**DANNETTE SMITH:** Yes, sir.

**KOLTERMAN:** --as a department, is that correct?

**DANNETTE SMITH:** Yes.

**KOLTERMAN:** And did you review that?

**DANNETTE SMITH:** Yes.

**KOLTERMAN:** OK. So in that media review that I-- and-- and I've looked through all the information as well.

**DANNETTE SMITH:** Yes, sir.

**KOLTERMAN:** It showed multiple times that hundreds of children had been housed at their corporate offices in Kansas over a period of time. I think it was 600 during a six-month period. Does that-- do you remember reading that?

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**DANNETTE SMITH:** I didn't-- I didn't read that.

**KOLTERMAN:** When you got the media review, who did you share that with? Did that become part of the process?

**DANNETTE SMITH:** Well, I shared it with our-- our team.

**KOLTERMAN:** That team--

**DANNETTE SMITH:** Yeah.

**KOLTERMAN:** --that you talked about?

**DANNETTE SMITH:** No, no, not the evaluation team. It was the DHHS team--

**KOLTERMAN:** OK.

**DANNETTE SMITH:** --not the evaluators. The evaluators only dealt with scoring the proposals.

**KOLTERMAN:** Is it troubling to you-- and-- and again, I'm-- maybe I'm doing too deep a dive into this, but is it troubling to you that-- that they would house kids in their corporate offices in Kansas? And again, my information shows there was about 600 kids over a six-month period. Do you approve of that type of--

**DANNETTE SMITH:** So this is what I would say to you, Senator Kolterman. No, I don't approve of that, but I know instances even in my career where that has happened.

**KOLTERMAN:** Is that going on with our current process here in Nebraska?

**DANNETTE SMITH:** Absolutely not, no, no

**KOLTERMAN:** OK.

**DANNETTE SMITH:** But I do know that it occurs from time to time in child welfare systems where-- when they are not able to find good places.

**KOLTERMAN:** Having read that media review, do you think that there could have been more due diligence before awarding this contract? I mean, a \$197 million contract--

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**DANNETTE SMITH:** You know, Senator Kolterman, there's always opportunities to improve.

**KOLTERMAN:** OK. Then-- then I want to-- then I want to move a little bit into the-- the contracting process itself. And-- and we don't have a lot of-- our procurement process doesn't allow for a lot of appeals, so it's up to some-- if someone wants to appeal something in our state, they have to bring a lawsuit. So I'm going to ask this chronological question. Did you know that the contract with Saint Francis was signed during the protest process?

**DANNETTE SMITH:** I wasn't aware of that.

**KOLTERMAN:** And-- and that actually happened before PromiseShip had gotten an opportunity to meet with DAS. So the contract was signed prior to that. Did you authorize a signing of the contract before the process-- the protest process was finished?

**DANNETTE SMITH:** I don't think I did.

**KOLTERMAN:** OK. Did you know that PromiseShip, the other bidder, had asked DAS to stay the execution of the contract until after the protest process was finished?

**DANNETTE SMITH:** I think I was aware of that.

**KOLTERMAN:** Why didn't we wait?

**DANNETTE SMITH:** I don't have an answer for that, sir.

**KOLTERMAN:** Did you think that the protest had no merit?

**DANNETTE SMITH:** Oh, no, I didn't feel that.

**KOLTERMAN:** OK. And finally, did you-- did you make the decision or did DAS made the final decision to award prior to the protest being completed?

**DANNETTE SMITH:** An-- ans-- ask that again, I'm sorry.

**KOLTERMAN:** Did you make the decision or did DAS make the decision to award the contract prior to the protest being completed?

**DANNETTE SMITH:** No, I think we thought we were just following the process. And again, we make the recommendation at DHHS and they make the final decision.

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**KOLTERMAN:** OK, and then-- and this is just-- and I-- I don't know if this is a fair question or not, but when-- when you're dealing with-- I mean, we're talking about two different departments here. We're talking about DAS and DHHS. During the period of time that we-- we award contracts of this magnitude-- I mean, it's a large contract, it affects a lot of people-- are you in contact with the Governor's Office to get any input from them, one way or another, on contracts of this nature?

**DANNETTE SMITH:** No, I was not.

**KOLTERMAN:** OK, thank you very much.

**DANNETTE SMITH:** Thank you.

**ARCH:** Other questions? Senator Cavanaugh.

**M. CAVANAUGH:** Thank you. Thank you so much, CEO Smith, and I'll ask my question slowly so you can take a sip of water. I appreciate all of your answers to legal counsel's questions. I just had two clarifying questions.

**DANNETTE SMITH:** OK.

**M. CAVANAUGH:** You mentioned that you had conversations about the contract and the cost before with-- with your internal team and that no one said that you shouldn't move forward with it. But did anyone express actual concerns over the cost?

**DANNETTE SMITH:** There was discussion about both, Senator Cavanaugh.

**M. CAVANAUGH:** OK.

**DANNETTE SMITH:** There was discussion about both.

**M. CAVANAUGH:** Does that-- does that mean that there were concerns expressed over the-- the cost of the Saint Francis bid?

**DANNETTE SMITH:** I don't want to say concerns, but--

**M. CAVANAUGH:** What would you say?

**DANNETTE SMITH:** We discussed-- yeah, we just discussed both proposals.

**M. CAVANAUGH:** How would you describe the discussion then, if not concerns?

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**DANNETTE SMITH:** Just making sure that we were following the process and doing what we needed to do.

**M. CAVANAUGH:** OK, and then Senator McKinney had asked you a question about the RFP process and the decision making about the score, and you said it was based on the score. And I-- I'm not sure if you had read Mr. Wallen's deposition during the--

**DANNETTE SMITH:** No.

**M. CAVANAUGH:** He stated that there is always a concern over doing a transition like this and the impact it has on the stability of the children. Were there conversations about that, especially since I assume-- was Mr. Wallen part of those conversations with your team?

**DANNETTE SMITH:** Yes.

**M. CAVANAUGH:** Was-- was that expressed at that time about whether or not you should be transitioning just purely based on the score, considering the disruption to the children?

**DANNETTE SMITH:** No.

**M. CAVANAUGH:** OK, thank you.

**DANNETTE SMITH:** Um-hum.

**ARCH:** Senator McKinney.

**McKINNEY:** Thank you, Senator Arch. I just had two quick questions that I meant to ask earlier. Do you think the state should be doing the case management or should a private entity like Saint Francis be doing it?

**DANNETTE SMITH:** Well, you know, I think privatization has its place in child welfare. I think it really depends on, again, identifying, providing clarity on what the role is going to be. So I still think that there's opportunities for privatization to do that.

**McKINNEY:** Would you-- in-- in your opinion, would you say this pilot has been successful or a failure? And depending on your answer, do you think the-- the pilot should be ended and the take-- and the state should take over and assume the responsibility of taking care of these kids?

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**DANNETTE SMITH:** I don't know that I could say that right now. Again, I'm gonna go back to my first question, the first question that you asked me, and that is I think there's roles for private then-- private subcontractors to help us do the work here in the state. It's just really clearly defining what their role is and what the expectations are and whether they can do the work.

**McKINNEY:** If you-- if-- if it was ended, do you think the state could do a better job?

**DANNETTE SMITH:** Child welfare is difficult, be it the state doing it or a private provider. But again, it's really itemizing the roles and responsibilities so that everybody can be successful, both the private contractor and the state.

**McKINNEY:** All right. Thank you.

**ARCH:** Any final questions? Senator Williams.

**WILLIAMS:** Thank you, Chairman Arch. And thank you for being here and thank you for taking care of our kids and trying to do this well. I think we are all here today trying to analyze and strengthen the process that we have gone through. And there's one piece of that that still, when I hear the questions that we've had and the responses, that I still-- is-- is fuzzy to me in this process. Several times you said you believed Saint Francis could do the job, I think was your-- and in looking at the information that they said, I think you looked at the-- the performance that they had had in other situations. You analyzed their financial position. You looked at the media information. I know we have two different sets of media information, maybe, on that. But-- but the part, as-- the-- the banker in me continues to go back to the question of where in this process-- yes, they can do the job, but where in the process does the price tag that they are going to be paid for doing this job come into that decision?

**DANNETTE SMITH:** And I think it did. And I think the decision we made was based on the score, that we would score it to the person that had the highest score. I think we tried to work well with DAS, and we do work well with DAS around the procurement process, but I think that's where the line-- the rubber hits the road.

**WILLIAMS:** In the scoring process, are the weighting-- is the weighting in such a way that the final price tag is-- outweighs other performance factors?

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**DANNETTE SMITH:** I can't remember. I don't think so, don't think so.

**WILLIAMS:** That's something I would be interested in, to see how--

**DANNETTE SMITH:** Yeah, I don't think so.

**WILLIAMS:** --how that is.

**DANNETTE SMITH:** Yes, yes.

**WILLIAMS:** --again, looking to building a process--

**DANNETTE SMITH:** Right--

**WILLIAMS:** --that is successful for this long term. Thank you.

**DANNETTE SMITH:** Yes, sir.

**ARCH:** Any other questions? I guess just one final question, and that is I-- I just want to make sure that--that you have the opportunity to-- if there's something else that you want to share with us, we haven't asked you in the questions or you didn't provide in your opening remarks that would-- that would assist us in our investigation and our understanding, we-- as I mentioned at the opening remarks, that's why we're here, is-- is understanding. And if there's-- if there's anything else, we want to give you that opportunity.

**DANNETTE SMITH:** Well, I think I started on it when Ms.--

**ARCH:** Jensen.

**DANNETTE SMITH:** --Jensen asked me the question, and, you know, I'd like to flip the conversation to what opportunity we have to really look at a path forward. And I talked about five things. One was really having a good vision for what child welfare needs to look like in Nebraska, and I'm not sure that we do. My staff, through Stephanie Beasley, has begun to do some work on strategic planning. But one of the things that we do need to have here is a good strategic-- a good vision of what does child welfare look like in Nebraska, how do we plan to serve the most vulnerable families here, and I'm not sure that we have that. I think that our stakeholders have one view, our providers have another view, our-- our judiciary have another view, but it's not a single view that all of us can wrap around and say, this is how we serve families in Nebraska. And one such example where I thought that work was done very well, and it happened shortly after

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I got here, was with Senator Williams and my Medicaid/Long-Term Care. We had our legislators, we had our providers, and we had DHHS around the table figuring out what was going to be the price tag for long-term care fees, I think, at the time. And I thought that was a wonderful model to have this discussion. The second thing is really looking at that practice model. How do we say that we do-- we-- we serve fam-- families that are at the attention of child welfare? I don't think that that's designed here. We use what is called safety-organized practice, but I'm not sure that everybody who touches a vulnerable family understands safety-organized practice and what they should see in the courtroom, what they should see in a home visit, what they should see when they're talking to a CASA. I don't know that the system knows the practice of how we serve children and families here. And one of the successes that I had in Mecklenburg County was from the county manager's office all the way down to the frontline staff. Everybody knew family-centered practice and they knew what it looked like. The judges knew, our counselors knew, our probationary folks knew, the attorneys for the department knew, the parents' attorneys knew. Everybody was educated on this is how we serve children in Mecklenburg County in North Carolina. I don't think that we all share that view, and I think sometimes there's blaming instead of figuring out how we can get around the table. The third thing is having a cost model, so if you're going to have a pri-- if you're going have a vision, you're going to have a practice model, how do we fund it, what does it look like, what's the cost, what are we going to be asking people to procure, to-- what are we going to purchase, what are we going to buy, and to really be clear about what that looks like. I think that that has been one of the difficulties. And then the next one is the development of the RFP. If I have a practice model and a finance model, then I can put a good RFP together because there I'm going to outline the roles and responsibilities of the department, I'm going to outline the roles and responsibilities of the vendor, I'm going to use data and matrix to guarantee, and then I'm going to pay according to how you do the work. And then finally, I'm going to use data as a basis for saying whether or not you're being successful or not, whether or not, not only is the vendor being successful, but is the system being successful. And that's one of the things that we don't talk about here. In other systems that I've worked in, there are measurements for everybody to make sure that everybody is doing the practice that best supports children and families in the system and moving them quickly to permanence.

**ARCH:** Thank you. Thank you. Any other questions?

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**MARNIE JENSEN:** Ms. Smith, you, as we noted at the outset, would have the opportunity to provide any additional testimony after the questioning. And I think Senator Arch maybe wants to send us to a short break. Do you intend to provide additional testimony?

**DANNETTE SMITH:** No, I do not.

**MARNIE JENSEN:** OK. I do then just have one more series of questions, if you don't mind, and it goes to process and some of the questions that some of the other senators were asking with respect to process and-- and also thinking about your testimony today about sort of "visioning" that RFP on-- on the front side, right? When you were here in January, your testimony included kind of when you-- when you got to the place in the process where maybe, to use my words, there was a fork in the road: Do we move forward with Saint Francis or what are our other options under the procurement manual? In January, your testimony, you know, you-- you mentioned three things that, you know, when it was sort of late in the game, you-- the-- the state could reject the bid and start over. That was the first thing that you mentioned. The-- the second thing was to reject the bid and enter into an emergency contract with PromiseShip. And then the third thing was to accept the outcome of the process, and you say which is what we did, and that resulted in the contract to Saint Francis. Are-- did you have an understanding in January that there was actually a fourth option under the procurement manual? And that's that under the manual itself, the state could have chosen PromiseShip. Did you have an understanding of that?

**DANNETTE SMITH:** I think I did.

**MARNIE JENSEN:** OK. Why didn't-- I-- do you recall, why didn't you sort of, like, consider-- do-- well, let me ask it differently. Did-- did the state consider, did DHHS consider saying, look, we've had this request for additional money, we've had a clarification meeting, we've had some alterations to Saint Francis's proposal, something doesn't smell right here, maybe we should look at that fourth option of sticking with PromiseShip? Was that considered?

**DANNETTE SMITH:** I think at that time it was not.

**MARNIE JENSEN:** That-- that-- that was the last question I had. And since we are not going to have-- did-- did that spur some more questions now?

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**ARCH:** Senator Clements indicated he has a follow-up. Please go ahead.

**CLEMENTS:** Thank you, Mr. Chairman. Thank you, Ms. Smith. You mentioned that an RFP needs to be detailed and defined. If you were rewriting the RFP with Saint Francis, what-- what changes would you make?

**DANNETTE SMITH:** Well, see, it all would be based on what we envision the Nebraska child welfare system to be. That's what it would be based on. A lot of the things, I think, in the initial RFP-- and again, I'm not knocking the work that has been-- being done. And I want to be clear about that. I'm not knocking it. I was not here. But I think, you know, one of the things that we want to give rise to is, is the work that we're asking people to do exactly what we want them to do to support the system? There were some performance outcomes in there, but is that actually what we're asking them to do?

**CLEMENTS:** You would have-- would you have made changes then? In-- in a future RFP, would you make it more detailed?

**DANNETTE SMITH:** Absolutely--

**CLEMENTS:** All right, thank--

**DANNETTE SMITH:** --be more prescriptive.

**CLEMENTS:** Thank you.

**ARCH:** Thank you. OK. Is-- anything else?

**MARNIE JENSEN:** Nothing from me.

**ARCH:** All right.

**MARNIE JENSEN:** Thank you.

**ARCH:** Thank you very much for your testimony. Thank you for being here, and this is-- this is helpful to the committee. Appreciate it very much.

**DANNETTE SMITH:** Thank you for having me.

**ARCH:** Yeah. With that, we're going to take a ten-minute break and we will resume with Mr. Botelho.

[BREAK]

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**ARCH:** OK, we are ready to resume our hearing today. And, Mr. Botelho, you are-- you are next. And so as-- as we begin here, I would like you to raise your right hand. Do you swear or affirm that the testimony you are about to give to this committee is the truth, the whole truth, and nothing but the truth?

**BO BOTELHO:** I do.

**ARCH:** Great. You may begin.

**MARNIE JENSEN:** Good morning, Mr. Botelho. I think you were present for Ms. Smith's testimony this morning, but I'll just repeat myself a little bit here. As you know, my name is Marnie Jensen. I'm special counsel to the LR29 Committee. As with Ms. Smith, I'll ask that you try to keep your responses direct, succinct wherever possible. And again, if I interrupt you, it's merely to keep the hearing going. As I think Chairman Arch noted at the outset, because Ms. Smith, I think, gave those overarching comments for DHHS, I'm going to skip the five-to ten-minute opening remarks for you. You will have an opportunity at the end of the questioning if there is anything else you'd like to cover or offer, and so I will give you that opportunity. So we will just jump right into the questions here. Mr. Botelho, what is your position at the Department of Health and Human Services?

**BO BOTELHO:** General counsel.

**MARNIE JENSEN:** And what roles have you had there? If you could just assign dates for ease of the record.

**BO BOTELHO:** Yes, from July 2017 to August 2018, chief operating officer; from August 2018 to September 2020, chief operating officer and general counsel; from September of 2020 to present, general counsel; from October 2018 to September 2019, interim public health director; and from October 2018 to February 2019, interim CEO.

**MARNIE JENSEN:** Thank you. What was your previous experience prior to DHHS? You don't have to give your whole résumé, but generally, especially as it relates to procurement.

**BO BOTELHO:** I was in Department of Administrative Services.

**MARNIE JENSEN:** And what was your background with respect to Nebraska's procurement process, especially as it related to that position with DAS?

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**BO BOTELHO:** I was general counsel through most of my time there, as well as materiel administrator, which would be the individual supervising the State Procurement Office.

**MARNIE JENSEN:** Fair to say you have a good understanding of the state's procurement process?

**BO BOTELHO:** I would say so.

**MARNIE JENSEN:** OK. And what about your understanding of the state's procurement manual?

**BO BOTELHO:** Yes, I have a fair understanding of that as well.

**MARNIE JENSEN:** I'll ask you a similar question to what I asked Ms. Smith. You were provided some questions and topics in advance of the hearing, correct?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** And did you discuss those questions or topics with anyone outside the department of DHHS?

**BO BOTELHO:** No.

**MARNIE JENSEN:** In particular, did you have any conversations with anyone at Saint Francis Ministries about those questions or topics?

**BO BOTELHO:** No.

**MARNIE JENSEN:** I'm sorry. That was a no? I talked over you.

**BO BOTELHO:** No, I did not--

**MARNIE JENSEN:** OK.

**BO BOTELHO:** --nor am I aware of anyone in Department of Health and Human Services speaking with Saint Francis about the questions provided.

**MARNIE JENSEN:** OK, thank you. Thank you. And-- and also, Mr. Botelho, I think you had some-- some of-- somewhat more direct involvement in responding to the committee's request for information. So you were aware that DHHS received a request for information from the committee through counsel. Correct?

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**BO BOTELHO:** Yes.

**MARNIE JENSEN:** And what did you and maybe your general counsel department, or counsel's office, do to identify, review, and prepare documents to satisfy those requests?

**BO BOTELHO:** When we got the request from the committee, we reached out to the committee's counsel, yourself, and asked how you wanted to proceed with the record search. We identified search terms, which was provided to us by-- by yourself, your-- your law office. We ran an initial search on those terms to see what would-- it would pick up. It was just shy of a million documents and we turned that back to you. You narrowed your search down to less search terms and-- and may have narrowed a number of individuals as well. I can't remember. We then ran that search. That came back with 90,000 responsive documents initially on the search terms. We pulled those documents. We reviewed all 90,000 documents and provided to the committee all those that were responsive to the actual request.

**MARNIE JENSEN:** Thank you. And-- and that, just for the sake of clarity of the record, that search process and-- that-- that we entered into, special counsel's office and your-- or-- yeah, and your office, that was in addition to providing the committee with duplicative responses to every public records request relating to this issue. Is that correct?

**BO BOTELHO:** That is correct. Any public record request or any other document request we provided to any entity, OIG, or to individuals regarding this, those were all identified in the committee and those documents were all provided as well.

**MARNIE JENSEN:** Are you aware of any instances where any responsive documents, and this is prior to receiving our request, would have been destroyed?

**BO BOTELHO:** No.

**MARNIE JENSEN:** Do you believe that the department has fully cooperated with the committee's request for information?

**BO BOTELHO:** I believe so, yes.

**MARNIE JENSEN:** In the event that there were additional requests for information, do you have any reason to believe that DHHS would not be able to cooperate?

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**BO BOTELHO:** No, no, absolutely not.

**MARNIE JENSEN:** All right. Thank you, Mr. Botelho. So I'm probably going to be a little more detailed in-- in my questioning with respect to similar topics that we covered with Ms. Smith. But we'll start sort of in that same general time line, which is the prebid process and that RFP process. What role did you play in the development of the RFP itself?

**BO BOTELHO:** I was not involved in the development of the RFP.

**MARNIE JENSEN:** Are you aware of whether anyone in DHHS was involved in the development of the RFP itself?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** Who-- was someone from DHHS involved?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** I asked the question poorly, so I tried to fix it. Who was involved from DHHS?

**BO BOTELHO:** The-- the RFP-- and this is generally how it works in-- in the state of Nebraska. RFPs are developed usually by the bidding agency program. So in-- in this case, the bidding agency was the Department of Health and Human Services. Department of Health and Human Services has multiple divisions and, with the director, those divisions that are-- that are seeking the service will build the RFP. So it would have been the CFS programmatic folks. I-- I don't know how many of them specifically were-- were involved with it. As I understand it, it was a lengthy process, but you would have had your director, you would have had your deputy director, Lori, and I don't know how many other programmatic folks. They had a consultant for this RFP, Stephens [SIC] Group. There would have been at least one buyer, the agency buyer, which had been from the Procurement Office, involved, helping to get the information and putting it into an RFP format. I don't know if DAS's buyer would have been involved in all of those, but at some point, once the RFP got to where we thought it was sufficient to move to DAS, it would have been moved to a DAS buyer. And then DAS would have done a review to make sure it fits the template and-- and it conforms with their requirements.

**MARNIE JENSEN:** And at the time that the RFP was issued, you were the interim CEO, correct?

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**BO BOTELHO:** I might have been.

**MARNIE JENSEN:** So did you have-- understanding you were maybe at that ground level in terms of development of the RFP, as you just described, did you have final sign-off as-- as the agency, as interim CEO?

**BO BOTELHO:** It would have come from the director. In this case, it would have been Matt Wallen.

**MARNIE JENSEN:** OK. I'm going to ask you some similar questions that we heard Ms. Smith's testimony this morning. I would like-- you were at DHHS for some period of time before CEO Smith took the reins. And so I would like for you to describe, in-- in your view, the relationship between DHHS and PromiseShip. And-- and I'll limit it to in the-- in the time, the couple of years immediately preceding the RFP.

**BO BOTELHO:** Right. PromiseShip is a-- a large vendor. And it's-- it was-- or-- or in-- the Eastern Service Area in general is a unique relationship. It's a subaward in that it's a pass-through, but it's really more of a staff aug type of agreement. They're not a true or what you would call a traditional awardee because they're not simply providing services on their own behalf. They-- they are augmenting state resources, so they're a direct agent of the state, but they're not providing services to the state like a commercial contract would. They're providing services to the public as, in essence, state agents under their own name, PromiseShip. So I think-- I-- I think that's a very difficult relationship in any situation. You have a private entity that seeks to do things the way it thinks it would be best for them to do it; however, they are in fact agents of the state and representing the state directly with families and in the court. And so the state wants them to do things spec-- you know, the way that they would do it, as consistent with the-- what's going on with the rest of the state, which is where every other dis-- every other service area other than the Eastern Service Area is done by the state, and we're trying to maintain consistency throughout the service areas. So I-- I-- I think it's-- I think there's-- I don't know how you would describe it. I don't know if you would use the word "tense," but there's a lot of moving back and forth in that relationship.

**MARNIE JENSEN:** Do you agree that the relationship was strained? I think that's what CEO Smith-- that was her word this morning.

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**BO BOTELHO:** I guess I couldn't disagree with that, if that's how it's being characterized.

**MARNIE JENSEN:** And the Stephen Group report characterized that relationship as existing in-- in a culture of distrust. Do you agree with that characterization?

**BO BOTELHO:** I-- I wouldn't disagree with it.

**MARNIE JENSEN:** And I-- I-- I think you were actually in your answers using the term-- I think you referred to PromiseShip as a large vendor. And with respect to that characterization of PromiseShip and-- and its role as a vendor or a subgrantee or now, in your words, sort of a staff augmentation arm of the state, do you have any response to maybe the characterization that that confusion of what they're really supposed to be led to that culture with the state and PromiseShip?

**BO BOTELHO:** Yeah, I would say that, I mean, it-- it does. It's-- it's unique, in my-- in my opinion. Are they an independent contractor? No, they can't be. They can't by-- simply by the services that are provided. But for a private entity that's an organization, I mean, typically when you do staff aug, it's your-- it's with an individual, right? You're reaching out to an individual and you're going to contract that person to provide services. In this relationship, you're contracting with an independent entity to provide, in essence, individual services. So I would say, yeah, it's-- it's-- that structure, that how-- how it's designed, is one that's going to be difficult to manage.

**MARNIE JENSEN:** And would you agree that that would be true regardless of who was selected as-- as a result of the RFP?

**BO BOTELHO:** Yes. The structure itself is difficult to manage.

**MARNIE JENSEN:** With respect to the RFP-- and I'm going to ask two questions here, one specific to you and one specific to the department and you as interim CEO at the time-- did anyone, to your knowledge-- well, I'll ask the more narrow question first. Did you affirmatively contact any potential entities to provide RFP responses?

**BO BOTELHO:** No.

**MARNIE JENSEN:** Did, to your knowledge, anyone at DHHS contact potential entities to submit RFP responses?

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**BO BOTELHO:** DHHS submitted a vendor list to DAS and asked that DAS send the RFP to those entities on the list, and that's typical. DAS will ask the bidding agency, are there any vendors you want us to send the RFP to? That agency will provide vendors that they're aware of. Those-- DAS should then send a copy of the RFP to that vendor or the vendors on the list, as well as the required publication on its website and I-- I think newspaper publication as well.

**MARNIE JENSEN:** In this instance with the RFP that resulted in Saint Francis being awarded the contract, was that vendor list provide-- excuse me, provided?

**BO BOTELHO:** Yeah. As far as I know, yes.

**MARNIE JENSEN:** Yeah. And how many vendors were on the list?

**BO BOTELHO:** Twelve.

**MARNIE JENSEN:** Was Saint Francis on the list?

**BO BOTELHO:** No.

**MARNIE JENSEN:** Was PromiseShip on the list?

**BO BOTELHO:** Yes. The incumbent should always get an RFP.

**MARNIE JENSEN:** Pro-- I'll ask you generally, Mr. Botelho, when that vendor list is prepared, is there any work-- I'm not even going to use the word "diligence," but even just a-- a modicum amount of work that goes into determining whether the entities that appear on the vendor list would be appropriate partners or is it merely, like I would characterize it as sort of a Google search, here's 12 people that might want to respond? I-- I'm kind of wondering sort of where that balance is.

**BO BOTELHO:** I mean, it-- it-- I'm sure there's a range of effort that goes into preparing vendor lists. I mean, typically what you want to do is you want to try to identify vendors that you believe are in the market and that you would like or hope to solicit a bid from.

**MARNIE JENSEN:** OK. Regardless of-- but it-- it sounds like you are not aware of any affirmative overtures to Saint Francis to submit a response to the RFP based on your testimony already. Setting that aside, are you aware of whether there were any communications between

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Saint Francis and the department prior to Saint Francis's RFP response?

**BO BOTELHO:** Saint Francis would have been a vendor, so there-- there would have had to have been interactions with them as a vendor, say, much like there would have been interactions with PromiseShip as, you know, a vendor of-- of the state. There should not have been communications regarding the RFP or no more communications that would have been available to the public, that were published.

**MARNIE JENSEN:** And you're not aware of any, as you sit here?

**BO BOTELHO:** I am not.

**MARNIE JENSEN:** OK. And when you say Saint Francis was a vendor, that's in reference to the work they were already doing in the Western Service Area?

**BO BOTELHO:** Yeah, Grand Island, I think, their child-placing agency.

**MARNIE JENSEN:** So move-- moving on to the decision-making process more generally, and these will be repetitive, but I do want to be thorough for the committee's investigatory work here. What was your understanding as interim CEO at the outset of the RFP, and then as, I believe, COO and general counsel throughout 2019 regarding which agency bore the ultimate responsibility for the fairness and legality of the RFP process?

**BO BOTELHO:** So DAS is statutorily empowered, entrusted with the state procurement process. Chapter 81 is the much older set of statutes and those speak to goods and commodities and-- and specifically vest that power in-- into DAS. Chapter 73, which is a newer set of statutes, came out in the 2000, 2003, which then created the service statutes and directed DAS to create a procurement manual-- manual and the procurement manual in itself regulates the procurement of services. It also empowers state agencies to procure it on their own, but they have to follow the DAS process. So ultimately, the-- the-- the procurement process itself, the integrity of the process is the responsibility of DAS to protect that. It's the obligation of the bidding agencies to follow that process.

**MARNIE JENSEN:** Do you believe that the bidding agency, and in particular this RFP process, had any responsibility for assisting DAS in that responsibility, I guess?

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**BO BOTELHO:** Yeah, I would-- I-- I mean, yes, I think it has to be.

**MARNIE JENSEN:** How [INAUDIBLE]

**BO BOTELHO:** DAS is relying on the bidding-- one, to provide the RFP, DAS doesn't have the technical expertise to generate an RFP for a specific service which it doesn't provide. It would have no institutional knowledge. So it's relying on the bidding agency to create the RFP and then to provide it to DAS. The bidding agency is the one that typically would identify the evaluators. The evaluation process is monitored by DAS, but it's the agency's evaluators that would evaluate the response. Those responses are, you know, generally, in-- in the Nebraska system, they're using a scoring method, they're attaching a numerical value to the different sections of the RFP. Those are submitted to DAS, they're added up, and a final score is-- is-- is provided.

**MARNIE JENSEN:** So DHHS identified the evaluators?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** OK. And so ultimately, I'll just ask it as I did colloquially this morning. Which agency, practically speaking, do you believe, you know, the buck stops with regarding the ultimate award recipient?

**BO BOTELHO:** So the-- the bidding agency is-- is going to make a recommendation for an award based on the-- the evaluations that it receives. It's going to-- it's going to take the scores, it's going to take the bids, it's going to consume that. It's going to make a recommendation to DAS for its intent to award. DAS, I would say, would typically accept that recommendation unless it has a reason not to.

**MARNIE JENSEN:** Have-- in your experience, which is a lot, certainly more than mine, have you ever seen an instance where DAS has not taken the recommendation of the bidding agency?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** How many times?

**BO BOTELHO:** I can recall, as materiel administrator, doing it at least once.

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**MARNIE JENSEN:** And I don't need the details of that. I'll ask another question. With a contract of this size, which I think we can all agree is a substantial expenditure of state funds, have you ever seen DAS take-- or, sorry, reject the bidding agency's recommendation?

**BO BOTELHO:** So can I--

**MARNIE JENSEN:** Sure.

**BO BOTELHO:** --explain a little bit? So DAS is probably not going to go in and reevaluate. They-- they're-- they're just simply not going to be able to do that. So if they find an error in the recommendation, like, for instance, agency submits three vendors. You have your high score, middle, low score. Agency wants to award to the number-two vendor, which is not the high-scoring vendor. DAS is probably not going to accept that recommendation unless there's a reason why you're not going to award to the number-one vendor. So there-- there's just something like that, if-- if there's sort of this plain error, or the recommendation would-- would appear to violate the process. Again, DAS is going to protect their process. Then they would not comply. But they're simply not going to be able to switch their judgment for the bidding agency. Technically, under the statute, they probably could, but practically, I don't know how or why they would do that unless it's, again, it's-- it's clearly a procedural process that-- that they can identify.

**MARNIE JENSEN:** Thank you for-- for that clarification. So we-- we know where this question is coming from here. But so, for instance, if the-- the second-highest bidder or the second score-- you know, in terms of scoring, were to be selected or recommended, you know, that would have to come with some explanation in terms of that recommendation. Is that fair?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** Still speaking sort of generally and based on your experience with the state's procurement process, can you explain the difference between what is considered a responsive bid or-- and an unresponsive bid?

**BO BOTELHO:** A-- a responsive bid is-- is one that generally purports to provide the goods or services which the state is seeking.

**MARNIE JENSEN:** Is there anywhere that the committee can look to find a definition or some guidance on responsiveness?

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**BO BOTELHO:** So the procurement model defines-- the pro-- not the procurement model, the procurement mo-- procurement manual defines responsive bid as one that complies with solicitations in all material respects and contains no mere-- material defects. So that's where you would-- you would go.

**MARNIE JENSEN:** And so then a nonresponsive bid would be the opposite of that. I think we can assume that-- that it maybe contains a material defect or it doesn't comply with the mandatory terms of the RFP. Is that fair?

**BO BOTELHO:** Yes, although the process accepts or allows for deviations, but yes.

**MARNIE JENSEN:** OK. And we may get into some of those deviations. But speaking of the manual and material defects, I think the manual defines a material defect as one that affects term, price, quality, quantity, or delivery terms. I'm-- I think that's a quote, but you can correct me.

**BO BOTELHO:** Yes, I believe that's correct.

**MARNIE JENSEN:** Is that the definition of a material defect that DHHS used as it related to the award to Saint Francis?

**BO BOTELHO:** That would be the definition that's in their procurement manual.

**MARNIE JENSEN:** So would DHHS-- DHHS have applied any other definition or standard with respect to material defect, to your knowledge?

**BO BOTELHO:** No.

**MARNIE JENSEN:** Do you agree that a contract can only be awarded to bidder who is deemed responsive?

**BO BOTELHO:** Generally, yes, and-- although the-- the process, the RFPs lays out conditions that's saying, you know, this is what we want you to respond to. The RFP says that you can submit-- you can give us something else, you can submit a deviation, you can bid something other than what we're asking for. The state reserves the right to consider that deviation. If the state doesn't explicitly accept the deviation per the RFP, the deviation is-- is rejected and the state takes the position that the RFP condition prevails. So if I'm asking for X and you say Y, I can accept Y; or, in the words of the-- the

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RFP, I can assume your Y is X, because the RFP becomes, and this is part of the reason why the state contracts are so massive, because they're designed so that the RFP, which is the bidding document, becomes part of the-- the contract. And if there's conflicting terminology between the response and the RFP, the state's position is, and always has been since I've been here, that the RFP language prevails, unless we specifically accept the deviation.

**MARNIE JENSEN:** So-- so with respect to that option, I guess, that-- that the state would have, would the-- would the RFP respondent necessarily know whether the deviation had been accepted or whether the state was just assuming that the bidding agency was, like, following the RFP, I guess?

**BO BOTELHO:** That's the purpose of the final negotiation or the-- I forget the exact, what the name is in the procurement manual, but that's why--

**MARNIE JENSEN:** Contract finalization, I think.

**BO BOTELHO:** Yes, that's why that reading is-- is so important, especially if your-- if there were deviations, right? I mean, technically, the state could simply execute the contract and try to stand on the terms of the bidding document, which is going to create a lot of conflict between the state and the vendor and probably would increase the amount of litigation. But that contract finalization is-- is important because if there is a deviation that was evaluated and scored, then that has to either be accepted or rejected, and should be, in my opinion, explicitly bid. Signing the contract and then trying to hold a vendor to a condition in the RFP, even though they bid something different, would be a bad practice.

**MARNIE JENSEN:** So speaking specifically about the Saint Francis intent to award an ultimate contract, well, really with respect to its RFP response, do you believe that the Saint Francis initial RFP response had any material defects?

**BO BOTELHO:** The initial response, I-- I think what you're referring to is the caseload, probably, right?

**MARNIE JENSEN:** [INAUDIBLE]

**BO BOTELHO:** Appeared to have bid-- the way that it was---- the way it was worded, appeared to have bid a ratio that would not have met the statutory requirement, which is the 17:1. But the same time, they said

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they would abide by all-- all relevant, applicable statutes and regulations. In the Q&A period, we specifically said this is because we got a question on this specifically and that was put out there: this is the ratio; you have to abide by the ratio. So they submit a bid that in the technical solution did not appear that it would meet that statutory requirement. But in the terms and conditions section, they agreed to abide by all applicable statutes. So you had this ambiguity from what they were saying, that we're going to abide by this, and what appeared to be in their technical solution, which the state would interpret as a-- as a deviation and-- and score it accordingly.

**MARNIE JENSEN:** So just so I'm clear, because the terms matter for the committee's work with respect to really analyzing the procurement process itself, you would-- and you would characterize that caseload ratio response from Saint Francis as a deviation and not a material defect?

**BO BOTELHO:** It was-- if there was-- if they were going to say that this is-- this is our bid, this is the only bid that we're going to do, then-- then I would say it's a material defect and the state couldn't award it, right? But the state evaluated and-- and-- and at that point, when, if the state evaluates it, it's-- to me, that's-- that's a deviation, or at least it-- it was accepted as a deviation in the evaluation process.

**MARNIE JENSEN:** Thank you. Was there discussion-- well, so one-- I-- at least one evaluator noted this discrepancy, in their evaluation notes this. I think that you just laid out that in one instance it said 25:1, but then they separately said-- Saint Francis said, we would comply, right? So with that notation, was that conflict or discrepancy discussed as part of the recommendation process that DHHS was going through?

**BO BOTELHO:** So when the-- when the evaluators completed their evaluation and the scores were all in, at that point the bids in the evaluations would have been provided to the-- the program. And they would have been reviewed by the director and the deputies and-- and the staff, and they would have considered all the information then, including, at that point, reviewing the bids. Even though you had your scores in, the bids would have likely been reviewed. And so I would say that it-- it should have been, although it's unclear what exactly Saint Francis was saying because they were saying two things. Their-- their technical solution didn't appear that it would meet the

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statutory requirements, but then they said they were going to meet the statutory requirements.

**MARNIE JENSEN:** OK. And we're going to talk a lot about cost. I-- I-- so I'm-- I'm saying that only because I'm going to ask you just a few more caseload questions, but noting, Mr. Botelho, we will come back to that in a lot more detail, so kind of trying to constrain us a little bit here, but just a few more questions while we're talking about this area. The 25:1 caseload ratio that was originally proposed by Saint Francis, do you believe at the outset that that affected the price that Saint Francis was proposing to do the work for?

**BO BOTELHO:** I would assume that their cost was based on whatever their proposal was.

**MARNIE JENSEN:** And do you think that that would, that 25:1 proposal, would also have potentially had an impact on the quality of the services that were proposed by Saint Francis at the outset?

**BO BOTELHO:** I-- I-- I'm not quite sure I understand that.

**MARNIE JENSEN:** So-- so-- and maybe I should ask it a little differently. Twenty-five to one in a caseload ratio, as opposed to, say, 15:1, do you think that that is going to have an impact on quality of services provided, that that caseload ratio directly correlates to quality?

**BO BOTELHO:** Yes. You mean it-- would-- would-- would the manner in which they were proposing to conduct the service have impacted the quality of the services actually rendered? Yes.

**MARNIE JENSEN:** And again, I-- I noted we're going to come back to more detailed questions on cost. But I'm really just focused on Saint Francis's original RFP response at this stage of the questioning. So in reviewing Saint Francis's response to the RFP, what did DHHS understand about the proposal relating to the percentage of services that Saint Francis proposed to provide directly? Did you-- did you have an understanding of that proposal, what they were going to do directly?

**BO BOTELHO:** They would have evaluated whatever was in the proposal. I--

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**MARNIE JENSEN:** Well, OK, so let me lay maybe a little bit more groundwork here. So are you-- you're familiar with the statutory requirements--

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** --relating to the 35 percent.

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** OK. And so just to be clear, you know, there is a statutory requirement that the lead agency may not directly provide more than 35 percent of direct services under the contract.

**BO BOTELHO:** Correct.

**MARNIE JENSEN:** OK, so when you-- when DHHS saw that original proposal, do you have, did you have an understanding about what percentage of services would be provided directly by the lead agency?

**BO BOTELHO:** I didn't evaluate the-- the proposals, but the evaluators would have seen whatever Saint Francis put in there and scored it accordingly. I think the-- I can't remember verbatim what Saint Francis put in there, but I don't think they put a lot of detail in there, if that's what we're talking about. But then again, they agreed to comply with all statutory and regulatory compliance requirements, so whatever was in the proposal was what those evaluators would have evaluated and scored.

**MARNIE JENSEN:** Yeah, so I'll-- I'll represent to you, sounds like the answer to my question is, no, you don't recall what Saint Francis put in with respect to that, direct services, and that's OK. It's not a memory test here this morning, still. But Saint Francis had originally submitted, I think, a 50-50, so that 50 percent of the-- of the services would be direct and 50 percent would be contracted, at least that's at least one reading of the RFP proposal. So I'll ask it differently. In a-- in that context, assuming that's true, then the RFP response had proposed a 50-50, do you think that would have had an impact on their costs?

**BO BOTELHO:** Their costs would have been based on their bid. But I-- I honestly-- I don't know where the 50-50 is coming from because I never found that in the-- the bid or--

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**MARNIE JENSEN:** Yeah, I'm more-- I'm-- and you may not have seen it. It is in an email from an individual, Diane Carver. Do you know who-- Ms. Carver? I think she's a vice president at Saint Francis. And that went to Ross Manhart. Do you know Mr. Manhart?

**BO BOTELHO:** Yeah, I do know who Ross is.

**MARNIE JENSEN:** And he's an employee, or at least was at the time, of DHHS, correct?

**BO BOTELHO:** Yes, he-- he is.

**MARNIE JENSEN:** And so Saint Francis had indicated, Ms. Carver had indicated, that the department accepted our bid of utilizing direct and purchased services, which was a 50-50 cost proposal. Do you have any familiarity with that 50-50 cost proposal?

**BO BOTELHO:** No, and I don't think that was in their bid. And regardless, if even it was in their bid or that's how they want to interpret their proposal, it would not be in accordance with state statute or regulation, which they were bound to abide by.

**MARNIE JENSEN:** I-- I think the answer is assumed in your other answers, but do you recall any conversations within DHHS, about either Ms. Carver's email specifically or more generally, that there was some concern that Saint Francis was presuming a 50-50 cost proposal?

**BO BOTELHO:** No, I don't.

**MARNIE JENSEN:** All right, let's move on from cost for a short amount of time and talk about the performance bond requirement. The RFP itself required the winning bidder to supply a performance bond. Is that true?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** And do you recall the amount of that performance bond?

**BO BOTELHO:** A million.

**MARNIE JENSEN:** I-- I think that's correct. I think that's page 13, at least my notes indicate that, so a million dollars, performance bond. Mr. Botelho, just for the committee's information, and not to insult anyone else's intelligence, but so that we are using the same terminology, what is a performance bond?

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**BO BOTELHO:** Yeah, that's a good question. A performance bond is-- is-- it's a type of risk mitigation. It's issued by a surety company. And basically what the surety company is putting up is a fixed number of dollars, in this case a million dollars, to ensure that the vendor complies with the-- the contract. Surety companies are more interested-- they're an insurance company. They don't necessarily want to pay out the-- the million dollars. In many cases, they will offer specific performance. If-- so if the state, as the holder of the bond, says, hey, there's been a breach of the contract, we're damaged, we want the money, surety companies will generally try to fix the problem before they pay the money out, which is really useful in construction contracts, not always applicable in other, more complex contracts. If that can't be done, then you'll make a determination as to whether or not there was an actual breach, and then they would pay up to that amount of money based on what the-- the bondholder can show their damages to be. So it-- it is there to offer protection to the-- the bondholder in hopes of ensuring that the services that are contracted for are actually performed, and, if not, there's something there to mitigate damages.

**MARNIE JENSEN:** There's been some question raised-- before we get into the actual submission of the performance bond, there's been some question raised, I think, relating to whether a million dollars is an appropriate amount of a performance bond for a contract of this size. Do you have any response to that just conceptually?

**BO BOTELHO:** A million dollars would-- I mean, if you want to look at the total risk of a contract this size, and this is where a performance bond sometimes falls short, right? The amount of money to cover all potential risk or damage to the state for a contract for this, for a complete failure, I-- I mean-- I mean, that would be a huge amount of-- of money, which is going to require a lot of cost on the part of vendors to get it, if they can get it. So it's-- it's hard. I mean, the state builds risk mitigation into its contracts, insurance requirements and, you know, performance bond, other means to protect the state. But you can never eliminate all that risk, and it would be difficult to do so with a performance bond. So that was part of what the state was considering with how much money, knowing that you probably couldn't cover everything but you wanted something. You didn't want the bond itself to be prohibitive to potential vendors.

**MARNIE JENSEN:** Is the performance bond a statutory requirement?

**BO BOTELHO:** I don't-- I don't think it is.

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**MARNIE JENSEN:** With respect to the performance bond, the RFP note-- I think there was a question: Must the million-dollar performance bond be secured for proposal or a bond award? And the answer was: It must be obtained prior to contract execution. Do you recall that part of the RFP?

**BO BOTELHO:** Yes, it's a-- it's not a bid bond, so it's not required for the purpose of submitting a bid. It's a requirement of the contract.

**MARNIE JENSEN:** And so in-- in your view, would not having a performance bond prior to the contract execution be considered a material defect?

**BO BOTELHO:** A-- a material-- it wouldn't be a material defect of the bid. It would-- it would be, I would say, noncompliance with the contractual terms, right? I think if you-- if you look at the DAS process, when it comes to certificate of insurance or performance bonds, they-- they request that sent to them, I think, prior to where they would execute the contract, or proof that the bond is in existence or the-- or the insurance is there prior to the execution of the-- the contract.

**MARNIE JENSEN:** Did Saint Francis provide a performance bond?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** Was that performance bond provided prior to the contract execution?

**BO BOTELHO:** I looked at the bond. The bond was executed July 1, 20-- was it 2019? July 1, 2019? So, yes, they had a bond prior to execution. The execution of the contract was on-- I think you had said previously it was July 3.

**MARNIE JENSEN:** So I-- and I really do just want to understand this performance bond issue, Mr. Botelho, because, frankly, I don't do a lot of work with performance bonds, so I-- I just want to understand. When I reviewed the information provided relating to the performance bond, it appeared to me at least that it was not provided to the state until February of 2020, but that it was dated July 1, 2019. Can you clarify that at all for the committee?

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**BO BOTELHO:** No. July-- I mean, if the-- the bond is dated July 1, so that means the bond was in effect July 1, it should have been provided to the state shortly after it was executed.

**MARNIE JENSEN:** So if it was, I-- I guess, and I-- because I really do sort of want to get past that question of the performance bond with respect to this RFP, it would be sufficient in your mind, as long as that performance bond was in place prior to the execution of the contract, whether the state had a copy or not, as long as it was in place, would you-- would you surmise that that then, I guess, complied with the contract?

**BO BOTELHO:** Yeah, so if they had an effective bond and it was effective prior to the execution of the contract, then the state had what it needed. The state should have a copy of that bond, but if the bond was in existence and valid, then they've complied with that condition of the contract.

**MARNIE JENSEN:** That performance bond that we've seen had an effective date, again, of July 1, 2019, and that went through June 20, 2020, with the option for an extension. I just want to make sure as we sit here today, is, does Saint Francis have a performance bond in place?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** And is that still in compliance with the contract? It's a million dollars, it's--

**BO BOTELHO:** It's a new contract now.

**MARNIE JENSEN:** Right.

**BO BOTELHO:** So it's in com-- it's-- whatever the terms and conditions of the new, the emergency contract are, the bond would-- it should comply with that.

**MARNIE JENSEN:** Do you have any information that Saint Francis is not in compliance with the performance bond requirements under the emergency contract?

**BO BOTELHO:** I do not.

**MARNIE JENSEN:** In fact, do you believe they are in compliance?

**BO BOTELHO:** I do.

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**MARNIE JENSEN:** All right, I'd like to talk a little bit about reasonableness. Do you agree that the RFP in this instance allowed the state to review bids for reasonableness of cost?

**BO BOTELHO:** The-- the RFP process-- Ne-- Nebraska relies on the RFP process to, in-- in part, make that determination of-- of-- of reasonableness. It generally relies on that process. And-- and so the result of the RFP, it is sort of deemed reasonable, un-- unless there's a reason to-- to question that, is how I would describe that.

**MARNIE JENSEN:** Do you believe that DHHS, in making its recommendation on the RFP, had any obligation to consider the reasonableness of Saint Francis's bid?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** And do you believe DHHS did that?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** OK. What does reasonable mean in this context to DHHS?

**BO BOTELHO:** I mean, reasonable would mean rational, fair. You-- you would look at ordinary, in a normal course, sensible.

**MARNIE JENSEN:** Is there any place the committee can look to find a definition or some guidance on reasonableness?

**BO BOTELHO:** I mean, yeah, you got, what, 200, 300 years of Anglo-American case law based on this sort of quasi-judicial definition of-- of reasonable. There's-- it-- it's not defined in the procurement manual, I don't think, like-- like responsiveness and those other elements are. It's sort of implied. But it's-- there is no reasonable test that's defined in the procurement manual or in-- in statute. It's sort of inherent out of the Chapter 181 commodity statutes that were pulled over into the service side by the DAS procurement manual.

**MARNIE JENSEN:** Other than the words that you just provided, rational, fair, normal, sens-- normal course, sensible, is there any guidance that-- that exists within DHHS that when DHHS is examining bids or, you know, procurement issues, where we-- where we could look to, to see what reasonable means? Understanding it's not in the procurement manual like some of the other terms, have you developed anything within DHHS?

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**BO BOTELHO:** I have not.

**MARNIE JENSEN:** Are you aware of anything that has been developed within DHHS?

**BO BOTELHO:** No, not to address that specifically.

**MARNIE JENSEN:** Do you think that the Stephen Group report and findings had some role to play in testing for reasonableness as it relates to Saint Francis--Saint Francis's bid?

**BO BOTELHO:** I-- I don't know.

**MARNIE JENSEN:** Going to ask you just a few-- have you-- let me ask a threshold question. Have you reviewed the Stephen Group's report?

**BO BOTELHO:** I have reviewed it, but it's-- it's been a while, and I don't think I-- I-- it's not something that I-- I read or necessarily applied to anything, but I have seen it.

**MARNIE JENSEN:** With respect-- that's helpful. So if you just don't know the answers to the questions I'm going to ask, just-- you're under oath-- be honest, say you don't know, and we'll move on. But I do want to kind of test your own memory of that review on the Stephen Group findings, if we could. So the Stephen Group found that there were no areas in terms of cost or outcomes in which PromiseShip was an outlier over all state results. Do you remember that finding? Do you remember seeing that finding?

**BO BOTELHO:** Not specifically, but I-- I do-- no, I don't.

**MARNIE JENSEN:** Knowing everything that you know about the relationship-- well, sorry, about the-- the providing of services that PromiseShip did to the state, do you disagree with that finding, sitting here, that PromiseShip was generally in line with all state results, complete state results?

**BO BOTELHO:** As-- as far as child welfare and-- and-- I-- I think I would agree with that.

**MARNIE JENSEN:** OK, and what about with respect to cost? It said cost or outcomes. Do you think PromiseShip, leading into the RFP, was in line with other state costs?

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**BO BOTELHO:** The impression that I had from the program was-- was that the costs were high in the Eastern Service Area.

**MARNIE JENSEN:** What was that understanding? What was the basis for that understanding?

**BO BOTELHO:** From the programmatic understanding? I might be--

**MARNIE JENSEN:** That costs were high, and I'll just-- I want to know why-- what-- sort of, what was the basis for you to understand that PromiseShip's costs were high?

**BO BOTELHO:** That's just what was communicated to me in talking with the CFS program and those folks.

**MARNIE JENSEN:** OK. Any detail at all given on what costs were high or why they thought costs were high or any other detail with respect to that?

**BO BOTELHO:** I know they monitored costs in all the other service areas, so I would imagine their-- their-- it was based on what they knew their cost was elsewhere.

**MARNIE JENSEN:** The-- I've seen some indicators, some-- some support that, for 2017, PromiseShip's costs per case per month was actually less, like \$300 less, than the state's own costs in those four other regions. Do you have any information res-- with respect to that? And that was 2017.

**BO BOTELHO:** I do not.

**MARNIE JENSEN:** No? And then I'll ask about 2018, because the information that the committee has been provided is that, in 2018, PromiseShip's cost per case per month was within \$100 of the state's own costs. And that was approximately \$100 more, but still within \$100. Any information that you have with respect to that?

**BO BOTELHO:** I do not.

**MARNIE JENSEN:** Were there discussions within-- and again, we're going to spend some time, I think, later on in your testimony relating to the request for an additional \$15 million and that clarification meeting, so I'm not asking you to go into that quite yet. But were there discussions upon, you know, receiving Saint Francis's bid about, you know, just the realism, the re-- the-- is this a realistic bid for

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these services that are going to be provided, understanding that differential between PromiseShip and Saint Francis? Did you have conversations about, wow, 40, 40 percent is a lot of difference?

**BO BOTELHO:** I-- I believe so. When the-- when the bids-- when the evaluation was completed and the scores and the bids were provided to CFS, they-- they looked at both bids in light of the scores. And they would have considered the bids in their entirety. And obviously the difference in-- I mean, there was an obvious difference in-- in cost that would have been considered as well.

**MARNIE JENSEN:** Was there any substantive evaluation within DHHS once you got the, you know, evaluators' report, I guess, and notes and comments? Was there substantive discussion within DHHS to try to determine what was driving that 40 percent differential?

**BO BOTELHO:** I don't know specifically if there was an attempt to differentiate that, in that manner, not that I'm aware of.

**MARNIE JENSEN:** And I know Chairman Arch wants to break around noon, but I think I will try to cover one more topic, which hopefully we can do and sort of stay on schedule with our lunch break. I want to talk about due diligence, and there was some discussion this morning with Ms. Smith relating to this media review. And I'm going to ask the question maybe on most people's minds. Was there more than one media review conducted in this RFP process?

**BO BOTELHO:** So I know CEO Smith asked for-- or asked Matt Litt, who was the communications director at the time, to do a media search. I know that that occurred. And I, if I recall, I think when the-- the protest was filed, I-- there may have been information provided with the protest, as well, that would have had other media articles, or at least was raised in the protest.

**MARNIE JENSEN:** So I had-- at our break, I placed a document on the table there in front of you, Mr. Botelho. Can you-- it's sitting right on top of that binder. Right there, yep. The-- this was a document that was provided to us in conjunction with the-- the PromiseShip litigation that resulted after the protest by PromiseShip was denied. This has been, I think, at least for me, as special coun-- counsel, what we believed was the media review. Is-- is that your characterization of that document? Maybe that will clear up Senator Kolterman's question, as well, from the earlier testimony.

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**BO BOTELHO:** The media review that CEO Smith was talking about, I don't-- I don't think this is that media review. I think her media review that she got was a collection of-- of-- of news articles. I don't think this is-- I don't think this is it.

**MARNIE JENSEN:** OK, we may spend a little time over lunch trying to-- to sort that out a little bit more. But since you have the document in front of you, is that something that was provided to you prior to the signing of the contract with Saint Francis?

**BO BOTELHO:** I don't specifically recognize this document. I know we did an internal media review, which was reviewed. I know there was information raised in the protest, and that would have been reviewed and considered in conjunction with the protest. I-- I-- I can't say one way or-- or another. If it was provided to us, it would have been reviewed.

**MARNIE JENSEN:** And I will share with you the document that is sitting in front of you is, I believe, the document that Senator Kolterman was referring to earlier, where there are media and other reports of children being housed in a corporate office and sleeping on the floor. And so I just am trying to clear up that confusion for-- for folks today. So maybe over the lunch hour, you can--

**BO BOTELHO:** I can try to find out.

**MARNIE JENSEN:** I would ask maybe for you to try to clarify that so that we have, you know, accurate information as a committee in terms of what was provided. The-- the real question is, what information was provided to DHHS prior to the signing of the contract with respect to Saint Francis's performance or other issues from other states? That's what I would like you to, if you wouldn't mind over lunch, look at. With that, it might be a good time to break before I move into the next topic.

**ARCH:** Sure. Let's-- let's do that. We will break for lunch and we will resume the hearing at 1:00.

[BREAK]

**ARCH:** OK, we will resume our hearing today and continue the questions for Mr. Botelho.

**MARNIE JENSEN:** Mr. Botelho, before we broke for lunch, we were having a discussion about what, what we've been talking about this morning as

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a media review and I, I-- we just had a discussion off the record about whether you could maybe spend some time over the lunch hour trying to clarify that. I'll just ask the open-ended question, starting with, is there more than one media review? And if so, can you just please explain that?

**BO BOTELHO:** This is the media review that the CO was referring to.

**MARNIE JENSEN:** But when you say this, the one that you were looking at?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** And we can make that--

**BO BOTELHO:** And this is in fact what she directed at what was produced by Matt Litt.

**MARNIE JENSEN:** OK.

**BO BOTELHO:** I think it was additional media information that was submitted with the protest as well.

**MARNIE JENSEN:** OK. I think that clarifies it. Some of the committee may have some follow-up questions there, but I appreciate the clarification that when we use the term media review in the testimony, we are referring to that document, which I think the committee can make part of the record. And if any folks want to, want to get more detail on that we can do that. So in the interest of moving on, I'm going to move on. Before we broke for lunch, we were, I think, just moving into kind of talking about cost caseload ratio and some other topics. So I'll start more generally. And you were-- in DHHS's view, what does it mean to be a responsible bidder with respect to this RFP?

**BO BOTELHO:** It means a bidder that's able to provide the services. Which that comes from Chapter 81, which is a commodity statute, it speaks about responsibility, but the commodity statute was pulled over in part by the procurement manual through the authority under Chapter 73.

**MARNIE JENSEN:** So does being a responsible bidder understanding that a-- that is you can-- the bidder can provide the services? Does that have a cost component-- can provide the services for the cost detailed in the RFP or only that, that entity can provide the services?

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**BO BOTELHO:** Yes, it's not explicit in Chapter 81 or in the procurement manual, but if you look at the definitions and what you look at for responsibility, the ability to provide the services, it arguably is implicit that if, if whether you're seeing-- looking at the vendor through the bid to be responsible, they would have to provide the services that they're offering at the cost proffered.

**MARNIE JENSEN:** And just-- Mr. Botelho, the feedback that I got from the morning is that folks are having a hard time hearing you, and I forgot to mention that before we got started. I think the microphone doesn't move, but if you can adjust it, maybe a little bit. I can hear you fine, but I do want to make sure. And if any of the committee members needs Mr. Botelho to speak up, I'll try, but I, I sort of forgot that. And the reason I said that there is because at the cost proffered is that what you said?

**BO BOTELHO:** In the bid.

**MARNIE JENSEN:** OK. So let's, let's talk about the, the, the Saint Francis bid. At the time of the award to Saint Francis, did you believe that Saint Francis was a responsible bidder using the definition you just provided?

**BO BOTELHO:** Yes, I had no reason not to believe at the time of the award.

**MARNIE JENSEN:** And what, generally speaking, was the basis for your belief that Saint Francis was indeed a responsible bidder at the time of the award?

**BO BOTELHO:** By your, you mean me personally?

**MARNIE JENSEN:** You personally. We'll start there. And if you can't answer personally, we can talk for DHHS as a whole.

**BO BOTELHO:** Yeah, I hadn't reviewed, I hadn't-- I was not an evaluator. I did not review the bid. So based off of the evaluation that went to CFS and, and as a result of CFS wanting to make the award and after their review of everything, I had no reason to tell them or, or to think that they were incorrect.

**MARNIE JENSEN:** At the time of the award, did you personally in your role, I think at that time, at the time of the award, you were back to being COO and general counsel--

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**BO BOTELHO:** Yes.

**MARNIE JENSEN:** --and no longer interim CEO. But at the time of that award, did you have an understanding of the cost differential between the PromiseShip bid and the Saint Francis bid?

**BO BOTELHO:** I, I would have seen the cost proposals, I believe. Yes.

**MARNIE JENSEN:** And so in addition to the cost proposals, is it fair that you would have also seen the rest of the RFP responses? So for instance, the response as it related to caseload ratios?

**BO BOTELHO:** I did not.

**MARNIE JENSEN:** You did not.

**BO BOTELHO:** I saw the final scoring.

**MARNIE JENSEN:** You only saw the final scoring. At, at any time before today, so I'm going to go all the way back for several years here. Have you had occasion to review Saint Francis' RFP response, that original RFP response?

**BO BOTELHO:** Not in its entirety. If, if there is issues or concerns with the contract or whatever and it can't be handled with the contract attorney, then those will come up to me. But no, I have not read either bid proposal from start to finish.

**MARNIE JENSEN:** When you say either you mean either PromiserShip's or Saint Francis'?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** OK. Do you have an understanding, however, of what Nebraska law requires regarding caseloads for case managers in the child welfare system?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** What is that understanding? Just so we're talking the same--

**BO BOTELHO:** By statute, it requires a 17 to 1 ratio or less.

**MARNIE JENSEN:** Maximum 17 to 1.

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**BO BOTELHO:** Yes.

**MARNIE JENSEN:** Prior to the Saint Francis RFP response, had you ever heard the term dyad model?

**BO BOTELHO:** No.

**MARNIE JENSEN:** Since the Saint Francis RFP response, have you come to understand what dyad model means?

**BO BOTELHO:** Yes, in that, it's more than one worker assigned to a child or a family. I think a caseworker, plus a support worker.

**MARNIE JENSEN:** And as of 2019, and I'll just use the contract date. Prior to July 3, 2019, were you aware of any use by the state of the dyad model as it related to the provision of child welfare services?

**BO BOTELHO:** No.

**MARNIE JENSEN:** That was not a conc-- is it fair to say that was just not a concept that the state utilized?

**BO BOTELHO:** Not that I'm aware of.

**MARNIE JENSEN:** When is the first time you can recall hearing the term dyad model?

**BO BOTELHO:** When it was either from the director or from the deputies and they were discussing it.

**MARNIE JENSEN:** In conjunction with Saint Francis' proposal?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** And with respect to Saint Francis' proposal and the dyad model, was there a view with-- within DHHS in that discussion about whether the dyad model would be in compliance with the 17 to 1 statutory requirement?

**BO BOTELHO:** I, I don't know if necessarily the model itself would not comply. You would need-- you would still need to have the sufficient number of case managers to comply with the ratio. I, I-- as far as I understand the model, it just speaks to the number of people assigned to an individual case. But as long as the case management number is sufficient, then I, I would imagine it would comply.

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**MARNIE JENSEN:** So let me maybe try to restate your concept back to you, the mere use of a dyad model would not necessarily render a bid noncompliant with Nebraska statutes. Is that fair?

**BO BOTELHO:** Correct.

**MARNIE JENSEN:** It is really the caseload ratio that is proposed regardless of a dyad model or some other model that may or may not render that RFP response compliant. Is that also fair?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** Within DHHS-- we were talking and I, I asked you before if the dyad model was discussed, but within DHHS was the caseload ratio proposed by Saint Francis more generally discussed prior to the contract being signed but after the intent to award?

**BO BOTELHO:** I, I don't know. I became aware of the issue when the protest was, was filed. But I would suspect that all those bids were discussed within the, the program.

**MARNIE JENSEN:** I'll try to characterize what I think you mean by the issue and you tell me if I'm correct. Saint Francis' original bid proposal included a caseload ratio of 25 to 1. Right?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** And when you say the issue, is that the issue you're talking about?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** And so 25 to 1 on its face would not comply.

**BO BOTELHO:** It would not.

**MARNIE JENSEN:** How was that noncompliance of the 25 to 1 caseload ratio communicated to Saint Francis?

**BO BOTELHO:** When, when the protest was filed, that was raised in the protest. Clearly, if they were going to stand on a proposal that had a 25 to 1 ratio for case managers to children-- I, I think it is if they're out of home. And I think it's different if they're in home. But if they weren't going to abide by the statutory requirements, then the, the protest would in-- we wouldn't be able to award. I mean, you

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would probably uphold the protest and dismiss their bid. So the procurement folks reached out because, again, there was this ambiguity. Right? They're saying that we're going to meet all statutory requirements and all regulatory requirements. And that was explicit in the Ts and Cs, and it was addressed in the Q&A period. But then there's this language in the technical evaluation or proposal, which was evaluated and scored that's inconsistent with that. You can't do both, right? You can't have a 25 to 1 ratio and say you're going to apply with a statutory requirement that's at most 17 to 1. They're mutually exclusive. So the procurement then reached out and, and asked if they would, and I can't remember, but it was an email to Tom when we were trying to finalize the contract going into the, the, the contract negotiations, basically asking if you were going to meet this ratio. There was a response from Tom Blythe, who was the COO, that appeared from his response that he was interpreting that email to say that we're asking you to add bodies to it. You know, you're going to ask us to add bodies, then we're going to have to increase the cost. And at that point, I said, no, you have to meet the ratio at the cost bid. And then we just went into negotiations so that can be resolved. So it's rather than email it or try to do redlines back and forth, I just needed to know, are you going to meet this ratio at your cost? If the answer is no, then the state can't go forward with your bid.

**MARNIE JENSEN:** Thank you, and thank you also for setting out that timeline because I think it's going to make these questions make a lot more sense, hopefully, for the rest of the committee members. That communication you just described from Tom, Tom Blythe at Saint Francis, just so the record's clear, that's who you were referring to?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** OK. And so Mr. Blythe responded back and said, if you want us to meet this ratio-- this is my summary, it will cost an additional \$15 million-plus. Correct? I think it was \$15.1, maybe, but. Was that his response, he emailed back and said?

**BO BOTELHO:** He emailed his response back, and I can't remember exactly what he, he said. But the way I interpreted his response is that if you're asking us to add more bodies, then it's going to cost us more money.

**MARNIE JENSEN:** OK.

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**BO BOTELHO:** And that's not what the state was asking. The state is asking, are you going to comply? Yes or no?

**MARNIE JENSEN:** And I think there has been some characterization of the process that happened next as a clarification meeting. Are you familiar with that characterization?

**BO BOTELHO:** Yeah, I mean, that would be your, your contract negotiations, which there's very few contracts that don't-- bidders will take exceptions to terms and conditions, almost always. And those things have to be negotiated. If there are other, you know, deviations or proposals that the state is considering, then all that has to be resolved prior to the contract be executed. And this particular RFP was designed so that you would, you would have to have a final negotiation meeting with, with whoever the bidder was because they were turning to conditions that were specifically left open to final negotiation. I think it had to do with, with, with auditing forms and so much and so forth so it was designed to do that.

**MARNIE JENSEN:** OK, so I'm going to use the term clarification meeting, but only for consistency sake. Please don't read into that terminology. It's just consistent with some of the other briefings and testimony that the committees had. So that clarification meeting, which I believe happened on June 26, 2019. I would just like to ask for some detail around that. So that's what I'm referring to. And if you take exception to the characterization, I'll note that, but it's really for ease of reference for my sake.

**BO BOTELHO:** That's fine.

**MARNIE JENSEN:** OK. So with respect to that meeting, who decided to have that meeting within DHHS?

**BO BOTELHO:** We were already preparing to have that meeting and due to the, the issues with the, the ratio and decided when the protest, I, I wanted to have it sooner rather than later so that we can resolve whether or not we can go forward with this bid or move on to the other vendor.

**MARNIE JENSEN:** OK. So the information provided by the department, I think it's a, it's a pretty lengthy agenda with an appendix and got a--

**BO BOTELHO:** Yes.

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**MARNIE JENSEN:** --sort of nine-page agenda. I, I want to understand for the committee's work who attended the meeting. So just, just to be clear, I'm going to go through the invite list and let me start by asking, did you attend the meeting?

**BO BOTELHO:** I did.

**MARNIE JENSEN:** OK. Did Tom Blythe attend the meeting?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** Did Diane Carver from Saint Francis attend the meeting?

**BO BOTELHO:** I-- there were at least two other people from Saint Francis there, and I don't recall their names. One of them was a female. One of them was another gentleman. He was the CFO. I remember that.

**MARNIE JENSEN:** OK.

**BO BOTELHO:** Diane may have been the female, and I can't remember what her role was.

**MARNIE JENSEN:** OK. Did Peter Kroll, K-r-o-l-l, attend the meeting?

**BO BOTELHO:** Yes, I believe so. He would have been from DAS.

**MARNIE JENSEN:** DAS. And then how about Greg Walklin?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** And then there were some optional attendees at the meeting, Nancy Storant.

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** She was there?

**BO BOTELHO:** She's a, she's a buyer from DAS. I believe she was there as well.

**MARNIE JENSEN:** And are you also looking at the same invite list, Mr. Botelho?

**BO BOTELHO:** No, I'm looking at my notes. Want me to go through the notes I have?

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**MARNIE JENSEN:** No, no, that's fine. It's just a few more names. How about Keith Roland? Was he there?

**BO BOTELHO:** Yes, he would have been a HHS buyer.

**MARNIE JENSEN:** And how about Dale Shotkoski? I believe he was DAS counsel.

**BO BOTELHO:** He was and I don't remember if he was there or not.

**MARNIE JENSEN:** And Matthew Wallen?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** And Wes Nespor, N-e-s-p-o-r?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** OK. And then Lori Harder?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** And Ross Manhart?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** Anybody else that I didn't list that you can recall being at the June 26, 2019, meeting?

**BO BOTELHO:** Did you list Annette Walton?

**MARNIE JENSEN:** I did not. Although, you know, so she was the organizer, so I probably should have started there. I assume she attended?

**BO BOTELHO:** I believe so. Yes.

**MARNIE JENSEN:** And, and so anybody else other than Annette?

**BO BOTELHO:** No, I don't think so.

**MARNIE JENSEN:** I think you answered this already, but in your view, is a clarification meeting like the meeting that occurred on June 26, 2019, contemplated in the procurement manual?

**BO BOTELHO:** Yes.

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**MARNIE JENSEN:** Just describe why you think that's the case.

**BO BOTELHO:** It's, it's explicitly in the procurement manual. I can't remember the section, 6.18 maybe, contract finalization. So what, what I would recall in the clarification meeting because we were trying to clarify whether or not their intent was going to comply with the ratio or not, but that's the contract finalization meeting.

**MARNIE JENSEN:** So looking at 6.18, and if you need to refer to it, it is in the-- you might have your own copy, but it's also in that black binder next to you. The procurement manual, and you're correct it is 6.18 with the contract finalization section. Going into the meeting in June of 2019, what did you understand the department's options were at that point in the process? And when I say options, I'll refer you back to Ms. Smith's testimony from January, where she sort of set forth we could do one of three things. I mentioned a fourth thing this morning. I want to know what your understanding at the time of the meeting was with respect to what DHS could do next.

**BO BOTELHO:** So when you-- when you're trying to finalize a contract with a vendor, you're either going to come to an agreement, in which case you move forward with the contract. If you can't come to an agreement, you can, depending on why you can't, you can, you can reject all bids and start over again. You can-- typically, what you would do is you would move on to the next vendor. You would reach out to whoever the next vendor was, the number two, ask if they would continue to honor their bid and if they say yes, then you go forward in negotiations with, with that vendor. If, if that's not an option, you know, in Eastern Service Area, it's a critical service and you have to have continuity of service, right? So you can't not have this service. So if you can't reach negotiation with the, the, the, the number one vendor and you can't get it to number two, you're going to have to find a way to provide that, that service. It would, it would fall under-- you can either go into a new contract in an emergency if there wasn't, but you would, you would have to have a vendor to have that emergency contract with, right, or the state would have to do it themselves. There's no-- it's not like a, a, a service contract that would be optional to the state or one that simply you can just wait to do. You have to have a continuity of service in the Eastern Service Area. You can't not have case management services in the Eastern Service Area.

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**MARNIE JENSEN:** Understood. Going into the June 26, 2019, meeting, do you believe that all of those options were legitimately on the table at that point?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** Was there a discussion at that point prior to the meeting about potentially still, I guess, awarding the contract to PromiseShip?

**BO BOTELHO:** Well, I mean, the options would have been discussed, right? If you, if you can't finalize a contract with this vendor, you have an incumbent who is also on a bid so I mean that, I mean, I guess that would be your natural tendency, if it doesn't work with one, you, you, you go to two. I mean, assuming that they're willing to and they submitted a bid, there would be no reason why they, they would not.

**MARNIE JENSEN:** Was the-- I'm using some kind of loose terminology, but I think we're on the same page. Was it also on the table that the state could take back the ESA if the contract was not able to be finalized with Saint Francis?

**BO BOTELHO:** That was an option, but that's not-- I mean, yes, obviously, this is different than other contracts as well, and that the state does provide case management services, you know, everywhere else in the state. So it's, it's not a type of service that we don't have the capacity to do. We could do that. It would take time, obviously, to, to build the, the, the staffing and the other requirement is to take that over. But yeah, that's-- that was a possibility. You either award it to a vendor or you can do it yourself, but someone has to do it.

**MARNIE JENSEN:** What, what happened at the June 26, 2019, meeting? And that's a really broad question. I'm going to give you some leeway to just describe it. In the interest of time, I want you to be thorough. But in particular, I think the committee is very interested in learning what items were discussed and what agreement was reached and how did the state come out of that meeting with the determination that Saint Francis was indeed going to be able to provide these services for the cost bid? I think those are the big questions about that meeting. And so I'll just let you kind of respond to that, that very compound but thorough question.

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**BO BOTELHO:** So if you, if you look at the agenda, number one in the agenda was the case management ratio. And in fact, if you look at the other numbers on there, it says if necessary. Because if we didn't get an agreement on the case management ratio, there was no point going forward. Right? You're either going to do it or you can do it or you're going to do it or you're not. And if they weren't able to meet the case management ratio, at that point the negotiations would have stopped. The bid would have been rejected and we would have moved on. So that, that was the first question. OK, are you going to meet the 17 to 1 case management ratio? Is that your intent, you agreed to do so in the terms and conditions? You have this language in here that's inconsistent with your agreement to meet that statutory requirement. Are you going to do it? They said yes. Then we asked how? And they began to describe that even though they have individuals that are identified in the bid as case managers and then they had individuals identified in the bid that were kinship workers but were actually case managers, but only for kinship placements. And so they went through a list of people that were in their bid that were in fact providing case management services, but they weren't necessarily identified in their bid as case managers. So they spent some time discussing all of that. That was considered by the agency director that was there and his, his deputy at the time. They, they took that information and that was their demonstration of, of how they, how they would do it. That, that they were-- in essence, they were saying, we have the case managers in our bid, they're just called different things. That was explained to the department. The department accepted that explanation, at least on its face at that time. Later, everything was sent over on paper. It was reviewed and the department made a final decision.

**MARNIE JENSEN:** I think that a lot of, a lot of questions have been asked about that, that change with respect to well, we've got the staff built in, but we are calling them other things. And so if there's anything else you can share, Mr. Botelho, in terms of the discussions between the state or, I guess, the attendees, so that was DAS and DHHS and Saint Francis with respect to those changes, because let me just give a little more background. What I've seen is in the original RFP, you know, we've got this 25 to 1 ratio and, you know, a number of case managers. And then after the clarification meeting, there sort of appears to be this category of 64-- what is it, maybe therapist/case manager role, you know, was that, was that discussed during the meeting about, you know, just like this title change, I guess, for lack of a better term?

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**BO BOTELHO:** Yeah, I, I think what they did was they went through their, whatever they were calling these, their classifications of individuals, and they identified them as providing case management services. And that was explained to the department. So, yeah, I, I think if, if I recall, those positions were all explained to us.

**MARNIE JENSEN:** With that-- with the additional information provided after the clarification meeting in June of 2019, was it the department's belief that Saint Francis had not added any additional staff? But instead had just reallocated, I guess, by title? I'm just trying to drill down a little bit more there.

**BO BOTELHO:** Yeah, our understanding was they, they had the existing staff to, to meet the requirements of the RFP. I, I don't believe there was an impression that they were adding people. I believe the assertion that was made is that they were already-- that, that they had them there.

**MARNIE JENSEN:** In the department's view of that additional information that was provided post June 26, 2019, these therapists/case managers, was there any discussion about the qualifications of those individuals and whether those 64 people that were allocated in that column actually could be case managers?

**BO BOTELHO:** Yeah, there's, there's statutory requirements for, for case managers, so any, any position they would use for a case manager would have to meet those, those requirements.

**MARNIE JENSEN:** OK, so the department was satisfied with the materials provided post June 26, 2019, that Saint Francis had, had, had qualified case managers that could meet the statutory caseload ratio?

**BO BOTELHO:** That they would provide. I mean, at, at the time they weren't, they weren't in existence, but that they were saying that they would provide it, that they had the bodies, that they, they could meet the ratio.

**MARNIE JENSEN:** Did you press them on the cost of that during that meeting? The \$15 million request sort of led into this. So I think the logical question for folks, you know, sitting here is, did they really just say, no, no, no, we're, we're fine? We've got the people, they're qualified and just kidding about the \$15 million. We, we don't actually need more money. Did that come up during that meeting?

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**BO BOTELHO:** Yeah, that's where, where they-- we talked about we're not asking you to add bodies, we're not asking you to add additional people. What we're asking is, can you comply with this requirement with your bid as proposed? And that's where they, they went through the, the staffing and said that they could. And we made it clear that you couldn't-- I mean, you can't raise the price now, you're either standing on your bid or you're not.

**MARNIE JENSEN:** So this-- in our information, this, this staffing plan with the caseload ratios becomes, I think it's B, there was A and then there was B, that's addendum B, and, you know, my review of that submission, and this is just my review, appears to be that the-- these kinship workers were sort of just reclassified as case managers or maybe the sort of changing of the qualifications happened so that they could be reallocated as case managers. Was that discussed during the June meeting?

**BO BOTELHO:** The kinship workers were definitely raised because I, I, I remember them describing them explicitly. And if they were used and if they were going to be used as case managers, they would have to meet the requirements, which I think is a bachelor's degree I think for, for a case manager.

**MARNIE JENSEN:** So when it was discussed, the kinship workers, I mean, what did you understand these kinship workers were? Did you, did you under-- when you heard the description from Saint Francis, did you understand that those folks would qualify as case managers?

**BO BOTELHO:** The way I understood that what they were is, is that they were in fact providing case management services to kinship placements.

**MARNIE JENSEN:** Oh, OK, but that they would qualify as case manager? Sorry, I don't mean to ask the same question again.

**BO BOTELHO:** They would have to, right? I mean, if, if they're going to be counted as a case manager, they would have to qualify and meet all the other qualifications of a case manager.

**MARNIE JENSEN:** With respect to this sort of, you know, what was provided relating to the staffing plan before the June meeting and what was provided after, was it DHS's-- DHHS's view that that second staffing plan was a change to Saint Francis' RFP response? Did that constitute any change?

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**BO BOTELHO:** If it-- yeah, I mean, if, if, if they're-- I'm trying to remember how they had it laid out in their original bid, but what we interpreted that or what we were interpreting that to be is that they were agreeing to comply with the RFP requirements and they were telling us how they were going to apply, apply-- comply with the RFP requirements. And it may have changed their, their bid, but it changed in a way that ensured compliance with what the state was trying to procure.

**MARNIE JENSEN:** I'm going to put you on the spot for a moment, Mr. Botelho, with respect to the June 2019 meeting and give you an opportunity to respond maybe to some of the, I guess, characterizations of that meeting. Some have indicated to me that they, they believe that DHHS was going to great lengths to ensure that this contract was awarded to Saint Francis and that DHS was-- DHHS was sort of going above and beyond with allowing this staffing plan change, allowing ratio-- case ratio change. Do you-- I'll let you respond to it. But the first question is really, do you agree that DHHS was indeed going to great lengths to ensure this contract would be signed with Saint Francis?

**BO BOTELHO:** No, I mean, to me, contract negotiations occur almost with every, every bid, right, we're trying to ensure whether or not they would comply with the contract. So it, it didn't seem extraordinary to me.

**MARNIE JENSEN:** OK. So again, sort of sitting in, in my shoes here. It, it, it doesn't look logical that an entity could go from a 25 to 1 caseload ratio on-- and then with the same number of people somehow managed to achieve a 17 to 1 ratio. And I think we just want to understand why that seemed logical to DHHS that that would be possible?

**BO BOTELHO:** It-- so their-- when, when they went through their staffing, it, it didn't appear, at least it didn't appear to me that they were adding personnel. If you're not adding personnel, then the personnel that are in the bid should be built into their cost. And what they kept saying is that we have the people here to do this, that they're in there, that we, we anticipated or that through these other jobs that they, they were doing, that it was sufficient. And, and that was described how they would do that in, in detail to CFS and it made sense to the program.

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**MARNIE JENSEN:** So thank you for, for that response. I will confess I haven't just added up the number of bodies in each of those proposals, but I've done some rough math. I haven't, you know, like, from a CPA standpoint, you know, add it up with the certification, but it does appear to me that there are more, just more numbers of people in the later staffing plan that was ultimately posted, you know, to the website than what was in the original proposal. Do you have an understanding of whether that is true? There were just a-- more human beings in that staffing plan to do the same work that they had proposed to do.

**BO BOTELHO:** I don't, I don't recall there being new, new people. I recall them repurposing them. But it could be true.

**MARNIE JENSEN:** OK, so and maybe that's the answer to my question of whether in conjunction with that June meeting or at any time in the contract finalization, whether you or anyone in DHHS just ran the numbers, right, did-- was there an effort to determine are they adding staff without adding dollars?

**BO BOTELHO:** I did not.

**MARNIE JENSEN:** Are you aware that that occurred within DHHS? Would you have any understanding that someone was doing that?

**BO BOTELHO:** Adding?

**MARNIE JENSEN:** Just are they adding staff but not adding dollars?

**BO BOTELHO:** Not that I recall.

**MARNIE JENSEN:** Going to try to move us to wrap to stay on schedule here, I know folks here have lots more questions, but in your view was the proposed, that initial 25 to 1 caseload ratio a minor error or a minor defect?

**BO BOTELHO:** I don't, I don't think it was in error. You mean that it was inadvertent by Saint Francis?

**MARNIE JENSEN:** Let me maybe ask a different question. The 25 to 1 caseload ratio, if it had not been changed to comply with the statute, can we agree that would have been a major defect which would have resulted in Saint Francis not ultimately signing this contract? I mean, we wouldn't have offered the contract.

**BO BOTELHO:** That's correct.

**MARNIE JENSEN:** I'm going to ask just some really top-level questions and then turn it over to Chairman Arch, but you were here for Ms. Smith's testimony this morning and perhaps even familiar with her January 2021 testimony where she said, you know, nobody in DHHS knew that Saint Francis had underbid the contract. So in everything that you have done both to prepare for today and since January of 2021, do you believe it is true that no one in DHHS knew that Saint Francis underbid the contract?

**BO BOTELHO:** Yes, if you're asking if we believe that they were misrepresenting their ability to perform this contract, then I don't think anyone at that time believed that. They affirmatively said they have the bodies that their cost was "apportionate" to what we needed to get done and that they would meet the requirements and they could do it at the cost. They said it directly to us. And at that time, I don't think there was anyone who had any information that would refute that. So we, we took them at their word, if that's what you're asking.

**MARNIE JENSEN:** Mr. Botelho, you're very experienced in state procurement and in particular within DHHS and DAS and I'm not. I haven't done the jobs that you've done. But as just a person coming to this and looking at the facts before me, it does seem very, almost preposterous to think that a bidder could do the same work for 40 percent less. Did, did that enter your mind at any point in 2019, just how can Saint Francis possibly do this contract for 40 percent less?

**BO BOTELHO:** So the, the question was asked, and the impression of, of CFS was that the cost with Saint Francis would have been comparable to what their own cost would be.

**MARNIE JENSEN:** CFS's own cost?

**BO BOTELHO:** Yes.

**MARNIE JENSEN:** Please finish. I didn't mean to interrupt you. But so what, what analysis was done with respect to-- well, I'm going to go back, I think we talked earlier. The Stephen Group report indicated that PromiseShip's cost was within 100 bucks a, a, a kid, right, of the state's cost. So those, those things don't really compute for me. Then if CFS had determined that it could provide the services for 40 percent less and that that somehow made sense for Saint Francis' bid,

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that doesn't add up to the finding that PromiseShip was only \$100 more. Are you tracking that?

**BO BOTELHO:** Yeah, I understand what you're saying.

**MARNIE JENSEN:** I don't understand how those things can both be true. Can you help me?

**BO BOTELHO:** I don't know what the Stephens Group report based their information on so I can't, I can't speak to that or how they quantified that. What I know is what the program was expressing at the time, which would have been the CFS.

**MARNIE JENSEN:** That's helpful. I, I think at this point, I don't have any more questions for the witness, so I'll turn it over to Chairman Arch--

**ARCH:** OK.

**MARNIE JENSEN:** --for any questions he may have.

**ARCH:** Thank you. Yes, I have, I have two questions, and I want to go back to something that you said earlier, almost at the beginning of your testimony, where, where you, you talked about the relationship with PromiseShip, and, and I think that I, I, I, I wrote it down, the structure is difficult to manage. That's, that's a difficult relationship of that lead agency or the, or the case manager or a private agency. And I guess I'd like your opinion on this, and this, this is just an opinion, but you've-- you have been around and you've seen privatization. Is, is there an inherent conflict when, when the case manager also provides services? And maybe I can--

**BO BOTELHO:** I understand what you're saying, Senator, so when you have a case management entity--

**ARCH:** Yes.

**BO BOTELHO:** --who is then providing services to itself.

**ARCH:** Yes.

**BO BOTELHO:** I would, I would say there would be almost no incentive to manage that cost. Right? And that's part of the structure that it's one reason why it's difficult to assess cost or manage cost. Right? You have a, a vendor, let's call that a vendor that's entering into

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contracts for services. But those, those payments, those payments of those services aren't paid by the, the vendor. Right? Those are reimbursed by the state. So the state is reimbursing for all these, regardless of who's providing those services, the state is reimbursing that cost. The vendor then enters into these agreements at whatever it negotiates that cost, there's not a lot of incentive for that vendor to try to drive that cost down. In fact it, it may "disincent" that in its entirety.

**ARCH:** I, I agree, and I, and I, I think that even further than that, the conflict of, of what the case manager is tasked with versus what a provider is tasked with is quite different. The provider wants to provide services. I mean, that's, that's what they do. Case manager has a different, has a different task. And I, and I, and I think about the 35 percent cap on direct provision of services that's in statute and, and why that would be in statute. And I, and I, and I say this conflict of I'm a provider and I'm the case manager could be, could be part of that. Any comments on that?

**BO BOTELHO:** I'm not sure why that was, was there. It would prevent the vendor from providing services themselves. There had to be a reason for the Legislature. I'm not sure.

**ARCH:** OK. Second, second question, and this is just for, for clarification. I got a little confused when we started talking about deviation RFP, a deviation from the RFP versus what I would, what I would term nonresponsive, which I'm assuming would be defined as a material defect. And so the, the glossary of terms in the RFP for the deviation, it talks about any deviations from the RFP in sections two through six must be clearly defined by the bidder in its proposal and if accepted by the state, will become part of the sub award. Any specifically defined deviations must not be in conflict with the basic nature of the RFP requirements or applicable state or federal laws or statutes. So there's provision for that and, and earlier it says the state reserves the right to waive any deviations or errors that are nonmaterial. But, but when you, but when you-- kind of to, to Marnie's question about when you see some of the-- I'm not sure what you would call them, but the case ratio, the 25 to 1, the 50/50 self-performance, staffing plan changes, those types of things. Now I'm-- and I guess this is now with, with your legal hat on. What would you characterize those as? Deviations? Would you characterize those as deviations? Or I'm just trying to, I'm trying to understand how the state saw this, this RFP that did not comply.

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**BO BOTELHO:** So they did two things. They, they affirmatively said, we're going to comply with these requirements and then in their technical solution, they proposed a solution that was inconsistent with that. The technical solution is evaluated by this, this group of evaluators, right? And the way this RFP was, was set up-- you can structure RFPs in many, many different ways. You can structure it such that you have a series of go, what I call go, no goes, right? Will you do this? And, and they go through that and say yes, no, yes, no. And depending on the yeses and noes where they are, you stop right there. This RFP didn't have that type of structure. It asked for how are you going to solve this problem? Right? Which the bidders then put in there what their solution was. Those solutions were evaluated. The evaluators took that information and, and, and scored it. They, they scored the, the, the bid as is assuming that it, it was a-- an alternative. Those scores then come up and you compare that with the Ts and Cs. Evaluators don't see the terms and conditions. Those, those aren't evaluated. You can have a, a, a vendor that takes exception to every term and condition. That's not considered in the award decision. You then have to go and negotiate every single, single one of those. So when this thing comes up, it goes to the, the program, the division, the, the bidding agency, which is Department of Health Human Services, CFS. They're reviewing these, these, these bids and, and the scores. They then make a recommendation to, to DAS. I don't know what the consideration was at that time to that, that, that ratio. I do know that they bound themselves to meet that ratio.

**ARCH:** So did I understand you correctly to say that the evaluators then did not evaluate against compliance? They-- that wasn't the way the RFP was written.

**BO BOTELHO:** No RFP is, Senator. The, the terms and conditions are submitted by the vendor, but that's not part of the evaluation process. Those, those are left to-- those come to me in, in legal to then review the exceptions and then we negotiate those, those, those exceptions. And, and the cost doesn't go to the evaluators, at least not the ones that are, that are evaluating the technical solution. They don't see that. They, they get the-- oh, I don't know what the components are, this corporate overview, there's the technical solution, which is the biggest part of it, and there's other, other components. So they're evaluating that. Typically, it's the same group that evaluates all those sections, but you could have different ones as well. And I can't remember what we did for this one. Then the cost under the Nebraska model is, is really an objective evaluation, right? You have the cost, they get scored and you decide how much points

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you're going to give to the cost proposal. The, the low cost gets the most points and then there's a formula that's a DAS formula that then divvies out points from that total based on where you are with the high and, and you just come up with a point score. That's added in to the other components. And that's your high, and that's how you determine your final score. But the Ts and Cs, the terms and conditions, those, those-- are we going to agree to these statutory requirements? That's not evaluated, that's left to us to negotiate.

**ARCH:** OK, that's helpful. I mean, I would use the term quality. The quality, the quality is not part of the evaluator's process. It is, it is-- nor is necessarily statutory compliance. It, it-- it's a different evaluation. So even when it comes to the cost evaluators, the cost evaluators were not evaluating on reasonableness of cost. It was, it was-- did-- you know, are they, are they costing it appropriately? And I use that term loosely, but I--

**BO BOTELHO:** Depending on how you structure your cost proposal, you can ask for different things in your cost proposal. I'm not sure how this cost proposal was, was structured, but really the evalua-- the scoring of cost is based on the number. Right? It's, it's, it's an extremely objective evaluation, high to low or low, low to high.

**ARCH:** OK. And it, and it, it's a formula. I mean,--

**BO BOTELHO:** It is.

**ARCH:** --it, it adds up. And that's, and that's the number. Now when, when that, when that-- when those evaluations are complete, is that when it comes to you for determination of, of compliance with statute or when does that get raised to your attention?

**BO BOTELHO:** It, it goes to the what-- whatever would be the director, whoever is making that decision as to whether or not to accept the scores or not. It goes to them. It doesn't come to me for the Ts and Cs until the decision has, you know, has been made. There is no consideration to how many exceptions vendors take to the, the state's terms and conditions in the award process. That's, that's left to us to negotiate. And sometimes negotiations take months to get through those, depending on the vendor and the amount of exceptions they take. Sometimes you can't get to resolution on that because there are certain components those Ts and Cs the state can't waive, like choice of law. Right? The state of Nebraska, sovereign state of Nebraska isn't going to agree to be held to the law of New York. Right? We're

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not going to give-- we just, we just can't do that. So you'll, you'll negotiate these Ts and Cs after the-- all the intent and all that has been done. That's when you get to that component and you either come to an agreement or, or you don't. If you don't come to an agreement, you move on to the next vendor, if there is a next vendor or depending on how long it is, and they may not even be willing to accept their, their, their bid.

**ARCH:** OK. Is there, is there a point anywhere along this process of, of award where there is a-- an actual decision made, yes, that is a responsive bid?

**BO BOTELHO:** Yes, when, when the, when the evaluations are done, once, once your evaluation is done, the scoring is, is done and those go to the, the decision makers, right? That's when that should be-- decision should be made. And if there's an issue with it, then it gets resolved there and then the state makes the-- the state has discretion in that to, you know, to an extent. I mean, case law in Nebraska gives procuring officials, you know, fairly broad discretion. But that's when that calculation would be made, right? The, the evaluations are done, everything's scored, the cost is in. We haven't even addressed Ts and Cs because, quite frankly, Senator, I don't think anyone considers the terms and conditions until after they decide they want to award this contract and then we have to go and try to negotiate these things. But that sort of response of a reasonable analysis would, would have to occur in that time when the evaluation's done and the state makes the decision as to whether or not we want to award.

**ARCH:** So prior to the, prior to the award, prior to the intent to award after the evaluation. And you said the decision maker, so not-- I, I assume not you, but rather the department director or whomever is in that chain of authority to make that call?

**BO BOTELHO:** Yeah, it's almost, I mean, legal doesn't-- our role is, is when to provide support and, and counsel and that we don't-- I don't have any-- legal doesn't have any contracts. If legal is bidding a contract as a division, then, then we would be making that decision. We're, we're part of that and we're consulted, but we don't award the contract.

**ARCH:** Is that a-- is that an, is that an actual formal decision? I hereby declare this to be responsive.

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**BO BOTELHO:** Well, it-- no. I mean, those, those types of-- the process doesn't have a, a, a second process, right? When you look at the Nebraska procurement process, you're, you're, you're relying on the procurement process. You're relying on the evaluation of these, of these bids. And, and there's this sort of reliance on, on that. The process itself is, is reasonable, right? You've gone through the bid process, you scored it. Then it goes up to the, the, you know, the decision makers, right? They're looking at the scoring result. They're relying on, on the scores and the evaluators. And in that time period, although it's not expressed anywhere in the process, you know, so, so to speak. Although, statute 73, if you look at-- not statute, section 73 in the statute, it, it, it lays out DAS and then it speaks to if it's an agency bid contract and, and in there expressly directs directors when they're making decisions, kind of what things they, they would need to consider. But that, that consideration, that calculation would occur postevaluation prior to intent to award.

**ARCH:** OK. OK. Well, given that there was an intent to award, whether it was part of the process, it was determined somewhere along the line that this RFP response was responsive, that the bidder was responsive or the intent. I mean, you say it's ahead of that, the intent to award would not have been issued.

**BO BOTELHO:** Right, it should not have been. Right.

**ARCH:** OK. All right, I'll pause there. Questions? Senator Clements.

**CLEMENTS:** Thank you, Mr. Chairman. Thank you, Mr. Botelho. The legal counsel mentioned a \$15 million adjustment. Was the contract increased by \$15 million?

**BO BOTELHO:** No. When-- which contract are we talking about and when?

**CLEMENTS:** With Saint Francis.

**BO BOTELHO:** The original award? No, in the original award, the contract, the cost was not increased.

**CLEMENTS:** All right. So the, the-- at the execution of the contract--

**BO BOTELHO:** They agreed that they would-- they could comply with the terms and conditions of the contract at the cost they bid.

**CLEMENTS:** OK, it was in, in the legal counsel's comments, it talked about a \$15 million amount. Do you know where that comes from?

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**BO BOTELHO:** Yeah, that comes from that email from when the original communication went from either DAS or DHHS procurement, saying that-- and I can't remember if it was in the original email, but in essence, they were trying to determine whether or not they would comply with the ratio. And there was a response back from Saint Francis saying that, you know, if you're going to ask us to add bodies that we're going to have to add money. If you're, if you're telling us we need to bring additional people to the table, then we need to add money. And I responded back saying, you can't add money. You, you have to meet the contract as is, or we're not going to award it to you, right? You can't increase your cost at the time of award. You either can do it or you can't.

**CLEMENTS:** OK. So then it was, you know, just executed without an adjustment and the original bid then was signed.

**BO BOTELHO:** Yes.

**CLEMENTS:** The contract. Thank you.

**ARCH:** Marnie, I believe you have another question.

**MARNIE JENSEN:** While we're talking about cost, Mr. Botelho, and I-- and I'm sorry if I've created some confusion, especially for Senator Clements here. The cost, or I guess the price that was going to be paid to Saint Francis did ultimately increase by approximately \$18 million in conjunction with that move update on the case transferred to October. Are you familiar with that?

**BO BOTELHO:** Yes, when we, when we, when we moved up the start date to transition the, the youth earlier.

**MARNIE JENSEN:** Yes.

**BO BOTELHO:** Yeah, so then you would have been paying for services and an earlier date.

**MARNIE JENSEN:** So while the overall, it's fair to say that while the overall contract increased by \$18 million, that was in conjunction with getting services for that increased cost that were not originally contemplated in the RFP?

**BO BOTELHO:** Correct.

**MARNIE JENSEN:** OK, thank you.

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**BO BOTELHO:** The, the, the, the start date was moved up so their performance-- contract performance date was moved up.

**MARNIE JENSEN:** I just wanted to clarify because I think that of those increases in numbers, and I wanted to make sure that that was clear that there was indeed a cost increase, but that was correlative to a provision of services. Thank you, sir.

**ARCH:** OK. Senator Kolterman.

**KOLTERMAN:** Thank you, Senator Arch. Mr. Botelho, thank you for being here today. I'm going to just switch gears on you a little bit here. My goal being on this committee has been, and I don't think there's any secrets, to upgrade the procurement process. And in fact, I brought a couple of bills to that regard. And even prior to me, Senator Schumacher brought some bills. At the time in 2019, I brought LB21. And the sole purpose of that bill is to put in place an appeals process so that if, if this happens again in the future, there's an appeals process that's outlined in statute that one could follow, and it, it makes it so that we don't move forward until the proper appeals have taken place. On LB21 in 2019, I had a whole, whole bunch of testifiers in support and there was only one testifier in opposition. And at the time, I believe you were legal counsel for DAS. Would that be correct?

**BO BOTELHO:** What year was that, Senator?

**KOLTERMAN:** 2019.

**BO BOTELHO:** No, I would have been in HHS.

**KOLTERMAN:** OK, well, you testified in opposition to that bill at that point in time. Then I brought another bill in LB61 in 2021, and Jason Jackson was the only one that testified in opposition. And the bill really didn't change. It just set the level from \$5 million up to \$10 million. I guess where I'm going with all this is as, as we have evaluated the process in the state of Nebraska and the process that we go through with procurement, we've looked at a lot of different models that a person-- that state could adopt. There's the American Bar Association model out there, which we have a little bit of that in ours and, and we've used some of that language, but there's also 49 other states. Do you feel, do you really feel after seeing this and Wipro and other items that have come about that our procurement process is really adequate? Or do you think there's too much-- and the

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second question is, is there too much discretion being placed on the process?

**BO BOTELHO:** So the procurement process itself is, is different than working-- what your appeal process would, would be, would be in essence a-- an APA type of, of hearing, right? That would occur after the procurement process so that, that gives-- it's a methodology of release. But all that's postprocurement, right? A protest is already postprocured by timing and the state has a protest process. It's just not under the APA. What-- if you're asking me, is the current procurement process really what it, what it should be? I, I would say that it's, it's old, right? We're, we're, we're operating on the, on the process itself that, in essence, is already 20-something years old and hasn't really been changed much. Not, not the protest process, but the procurement process, right? The needs of the state have evolved significantly since these statutes were written in, in 2000, right? Which means the types of services and contracts have, have changed dramatically. So I mean, if you think about it, you have all these pegs and those pegs would be your services. They're all different shapes and sizes, but you have only one hole to try to put those pegs in. You're moving all these procurements through the same process. The ESA contract, right, is this hybrid of a, a staff augmentation in kind of mixed with a subaward. It doesn't fit well in-- into a process that's really designed to procure commercial services, right, commercial type contracts, IT contracts, software as a service, which isn't a service. It's a, it's a lease of intellectual property. But that type of procurement doesn't fit well into the service process as well as the commodity process. So I think when you look at the state's procurement process, you have to understand-- and it's a paper process, it's all paper as opposed to any type of, of e-procurement. So you know, when you end up with, end-- you end up with a contract that's four binders, you know, consist of four binders and they're each three inches, four inches thick, that's because there's no way to really synthesize the RFP and yet resolve into what would look like a, a, a commercial contract, because it's all, it's all paper based. So I would not tell you that the state's procurement process is all that it can be. And I would not say that the state procurement process doesn't need to be modernized. What I will tell you is that the procurement process is different than the protest process.

**KOLTERMAN:** OK, and I, I appreciate that and I appreciate your willingness to maybe consider that. Then let's take a look at the appeals process. Under our current appeals process, there's really no, there's no legal avenue to approach that from, as I understand it, in

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the process. You have a process in place, would you explain how that works? Because the concern that I'm hearing from the general public, the people that are making-- putting together these multimillion-dollar proposals is that if we don't get the bid, there's really not a very good appeals process that we can utilize to appeal our bid. And let's take a look at 200 and-- in this case, \$218 million contract at the end of the day. Well, it costs a lot of money to put together a \$218 million contract. And if, if in fact, it's just going to go back to the internal process that DAS has established and they're-- you're going to have one person over here that says, yeah, I think they got a fair deal, there's no process that says they can appeal it right. And what we're saying is on any contract of \$10 million or \$5 million or more, there ought to be a process that somebody can utilize. Otherwise, what's going to happen is we're going to have these bidders that are not going to want to come and bid because they're thinking they're getting "homered" from the get-go. It's a done deal to start with. And so tell me about how, how the current appeals process works and why shouldn't we at least try to fix that, which LB21 and LB61 tried to do?

**BO BOTELHO:** So the current appeal process would be the, the DAS protest process, if DAS is bidding it. And if it's an agency bidding it, then they would handle the protest. But it should be conducted in, in basically the same manner as DAS would. There's, there's two stages, or it can be combined into one stage at the option of the protesting party. First stage is to the materiel administrator, who would be the one that would execute the contract, saying there's a problem. This is the problem, we want you to look at this. That's then reviewed. If they're not happy with the review of the materiel administrator, they can then appeal to the DAS director and, and have an in-person meeting with the DAS director if they want. The appeal to the materiel administrator is, is done via letter-- by, by, by paper. The DAS administrator then can make an independent decision of materiel administrator as to uphold the protest or, or not.

**KOLTERMAN:** But there's no really outside party looking at this and saying--

**BO BOTELHO:** No.

**KOLTERMAN:** --an unbiased party looking at this and saying, no, you're not getting a fair deal.

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**BO BOTELHO:** The state's procurement system is not within the APA, which is the Administrative Procedures Act, which is what you're referring to, which would go to a hearing officer. A hearing officer would make a, a, a decision and then you would appeal the no vote to the district court from a hearing officer's decision if you want to go further.

**KOLTERMAN:** So, so has, has the thought ever entered your mind that we could lose bidders in the future if we don't correct this? I'm asking for your opinion on that.

**BO BOTELHO:** I suppose that's, that's possible, Senator. I don't, I don't know how the protest process is, is figured in or considered by, by, by vendors. Oh, I, I guess I can't quit it, yeah, I suppose. When you're, when you're doing business with the state or a public entity, you're, you're constrained by that process. I imagine all of that is factored in to whatever their decision making is.

**KOLTERMAN:** And then I asked this morning of Director Smith when, when a, when a proposal is put together. And she indicated like in this particular case, DAS was involved with that and HHS was involved with that. They came together and they evaluated, both sides evaluated. But the final decision was made by DAS at the recommendation of HHS. I get all that. I asked her if, if, if anybody else was involved in that, I think I used the Governor's Office. I-- what I was really talking about was the budget director. Does, does a budget-- I mean, on contracts of this nature, would a budget director get involved with a \$200, \$250 million contract? And the reason I'm asking that is we've got another-- I mean, pretty soon we're going to have an RFP going out for Heritage Health, the renewal of Heritage Health, which is going to be multimillion dollars again. And I would think an item of that magnitude ought to have more than just HHS, DAS possibly, the budget director of the Governor's Office ought to be involved with that. Correct-- is that a wrong assumption?

**BO BOTELHO:** Those contracts and those services should already be calculated into the agency's budget. I don't-- the, the budget director doesn't sign off on a-- I guess if an agency has a question of cost, I, I am aware of instances where we've gone out to bid, by we, I don't mean HHS, I mean the state, because this would have been when I would have been at DAS, where they've gone out for bid for, for services. All the bids came in above what their budget could sustain and they had to reject those bids and, in essence, refine their RFP, ask for less to get it within their budget. So the budget

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determinations should be made prior to going out to procurement. You have a kind of an idea of, of like for the MCOs, they're, they're there, right? So we know that that's part of Medicaid's budget. So that would be calculated in through their financial officer and budgets are, are sent out to the Governor's Office and submitted by the Governor to the Legislature. So you have this budget that's approved already. But as far as an independent sign-off by the Governor's budget office on any particular RFP, they, they don't do that, Senator, not that I'm aware of.

**KOLTERMAN:** I'm just asking because I wanted to understand the process a little better.

**BO BOTELHO:** Yeah, it's up to the bidding agency to understand its budget and what it can sustain to the best of my knowledge.

**KOLTERMAN:** The other, the other thing I was told when we were doing our, our investigation of all this was that there's, there's probably 100 contracts over, over \$10 million a year, and they were concerned that this process of appeal would slow the whole thing down. But can you comment on that? Are there that many-- you worked at DAS, is there-- are there that many [INAUDIBLE]?

**BO BOTELHO:** There are a lot. Where you, where you would be concerned would be those contracts that require a continuity of service. Not every contract requires a continuity of service, but some do. They tend to be the bigger ones, Eastern Service Area is one that requires a continuity of service. The Medicaid contract, your MCO contracts require a continuity of service. The current protest process doesn't stop the state from moving forward, and I think you were talking about that earlier. It doesn't pause it. The state still can move forward with efforts during negotiations, execution, you know, whatever. If the protest process is going to pause that-- so if, if the pro-- however, if there is a new protest process designed, appeal process, if it pauses the actual award and moving forward the contract, your concern would be for those contracts that require a continuity, right? So you would, you would have to either move up your bidding process so that you're, you're bidding much earlier, accounting for some measure of time for maybe a, a prolonged protest process to ensure that you can hopefully get to the end of that prior to the expiration of the existing contract. You can, you can extend contracts under state law for one- half of the original term, but you can only do it once. So if you're already on an extension, you can't extend your incumbent. You could enter into an emergency contract with, with an incumbent for a

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period of time to get through this, but that, that would be the calculation that you would need to consider with the protest process that, that pauses the, the new award.

**KOLTERMAN:** So let's go, let's go back to where we--

**ARCH:** Senator Kolterman, can-- I'm, I'm concerned we're going to run out of time this afternoon.

**KOLTERMAN:** I just have one more question.

**ARCH:** OK. All right.

**KOLTERMAN:** So let's go back to the current process that we had in place here with back in-- we awarded this contract July 1, if, if I am correct. And prior to that, there was a, a protest made in June of that year, 2019, by PromiseShip. Would that have put, put, put you on record of knowing that, you know, maybe we need to have a stay on this so that they would have to keep their contract in place until that, that process was heard or that, that grievance was heard? Are you following my logic here?

**BO BOTELHO:** No, I'm sorry, I'm not.

**KOLTERMAN:** So as an example, they filed their complaint on June 14. They protested with DAS.

**BO BOTELHO:** Who's, who's they?

**KOLTERMAN:** PromiseShip did.

**BO BOTELHO:** OK. This is the most recent protest.

**KOLTERMAN:** Yeah. And then they, and then they, then they awarded the contract on July 3 of that same year. Knowing that there was a conflict that there was in place, why would they have awarded that? I guess that's where I was going with that.

**BO BOTELHO:** Who's they? DAS?

**KOLTERMAN:** DAS.

**BO BOTELHO:** There's-- there, there would be nothing stopping them to award that is what I would, I would tell you, Senator. I know there was a timeline that there was a lot of concern because of transition,

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that current contract with PromiseShip had already been extended, if I recall correctly, so we couldn't add time to it.

**KOLTERMAN:** So you couldn't extend it again?

**BO BOTELHO:** No, we couldn't. So I mean, the CFS had this timeline to sort of get [INAUDIBLE] of all these things that needed to get done for the purpose of transition. So they were very concerned about having time to, to do that. In regards to DAS, the protest itself doesn't pause the, the, the award, so there's nothing requiring them--

**KOLTERMAN:** But you could have signed an emergency contract had you needed to.

**BO BOTELHO:** We could have. Yes.

**KOLTERMAN:** All right. Thank you. Thank you, Senator Arch.

**ARCH:** You bet. Other questions? Senator Cavanaugh.

**M. CAVANAUGH:** Thank you. Thank you, Mr. Botelho, for being here. I wanted to go back to Senator Clements' question and, and counsel's sort of follow-up, the \$18 million that was given. I just did some quick math based on the cost proposals of Saint Francis Ministries and their monthly cost for that three months would have been \$9,400,000. So is there an additional reason that they were given \$18 million and not the, the \$9,400,000?

**BO BOTELHO:** I, I don't know, Senator.

**M. CAVANAUGH:** OK.

**BO BOTELHO:** I can go back and try to figure out how that cost was calculated.

**M. CAVANAUGH:** I think that would probably be helpful for everyone. Thank you. OK, and now this is a little bit longer. It's-- I'm, I'm kind of trying to put through here how we got to where we are on the evaluation part. So the evaluators only use the information provided to conduct their evaluation for scoring. Correct?

**BO BOTELHO:** The evaluators evaluate the bids and only the information. Yes, that's correct.

**M. CAVANAUGH:** Yes, OK. And then the cost is awarded using a formula.

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**BO BOTELHO:** Yes.

**M. CAVANAUGH:** The cost points are--

**BO BOTELHO:** Yes.

**M. CAVANAUGH:** Yes, OK.

**BO BOTELHO:** Yes. Yes, that's correct.

**M. CAVANAUGH:** The Stephens Group provided a cost analysis and you had stated that CFS, Child Family Services, determined that this cost was, was reasonable, disregarding the Stephen Group's analysis of what was a reasonable cost for these services.

**BO BOTELHO:** [INAUDIBLE]

**M. CAVANAUGH:** So, so the Stephens Group had the cost at around \$100, the same as DHHS providing it themselves, and our legal counsel asked about when-- why was it then decided to ignore that? And you said that CFS said that it-- this was a reasonable expense proposal.

**BO BOTELHO:** By this expense, do you mean the cost proposal by Saint Francis?

**M. CAVANAUGH:** Yes.

**BO BOTELHO:** Yes, they did.

**M. CAVANAUGH:** OK. And did you have conversations with at the time Director Wallen about that?

**BO BOTELHO:** No, not-- I mean, did, did I question it, did I challenge it? No, I did not.

**M. CAVANAUGH:** OK. So the decision was made to award with no basically an audit of the ability of the vendor to, to deliver on what they said in the bid. And my understanding is that from what you have stated here today, let me know if I'm misunderstanding, that, that their ability to deliver on the bid would be determined during the, as you said, T and C terms and contract?

**BO BOTELHO:** No. The terms and conditions of the contract, there are a list of basically, what Senator Arch was calling compliance, and that's probably a good way to put it. It lists out all the, the laws

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and regulations and other conditions that aren't subject to bid that the state's saying you have to do.

**M. CAVANAUGH:** OK.

**BO BOTELHO:** And then the vendor, when they submit their bid, they either check yes or no by, by all of those, those components.

**M. CAVANAUGH:** OK. So the, the vetting process of the claims of deliverable--deliverables is taken at face value from what the vendor says they can do?

**BO BOTELHO:** Yes, Senator, it is.

**M. CAVANAUGH:** OK. So my background is in nonprofit development, so I am familiar with nonprofit budgets and I'm looking at the Saint Francis budget, and the first year of the initial contract is 50 percent less than the rest of their years. And, and that, to me, is an immediate red flag that I would have asked why-- how can you provide new services, start this whole big transition year one at 50 percent less of what you're going to provide it in the cont-- that should be the most expensive year?

**BO BOTELHO:** I, I think the first year wasn't a full year.

**M. CAVANAUGH:** OK.

**BO BOTELHO:** So when, when the original bid came out, the first year for Saint Francis would not have been a, a full year. So their cost was just for whatever the portion the original bid would have asked them to provide service.

**M. CAVANAUGH:** But PromiseShip's cost was bid at a full year. But I'm-- I actually-- it's by month, so their monthly costs are less. Their monthly costs are \$1.3 million in the first year per month,--

**BO BOTELHO:** Um-hum.

**M. CAVANAUGH:** --and their monthly costs in the following years are \$3.1 million. That's what I'm talking about, not the full-- I mean, actually the full year then administrative costs, etcetera, are at 50 percent less as well. But I'm stating that this is, this is would have been a red flag and I'm not hearing any checks and balances as to how we would have not done this. And I guess I want to-- to, to our legal

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counsel's point, I don't understand how there was never a conversation with anyone within DHHS or DAS to say this doesn't look correct.

**BO BOTELHO:** So the, the first year in monthly cost, I think there was ramp-up time built into that contract, so that they weren't necessarily providing services. I, I can't remember. I'll have to go back and look at how that was structured, Senator. I don't, I don't really know. In regards to the cost itself, that was considered by, by CFS. They, they, they looked at that and, and they made a determination. The mechanics of the contract and how those-- the, the, the costing was required in that first year, I can find out and I, and I can get that for you.

**M. CAVANAUGH:** OK. But just to, to getting back to my point, I'm sorry, I kind of took me-- us away from my point is there was no point in this entire process where anyone stopped and, and actually determined, not taking it on face value, but actually determined if they could fulfill the contract.

**BO BOTELHO:** So that was all part of the consideration in, in the award. So even after-- I mean, even after the bids, the evaluations came in and, and the normal process was done and it goes up to the director and his team. That happens at that point.

**M. CAVANAUGH:** And is there documentation of how that was determined? Because I-- and I apologize if there is, I have not seen documentation that says they will have this X number of employees that are case managers paid X amount of dollars that you can do simple math. I mean, if you pay them \$33,000 and they get, you know, \$15,000 in benefits and multiply that by 110. You can figure out if their budget is real.

**BO BOTELHO:** No, if you're talking about was-- did the state attempt to reverse engineer the, the, the cost? No, we did not. I, I would-- I'm not aware of it, and I would be surprised if we did. In fact, I don't know if the state has ever attempted to reverse engineer to my-- best of my knowledge. That's just not part of the process that we've ever done. So I, I would suspect not, Senator.

**M. CAVANAUGH:** OK. I have a lot of more questions, but I think I'll stop for now.

**ARCH:** OK. All right. Senator McKinney.

**McKINNEY:** Thank you. How do I put this? OK, so I don't know if you have kids or not, but if you do, you-- you've been taking your kids to

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a daycare for X amount of years, and it, it comes a time where you're starting to search for other daycares. And just hypothetically, I'm just using a hypothetical, you spend \$1,000 a month on daycare. But then you go to this other daycare provider that says I could do the same care for \$600, \$400 less. Would you ask questions about how could you-- how is that possible or would you just say, wow, that's great?

**BO BOTELHO:** I, I, I don't know, Senator, I probably-- I mean, perhaps, yes.

**McKINNEY:** Because I, I ask this, because it seems like throughout this whole process, nobody ever took the time to step back and say, how is it possible for their proposal to be 40 percent less than PromiseShip and actually take a step back and ask, ask, ask them and ask yourselves, how is this possible? How is this going to get pulled off without negatively affecting the kids? And I just think that is something that, you know, is disheartening, that, you know, we have a department, departments, and organizations that, in my opinion, weigh the value of spending less over the value of making sure our kids were properly taken care of. Thank you.

**ARCH:** Other questions? I want to remind the senators we have two other testifiers coming. Other, other questions? OK. All right.

**MARNIE JENSEN:** I, I do think we committed to each witness to the opportunity to make any statements in closing. If there's anything in addition that you haven't had a chance to share, Mr. Botelho, this would be your opportunity to do it. I know we've covered a lot of ground. I'll encourage you to think hard about whether there is anything you haven't shared that you need the committee to know or would like the committee to know. But I do want to give you that opportunity.

**BO BOTELHO:** I, I don't have anything else.

**MARNIE JENSEN:** Thank you.

**ARCH:** All right. With that, thank you very much. Yeah. Thank you very much for your testimony today, Mr. Botelho. Appreciate you coming.

**BO BOTELHO:** Thank you, Senator.

**ARCH:** All right, our next testifier is not here at this time, so we're just going to pause for five minutes and we'll resume then at-- in, in five minutes. Thank you.

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[BREAK]

**ARCH:** OK, we will resume our hearing. And, Mr. Jackson, I believe that you are, are next up.

**JASON JACKSON:** May I sit?

**ARCH:** Please, yes, please, and thank you for coming today, and we're swearing in our, our, our testifiers today, so if you would raise your right hand. Do you swear or affirm that the testimony you're about to give to this committee is the truth, the whole truth, and nothing but the truth?

**JASON JACKSON:** I do.

**ARCH:** Thank you. You may begin.

**MARNIE JENSEN:** All right. Good afternoon, Mr. Jackson.

**JASON JACKSON:** Likewise.

**MARNIE JENSEN:** I'll, I'll maybe save us some time here. Although you weren't present this morning, did you have an opportunity to listen to at least the opening remarks this morning from the Chairman and kind of what our process is going to be today?

**JASON JACKSON:** I did.

**MARNIE JENSEN:** OK, thank you. So you, I'll say it again, my name is Marnie Jensen. I am special--

**JASON JACKSON:** It's a pleasure meeting you.

**MARNIE JENSEN:** --yes, you too, special counsel to the LR29 Committee. I'll give you the same warning I gave everyone. We're trying to stay fairly structured and stay on task. That desire is increasing as we get further and further into the afternoon. So with, with your testimony, I'll ask you to, to stay as succinct as possible, but we do want thorough answers to the questions. So if I interrupt you or one of the senators interrupts you, it's merely to sort of keep, keep things going. But we do want you to have the opportunity to say what you'd like to say today.

**JASON JACKSON:** Thank you.

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**MARNIE JENSEN:** Mr. Jackson, we did give particularly some of the witnesses the opportunity to make some opening remarks. We ask you to keep that to five to ten minutes. Although it's not required, do you have any opening remarks you'd like to make this afternoon?

**JASON JACKSON:** I do, and I expect I'll come in far under ten minutes.

**MARNIE JENSEN:** OK, fantastic. Yeah, go ahead.

**JASON JACKSON:** So thank you for the opportunity. Chairman Arch, thank you for the opportunity to be here. I-- if my memory serves, this is actually my first time in front of the HHS Committee. I'm generally in front of Government and Military. And so to that end, several of you, I haven't had the opportunity to, to meet before. So Senator McKinney, pleasure to meet you, sir. Senator Day, pleasure to meet you. And Senator Cavanaugh, pleasure to meet you as well. So thank you for affording me the opportunity to be here. My name is Jason Jackson, J-a-s-o-n J-a-c-k-s-o-n. I'm the director of the Department of Administrative Services. Generally speaking, Administrative Services is responsible for the back office business operations of state government. By state statute, we're organized with a number of divisions. So among those would be State Personnel Division, which basically administers all our HR processes; Accounting Division, which manages our accounting operations; Building Division, handles all our facility management across the state; Risk Management handles our insurance portfolio; Transportation Services manages our vehicle fleet; and of course, Materiel Division administers our state procurement of goods and services on behalf of our customer agencies. In addition to those agencies, we have a HR shared services team that supports 13 boards and commissions with their end-to-end HR needs, as well as our Center of Operational Excellence, which deploys to our various agencies to support process improvement efforts throughout the state. All ten-- all in, we have about 310 teammates across our agency. I understand this committee's work is particularly focused on Materiel Division. Materiel Division itself is organized into three components, so it has a Mail Operations Division, it has a, a Surplus Property Division, and then it has State, State Purchasing Bureau. We just kind of conversationally off-- often refer to the State Purchasing Bureau as State Procurement or just Procurement or Materiel Division. So I may lapse into just conversational language. And if at any point clarity is required, I'd, I'd be happy to, to try to offer that. To give you a sense of kind of the, the breadth and scope of Materiel Division generally, we administer about 700 contracts across the state with a total value of about \$6 billion. In any given year,

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we handle about 200 contracts on behalf of our customer agencies. To perform that work, we have a team of ten buyers and two supervisors generally organized into teams of kind of services and goods. So that kind of gives you an idea of just kind of how we're organized around the work. From a process standpoint, I think you heard several of the testifiers this morning, and I wasn't able to catch all of it, but some of the testifiers this morning spoke in some detail about the process. But just kind of at a high level, state law generally vests DAS and Materiel Division, specifically, with responsibility for goods purchases in almost every instance. And then it affords agencies discretion with whether or not to do their own services contracts or leverage DAS to perform those contracts on their behalf. In all cases in a services-related contract, and I think Dannette may have touched upon this this morning, when there's a \$50,000 threshold for an RFP. So it's, it's at that anticipated dollar amount that we would expect there to be a competitive bid process. And in every instance, whether or not a agency is partnering with DAS to actually conduct the process in partnership with them or whether they're administering it themselves, we would have an expectation that they're complying with the DAS process. To give you a sense, and, and, Chairman Arch, I understood your question and, and several of the questions of the committee to be less specific to this particular procurement and more, just kind of big picture of what does this mean for the total health of the process. Of those 200 contracts we handle in any given year, we see that 2 to 3 percent of those are protested. So about 97 percent of the time a contract doesn't result in a protest. Among those that are protested, DAS generally sustains the protest. In other words, decides on the side of the protester about a quarter of the time. So it's not a perfunctory process. It's a process that we take seriously and attempt to actually execute with a high degree of fairness and objectivity. That concludes my prepared remarks. And with that, I'm happy to respond to any questions you may have.

**ARCH:** Thank you.

**MARNIE JENSEN:** Thank you, Mr. Jackson. My questions are going to start with some background questions. I know you've just given some background, but I'll, I'll maybe go into a, a little bit more detail. When did you join the Nebraska Department of Administrative Services, which I will call DAS?

**JASON JACKSON:** Um-hum. I believe it was December of 2018.

**MARNIE JENSEN:** Eighteen, 1-8?

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**JASON JACKSON:** 2018. Yes.

**MARNIE JENSEN:** Eighteen, sorry. And did you join the role-- did you join DAS as director?

**JASON JACKSON:** I did.

**MARNIE JENSEN:** And what was your prior experience, in particular, with Nebraska's procurement process prior to joining DAS as director?

**JASON JACKSON:** I had no previous experience with Nebraska's procurement process.

**MARNIE JENSEN:** Did you have prior experience more generally with procurement, just not Nebraska's process?

**JASON JACKSON:** I mean, throughout my career I've had-- I've been in various operational and HR roles, both in the private sector and in the military, and had occasion to use various procurement processes in those organizations.

**MARNIE JENSEN:** Thank you. Generally speaking, you talked about approximately 200 contracts a year that DAS is involved with from a procurement standpoint. This is personal to you as director. Of those 200 or so, how involved are you? Like, what percentage of those are you personally involved in or overseeing or just asking questions about? Just any involvement.

**JASON JACKSON:** Yeah. So generally at the, at the point of procurement, no involvement. OK. And that's very deliberate, again, because our protest process stipulates that I am a second level of appeal if a protest were to arise. And so to that end, in an attempt to maintain objectivity and really just so if an-- if a protest were to come to my desk, it would be a matter of first impression. I don't involve myself in any specific procurements.

**MARNIE JENSEN:** Is that the-- would your answer be the same regardless of the amount related to the RFP? So I'll try to ask it a different way. The, the procurement process that we're going to talk about this afternoon is very significant just in terms of not just the import of it, but dealing with Nebraska's vulnerable children, but also the dollars attached. Do you get involved when those things are present, right, that there's more, the importance of if or the dollars attached? Do you personally get involved in those procurement processes?

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**JASON JACKSON:** No, there's no threshold of risk that would say, hey, I as a director need to involve myself in this procurement. If anything, I think the analysis would cut the other way. That the more momentous the contract, the more important it was, the more scrutiny it would likely to be applied, all the more so that we need to adhere to our process, which calls for me to not be involved and rather maintain objectivity. So in my experience in the two and half years that I've been a director, I don't have any recollection of involving myself in any contracts--

**MARNIE JENSEN:** OK.

**JASON JACKSON:** --until the point of protest.

**MARNIE JENSEN:** Thank you. Well, and so let's talk about this particular RFP process, this particular procurement process that resulted in Saint Francis and that ultimate contract, but especially the intent to award. Who at DAS had the primary responsibility and authority for that particular RFP process?

**JASON JACKSON:** That would be the Materiel Division Administrator.

**MARNIE JENSEN:** OK, and who was that in 2019? Do you know?

**JASON JACKSON:** It was Doug Carlson.

**MARNIE JENSEN:** And I understand Mr. Carlson is no longer at DAS.

**JASON JACKSON:** Correct.

**MARNIE JENSEN:** Do you know where he is today? Is he working somewhere else?

**JASON JACKSON:** Yeah, I think he took an opportunity at the university.

**MARNIE JENSEN:** OK, thank you. Just a little bit more background, Mr. Jackson, what steps did you take to prepare for your testimony this afternoon?

**JASON JACKSON:** Admittedly, not as much as I would have liked. We've been in the middle of negotiations with NAPE and FOP on increasing wages for our 24/7 facilities, and I hope some of you have seen the news that a welcome development just today that we were able to finalize an agreement with NAPE that would provide for raises of between 15 and 30 percent for our workers at our 24/7 facilities. So a

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very happy development there that's been monopolizing a lot of my time this week. So I hope the committee will extend me a little bit of, of charity because my preparation hasn't been as rigorous as I would have liked. I did do a kind of a cursory review of the PromiseShip protest. I also did a brief survey of what I understand to be the governing law and our procurement manual.

**MARNIE JENSEN:** Thank you, that's, that's helpful. And if at any point in the questioning, either by me or one of the senators, you think it would be beneficial to do a little bit more work and prepare something and, you know, we're happy to accept something after this hearing as well if that's--

**JASON JACKSON:** That's gracious of you. Thank you.

**MARNIE JENSEN:** --if that's beneficial. OK. Did you or anyone at DAS share or discuss the questions and topics provided in advance with any representatives from Saint Francis?

**JASON JACKSON:** Not to my knowledge.

**MARNIE JENSEN:** Now, Mr. Jackson, your office received requests for information from the committee through counsel. Are you aware of that?

**JASON JACKSON:** I am.

**MARNIE JENSEN:** And what did your office do to identify, review, and then provide documents satisfying those requests?

**JASON JACKSON:** I directed my team to fully comply. I understand that over a thousand records were presented to you at about an investment of about 60 hours of staff time. So it's my expectation that that has been fully complied with. Specifically, we would have looked at through our documentation retention records specific to this procurement, applied the date range that was provided by the committee, as well as the search terms that the committee provided that they expressed interest in, in understanding if there were any records that were on point for those.

**MARNIE JENSEN:** Thank you. Are you aware of any instances where potentially responsive documents had been destroyed prior to receiving the committee's request?

**JASON JACKSON:** I have no awareness of any destruction of any responsive documents.

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**MARNIE JENSEN:** Thank you. What role did your DAS Materiel Division play in developing the RFP itself that that ultimately resulted in the award to Saint Francis?

**JASON JACKSON:** I think that a previous testifier testified to that DHHS, our customer agency, would have developed the RFP. That's generally consistent with our expectations when an agency engages us for a services contract. They're the subject matter experts in terms of what they need from the procurement. It wouldn't be atypical for our Materiel Division to provide an agency with some sort of template or kind of a, you know, just a general outline of an RFP just to give them kind of a, a guidepost or a jumping off point for their own technical development. But the preponderance of the RFP development work would have occurred with the-- at the agency level.

**MARNIE JENSEN:** At DHHS in this instance?

**JASON JACKSON:** Correct.

**MARNIE JENSEN:** And what was your understanding in 2019 about which agency bore the ultimate responsibility for the fairness and legality of that RFP process?

**JASON JACKSON:** Yeah, if the question is to the process itself, that's the responsibility of DAS.

**MARNIE JENSEN:** What's the basis for that understanding?

**JASON JACKSON:** I think state law dictates that DAS is generally vested with responsibility for the processes around state procurement, generally. And that's our expectation.

**MARNIE JENSEN:** So there's been a lot of conversation and testimony this morning and even prior to today trying to understand who ultimately made the decision to award the, the, the-- to make the intent to award, which ultimately led to the contract with Saint Francis. The, the testimony this morning from Ms. Smith was that ultimately that is DAS's decision based on the recommendation that DHHS provided. Do you agree with that testimony?

**JASON JACKSON:** I would say it's a shared responsibility. I, I would say--

**MARNIE JENSEN:** A shared responsibility? I'm sorry, I didn't hear you.

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**JASON JACKSON:** Yeah, --

**MARNIE JENSEN:** A shared. OK.

**JASON JACKSON:** --a shared responsibility. That's right. I would, I would say that when we partner with a customer agency, both, both parties have a veto, basically. You know, DAS is responsible for the process, and that's where our subject matter expertise lives. The agency that we're-- that are-- is our customer, that's kind of my language, our customer agency, in terms of executing the procurement on their behalf, is responsible for the actual technical evaluation of if they're getting what they're buying. And so to that end, it's a shared responsibility.

**MARNIE JENSEN:** So I'll ask it as I've asked everyone, where does the buck stop with the decision to award the, the bid to Saint Francis? Does it stop with DAS or DHHS?

**JASON JACKSON:** Yeah, it's a, it's a bit of a curious question. I heard you present to earlier question. Frankly, I think it's atypical. I mean, it's antithetical to how we think about decision making, right? The question seems to presume a level of "territorialness" about decision making. That isn't how we conduct our business. You know, we regard it as a team sport and we all succeed or fail together. And I think as policymakers, that's the way you would hope it would be. I, I don't think you would want a process where DAS procurement professionals could overrule the judgments of subject-matter experts in the agency about what they're buying and what they're paying for and ultimately the program they're responsible for delivering. So I analogize it to like a law getting passed. Who's responsible for a law getting passed? Well, the Legislature votes on it and the Governor signs it. I mean, it's a, it's a shared responsibility. It doesn't happen without both. And that's the way we comport our business.

**MARNIE JENSEN:** So I'm not sure if you heard Mr. Botelho's testimony, but as I understood it, and this won't be verbatim. But as I understood it, in his experience, there have been instances where DAS does indeed question the subject-matter experts and says, you know, this is the recommendation. We are not taking your recommendation. Are you aware of those instances as director?

**JASON JACKSON:** I can't speak to any of Mr. Botelho's experiences.

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**MARNIE JENSEN:** So have-- well, have you had any experiences as director where DAS has indeed overruled the recommendation of the bidding agency?

**JASON JACKSON:** Well, I would answer the question this way. So I said 25 percent of protests get sustained. Right? So when a protest, and generally you could do the numbers, and six to seven protests a year out of about 200 contracts come to DAS for a review. OK, if a-- those contracts initially or the evaluators at the agency would have selected somebody other than who protested. And in 25 percent of the time we say we look at the losing bidder who's bringing the protest and say, hey, there's, there's some merit to your protest here. Now the reason there's some nuance to the response to your question is that doesn't necessarily mean we're overruling them, right? It might just mean that there's a defect in the process, in which case there's a lot of-- there's a number of remedies that are available to us to, you know, support whatever the agency's aspirations are, but still protect the integrity of the process. So, so I mean, that might be an indicator, if that's where you're going with your questioning, that might be an indicator, but I'm not aware of, of personally any instance in which State Procurement has gone back to an agency and said, no, you're wrong. Our, our judgment is better than yours with respect to what your program is and what you need. And as a consequence, you need to subordinate your judgment about your program and your needs to that of us as procurement professionals.

**MARNIE JENSEN:** So I think I understand your testimony, let me try to summarize and you tell me if I've done that correctly. Prior to the intent to award, you are in the period, in that period, you are not aware of any DAS involvement to, to change the recommendation that the bidding agency has made to DAS but after the intent to award in the event of a protest that has happened in approximately 25 percent of the protest times. So, so essentially, you do, I think I'm trying to clarify, substituting DAS's judgment for subject-matter experts doesn't happen prior to the intent to award, but there may be instances, and there are in fact instances where protests are sustained, which could be considered to be either a material defect or some other reason for the protest, not necessarily that you're substituting DAS's judgment. Is that fair?

**JASON JACKSON:** I'm sorry, Counsel. If your attempt was to clarify, I'm, I'm, I'm confused. I would just have my previous response stand.

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**MARNIE JENSEN:** That's fine and I think we can move on. I think your testimony is fairly clear, but I'm, I'm trying to get-- it is actually important for the Saint Francis process here to understand because there is--let me just check your knowledge here. You understand that between bidder one, which was Saint Francis and bidder two, which was PromiseShip, there was a 40 percent cost differential and those are a few responses. Do you have that understanding?

**JASON JACKSON:** I think I'm aware of that. Yes.

**MARNIE JENSEN:** OK. So, so I guess I'm trying to get at in what instance, if ever, would DAS step in and say 40 percent is a huge cost differential? Are the subject-matter experts doing what the subject-matter experts are supposed to be doing? Is there ever that instance where DAS would do that, or would you simply just wait until the protest process plays out?

**JASON JACKSON:** Yeah. I mean, and so I'm going to attempt to respond to your question. I-- the-- there seems to be a-- and just from the testimony I observed this morning, the sense that cost was the predominant factor here, right? So let me take a step back and just say, you know, what happens at award or rather evaluation. So the, the customer agency, in this instance DHHS, decides the totality of the criteria that it wishes to see evaluated, and it decides what weight to give each of those criteria. So in this instance, and forgive me, I'm being a little conversational, so I hope you'll just take this as directional. I believe cost was about 25 percent of the evaluation. So that would have been a criteria that DHHS would have decide-- decided. And which DAS-- excuse me, that would have been the criteria that DHHS would have decided and a weight of the total evaluation that DHHS would have decided. So this cost evaluation component is inherent in the evaluation portion, OK? So that's the-- at the agency level. That's an expectation of the subject-matter experts at the agency for the evaluation of cost. And so you're proposing this-- I'm characterizing this as a hypothetical because you're asking actual facts, but in any instance, speaking generally, based on my expectations as the director about how Materiel Division would conduct itself, we would have, we would have some, we would have deference to the subject-matter experts in that field about what they thought was the appropriate cost. I think some previous testifiers spoke at some length about the, the lengths that they went to just validate their presumption that the cost was reasonable. But in any case, because the cost is a component of the, of the evaluation of the bid and the age-- the customer, agency is deciding what that criteria is, what way to

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get it, and who the evaluators are, that's the responsibility of the agency to determine and we wouldn't substitute our own judgment for their judgment.

**MARNIE JENSEN:** And you wouldn't substitute DAS's judgment for the agency, just-- judgment with respect to those percentages and those weights either, is that fair? So DA-- DHHS, in this instance, said 25 percent and that's the weight?

**JASON JACKSON:** I'm, I'm not personally aware of any circumstance in which we would have dictated a different weigh-- weighting scale other than what the agency would have offered up for themselves.

**MARNIE JENSEN:** Do you have any understanding of whether DAS advised DHHS regarding whether to, whether to award the, the RFP to Saint Francis?

**JASON JACKSON:** I'm not aware of any discussions or conversations or recommendation originating from DAS to DHHS about which, which bidder to select.

**MARNIE JENSEN:** In fact, it's fair to say it went the other way. DHHS was recommending to DAS who ought to get the award.

**JASON JACKSON:** I think the record substantiates that.

**MARNIE JENSEN:** Yeah. So Mr. Jackson, you said-- and I don't, I don't mean to mischaracterize your testimony, but I do want to understand maybe that you, you aren't sure, with respect to this particular procurement process, whether cost was the predominant factor. Is that-- did I-- I don't want to mischaracterize, but do you have an understanding of whether cost was the predominant factor in this award or not?

**JASON JACKSON:** Well, I, I think the committee should have records that substantiate that it wasn't the predominant factor. So I-- all I have at my disposal is the same records that you have at your disposal and I believe that the rating scale were to cost 25 percent of the total, of the total points available. So I wouldn't substitute my own testimony for the record that you have in your fingertips, but if in fact it was 25 percent, I don't think it would be fair to characterize cost as the predominant factor.

**MARNIE JENSEN:** OK, understanding that. I think you were mostly referring to math there, so that does make sense. Do you have an

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understanding of the comparison between PromiseShip's bid and Saint Francis' bid in terms of who scored higher on which categories? Do you have a general understanding-- I'm not going to quiz you on it, but a general understanding of how PromiseShip's bid shaped up next to Saint Francis' in the varying categories, cost being one of those?

**JASON JACKSON:** I mean, if you'll content yourself with a conversational answer--

**MARNIE JENSEN:** Absolutely.

**JASON JACKSON:** --I, I have an understanding that, that cost was one of the factors-- about 25 percent-- that the balance of the criteria got into the actual ability of the vendor to perform the bid; the corporate work overview, the technical ability of them to-- actually to do the work-- basically, the substance of what it is they're going to be purporting to do and that there was-- that generally, Saint Francis Ministries scored below PromiseShip in those categories, but close enough that the cost disparity shifted the overall objective assessment into Saint Francis Ministries' favor.

**MARNIE JENSEN:** OK.

**JASON JACKSON:** That's my, that's my conversational understanding.

**MARNIE JENSEN:** No, that, that's helpful because I think as a committee and certainly as special counsel to the committee, one of the, one of the big questions for us is just kind of getting, getting down to the granular information because I will represent to you that in every single category except cost, PromiseShip outsourced Saint Francis, so I think that's a factual statement that most of us around the table know. And so if-- I think there's just a disconnect-- and if you can't connect it for us, that's fine, but I would ask you to try-- that if one bidder outscores the other on 75 percent of the categories and cost is weighted at 25 percent and that is the only category, you know, it-- does DAS have any responsibility in that instance to say hold the phone, subject-matter experts. We need-- speaking conversational, but, you know, we need to look at this. This doesn't really make sense here. Do you think DAS bears any responsibility in a situation like the one we have here?

**JASON JACKSON:** So, so your, your follow-up question was do we bear any responsibility?

**MARNIE JENSEN:** Do you think the DAS should have any responsibility or you could say any involvement? You don't even have to take the word responsibility, but, you know, when that is what the picture is that is presented to DAS on that recommendation, you know, is there-- I'll use Senator Cavanaugh's statement from earlier-- should there be some checks and balances when it comes back to DAS on the recommendation when the, when the situation is as I just described?

**JASON JACKSON:** So as-- what I understand your question to be is if on the other-- the, the general technical execution grounds, one vendor prevails, but they score below on cost, should DAS overrule the agency and award the bid to the more expensive provider? I, I don't presume that that's true and I don't know what information we would rely on to overrule the agency in that instance, but for information that they would be better care-- better positioned to understand if it was relevant or not. So I caught one of the earlier testifiers who said they looked at the cost and thought it was comparable to the way their services were done internally. I don't know if that's true or not and-- but, but that does-- that would be consistent with my expectation of the type of evaluation that would have occurred at the agency level because they have the, they have the subject-matter experts with the expertise in the field. They know what the service costs generally. They know what they've paid historically. They know where the market is going with respect to those services. They know the other partners that are out there. They-- and so-- and what's more is it's their budget and so to suggest that DAS, with no familiarity with any of those factors, should go in and overrule, no, that wouldn't be my position.

**MARNIE JENSEN:** Thank you for that. Who decided to deny the PromiseShip protest?

**JASON JACKSON:** I believe the-- excuse me-- I believe the Materiel Division administrator decided to deny the step one.

**MARNIE JENSEN:** Who decided to deny the Prom-- who decided to deny PromiseShip a protest meeting?

**JASON JACKSON:** I, I saw that question and I'm, I'm not aware that anybody denied PromiseShip a protest meeting.

**MARNIE JENSEN:** Do you have an understanding that PromiseShip requested a meeting relating to its protest?

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**JASON JACKSON:** Yeah. So as I understand, what occurred was there was-- that the protest was decided at the step one level. PromiseShip initiated an appeal to the DAS director, as our procurement process calls for. Before that appeal could be considered, PromiseShip initiated litigation, as is general practice throughout state government and I think in a manner that protects both parties. Once you've entered into litigation, now you're in an adversarial posture with respect to who you're litigating against. And in this instance, they were suing me in my official capacity as DAS director. And so just as a general practice, you wouldn't engage in kind of ex-parte communications with somebody that you're in an adversarial litigation with that's already commenced. And so when they decided to basically forgo the administrative remedy that was still in front of them in terms of appealing to me and initiate litigation, we, I think, communicated to them that we were just going to pause the, the protest meeting until such time as the litigation could resolve itself. So there was no denial of a meeting. It, it just contemplated that, hey, to protect both parties, we don't want to have these communications ongoing while the litigation is pending and we'll-- since you've decided to avail yourself of the litigation remedy rather than the administrative remedy, we'll pick this up after the litigation concludes.

**MARNIE JENSEN:** So just from a-- kind of digging into the timeline a little bit with respect to your last answer, so-- and I understand you don't have the timeline in front of you, but I do. So on 7/1, Mr. Carlson advised PromiseShip that DAS would need an additional ten days to complete its initial review of the protest. Are you aware that that letter had gone out saying we need an additional ten days?

**JASON JACKSON:** I am now.

**MARNIE JENSEN:** OK. I, I think my date is right, so let's represent-- I'll represent that it is.

**JASON JACKSON:** Yep.

**MARNIE JENSEN:** Two days later, DAS upheld the award and the five-year contract with Saint Francis was finalized and executed that same day. So just two days prior, Mr. Carlson indicated, you know, that the, that the protest process needed an additional ten days, but then the contract was signed two days later. So I think that timeframe-- and Senator Kolterman is not here anymore, but I'm certain he would want me to clarify this based on his prior questions with other witnesses--

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what-- why was that timeframe compressed into two days when the PromiseShip protest was still pending?

**JASON JACKSON:** I'm not sure I understand your question.

**MARNIE JENSEN:** So-- well, will you agree with me that once a contract is signed, is the protest process over?

**JASON JACKSON:** No.

**MARNIE JENSEN:** OK, so tell me why not.

**JASON JACKSON:** Because we can still adjudicate the protest and generally speaking, the contracts we enter into provide for termination for convenience for the state. So the state still has remedies available to us, even after it's initiated a contract, that it can avail itself of if the protest process were to proceed in parallel of actually effectuating a contract. And if we were to decide to uphold a protest, a protest, we would still have remedies at our disposal to address that.

**MARNIE JENSEN:** Is upholding an award the same thing as denying a protest?

**JASON JACKSON:** I, I can't say that I know.

**MARNIE JENSEN:** Is the decision to deny a protest solely within the discretion of DAS?

**JASON JACKSON:** Yes.

**MARNIE JENSEN:** What factors guide DAS in that decision to deny a protest?

**JASON JACKSON:** Again, I'll speak generally and conversationally if that's permissible. I would expect the-- basically to, to do our due diligence with respect to what is the protestant-- if that's the right word-- what is it that they're alleging within their protest? Was the process generally fair? Was the RFP addressed? Was the-- you know, it-- was the evaluation conducted properly? And just generally, whatever it is that the protest is alleging, was it contributed to unfairness? You know, here I would just generally refer to OK, what, what guides us in adjudicating these decisions? I believe it's 73-501, which is kind of the, the state's services contracts, which lays out legislative intent with respect to what is the legislator--

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Legislature trying to achieve with its statutory regime around services contracts specifically? And that kind-- that statute specifically says-- well, maybe more conversational, I'd say-- but I believe the factors that it lists are, are generally fairness, objectivity, transparency, and merit or performance and so we would use that as kind of our north star when we're adjudicating any type of protest or for that matter, when we're advising an agency about how to conduct a procurement-- is making sure that we're aligned with legislative intent around that.

**MARNIE JENSEN:** When you are considering a protest, whether you personally or folks in your department, do you consider whether the bidder to whom the award was given-- so not the protester, but the bidder to whom the award was given, do you consider whether that bidder was a responsive bidder, whether that bid was responsive or not?

**JASON JACKSON:** I would expect that responsiveness would be considered throughout the process, at the point of evaluation and at the point of protest consideration, particularly if the protester raised an allegation that the bid itself was nonresponsive.

**MARNIE JENSEN:** OK and I'll need to ask some questions about reasonableness, which I know-- if you heard Mr. Botelho-- and actually I should ask if you heard his, his definition or his, I think, explanation for reasonableness. He said that he thought reasonable meant that it was rational, fair, and in accordance with the normal course and sensible. Do you agree with Mr. Botelho's characterization of reasonableness?

**JASON JACKSON:** I think that's one possible definition of reasonableness. That's not generally the definition of reasonableness we apply in state procurements.

**MARNIE JENSEN:** What do you apply in DAS?

**JASON JACKSON:** Yeah, so the, the general rule is, is a bid more than a reasonably prudent person would have expected to pay under the circumstances? And so a reasonableness assessment, at least as DAS takes it, is actually an assessment for a higher threshold. There's generally no provision for an assessment of is the bid too low? What we're interested in when we do a reasonableness assessment is basically is the taxpayer being swindled? Is this bid too high such that somebody is being taken advantage of?

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**MARNIE JENSEN:** So here we're dealing with our state's-- some may say most vulnerable individuals, our children who are in care and in all of our care. And so in an instance where we are talking about child welfare, do you believe that the RFP process and in particular, the protest process needed to look at the reasonableness of the cost, even the reasonableness if it's too low for the, for the services provided? Do you think that that was an important consideration in the protest process?

**JASON JACKSON:** Well, I think-- so I saw Dannette's testimony this morning. I don't think anybody would represent that Dannette is inauthentic or insincere in the level of prioritization that she provides in terms of caring for children. So, you know, what-- I, I can't substitute my judgment for that of the agency about what their assessment of reasonable was or what its impact would have been on the total evaluation criteria that they arrived at. I do have-- I, I, I appreciate the committee because I haven't heard any second-guessing of anybody's motives, but I, I believe the state was acting from pure motives here. What I can speak to is what I understand, where my subject expertise lies, to whatever degree there is subject-matter expertise, is what does procurement law require? And procurement law generally again looks to that definition that I gave you. I think that assessment of reasonableness is interwoven throughout the evaluation period and particularly the cost component. I think Mr. Botelho spoke a little bit about what goes into that cost assessment and I can speak in a little bit more detail. But basically, as he said it's a formulaic analysis where the agency decides how much weight to give cost and that's appropriate. You know, is, is cost their primary factor because-- and I'm, and I'm speaking generally about any procurement, right, because I understand that's what this committee is interested in. I know you have a focus on Saint Francis, but I also understand that you're considering reforms to the procurement process generally. But it would be my expectation that the agency is deciding how-- what importance is cost relative to the criticality of the services that they're, that they're delivering? I think a 25 percent assessment-- I mean, in-- is almost any instance as reasonably defensible. So they're decide-- they're deciding what weight to give cost and then generally what happens-- just the math-- is whatever weight they're giving it, the low bidder gets 100 percent of those points and then the next bidder gets a percentage of those points based on their percentage of their proximity to the highest bidder. So that's how we arrive-- again, getting back to legislative intent, right, with 73-501 and just transparency and objectivity around cost.

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It's not a subjective assessment. It's a math problem. But reasonableness is interwoven in that, at least the definition that I provided you, because if a-- if we're doing an assessment and ultimately the low bidder is prevailing, we would say that would satisfy a reasonableness assessment that the, that the taxpayer is then being swindled for an exorbitantly high bid over and above what a reasonably prudent person would have paid in that circumstance.

**MARNIE JENSEN:** Thank you. I'm going to press you, Mr. Jackson, and I don't mean to be disrespectful, but I am going to press you and I'm going to use a different analogy or example than what Senator McKinney used with our last witness, but similar. If you came to me and you asked me to build you a house and, and it was going to be a 12-bedroom house with a pool in the back and a tennis court and I said I can do that for \$50,000 and you were using state funds, would you say to me, well, the taxpayers aren't getting swindled, so I guess that's reasonable?

**JASON JACKSON:** Counsel, I'm, I'm afraid I don't follow the hypothetical. Again, all, all subject-matter expertise, to whatever degree I have it, is just in generally, how does procurement law operate? That's how DAS shows up in terms of our consultation and partnership with our agencies. I believe that's how policymakers should want it. Again, I don't believe policymakers should want a gubernatorial appointee in Administrative Services reaching down and overruling subject-matter experts in our agencies that are most intimately familiar with the services or what they should cost. So I, I'm not sure about the house construction, but that's, that's just my, my general answer in terms of how I would hope we would conduct ourselves and what I believe policymakers ought to want from how our agencies are showing up in circumstances such as these.

**MARNIE JENSEN:** Thank you and, and I appreciate that. I was, I was pressing there and giving you, you know, a hypothetical that, you know, to me was pretty preposterous. But I think for folks on the committee and certainly myself, that the bid was 40 percent below the next highest bidder, I think is-- for me and my definition of reasonableness does not seem reasonable that these services could have been provided for that cost in light of the Stephen Group report and other factors. And so I think the committee is looking, you know, for any check in the system where there is a check on the subject-matter experts to say, look, are you really considering whether the services can be provided for the amount bid? And I think-- you know, I'll, I'll just pause and let you respond to that because I don't want to put

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words in your mouth, but it sounds to me like DAS doesn't believe that that is appropriate. And, and that's OK, I just want to understand if that is indeed the belief of DAS; we're not going to second-guess our subject-matter experts regardless of cost as long as the cost is not too high.

**JASON JACKSON:** Yeah and-- well, forgive me for being, I don't know, perhaps a little guarded because you're, you're using some language that's unfamiliar to me and we're covering hypotheticals and I take the seriousness of being under oath pretty seriously. Your question is-- I-- well, I, I take your question to mean does DAS provide any guardrails on a reasonableness assessment of cost? Again, from the process perspective, we would insist that the process is conducted and the process has guardrails on cost: you know, the, the criteria provided, the weight afforded it, we need to make sure that that is met, that the actual math of how it's conducted, again, is objective and fair and transparent for everybody to see. So to the question of are there no guardrails or what is DAS's role in providing guardrails, those are the guardrails that I identify. I think our-- DAS has a role in that. When you're using words like reasonableness that have a very clear legal meaning in procurement law, I just think it's important to be precise about that and, and so that's how we take that to mean, that's how we apply it at DAS. And again, I think, generally speaking, that's what the Legislature would have us do. The Legislature isn't interested-- and I know this is a very, you know, high-profile, volatile, important and-- but again, we handle 700 contracts in total at \$6 billion. That's a high level of public trust-- 200 contracts a year-- and so I'm burdened with not only, of course, being interested in this specific contract, but also just generally our procurement policy so this system as a whole works well. I understand that to be the interest of the committee as well and I don't think it would be consistent with legislative intent to just-- to say we shouldn't be assessing reasonableness based on a standard of, you know, people charging the taxpayer too much. And what's more, again, that's when we lean into from a contract law perspective and that's the standard being applied at DAS and that is interwoven into the actual evaluation process, so that's what I would say is DAS's role in that assessment.

**MARNIE JENSEN:** Thank you. Do the same guardrails that DAS applies or has-- the term guardrails-- do those same guardrails apply in terms of the procurement process and cost? As it relates to cost being too low or too high, would you apply those the same way?

**JASON JACKSON:** I'm not sure I understand the question.

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**MARNIE JENSEN:** Do the guardrails that exist-- do you believe the guardrails that exist guard against an award that is too low?

**JASON JACKSON:** OK. OK, so what I understand your question to be is, is there a guardrail against a bidder basically artificially submitting a bid that is too low? I think the guardrail that would exist in that instance would have to be, again, the subject-matter experts in the agencies. I think I've spoken at some length at this point about how DAS procurement professionals would be ill situated to know exactly what the market should bear and how much a service should cost, absent the subject-matter expertise of the agencies themselves. And so again, the procurement process calls for and the evaluation process calls for the agency to do that evaluation. And so if there were a defect to that extent, I would have an expectation that the agency evaluator would be-- would identify it. But again, as I think the testifiers earlier today said, they looked at the reasonableness. There was this question as to whether or not they compared it to their services in their own organization. Those were facts that were unaware to me, but to me, that, that seems to suggest the system working as designed, that the agency subject-matter experts that are the most familiar with what the cost should be would form a judgment based on the information available to them about whether or not the cost was reasonable.

**MARNIE JENSEN:** Are you aware of any instances where DAS has ever rejected the lowest bidder?

**JASON JACKSON:** I'm not personally aware.

**MARNIE JENSEN:** Mr. Jackson, are you-- would you agree with me-- well, I won't make you agree with me. Are you aware of the testimony that was provided to the HHS Committee in January of this year where I believe Saint Francis indicated that the contract was indeed underbid? Are you aware of that testimony?

**JASON JACKSON:** I, I didn't watch the hearing and I didn't see any testimony.

**MARNIE JENSEN:** Do you have an understanding sitting here today that the, the RFP by Saint Francis was indeed underbid?

**JASON JACKSON:** I, I-- yes.

**MARNIE JENSEN:** Because they came to this committee and asked for an emergency contract, right, you're aware of that?

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**JASON JACKSON:** I can't say what the foundation is for my belief about that.

**MARNIE JENSEN:** OK, so did anyone in DAS at any point in 2019 indicate to you that they knew that the contract had been underbid--

**JASON JACKSON:** Probably no.

**MARNIE JENSEN:** --that Saint Francis-- I'm sorry. Let me just clarify. Did anybody in DAS indicate to you that they suspected that Saint Francis had underbid the contract?

**JASON JACKSON:** I don't have any recollection of anybody giving me that indication.

**MARNIE JENSEN:** I think with that, in, in an effort to move forward and make sure the committee's questions are also asked, I'm, I'm going to pause. I don't think I have more questions, but I'll turn it over to Chairman Arch for maybe some additional questions.

**ARCH:** Thank you. Senator McKinney.

**McKINNEY:** Thank you. Thank you for your testimony.

**JASON JACKSON:** Yes, sir.

**McKINNEY:** I know you said the cost was only 25 percent of the, the whole thing, but still cost could have been-- the 25 percentage could have been higher than everything else. It's just 25-- the, the cost was just not the, the majority technically. And I, I want to try to put you in the shoes of somebody with a kid that's in the foster system. So just imagine that I am you and your kid is in the foster system and you're, you're curious about the case management and everything that goes on. So I guess my, my question is would you, as a parent or as a taxpayer, care more that Saint Francis could properly manage the cases or do the work at a lower cost?

**JASON JACKSON:** Yeah, so you're asking me to opine about what I would care more about as--

**McKINNEY:** Yes.

**JASON JACKSON:** --as a parent?

**McKINNEY:** Yes--

**JASON JACKSON:** OK.

**McKINNEY:** --or a taxpayer.

**JASON JACKSON:** Yeah, well, I mean-- yeah, so I, I am a parent. I, I think, Senator, we've, we've gone through some length to be authentic and sincere about the, the care and the importance that we place on the service to the children. To the question-- so the question is should cost-- would the care be more important? Absolutely and I think the evaluation here reflects that. The, the total care-- the total program was 75 percent, the cost was 25 percent, and again, that would have originated from DHHS. They would have decided that criteria. They are closest to the work. They care intimately about the children they're caring for and so they would have decided what level of prioritization to apply to cost and then how to grade that relative to the services that they were providing.

**McKINNEY:** So do you think we should be looking at the scoring system? Because from what I've gathered today and from what I understand, although care is supposed to be prioritized higher than costs, it seems like although PromiseShip probably scored better in being able to manage cases and take care of kids better, the fact that Saint Francis may have not scored as high with care as PromiseShip, the fact that they submitted a proposal with the 40 percent lower bid outweighed all that. Do you think we should definitely fix our scoring system?

**JASON JACKSON:** Well, so the scoring system is subject to the judgment and the discretion of the agency that's engaging in the service, so it's not a 25 percent calculation in all, in all circumstances. The agency that's procuring the service, again, decides what their criteria of evaluation is and then how much weight to give each of those criteria. So in this instance, DHHS decided that yes, the care for the children was the overwhelmingly most predominant aspect of their RFP and that was 75 percent of the weight. The cost component was 25 percent. Saint Francis was close enough in proximity to PromiseShip, such that the cost was the differentiating factor. But in my role as DAS director, I'm responsible for the system as a whole and the 200 contracts that we do every year and I'm deferential to the judgments of our agency subject-matter experts that were responsible for the programs for determining what cost-- what weight to give cost.

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**McKINNEY:** And, and I understand that but CEO-- CEO Smith earlier stated that DAS makes the recommendation and it's not them. So I guess it's who is responsible, who-- you or her?

**JASON JACKSON:** Yeah, I, I didn't catch CEO Smith say that. I, I-- what I understood her to have said is that DA-- DHHS makes the recommendation based on their evaluation, which is true. They do the-- they decide how much weight to give each of these factors, they do the evaluation, and then they make their recommendation on bid award based on that. Your question gets to, hey, are we placing too much emphasis on cost? And my response to that is the process allows agency directors to determine for themselves what weight to apply to that specific contract and it's entirely foreseeable-- again, I know you're interested in the Saint Francis contract specifically, but I also understand you're interested in state procurement more generally. I think it's entirely appropriate that agencies have the discretion to decide, in any particular instance, what weight to give cost. In some cases, cost may not be a factor at all, I don't know, or it may be a very small factor. In other cases, maybe their budget is tight. The service is not particularly critical and cost is the predominant factor. Again, I wouldn't substitute my own judgment for their expertise about what they're trying to accomplish and what their resource limitations are and so that's why the process, I believe, is designed to give those leaders who are most accountable for the results the discretion to make those determinations.

**McKINNEY:** So would it be fair to say that the department made the decision and you just followed their direction?

**JASON JACKSON:** I think I spoke to that when Ms. Jensen raised the question earlier. I really look at it as a collaborative process. DAS is responsible for the fidelity of the process. CEO Smith and DHHS as an agency is responsible for the evaluation. It's like air, food, and water. We can't have one without the other and live. These things go together, there's a mutual dependency, and what's more is that's how we show up as a team. We show up in a collaborative sense with-- you know, the expertise that DAS brings to the table is for the process. The expertise that they bring to the table is the actual evaluation in child welfare and I believe that's how policymakers should want it. Again, that, that places a veto with both parties consistent with legislative intent. Again, there's this legislative intent that the process be fair, objective, transparent, and performance based. We own making sure that's true. DHHS is best positioned to own the actual

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outcomes with child welfare and so we both need to come together with a mutual agreement on this contract.

**McKINNEY:** All right, thank you.

**JASON JACKSON:** Thank you, sir.

**ARCH:** Other questions? Senator Cavanaugh.

**M. CAVANAUGH:** Thank you. Thank you, Mr. Jackson.

**JASON JACKSON:** Yes.

**M. CAVANAUGH:** OK. Is there a typical cost percent-- when-- in all RFPs across the board for the state, is there an average of what-- how cost is weighed, what the percent is? You said it was 25 percent in here and I will actually correct-- it is not 25 percent. It is 28.4 percent--

**JASON JACKSON:** Thank you.

**M. CAVANAUGH:** --28.6 percent, in, in this particular RFP, but-- I'm sure you, you just estimated, but is there an estimate of what it averages typically?

**JASON JACKSON:** I, I don't have that estimate at my fingertips, but that is knowable to us, so my team can go back and, and look at just generally speaking, what is the general percentage that cost is applied across the breadth of a project?

**M. CAVANAUGH:** Would you say that this will probably fall in the middle of the road, at the high end, or the low end?

**JASON JACKSON:** I wouldn't hazard any estimate--

**M. CAVANAUGH:** OK.

**JASON JACKSON:** --because I don't know.

**M. CAVANAUGH:** All right, I will wait for that information. You have mentioned, both to legal counsel and to Senator McKinney-- and I, I apologize because I, I haven't quite followed the flow here. You said both parties have veto power, you don't think that's appropriate for you to overrule, and then there's the whole scoring process and the tabulation. And I just-- doesn't seem like anybody knows who's responsible for, for fact-checking and I understand that you're

talking about the context experts, which is DHHS, but the RFP is online-- available online. The scoring, how it's scoring is tabulated-- is also within that, that document, correct?

**JASON JACKSON:** Yeah, I believe, I believe the score-- the tabulated scores-- the evaluators' results of their evaluation is posted online and available everywhere.

**M. CAVANAUGH:** But how, how it is tabulated in advance, like, during the RFP process, RFP [INAUDIBLE] like, the whole RFP says cost is this-- tabulated this way?

**JASON JACKSON:** It's my belief that the bidders have advance notice of what the percentage of the evaluation is, but I am not certain of that. So if you'll afford me a little grace, I'll make sure and look into that.

**M. CAVANAUGH:** I believe it's on page 50 of the RFP, but I wasn't able to pull up the RFP, so I can't say that for certain either. OK and then the previous contract for PromiseShip and the amount of that contract, that is also publicly available?

**JASON JACKSON:** It would be my expectation that all contracts are publicly available.

**M. CAVANAUGH:** I apologize. I don't know-- I'm not a lawyer.

**JASON JACKSON:** Yeah.

**M. CAVANAUGH:** Do you have a law background?

**JASON JACKSON:** I do.

**M. CAVANAUGH:** OK.

**JASON JACKSON:** Not a very accomplished one, but--

**M. CAVANAUGH:** Well, I'm not here to judge that. But in the law, there is, as we've talked about here, a responsibility in due diligence, etcetera. If it is known that-- how the scores are calculated is online and what the contract amount has been is available online and somebody comes in with a 40 percent underbid who wasn't on the vendor list to begin with, what do we do to make sure that that is actually vetted? Because nothing that we've been told today by any party is that there's a process to vet that and that, to me, is like-- it's

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clear that should have been vetted. So what do we need to do as legislators to change that?

**JASON JACKSON:** Yeah, I'm, I'm uncertain. It's a very thoughtful question. I think I heard some of the earlier testimony cut a different way. So, you know, from, from my own perspective, like I said, this cost assessment and the actual ability of the bidder to, to conduct the work is interwoven throughout the evaluation process. What I heard the earlier evaluate-- the earlier testifier say was that they did evaluate that. I heard specifically that there was a sense that PromiseShip was-- in the-- in some history of service delivery for PromiseShip, they felt like they were spending too much, that they had formulated a basis of that understanding from their own knowledge of what child welfare should cost for those areas of service that they're specifically responsible for and that that had informed a judgment on their part that it was reasonable.

**M. CAVANAUGH:** Can I--

**JASON JACKSON:** That's what I understood from--

**M. CAVANAUGH:** --clarify that point because it was Mr. Botelho that said that--

**JASON JACKSON:** OK.

**M. CAVANAUGH:** --but he actually said that that was his impression from Mr. Wallen and Mr. Wallen has not been able to-- has not testified to that, so--

**JASON JACKSON:** OK.

**M. CAVANAUGH:** --I just want to clarify that we don't actually have verification that Mr. Wallen thinks that we were paying too much to PromiseShip.

**JASON JACKSON:** Understood. OK. Well, presuming the testimony that you heard was accurate, that would comport with my expectations about how subject-matter experts at the agency are assessing cost. And basically, are they getting what they're buying and is the vendor that they're working with capable of performing that service, and that that's interwoven throughout the evaluation process.

**M. CAVANAUGH:** So-- but what we did hear today is that it actually wasn't interwoven. They asked them if they could do it and they said

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yes and that was it. And there wasn't a financial audit done, there wasn't a performance audit, there wasn't a risk assessment. All of those things that are supposed to be done were not done in advance of entering into the contract.

**JASON JACKSON:** Those are facts unknown to me, so I couldn't speculate as to--

**M. CAVANAUGH:** Am I-- I'm accurate in what I'm saying, I believe.

**ARCH:** We've heard a lot of testimony today.

**M. CAVANAUGH:** Yeah, I-- sorry. So-- I'm sorry and I don't want to take up too much time, but I'm just trying to figure out-- and while we have you here, I'm hoping that you can help me understand because I spend much more time with DHHS than, than DAS and so I, I just-- again, I go back to what can we do because there's clearly-- there's something happening. There's a disconnect happening where you believe that DHHS is, is doing something and they believe that oh, this looks good, we will make this recommendation. You will probably vet it and tell us if it's bad or not. Like, where does the, where does the buck stop?

**JASON JACKSON:** Yeah. Again, so if you'll extend me a little grace of being conversational, a-- to me, I think this is a core question that your committee is analyzing, as I've reflected on this question myself. I would hope the committee would have some empathy for the hindsight being 20/20, that there is now facts in the record that you have at your disposal that were not at the disposal of the decision-makers at the time of this contract and based on the facts that were available to them at the time, this was a very defensible position. And just to kind of illustrate this, I mean, something I've thought about subsequent is imagine the alternative hypothetical. Imagine that there's an RFP, two bidders respond, both of them believe the process to be objective and fair. They have full knowledge about what should be included in the RFP. They make a price recommendation based on what they-- the price they think they can provide it for. The state does an evaluation of it using objective criteria that are known to everybody in advance and then the state preferences an incumbent bidder and selects the, the losing bidder at the expense of another provider that was going to charge the state \$40 million less. To me, that-- I mean, based on the information I've seen that was available to the decision-makers at the time, it's very hard for me to put it-- that would have been a scandal. That's not a defensible position and

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what's more is the results of that decision, if that would have been the preferred results, are entirely predictable. Saint Francis would have sued instead of PromiseShip and they probably would have won because the facts would have indicated that that was an arbitrary decision at odds with an objective evaluation process. And if I might, I'm not attempting to be glib, but I'd probably be here in front of a special investigative hearing today trying to explain why we wasted \$40 million selecting a bidder who was so obviously lower when all the objective information of the subject-matter experts in the agency indicated that the alternative choice were the appropriate choice. The membership of this committee would probably be different, but that's--

**M. CAVANAUGH:** I could, I could answer that question for you.

**JASON JACKSON:** OK.

**M. CAVANAUGH:** The department had a cost analysis done when they were forming the RFP that told them that the costs that they were currently occurring from PromiseShip was an appropriate amount, that it was equal to what the state would be spending if the state was doing it themselves. So we did know. We had a document, we commissioned this document, and everyone had it saying that the cost that PromiseShip bid was accurate, so that's the first very large red flag is that there's a 40 percent underbid and we know it's an underbid. We don't have to know anything else. We know it's an underbid because we asked what it costs to deliver these services. And so how do we make sure that we don't ever do that again? Because it's also costing the taxpayers way more than \$40 million right now.

**JASON JACKSON:** Those facts are unknown to me. I guess I would just have to hope that a court, when Saint Francis were to sue, would find that argument convincing, but those weren't facts that were available--

**M. CAVANAUGH:** But I'm asking moving forward, how do we stop this from happening again? How do we--

**JASON JACKSON:** Could you be more specific?

**M. CAVANAUGH:** --how do we get, how do we get DAS and the-- I can't remember what you call them-- the, the other agency that's participating, how do we get them to the point where they are talking to each other and making the decision in tandem, not taking a recommendation from one and accepting it without in-depth conversation

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as to is this appropriate? How was it vetted? I don't see-- I see that there were people-- individuals that were hired to score and I see that those scores were tabulated and I see records of, of some of the evaluators asking if they could check up to see if things could be done and they were told no. I don't see any point and I-- and I'm sorry, I will stop here because we are-- I'm carrying on, but I don't see any point in which there was communication about validating the application. And since you're the one that deals with the RFPs, I put it to you-- and you don't have to answer it today. I don't want to take up the rest of everybody's time, but--

**ARCH:** Senator Cavanaugh, I would say that's certainly going to be one of our deliberations--

**M. CAVANAUGH:** Yes.

**ARCH:** --is the answer to that question.

**M. CAVANAUGH:** Thank you.

**ARCH:** Thank you.

**JASON JACKSON:** I-- if, if I may, I, I guess I would just-- I think the, the record shows that it was collaboration. I think the testimony of me and my colleagues suggest a collaborative approach. If your question is specific to, hey, is there a legal remedy for a bidder who has dramatically underbid a contract? The answer to that is yes. The legal remedy is we cancel the contract. In, in 99.9 percent of all circumstances. So again, you're asking me to be here because of my expertise in the system, not in child welfare, in the contracting system generally. The state's remedy if a vendor underbids a contract and then subsequently can't perform it is to cancel the contract and--

**ARCH:** That's a tough, that's a tough remedy.

**JASON JACKSON:** Well, yeah and, and--

**ARCH:** But we, we've seen that, we've seen that in the past with some contracts. I guess I would say that, that from what-- the testimony I've heard today from you is that it's tough not to accept a low bidder.

**JASON JACKSON:** I think that's a fair characterization.

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**ARCH:** Yeah and, and sometimes we have accepted low bidders and then we've had to cancel the contract and it has not gone well, but-- I think particularly of, of Wipro. When, when that, when that happened and they were accepted and, and there was another bidder-- this is my understanding-- we got, we got into a similar situation, so--

**JASON JACKSON:** I'm not familiar with the circumstances of the Wipro contract.

**ARCH:** All right. Any other questions? Seeing none, thank you very much for your testimony today. Do you have some closing remarks that you would like to make?

**JASON JACKSON:** Yeah, thank you, Mr. Chairman. I understood that I would be afforded an opportunity.

**ARCH:** Yes.

**JASON JACKSON:** I would caution the committee that I think the line of questioning and the interpretation of the facts that I've experienced and I think my colleagues experienced seem to presume--

**ARCH:** Seem what?

**JASON JACKSON:** --seem to presume--

**ARCH:** Oh.

**JASON JACKSON:** --that-- seem to cut specifically in favor of PromiseShip having prevailed in the bid. I-- and what's more is the line of questioning, the interpretation of state contract law that I have, I've kind of heard as I have seen the committee's work today seems to-- I, I think would aid a very specific special interest and that would specifically be big law. And big law has been trying to uncrack our state statutes so that more contracts could be subject to litigation for many years. I think Senator Kolterman spoke to that. The-- that would have-- I don't particularly have any dog in that fight. I'm not at all territorial about this. It would be a lot more comfortable for me if I could just point to a judge and say they decide it. I don't think that should be what the committee is interested in. You know, however satisfying or unsatisfying this has been, at least you've been afforded an opportunity to hold leaders like myself accountable for the decisions that we've made. And if we were to open up our procurement process and our protest process specifically to litigation, that would basically absolve leaders like

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myself for any accountability for this and further remove the decision-making process from that of the actual subject-matter experts. What's more is that would advantage specifically incumbents. It would advantage the types of corporations that have large dollars, large resources, and large social capital. It would accrue to the detriment of the little guy. It would accrue to the detriment of rural business. It would accrue to the detriment of small business. It would agree to the detriment of minority-owned business that doesn't have the same access to resources, legal counsel, and social capital that incumbent and large players in the marketplace do. I heard some earlier testimony about, hey, do we believe or have we thought about a reform to the protest process and does our current protest process presumably deter market participants? Actually, we think about this all the time. That's why we oppose that legislation is because it would specifically shrink the number of market participants. Our protest process is objective. We take it seriously. As I mentioned, if we're assessing the breadth of our state contracting system, 200 contracts a year, only 2 to 3 percent of which are protested, and we sustain those protests 25 percent of the time, that's a quasi-- kind of just being conversational-- legal review that affords any market participant, regardless of their size, sophistication, access to legal resources, money, whatever an opportunity to be heard and to fairly adjudicate their decision. I fear that if this committee were to take into account a reform not just of the procurement process, but also the protest process, it would jeopardize that and really narrow our procurement processes in the favor of those large corporations and large bidders that are most advantaged by cumbersome legal processes and lengthy legal reviews.

**ARCH:** Thank you for your testimony.

**JASON JACKSON:** My pleasure, sir. Thank you all.

**ARCH:** All right, with that, we would ask Bill Clark if you would be willing to come up?

**WILLIAM CLARK:** Sir, how are you?

**ARCH:** Welcome. I would-- I'm sure you, you're aware we're, we're swearing in our testifiers today, so if you would raise your right hand? Do you swear or affirm that the testimony you are about to give to this committee is the truth, the whole truth, and nothing but the truth?

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**WILLIAM CLARK:** I do.

**ARCH:** Thank you. You may proceed.

**MARNIE JENSEN:** Thank you, Mr. Clark. Nice to see you again. We have met previously, so as you know, I'm Marnie Jensen. I am special counsel to the LR29 Committee. Mr. Clark, were you-- I didn't see you present earlier this morning, but were you at least listening to some of the testimony this morning?

**WILLIAM CLARK:** I was able to view the entire testimony.

**MARNIE JENSEN:** OK, thank you. Thank you. So you heard our process, but I'm just noting again that we, we may constrain you at times. I may interrupt you at times, but I do want you to be thorough in your answers. And I do-- I know it is getting late in the day, but with the committee's permission and especially the Chairman's permission, we do want to give Saint Francis an opportunity to fully answer the questions and present the testimony that you may have prepared today. So I'm, I'm not in a rush, even though it's exactly 4:00 p.m. as we get started. I know sometimes going last makes you feel like you don't get, you know, a fair shake and I, I want to make sure that you understand that's not going to happen even though we're late in the day. Mr. Clark, we are giving Saint Francis an opportunity to make some opening remarks. Just like we've-- other witnesses, Ms. Smith and Mr. Jackson, we ask you to constrain those to five to ten minutes if you have any. I'll ask if you would like to begin with some opening remarks?

**WILLIAM CLARK:** Yes, ma'am, I do have some I would like to proceed with if that's OK.

**MARNIE JENSEN:** Yeah, please proceed. Thank you.

**WILLIAM CLARK:** Chairman Arch and members of the Health and Human Services Committee and especially appointed legislative committee, I do appreciate the opportunity to present today. My name is William Clark, spelled W-i-l-l-i-a-m C-l-a-r-k, and I currently serve as the interim president and CEO of Saint Francis Ministries. Much has transpired since the last time I addressed the HHS Committee in January of this year, so I do value the occasion to be present today. As I begin my remarks, please know that Saint Francis Ministries has remained committed to providing full-service case management to the Eastern Service Area. This commitment has not wavered during

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unprecedented and turbulent times. In January of this year, I addressed the HHS Committee and owned that Saint Francis submitted a faulty bid when it bid on the ESA contract in 2019. Simply put, the bid was bad. The work to prepare the bid was not accurate. However, the contract was not maliciously underbid by Saint Francis. Speculation and false allegations of this nature are both unfounded and damaging. This form of rhetoric is simply false, not productive, and unnecessary. Clearly, there were errors in judgment by past senior leadership of the organization. However, the Saint Francis today cannot correct what transpired more than two years ago in the bidding process. We at Saint Francis have moved forward from this topic. The topic of gross mismanagement has also been addressed. We've been open and transparent about the situation to include addressing the HHS Committee in January and sharing reports with that committee and the Office of the Inspector General. To reiterate, those involved in this topic have been removed from the organization to include the former CEO, COO, general counsel, and CIO. Additionally, the Saint Francis work directors [SIC] has changed processes and procedures relating to governance to ensure nothing like this happens again. Much work has been done in this area during 2021. As part of this effort, the board of directors have changed. New board members have been added and another has departed. Audits have been conducted and have shown that Saint Francis did not use state funding for any nefarious, personal type expenses. Rather, those costs were levied against the organization's foundation. In January, I also articulated the financial mismanagement, mismanagement of the organization, the repercussions of that mismanagement, and the major areas of financial concern that Saint Francis was immediately facing. Today we are at a place of financial stability. Our monthly cash flow clearly indicates this stability. At this point in time, our focus in the Eastern Service Area is truly on providing healing and hope to children and families. In other words, on program delivery. One of the main points of contention with Saint Francis has been our inability to meet the caseload ratio required by statute. We agree that the best outcomes for children and families are more readily achieved with low caseload ratios. However, this caseload ratio requirement has never been met by entities within the ESA. Caseload ratios have consistently been a challenge within the ESA and throughout the child welfare industry as a whole. Just as it is today, employee recruitment and turnover are the primary reasons for this problem. Truthfully, this challenge is nationwide across child welfare. The American Network of Community Options and Resources, in their recent 2021 State of America's Direct Support Workforce Crisis Survey, stated that 77 percent of providers

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are turning away new referrals, which is at 16.7 percent since the start of the pandemic; 58 percent of providers are discontinuing programs and services, a 70.6 percent increase; 81 percent of providers are struggling to achieve quality standards, an increase of 17.4 percent during the pandemic. Three of ten providers report spending at least a half a million dollars annually on costs associated with high turnover and vacancy rates. And 92 percent of providers report that the COVID-19 pandemic continues to complicate their stability and their ability to recruit and retain qualified direct-support professionals. Even with that, Saint Francis is meeting the contract metric of 95 percent of monthly face-to-face contact with youth. The key statistic is more aligned towards safety and preventing maltreatment. On average, workforce turnover within child welfare profession is more than seven times the national average when compared to turnover in other professions. The historical challenge of workforce stability are being compounded by current events. Despite a concentrated effort by Saint Francis to attract and retain case managers, personnel shortages continue to be the central issue that impacts contract performance. The state's unemployment rate, according to the Nebraska Department of Labor in August of this year, was just 2.2 percent, which is 3 percent lower than the national unemployment rate of 5.2 percent. The reality is, however, is that negative unemployment exists in Nebraska. Worker in all fields are not readily available. Workforce availability is our greatest challenge. Saint Francis has been aggressive and innovative in our hiring strategy to combat this unprecedented employment environment. These efforts have included multiple hiring fairs, employee retention bonuses, referral bonuses, bonuses for fully trained case managers, performance bonuses, salary increases, establishing a mentor program, and social media campaigns just to state a few. With all that, we still continue to explore all options to adapt and expand our hiring process to the employment environment of today. Also of note, under the contract for the Eastern Service Area, DHHS is allowed to retain payments to Saint Francis if certain metrics are not met. DHHS has chosen this option and is currently withholding nearly \$2 million in payments due to Saint Francis. This is money that could be used for hiring bonuses, retention bonuses, and the like to help solve the employment challenge. In these times of unprecedented challenge, all avenues to correct employee shortfalls must be utilized. The state as a whole is weathering the same challenge and is using large recruitment bonuses and other benefits to attract and retain employees. Numerous requests to DHHS have been made regarding releasing the retained funds in order to provide necessary funding for attracting and retaining employees.

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Additionally, current, current pay rates must be adjusted to keep and attract employees or social welfare organizations will continue to lose employees to other entities such as Costco and Walmart, whose pay structure is just simply higher. Today the requests to return the retained funds have not been honored. Solving the challenges at hand requires a sufficient workforce. The, the key ingredient is currently absent. A continued nonflexible approach towards solving personnel challenges will only result in the status quo. The pandemic's impact on this world has been immense and must be considered. In Nebraska, turnover rates reached new monthly highs that were two or more times higher than historical measures during the first half of 2021. The pandemic was and continues to be a significant barrier across the state for hiring and retaining a sufficient quantity and quality of qualified staff. COVID-19's impact on Saint Francis' ability to perform services continues as of today. There is no question that Saint Francis is not satisfied with our current performance. We will always be committed to improving outcomes. However, children remain safe today in the Eastern Service Area. The commitment and dedication of the Saint Francis team members and the ability to shift resources in an unparalleled environment shows the power of a privatized system. Even with the challenges just mentioned, the Annie E. Casey Foundation, a national nonprofit devoted to developing a brighter future for children and young people, ranked Nebraska children as seventh in the nation on overall child well-being. By way of comparison, in 2014, the foundation ranked that Nebraska was ranked tenth nationally and ninth just last year. With Saint Francis responsible for 45 percent of children in the state welfare system, Saint Francis' performance has had a significant positive impact upon this improved ranking. I will conclude my opening remarks just as I began. Saint Francis owns its mistakes. We have remained committed to providing full-service case management to the Eastern Service Area. Throughout the unprecedented conditions of the COVID-19 pandemic and historic employment challenge across the state and country, Saint Francis has remained steadfast and dedicated to the work at hand, providing healing and hope to children and families. At this point, I stand ready to answer any questions.

**ARCH:** Thank you, Mr. Clark. Marnie?

**MARNIE JENSEN:** Yes. Mr. Clark, I'm going to start, as I have with all of our testifiers today, with some background questions. When did you join Saint Francis Ministries, which I will just call Saint Francis?

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**WILLIAM CLARK:** Yes, ma'am. I became a member of the Saint Francis team on November 1, 2019.

**MARNIE JENSEN:** And what was your role at that time?

**WILLIAM CLARK:** My role was as the chief of staff and in my purview, I was responsible for support type services of the organization that included facilities, safety, security, risk management, transportation, HR, IT, and quality assurance.

**MARNIE JENSEN:** And so did you have any role in the development of the original RFP response that was submitted by Saint Francis?

**WILLIAM CLARK:** No, ma'am, I did not.

**MARNIE JENSEN:** And did you have any role in the submission of any materials in 2019 that Saint Francis provided to DHHS with respect to the award or the contract, any-- anything, understanding that you did actually work at Saint Francis in 2019?

**WILLIAM CLARK:** No, ma'am, I did not.

**MARNIE JENSEN:** Prior to joining this as chief of staff in November 2019, did you have any relationship with Saint Francis in your prior role?

**WILLIAM CLARK:** I previously served as the president of St. John's Military School. St. John's Military School merged with Saint Francis Ministries in September of 2019. I knew the leadership of Saint Francis Ministries at the time through that merger.

**MARNIE JENSEN:** OK. Prior to that merger, did you know Tom Blythe?

**WILLIAM CLARK:** I did, as we were in the same town.

**MARNIE JENSEN:** So you know him personally, but not professionally or--

**WILLIAM CLARK:** Prior to starting the merger and work, I knew him professionally.

**MARNIE JENSEN:** And the same question with the individual who I think everybody knows as Father Bobby, did you know Father Bobby prior to you coming on as chief of staff in November 2019?

**WILLIAM CLARK:** I knew that he was the president and CEO of Saint Francis, but nothing personally.

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**MARNIE JENSEN:** And what is your current role at Saint Francis?

**WILLIAM CLARK:** I currently serve as the interim president and CEO of the organization.

**MARNIE JENSEN:** Is there any, I guess, view toward taking the interim off of the interim role for you?

**WILLIAM CLARK:** I think that's a decision by my board of directors.

**MARNIE JENSEN:** What duties do you have as the interim CEO?

**WILLIAM CLARK:** I'm responsible for all facets of the organization: program delivery to financial and personnel management, all support services that fall within the corporation.

**MARNIE JENSEN:** When did you take on-- when did you assume that role of interim CEO and president?

**WILLIAM CLARK:** Approximately the 28th of October of 2020.

**MARNIE JENSEN:** Mr. Clark, what steps and actions have you taken to prepare yourself to give your testimony here today before the committee?

**WILLIAM CLARK:** I have met with select former employees no longer with the organization. I have met with current leaders of the organization who have knowledge of the process and I have reviewed some internal investigative reports.

**MARNIE JENSEN:** Can you please share who-- the former employees with whom you met to prepare for today?

**WILLIAM CLARK:** The former vice president of programs, Diane Carver.

**MARNIE JENSEN:** Ms. Carver, who I think you've probably heard us discuss earlier--

**WILLIAM CLARK:** Yes, ma'am.

**MARNIE JENSEN:** --good. Well, I'll save those questions, so good, good to know that you've spoken with Ms. Carver. Did you share or discuss any of the questions or topics provided to you in advance of the hearing with any representatives of the state, specifically with DHHS or DAS?

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**WILLIAM CLARK:** No, ma'am.

**MARNIE JENSEN:** There's been some, there's been some discussion, I think, relating to the requests for information that were, that were propounded from the committee to Saint Francis. Are you aware of those requests for information that were submitted to Saint Francis from the committee?

**WILLIAM CLARK:** Yes, ma'am.

**MARNIE JENSEN:** And were those requests for information-- and just so that everybody understands, some of those were submitted informally and some of those were submitted through subpoena, is that accurate?

**WILLIAM CLARK:** Correct.

**MARNIE JENSEN:** And I just want to clarify with respect to both of those categories-- I'll lump them together-- what did your office-- what did, what did Saint Francis do to identify, review, and prepare documents that then were submitted to the committee?

**WILLIAM CLARK:** When we first received, we'll say the informal request, we met with members of this team to include yourself to review to make sure there was clarification on what was being asked and required. And once we completed that, we assembled our leadership team to go through the requirement. We divided who had what responsibilities. They then in turn collected documents that were required then submitted them to the organization's legal counsel who became a point of contact for this effort. That included our IT department going through and scanning the system, doing some manual checks. Once the information was put together, it was then in turn submitted accordingly.

**MARNIE JENSEN:** And I think I asked this, but that is true of both documents, responsive to the informal requests and to the subpoena?

**WILLIAM CLARK:** Yes, ma'am.

**MARNIE JENSEN:** With respect to the information available to the committee, I do just want to clarify with respect to the subpoena, did Saint Francis do-- did Saint Francis perform a good-faith search for internal communications between its former CEO, former COO-- that's Reverend Smith and Mr. Blythe-- and the state of Nebraska?

**WILLIAM CLARK:** Yes, ma'am.

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**MARNIE JENSEN:** And anything that was discovered, was that provided to the committee?

**WILLIAM CLARK:** Yes, ma'am.

**MARNIE JENSEN:** Mr. Clark, are you aware of any instances where responsive documents may have been destroyed prior to the committee's request or the subpoena being received by Saint Francis?

**WILLIAM CLARK:** I am not. I have no knowledge of anything being destroyed.

**MARNIE JENSEN:** There's been-- and, and destroyed is perhaps a tough word, so let me kind of ask the question a different way. In some of the documentation that's been provided to the committee, there is a discussion of, you know, a loss of documents related to some IT issues or server error. I'm, I'm not trying to mischaracterize it, but can you speak to your knowledge with regard to what documents, if any, just simply may not have existed at Saint Francis?

**WILLIAM CLARK:** In November of 2019, Saint Francis had a server crash, in which a substantial amount of documentation was lost. What was inside of that, I can't attest to. We have worked diligently on the financial side to rebuild that to make sure we can comply with the financial statements, audits, and so forth.

**MARNIE JENSEN:** And the timing-- it was November 2019-- did that occur prior to you joining the organization or at the same time or after?

**WILLIAM CLARK:** It happened at the same time. I started on the 1st. If I remember properly-- correctly, the server crashed on the 4th.

**MARNIE JENSEN:** That's helpful. Mr. Clark, do you believe that Saint Francis has fully complied with its obligation to provide information pursuant to the subpoena to this committee?

**WILLIAM CLARK:** I do. Yes, ma'am.

**MARNIE JENSEN:** Without reservation?

**WILLIAM CLARK:** Without.

**MARNIE JENSEN:** Mr. Clark, I'm going to move us into some specific questions about the procurement process. I know and I'm familiar with your testimony from January and I think I'm speaking for myself as

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special counsel. I appreciate the, I think, directness with which Saint Francis and you in particular has taken responsibility for the, the bid. I think you've handled that very directly, but that doesn't mean we don't still want to ask you questions about that and understand how we got to where we are today and also where we were in January of this year. So I'm going to start by asking whether you, whether Saint Francis-- before I do that, I do want to clarify. I understand that you were not there for the RFP response-- based on my understanding, but also what your testimony was today-- but the, the subpoena for testimony today was directed to Saint Francis. So when I'm talking to you, I really am asking for Saint Francis' knowledge, understanding that you probably don't have your own having not been there, but I do want to encourage you to answer my questions on behalf of the organization that's the entity subpoenaed today.

**WILLIAM CLARK:** Yes, ma'am, I understand that.

**MARNIE JENSEN:** OK, thank you. So did anyone at the state of Nebraska ask Saint Francis to submit a bid in response to the RFP?

**WILLIAM CLARK:** To our knowledge, no. Saint Francis was doing work in western Nebraska and became aware of the opportunity.

**MARNIE JENSEN:** Did you have an under-- did Saint Francis have an understanding of-- that there had been a vendor list prepared with respect to the RFP?

**WILLIAM CLARK:** No, ma'am.

**MARNIE JENSEN:** Regardless of whether-- well, I'll set aside-- assuming there were no conversations affirmatively requesting Saint Francis to submit an RFP response, were there any conversations between DHHS and Saint Francis prior to Saint Francis' RFP response about the RFP response, setting aside western services?

**WILLIAM CLARK:** Not to my knowledge.

**MARNIE JENSEN:** And I'm going to ask, with respect to Senator Cavanaugh's questions that she submitted to Mr. Jackson, was Saint Francis aware of how much weight would be given to the cost portion of the RFP at the time it submitted its original RFP response?

**WILLIAM CLARK:** I was not aware. I have not discussed that with my team members.

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**MARNIE JENSEN:** And a similar question, whether Saint Francis was aware of the costs that PromiseShip had been providing those services for leading into the RFP?

**WILLIAM CLARK:** I do not know if they were aware or not. I was not.

**MARNIE JENSEN:** And I know this sort of came up today. We may ask you to provide--

**WILLIAM CLARK:** I understand that.

**MARNIE JENSEN:** --additional answers after the hearing with respect to those. I think it is, you know, an important issue that's sort of come up this afternoon that-- I think we would be curious with Saint Francis' knowledge on those, those two items. But getting into the submission of the bid, was Saint Francis aware of Nebraska's procurement manual prior to submission of its RFP response?

**WILLIAM CLARK:** Not fully. Saint Francis understood the requirements in western Nebraska from a provider CPA perspective, not necessarily from a lead agency perspective. Elements of the procurement panel were reviewed and not in totality.

**MARNIE JENSEN:** And what, if anything, did Saint Francis team members do to familiarize themselves with the manual and the processes that were going to be used during the RFP process?

**WILLIAM CLARK:** There were select team members who, as I mentioned, would review parts of the procurement manual. There was a team put together to develop the RFP. The team also conducted a site survey. There was select members of that team up to Nebraska, specifically the Eastern Service Area, to speak with providers who were serving in the ESA.

**MARNIE JENSEN:** What agency did Saint Francis believe was the decision-maker?

**WILLIAM CLARK:** Saint Francis believed that DAS was the decision-maker.

**MARNIE JENSEN:** What was that based on?

**WILLIAM CLARK:** Previous experience in other states that Saint Francis had seen prior.

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**MARNIE JENSEN:** Was there an understanding at Saint Francis that DHHS was the evaluator?

**WILLIAM CLARK:** Understanding at Saint Francis was DHHS was really responsible for the programmatic or operational aspect of the contract. The decision for the contract itself came from DAS.

**MARNIE JENSEN:** OK. And did Saint Francis have an understanding-- we've heard some testimony here today and I think maybe we still don't have the answer as between DHHS and DAS, but what did Saint Francis believe DHHS's role was with regard to the decision to award? I understand we're talking about sort of program management once it is awarded, but what did Saint Francis understand DHHS's role was in the award?

**WILLIAM CLARK:** I'm not sure Saint Francis understood what their role was in the decision-making process.

**MARNIE JENSEN:** Was Saint Francis aware of the Nebraska statutes governing caseload ratios prior to submission of its RFP response?

**WILLIAM CLARK:** No, they were not.

**MARNIE JENSEN:** When did Saint Francis become aware of the statutory caseload ratio requirements?

**WILLIAM CLARK:** They became aware in two times: one when PromiseShip voiced an objection and the second time was when a negotiation process with DAS/DHHS transpired.

**MARNIE JENSEN:** So just, just to clarify, PromiseShip filed a bid protest on June 14, 2019. It-- I will characterize it as sort of highlighting the 25 to 1 caseload ratio that, that Saint Francis' bid contained. And so was that, for Saint Francis, the first time that Saint Francis understood that 25 to 1 caseload ratio did not meet statutory requirements?

**WILLIAM CLARK:** Correct.

**MARNIE JENSEN:** And then you mentioned in the sort of contract process-- and we heard Mr. Botelho's testimony. Are you specifically referring to the process that led up to the clarification meeting in June of 2019?

**WILLIAM CLARK:** Correct.

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**MARNIE JENSEN:** So just general overview, how did Saint Francis prepare its bid? What went into that, what effort went into that?

**WILLIAM CLARK:** As I mentioned, they assembled an RFP team. That RFP team consists of team members from the program side, finance, HR, training, systems improvement. Select members of that team then conducted a site visit to the Eastern Service Area. They met with providers to gain a better understanding of the environment and expectations. They then came back. The team reassembled and upon reassembling, they then worked to create the RFP.

**MARNIE JENSEN:** Mr. Clark, do you believe that Saint Francis understood the RFP requirements at the time it submitted its bid?

**WILLIAM CLARK:** I do not. I believe that when Saint Francis put the RFP together, they really took their experience in western Nebraska from a provider perspective rather than as a lead agency. I think that Saint Francis has learned that the work in Nebraska is different than the work in Kansas and Texas, for example. The RFP at Saint Francis was put together quickly. Consultants or experts were not utilized in forming the RFP, so there was some due diligence that was lacking when they put the RFP together. From the program side and those members that I've spoke to, they believed that they were creating an RFP that would introduce Saint Francis to the state of Nebraska really from a case management perspective.

**MARNIE JENSEN:** Do you believe that Saint-- well, did Saint Francis understand the historical costs of providing services in the ESA at the time it submitted its bid?

**WILLIAM CLARK:** They did not.

**MARNIE JENSEN:** Internally at Saint Francis, did, did Saint Francis anticipate a loss on the Nebraska contract as a result of its bid?

**WILLIAM CLARK:** Can I take a step back and clarify the last question just quickly--

**MARNIE JENSEN:** Absolutely.

**WILLIAM CLARK:** --if that's OK with you? The answer is still no and I think there's a further explanation to that being warranted. Saint Francis did not understand what we refer internally as the 65-35 rule. There was an expectation that the work would be done internally rather than having to take 65 percent of the work outside of the

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organization, so they did not understand the cost concept. As far as your question regarding did Saint Francis expect a loss on the contract, the answer is yes.

**MARNIE JENSEN:** And what, if anything, did Saint Francis-- I mean, was there a plan to mitigate that loss?

**WILLIAM CLARK:** I don't believe at this point I'm in the position to answer that. When the RFP was put together, there was discussions once they found that the intent to award came to Saint Francis. There was recommendations by team members not to move forward because of the financial concerns.

**MARNIE JENSEN:** So let's talk about that. Who-- to whom were those recommendations made?

**WILLIAM CLARK:** The CEO and COO.

**MARNIE JENSEN:** And obviously those recommendations were not followed?

**WILLIAM CLARK:** Correct.

**MARNIE JENSEN:** And do you know who made those recommendations?

**WILLIAM CLARK:** They came from the program side as well as from the finance side.

**MARNIE JENSEN:** Did, did anyone at Saint Francis-- any individual at Saint Francis, at the time the RFP was submitted, stand to personally benefit financially from securing this contract?

**WILLIAM CLARK:** Absolutely not.

**MARNIE JENSEN:** Did anyone at Saint Francis at the time of the intent to award have personal or business relationships with any Nebraska state employees that were involved in the award decision?

**WILLIAM CLARK:** No, ma'am.

**MARNIE JENSEN:** Did anyone at Saint Francis at the time of the intent to award have any business relationships with any Nebraska governmental officials?

**WILLIAM CLARK:** No, ma'am.

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**MARNIE JENSEN:** At the time of the award to Saint Francis, did Saint Francis consider itself a responsible bidder as defined under the Nebraska statutes?

**WILLIAM CLARK:** Yes, ma'am.

**MARNIE JENSEN:** And what was that based on? How, how is, how is that, I guess, determined?

**WILLIAM CLARK:** When you go back and look at the definition of which I reviewed-- I do have a copy of it in front of me. And when they looked through the characteristics of that, which was much deeper than just the cost perspective-- what are the top five aspects of that and when they looked at themselves from performance and so forth, they saw themselves in the response [INAUDIBLE].

**MARNIE JENSEN:** Today-- so that was at the time of the award-- today, does Saint Francis believe that it was a responsible bidder as defined in the statute?

**WILLIAM CLARK:** I would not have signed the contract.

**MARNIE JENSEN:** So I'm going to press you. Is that, is that a yes or no?

**WILLIAM CLARK:** That's I would not have signed the contract.

**MARNIE JENSEN:** Saint Francis was awarded the contract. There was an intent to award in I guess June of 2019, June 3. What was Saint Francis' reaction to being awarded the contract, understanding-- well, what was its reaction internally and operationally?

**WILLIAM CLARK:** I think there were two different perspectives. From the program side and the finance side, there was surprise that they were awarded the contract and there was concern. From the senior leaders that were there, there was also surprise in that Saint Francis was being awarded the contract, but yet there was excitement that they had been awarded the contract. Belief at the time when the intent to award was made was that the contract was a good contract for Saint Francis, including financially from the senior leader perspective.

**MARNIE JENSEN:** At any-- well, at what point in time after the intent to award were concerns raised that you just described, I think a moment ago, that, that we should not move forward with the contract? At what point was that flag raised within Saint Francis?

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**WILLIAM CLARK:** I can't give you an exact date, but I would say based on my conversations, in the relative near term after the intent to award was made.

**MARNIE JENSEN:** Perhaps-- is it fair to say it was in the June 2019 timeframe?

**WILLIAM CLARK:** I think that's a fair statement.

**MARNIE JENSEN:** OK and Mr. Clark, at any point, did anyone at Saint Francis tell anyone at the state of Nebraska we should not move forward with this contract?

**WILLIAM CLARK:** To my knowledge, they did not.

**MARNIE JENSEN:** Did anyone at Saint Francis advise senior leadership that if the, the contract moved forward, right, that if, that if the contract was signed that Saint Francis would not be able to meet its obligations under the contract?

**WILLIAM CLARK:** There was discussion that the contract was not financially sound. To my knowledge, there was no discussion at a more programmatic perspective they would not be able to deliver, but rather that the contract, as we discussed just a few moments ago, would be a financial loss for the organization and that was a concern.

**MARNIE JENSEN:** With respect to the concerned-- the concerns raised, as it relates to the intent to award and then the concerns relating to we should not sign the contract, were there discussions about not just the finances, but the impact on Nebraska's children if Saint Francis were to be given the contract, there would be a negative outcome on Nebraska's children?

**WILLIAM CLARK:** To my knowledge, those discussions did not happen.

**MARNIE JENSEN:** So the focus-- is it fair to say that the focus with respect to moving from intent to award to contract internally at Saint Francis was about cost?

**WILLIAM CLARK:** To my knowledge, yes, that's an accurate statement. And I look programmatic, there was and still remains today that Saint Francis can take care of children and families in the Eastern Service Area.

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**MARNIE JENSEN:** To clarify, I think before we sort of move out of this area of questioning, Mr. Clark, I think your testimony was that the senior leadership believed it was a good contract for Saint Francis. Can you clarify what you mean by that or maybe expound on that? A good contract in, in what way?

**WILLIAM CLARK:** I think they felt that it was viable, that they could find a way to financially, satisfactorily move forward.

**MARNIE JENSEN:** Can you explain the-- I'm going to, I'm going to talk now about a little bit more detail with respect to the RFP proposal and in particular, we're going to talk about that caseload ratio issue. So can you explain what is the dyad model?

**WILLIAM CLARK:** The dyad model is actually a best practice. It's best suited where providers for services are not available. A dyad team is an all-encompassing, two-person team to perform the work partnered with a child: parent visits, transportation. They do all the visits together. It provides a second set of eyes to do the work. It allows the organization to move to a ratio of 25 to 1 because you have two workers who can focus across the expanse of the caseload ratio.

**MARNIE JENSEN:** Would the dyad model as proposed in Saint Francis' RFP response ever have provided a ratio that was going to meet Nebraska's statutory requirements?

**WILLIAM CLARK:** To my knowledge in the way that the RFP was bid and submitted with the number of personnel in there and the costs associated with it, no.

**MARNIE JENSEN:** So just to state that another way, even with the dyad model, Saint Francis was not going to get better than 25 to 1.

**WILLIAM CLARK:** Saint Francis, at the time they submitted the RFP believed that the dyad model was acceptable, that the 25 to 1 ratio, which is normal course of business for Saint Francis, they thought that was acceptable when they submitted their RFP.

**MARNIE JENSEN:** And, and we know from your prior testimony that 25 to 1 was not acceptable, correct?

**WILLIAM CLARK:** Correct, 17 to 1 is the state statute.

**MARNIE JENSEN:** There has been some testimony today and some information provided to the committee that in the late June 2019

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timeframe, there were questions raised by individuals at the state of Nebraska relating to whether Saint Francis could meet the statutory caseload requirements. Are you familiar with those communications?

**WILLIAM CLARK:** I am. They're dated the 24th of June.

**MARNIE JENSEN:** OK. And so I-- in particular, we heard some testimony from Mr. Botelho today relating to those communications where I believe the state said to Saint Francis, will you meet the statutory requirement and the response from Mr. Blythe at Saint Francis was we will meet the statutory requirements provided that our cost proposal is increased by \$15 million. Is that a fair summary of the response from Saint Francis?

**WILLIAM CLARK:** Mr. Blythe stated that they would meet the requirements, but in doing so requested an additional \$15 million to meet that, to which the response back was we cannot change the cost on the contract.

**MARNIE JENSEN:** Right, so on-- and, and I do want to make sure-- and if you need to refer to it, it's, it's next to you in that white binder. If you don't have it, I think it's tab 1 in director-- or sorry, CEO Smith's testimony from January. But the response back from Mr. Blythe is, I think, very, very specific. It states that Saint Francis will switch our proposed model to a case management staffing model, which would provide one case manager for 12 to 17 cases. That's the statutory requirement, correct?

**WILLIAM CLARK:** You're correct. I'm looking at the email traffic.

**MARNIE JENSEN:** Yeah, OK, great. And then Mr. Blythe says in order to make this change, Saint Francis will need to increase our cost proposal by \$15 million for the life of the contract. Do you view that statement by Mr. Blythe as a request or a statement that to do the statutory requirements, \$15 million will be required?

**WILLIAM CLARK:** I believe that Mr. Blythe is stating that to change the model, it will cost an additional \$15 million and it needs to be added to the contract cost.

**MARNIE JENSEN:** And the response from the state, as you noted, was you cannot increase the cost.

**WILLIAM CLARK:** Correct, the response was any increase in cost would invalidate the bid. In order to, in order to be a valid bid, Saint

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Francis would have to meet the requirement the cost proposed and accepted in the bid.

**MARNIE JENSEN:** That communication from Ms. Walton at DAS was sent to Saint Francis, it was-- is dated June 17, 2019. There was a meeting held on June 26, 2019. Are you familiar with that meeting, Mr. Clark?

**WILLIAM CLARK:** If I can take a step back, please?

**MARNIE JENSEN:** Sure, please do.

**WILLIAM CLARK:** You mentioned that the communication from Ms. Walton was dated June 17. The one that I have and I'm tracking was dated June 24.

**MARNIE JENSEN:** Apologies, the original communication--

**WILLIAM CLARK:** OK.

**MARNIE JENSEN:** --setting forth the requirement was June 17. You're correct. The response back, yes, was June--

**WILLIAM CLARK:** Just making sure we're looking at the same--

**MARNIE JENSEN:** Yep, yep. Sorry about that. Is it Saint Francis' view that the conversation between Saint Francis and DAS relating to the caseload ratios and the \$15 million request led to the June 26, 2019, meeting?

**WILLIAM CLARK:** I do not know. My understanding of the June 26 meeting was a refinement of terms and conditions.

**MARNIE JENSEN:** Have you seen the agenda from that meeting?

**WILLIAM CLARK:** I have not.

**MARNIE JENSEN:** Did you hear Mr. Botelho's testimony this afternoon relating to that meeting?

**WILLIAM CLARK:** Yes, ma'am, I did.

**MARNIE JENSEN:** So I'm going to ask you for Saint Francis' knowledge of that meeting. First of all, can you state whether Diane Carver attended that meeting?

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**WILLIAM CLARK:** Yes, ma'am. From Saint Francis, there was three personnel-- three people who attended: Tom Blythe, Diane Carver, and the former interim CFO.

**MARNIE JENSEN:** So did you speak with Ms. Carver about that meeting in preparation for today?

**WILLIAM CLARK:** Yes, ma'am.

**MARNIE JENSEN:** What is, what is Saint Francis'-- and I think it's probably-- did you speak with the former CFO in, in preparation for today?

**WILLIAM CLARK:** No, ma'am.

**MARNIE JENSEN:** So I'll make the assumption that your knowledge is based on Ms. Carver's recollection, but, but I will ask more generally, what is Saint Francis' recollection of what occurred at that June 26, 2019, meeting?

**WILLIAM CLARK:** It was a short meeting, approximately an hour, very quick. Mr. Botelho laid out the attendees from DAS and DHHS. The intent was to negotiate the finer points of the contract. Part of that discussion had to do with rewriting the RFP tied to the kinship workers, which was discussed earlier today and moving them from kinship to case managers. There's about-- approximately 24 positions that were moved from one piece to the other. The kinship position is not a case manager. Kinship position is a support type person, but they were moved to assist in meeting with the caseload ratio requirement.

**MARNIE JENSEN:** I'm, I'm going to drill down a little bit more with respect to that meeting and, and especially what Saint Francis' understanding was. Were there statements made by any state attendees-- and I won't limit it to DAS or DHHS-- any state attendees that if Saint Francis did not alter its caseload ratio, that it would not get the contract?

**WILLIAM CLARK:** I have no knowledge of that, if that was issued inside that meeting. I know inside the meeting the work was done to move workers from one box to the other.

**MARNIE JENSEN:** Were there discussions during that meeting between Saint Francis and the state about the \$15 million request?

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**WILLIAM CLARK:** I do not know and that is not something that I discussed with Diane Carver.

**MARNIE JENSEN:** So the movement-- I'll use your words-- I think the movement from kinship workers to case managers, does that have a cost increase?

**WILLIAM CLARK:** Yes, ma'am.

**MARNIE JENSEN:** Did-- was there any attempt during that meeting to detail for the state what that cost increase would be?

**WILLIAM CLARK:** I don't know.

**MARNIE JENSEN:** Do you know today, just based on Saint Francis' experience, what that cost differential is-- we're talking about 24 kinship workers now becoming case managers-- what that cost increase would be?

**WILLIAM CLARK:** I don't.

**MARNIE JENSEN:** Did-- coming out of that meeting, the shift from-- well-- and let me clarify your testimony, Mr. Clark. You said that there was a shift from kinship workers to case managers and I, and I may have misunderstood you. Did that shift-- it was-- came, came out of that meeting or it happened during that meeting where-- it was just a decision made during the meeting, we're moving them?

**WILLIAM CLARK:** During the meeting.

**MARNIE JENSEN:** During the meeting. Who directed that, that shift?

**WILLIAM CLARK:** I don't know who directed it. I know that Ms. Carver went and did the work inside the meeting, off to the side to come back with the solution.

**MARNIE JENSEN:** So Ms. Carver left the meeting?

**WILLIAM CLARK:** She did not leave the meeting.

**MARNIE JENSEN:** Oh.

**WILLIAM CLARK:** She remained in the room.

**MARNIE JENSEN:** Oh, OK. Was the-- I should have asked. Was the meeting in person?

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**WILLIAM CLARK:** Yes, ma'am.

**MARNIE JENSEN:** Here in Lincoln?

**WILLIAM CLARK:** Yes, ma'am.

**MARNIE JENSEN:** So Ms. Carver sought to work-- got right to work. Was it as simple as a-- what I think of as a word-processing task to simply take, you know, the RFP response and move these kinship workers to a different-- literally change the name? Is that what we're talking about?

**WILLIAM CLARK:** I don't under-- I do not know the process she went through. What I can tell you is there is a difference between a kinship worker and a case manager: skillset, cost. When those positions were moved, that then left Saint Francis with a shortage of kinship workers in which when we-- I came back in January of this year. We then sat down to rework the emergency contract. We added more kinship workers back into it.

**MARNIE JENSEN:** And that was going to be my next question is whether kinship workers, in Saint Francis' view, are required team members to fulfill the services to the Eastern Service Area?

**WILLIAM CLARK:** Without a doubt.

**MARNIE JENSEN:** During the June 26, 2019, meeting, was there a discussion about the 65-35?

**WILLIAM CLARK:** I don't know.

**MARNIE JENSEN:** Do you have an understanding, Mr. Clark-- with respect to Saint Francis' original bid response on the 65-35 requirement, do you know what Saint Francis' original proposal was with respect to that ratio of direct services versus contracted?

**WILLIAM CLARK:** What I know is that Saint Francis expected to do the work in house. Saint Francis is accustomed to partnering with providers to assist with work, but the expectation is that the preponderance of the work is done within the organization.

**MARNIE JENSEN:** I sort of jumped us ahead, but now I'm going to jump us back . During the June 2019 meeting, was the overall staffing plan discussed during that meeting in terms of just-- I mean, I've seen,

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you know, the staffing plan, right, which workers will be where or was it just talking about that case manager ratio?

**WILLIAM CLARK:** To my knowledge, the topic centered around the case ratio load requirement and how does Saint Francis meet that?

**MARNIE JENSEN:** Do you-- did Saint Francis believe coming out of that meeting that simply reassigning positions, for example, from kinship workers to case managers would meet the RFP requirements without adding cost?

**WILLIAM CLARK:** I'm pausing because I think the answer is no if you go back and look at Tom Blythe's email to the state of I need to increase the contract by \$15 million. And so there was an expectation, by moving away from a dyad model, that the cost would increase, also knowing that a kinship worker is not the same cost as a case manager.

**MARNIE JENSEN:** During the June 2019 meeting, we talked about that movement from kinship workers to case managers and that Ms. Carver sort of set to work right away, even during a meeting on that. During the course of that meeting, were there discussions about adding to the total number of staff that Saint Francis would need in a broader sense?

**WILLIAM CLARK:** To my knowledge, no. We never had that conversation.

**MARNIE JENSEN:** So with Mr. Botelho this afternoon, we-- I talked about sort of Saint Francis' original staffing plan and then the staffing plan that was ultimately prepared and posted in conjunction with the contract. And I was referencing that I hadn't done the math, but since, we have done the math. So the original bid overall to service, you know, this contract had 275 employees. The signed agreement had a total of more than 303 employees. I don't know how you-- half an FTE, so it was 303.5. So that was an increase of 28.5 humans needed to do the work of the signed contract. Assuming my math is correct, were you aware of that staffing increase prior to just today?

**WILLIAM CLARK:** I was not.

**MARNIE JENSEN:** OK. So I think I'll ask you the question. Is it realistic, in your experience at Saint Francis, that an increase of 28.5 employees would have no cost increase?

**WILLIAM CLARK:** That would not be my experience.

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**MARNIE JENSEN:** Regardless of what titles they held, right?

**WILLIAM CLARK:** Correct.

**MARNIE JENSEN:** Do you know whether anyone at the state ever asked-- and in particular at DHHS-- ever asked Saint Francis about that increase in, in just human capital, that 28.5 person increase?

**WILLIAM CLARK:** I have no knowledge of that.

**MARNIE JENSEN:** I may have asked this already, Mr. Clark, and if I have, I-- I'm-- I apologize. It's late in the day and I'm not reasking it for effect. I'm just making sure I'm being thorough. At the June 2019 meeting, were there any representations made by anyone from the state that if Saint Francis needed more money later after the contract, that more money would be provided to Saint Francis?

**WILLIAM CLARK:** Not to my knowledge.

**MARNIE JENSEN:** Was there an understanding on the part of Saint Francis that-- the opposite, right? Well, we'll just ask and because we're providing an essential service, we'll probably get it. Was there that understanding within the organization?

**WILLIAM CLARK:** No. I think it goes back to people understand that the bid-- the contract initially had a loss for Saint Francis and there was concern about that. Former seniors believed that they could figure out a way, whether that be through philanthropic efforts to make up the difference, that they'd find a way to do that.

**MARNIE JENSEN:** Mr. Clark, did, did Saint Francis have an understanding from the state, particularly coming out of that June 2019 meeting, that the state was going to great lengths to ensure that Saint Francis and the state ultimately reached a contract? Did you, did you-- did Saint Francis have an understanding of whether there were other options on the table on the part of the state?

**WILLIAM CLARK:** Saint Francis was aware of the intent to award the contract. They knew the protest by PromiseShip I think in the-- in June, as that was going on. Saint Francis was diligently working with the state, DHHS and DAS, to work to refine the contract. To my knowledge, there was never any discussion of there's no alternative option and we have to go a certain path.

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**MARNIE JENSEN:** Do you agree that Saint Francis changed its bid, at least with respect to the staffing plan, after the meeting on June 26, 2019?

**WILLIAM CLARK:** Saint Francis changed the staffing plan.

**MARNIE JENSEN:** Do you think that that had a material impact on the original proposal submitted by Saint Francis?

**WILLIAM CLARK:** I don't know. I think that would be speculative. I think that knowing that a kinship worker is not a case manager-- going back to Mr. Blythe's request, as we've talked about, that would seem logical to me that that would follow.

**MARNIE JENSEN:** I'm going to ask this maybe, maybe a slightly different way. Do you agree that the change in the staffing plan would have affected-- and really positively or negatively, right-- but the change in the staffing plan would have affected the quality of services provided by Saint Francis?

**WILLIAM CLARK:** It would have changed the quality, both to the positive and to the negative.

**MARNIE JENSEN:** And I think you just said this, but let me be clear. Would the change in the staffing plan have affected the cost to Saint Francis, at least, of providing services?

**WILLIAM CLARK:** I would have expected that it would have.

**MARNIE JENSEN:** In your view, is the change from a 25 to 1 caseload, caseload ratio to a-- seven-- I'll just cap it at 17 to 1 caseload ratio-- a minor, minor change?

**WILLIAM CLARK:** Is it a minor change? No. It's a change that must be reviewed and based upon the size of the organization or the area that you're serving, could be significant based on the number of children in that area. It would definitely require the organization to take a step back and relook at it.

**MARNIE JENSEN:** Thank you, Mr. Clark. I'm going to talk a little bit about that caseload transition that it was originally determined to or, I guess, intended to occur in January of 2020, but then ultimately was kicked off in October of 2019. I'll ask the easy question first. Did Saint Francis request that expedited transition?

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**WILLIAM CLARK:** No, ma'am.

**MARNIE JENSEN:** When the state requested it, how was that communicated to Saint Francis?

**WILLIAM CLARK:** I think from the beginning, Saint Francis was expecting the transition to begin in January of 2020 as a graduated transition, gradual transition, not all cases at one time. When the transition began in October, Saint Francis stated they were not prepared to do that. They didn't have the personnel in place. At the same standpoint, Saint Francis wanted to be a good partner to move forward, understood that PromiseShip was losing staff quickly and was able-- unable to maintain caseload ratios. With that, Saint Francis wasn't ready. They didn't have the infrastructure in place. What I mean by that is IT, transportation to include some personnel positions weren't filled as well.

**MARNIE JENSEN:** I don't know if you heard Ms. Smith's testimony this morning, but I think if I were to summarize it-- and I truly am summarizing it-- I think it was her testimony that Saint Francis was set, set up for success from the outset of the contract. Do you agree with that summary?

**WILLIAM CLARK:** I did hear CEO Smith's testimony discussing the readiness reviews, that they were conducted and they were conducted. From where I sit right now and the individual I've talked to, Saint Francis was not prepared to move forward. There was a pledge of support from DHHS tied to mobile crisis response team to help with the earlier speed-up of taking cases that never materialized, even when the expedited process began.

**MARNIE JENSEN:** We, we know that Saint Francis-- and, and I think even in your opening testimony today-- has had issues with maintaining that required case manager ratio really since the beginning of the contract. What, if anything, did the expedited transition of cases to Saint Francis play? What role did that play in those ongoing challenges?

**WILLIAM CLARK:** You know, I think initially it, it had an impact on ability to maintain proper caseload ratios. I guess I'll go back to my opening comments as well. Since Saint Francis took over the contract, the world has completely changed. The COVID-19 pandemic has had a significant impact, not just in the state of Nebraska, but across the country and across the world. Employment conditions in 2020 and 2021

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are not the same as they were in 2019. So the expedited transition, yes, it impacted that. To say that it has always been tied to that, I think, would be a false analogy. I think there's more factors in play now than anybody ever anticipated.

**MARNIE JENSEN:** Mr. Clark, does Saint Francis believe that anyone at the state-- well, let me, let me start over. Does Saint Francis believe that anyone in DHHS knew that Saint Francis had underbid the contract?

**WILLIAM CLARK:** To my knowledge, no.

**MARNIE JENSEN:** Does Saint Francis have any information indicating that anyone at DHHS suspected, was concerned about the underbidding of the contract?

**WILLIAM CLARK:** To my knowledge, no.

**MARNIE JENSEN:** Those are the questions that I have for you. I think I'll turn it over to Chairman Arch for some questions and, of course, the committee.

**ARCH:** Thank you and thank you for your, your responses. I want to go back to the dyad model.

**WILLIAM CLARK:** Yes, sir.

**ARCH:** Was that, was that previously in place when the RFP bid was submitted? In other words, did you-- does-- did Saint Francis Ministries have experience with that dyad model elsewhere?

**WILLIAM CLARK:** Yes, sir.

**ARCH:** Where?

**WILLIAM CLARK:** Extensively in the state of Kansas.

**ARCH:** In Kansas. Is that, is that currently your model in Kansas that you're using?

**WILLIAM CLARK:** Yes, sir.

**ARCH:** Do I understand the dyad model correctly that you would have a-- I don't know what-- a case manager and then, and then not a case manager, but a-- but someone at a-- had lesser training to do a lot of the work that the case manager does-- in other words, they would

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divide-- is it like-- I, I use the analogy from, from medicine where you would have a physician extender-- you would have, you would have a p-- a physician assistant along with an M.D., but they could work together as a team. Is that the, is that the philosophy of the dyad model?

**WILLIAM CLARK:** Yes, you're actually-- you're very close. So that position is called a family support worker that partners with the case manager.

**ARCH:** You say family support worker?

**WILLIAM CLARK:** Correct.

**ARCH:** OK.

**WILLIAM CLARK:** And they, they partner to oversee all aspects of taking care of the family, the children. But much like in your example, with the transition to [INAUDIBLE], the M.D., the doctor has the decision-making authority, same thing with the case manager. The family support worker works all the administrative pieces that help support that. Obviously, they have the experience, experience working with children and families as well.

**ARCH:** This is, this is probably a difficult question. Well, they are all difficult questions, but, but if, if that dyad model-- if, if-- were it not for the state statute on 17 max caseloads, if that dyad model had been acceptable to the state of Nebraska, do you believe that the bid in your R-- that Saint Francis Ministries proposed, the bid would have been a reasonable bid, given that model? Did you still have problems within your bid independent of the dyad or no dyad model?

**WILLIAM CLARK:** I would have a problem, sir, with any bid in which we were losing money. As a nonprofit, you can't sign a contract like that.

**ARCH:** So even, even if the dyad model had been accepted, you still would have been losing money?

**WILLIAM CLARK:** The way that the RFP was written under the dyad model, you're correct. Saint Francis was going to lose money.

**ARCH:** OK. OK. And, and I am assuming-- and maybe I shouldn't assume-- is the reason that the dyad model was, was submitted-- or I should say

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the reason that Saint Francis thought that dyad-- that the dyad model would be acceptable to the state of Nebraska was because they did not have knowledge of the statute requiring a 17 max caseload?

**WILLIAM CLARK:** I believe that's part of it. Saint Francis operates from a dyad model and I mentioned it is a best practice, especially when other providers are not available or used, which is the normal practice for Saint Francis. So I think understanding how Saint Francis does work through dyad model and not knowing the state statute, Saint Francis moved their RFP forward based on the dyad model.

**ARCH:** OK, back to the June 26 meeting in 2019, when, when that meeting occurred and it was agreed that these kinship workers would be reclassified, moved to a different position, is it your understanding or was it Saint Francis Ministries' understanding that those kinship workers would have qualified as case managers? In other words, education, experience, whatever the qualifications are, they could simply move from kinship to case, case manager?

**WILLIAM CLARK:** They would have not have qualified as a case manager. They would have had to hire differently. So when Saint Francis took over the contract, [INAUDIBLE] say they're hiring all these different personnel to fulfill the role--

**ARCH:** So this is an FTE. This isn't necessarily a kinship. It was a moving--

**WILLIAM CLARK:** Correct.

**ARCH:** It was a moving of FTEs, maybe at a different rate or, or a different cost per FTE, but they simply moved positions. They didn't really move kinship workers over and call them case managers, am I correct?

**WILLIAM CLARK:** Correct.

**ARCH:** Which, which then caused you problems because now those kinship workers were needed, but those FTEs are gone.

**WILLIAM CLARK:** They were gone initially. When the new contract was written and signed, there were positions put back in there.

**ARCH:** Right, until the new, until that new staffing plan was, was presented at no additional cost.

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**WILLIAM CLARK:** Correct.

**ARCH:** OK. Totally different, totally different subject, I, I want to give you an opportunity to, to talk, you know-- recently, the, the, the license of the child-placing agency has, has been put on-- has been granted, but on, on a probationary license with restrictions. What's, what's your perspective on that and, and where are you now as an organization with, with eliminating the deficiencies and the issues there?

**WILLIAM CLARK:** We've had numerous discussions with DHHS on this topic over the past few weeks, as you can imagine. Saint Francis employees have been partnering with DHHS employees going through records. You know, a couple of comments, from my perspective, is the first year of the contract-- and when you-- I went back and looked at it-- the previous Saint Francis leadership didn't focus on that area. Since we have transitioned the leadership to the current Saint Francis, we have brought new leadership into the Eastern Service Area who identified the gap really in the kinship side, which impacts this. And so we have individuals who are diligently working that right now. We've been hiring very quickly. So, for example, there's now 25 authorized positions tied to that 17 are hired. We have three more scheduled to start next week. It's been a challenge hiring them. So the first part of the contract, Saint Francis has to own. They didn't focus on that properly. As I mentioned, staffing was significant to that. When you move the positions from one box to the other and you take away the ability to work on that topic, which eventually came back, we'll see the results of that right now. I also think there's some complexity inside the state when you look at CPAs as a whole. So CPA being a provider who receives a license from DHHS--

**ARCH:** I'm sorry, CPA?

**WILLIAM CLARK:** CPA, child placing agency.

**ARCH:** Thank you.

**WILLIAM CLARK:** And so DHHS retains the right or the authority to license all CPAs so they can place children. That falls within the 65 to 35 rule, so all of the subcontractors that we utilize-- or providers as we refer to them as-- are licensed and have a valid license with DHHS [INAUDIBLE]. And so I look at this-- number one is we, we are held accountable-- Saint Francis is the lead agency-- for those providers and their records. Rightfully so, we have a

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responsibility to make sure they have the right records in place. The challenge is Saint Francis doesn't license them, DHHS does. So when DHHS licenses those CPAs or providers, Saint Francis' ability to influence that becomes strained. The other thing is there's not really a central data repository in the state. N-FOCUS is not a system that's designed to do that and so we're in the process of right now actually building a SharePoint so we can go out to all these 17 different providers that we use, their CPA information, to put it into a database. Saint Francis is held responsible by DHHS for having that information on hand at all times and so we're working through that. We've had some productive meetings. We just had another one yesterday. There's a plan in place to provide data and updates every Friday going forward. As I mentioned, the hiring piece of being able to hire people to help solve this challenge has been significant. As I sit here today, knowing what we know and what I call the partnership of trying to solve this, I'm confident we're going to get there in time.

**ARCH:** Thank you. Other questions from the committee? Senator Murman.

**MURMAN:** Thank you and thank you for testifying. I got to apologize. I missed quite a bit of the meeting today. I had a hearing in a different committee, but I'm a little disappointed that we've talked so much about financial things and, and very little about the quality of care that the foster kids receive. I know there's a difference, as we've talked about, between Kansas and Nebraska, the, the requirements and also apparently between what Saint Francis provides in the rest of the state compared to the Eastern Service Area being the lead agency there. Do you-- what's your opinion on the, the differences between Kansas and Nebraska or, or Eastern Service Area and the rest of the state? Is the quality just as good with those differences in requirements?

**WILLIAM CLARK:** The requirement of Saint Francis in the western half of the state is completely different than the Eastern Service Area. In the western part of the state, we really focus on foster care. We don't do case management out there and so it's a completely different work. Saint Francis Ministries as a whole is not the lead agency in western Nebraska. Rather, we have an arm of Saint Francis that serves as a provider or a CPA that does that type of work and answers to DHHS. The complexity of the ESA is, is completely different. Metropolitan areas are much more challenging to work through. There's a lot more children. As I mentioned earlier, 45 percent of all children in care of the state of Nebraska fall within the Eastern Service Area right now. I think when you look at comparing Kansas to

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Nebraska, they're completely different states, the way that they operate and really even the way that-- in Kansas, it's called DCF. DCF looks at things that's different than what DHHS looks at in the state, so I, I-- Senator, I don't think it's a fair comparison from one state to the other, much like I don't think it's a fair comparison from western Nebraska to eastern Nebraska, just based on kind of the work that's being done.

**MURMAN:** So caseload, there, there is different criteria that in, in-- for instance, Kansas or the balance of Nebraska-- that kind of compensates for the differences in caseload requirements?

**WILLIAM CLARK:** So Kansas, as I mentioned, we're able to use the dyad model. That's an acceptable practice in the state and it works well. As far as western Nebraska, the case management piece that we're talking about, that's actually overseen by DHHS. That is not an aspect that Saint Francis even works to provide in western Nebraska. We only work that aspect of the care of children in eastern Nebraska.

**MURMAN:** So if I may, so by western Nebraska, you mean everywhere except the Eastern Service Area?

**WILLIAM CLARK:** There's actually two service areas of the five that are metropolitan in nature. One is the southeast, which is tied to Lincoln, and you have the Eastern Service Area, which is tied to Omaha. The three other ones are the more rural areas of, of Nebraska. The area that we operate in western Nebraska is really focused around Grand Island and further west.

**MURMAN:** So that, so that's not the southeast, but it's further west than the southeast?

**WILLIAM CLARK:** Correct.

**MURMAN:** Thank you.

**ARCH:** Other questions? Senator Clements.

**CLEMENTS:** Thank you, Mr. Chairman. Thank you, Mr. Clark. Regarding your difficulty with staffing and, and hiring enough case managers, does Saint Francis Ministries pay comparable wages to what direct DHHS service providers receive?

**WILLIAM CLARK:** Yes, sir, they do.

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**CLEMENTS:** So--

**WILLIAM CLARK:** Actually, I would say that they pay better than what DHHS pays.

**CLEMENTS:** So you are offering competitive wages, but-- so you would say it's the lack of applicants that's the problem?

**WILLIAM CLARK:** There's definitely a lack of workforce-- I'm going to say across the country because this experience, in other states we work in, is really no different. On the social welfare side, other organizations-- think of for-profit entities-- have started offering much higher wages that social organizations such as ourselves or even the state have a hard time competing with currently. So a starting wage of \$20 an hour, for example, in Costco is not something that organizations, whether it be Saint Francis or the state, is competing with right now. And so what we're seeing is employees opting to leave a vocation that they've chosen because financially, it's more viable for them and their family to go work someplace else.

**CLEMENTS:** Thank you.

**ARCH:** Senator McKinney.

**McKINNEY:** Thank you. I guess my question-- you said that, you know, it's tough to hire people because you're competing with Costco workers. Do you think the issue isn't that-- it's, it's the pay-- it is even more so how you value case managers? What I mean by that is not only the pay, but also benefitwise and things like that. Do you think you can do a better job at (1) paying more, (2) providing more benefits, and (3) making the job of a case manager less stressful and more professionalized?

**WILLIAM CLARK:** Senator, I think there's a lot to unpack there, if I can. I think there's multiple questions here. Can we do a better job? I think all organizations that want to do excellent work can always do a better job, always looking to get better. I'd like to give you some examples of things that we are doing on the pay side to be competitive, as well as what I would call nonpay areas. We're currently doing what I call time-of-service bonuses and we've been working with the organization. We have a mentoring program for case managers and so our more senior case managers [INAUDIBLE] help younger case managers reduce some of that stress and they receive a bonus. We have retention performance bonuses that we have in place right now. We

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have referral bonuses, so if you were to have somebody come and join the organization and you brought them, you receive a bonus for that. If you're a fully trained case manager when you come to us, there's a bonus just for being fully trained. As you probably are aware, when you hire a new case manager, they have to go through [INAUDIBLE] training period before they can begin. If somebody is bilingual, there's extra pay for that. Some of the things that we, that we do that we think are competitive-- not necessarily on the pay side, but just overall-- you know, we allow our employees to do telework, which we have found that to be a, a great benefit to, to our case managers. We provide flexible scheduling, realizing that case managers do not work an 8-to-5 job. They have to meet with families. There's times where it's at night. We have a, more of a casual dress policy to meet the needs of what they need to do. So if they're out in the field, you don't necessarily have to wear a coat and tie. We allow them to bring their infants to work if they're a new parent and so they have that opportunity, which takes away from the childcare needs. We have internal training. We provide fleet cars so they don't have to use their own vehicle. We have a very, I would say, competitive 401k match. We have paid holidays, paid life insurance, accidental death and dismemberment. We pay for long-term disability. Obviously, they get the normal earned time off, sick time, those things, and we have an employee assistance program, so if somebody feels that they are-- have a stress in their life and they need to be able to turn to somebody or a counselor and have that option available to them. Can we get better? Yes. And in fact, right now, we have work groups working within our own HR department to see how we can even add more to this. Part of that includes bringing the frontline workers into those sessions to get their view on what's working and what's not. So can we get better? I think we can always get better.

**McKINNEY:** OK. Because I mean, I know within probably the last couple of months, I did see some workers from Saint Francis protesting and I-- and, and we also met with some judges and one thing that stuck out to me, one of many things, was that the judges saying case managers were coming to court unprepared and just being thrown to the wolves. Why is that?

**WILLIAM CLARK:** Well, that has to do with the case manager turnover. There's been a high rate of case manager turnover. As I mentioned earlier, case manager turnover is seven times the average in a new profession. Part is because of the stress that you mentioned, Senator. It is a very demanding profession. You put yourself in challenging positions at times and places of distress, but when you can see the

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impact to a family-- and so I think you talked about being unprepared, part of it is, is the turnover. The other piece is Saint Francis had to look internally at itself on how the process that we were utilizing to be prepared to go to court-- about four months ago, I was part of the process that reviewed that. It had my attention. We rebuilt the process. As part of that, we hired a brand new corporate general counsel, which we did not have, which has been helping to oversee that work to ensure that we have the right people at the right place at the time for information. When I go back and look, for example, in the month of September and the results in that, what I see is basically 99 percent of the time, we're meeting the requirement right now. Are we perfect today? No, sir, we're not. But where we are today compared to where we were four months ago is completely different.

**McKINNEY:** Also, I don't have the facts to back this up completely, but I've heard stories of Saint Francis not-- I've heard stories of Saint Francis pretty much inaccurately tracking visits--

**WILLIAM CLARK:** Tracking what?

**McKINNEY:** Home visits and things like that. Do, do you think that's without merit or do you think there-- it's possible that some staff within Saint Francis may have falsified visit documents?

**WILLIAM CLARK:** I think if we know that an employee falsified a visit, we took corrective action. That's not acceptable. Visiting a child is what's expected. It's what you need to do to ensure their safety and there's no maltreatment. And so if we have a case manager or an employee who's putting false information inside N-FOCUS, they did a visit and they didn't, we would not allow that to happen.

**McKINNEY:** If-- how would you grade-- from the time Saint Francis has taken the contract to now, how would you grade your performance on a scale-- on a ABCDF scale?

**WILLIAM CLARK:** I think when you look at the data that's out, I would say it is impartial data. Going to the foundation report that I mentioned, Nebraska has increased. If you look at data that comes out from the Children's Bureau, the Department of Health and Human Services at the federal level, and how Nebraska has come off of a performance improvement plan in the past two years and our meeting requirements, there's been no financial losses. Saint Francis has had a significant piece of that improvement in all aspects on both of those because 45 percent of children fall within the ESA. Am I

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satisfied with where we're at? Absolutely not. We need to hire more employees. We have to get more case managers. We need to reduce caseload ratios. Am I proud of the employees that are inside Saint Francis and are working 60 to 80 hours a week? Absolutely. Am I proud of the corporate team members who are up here from different parts of the country, basically living here to help? I am. Am I proud of the Saint Francis team members from western Nebraska who come over here and help. I am. Senator, we can get better and we're striving. I think if you look at the data over the past three months, you would see that there's been improvement in all areas. We will continue to press that.

**McKINNEY:** OK and my, my last question: do you-- because I know CEO, CEO Smith mentioned earlier that coming into the contract, the department set you guys up for success. Do you think you guys were set up for success in the beginning or do you think you guys-- you weren't and you weren't because of the proposal you put in place once you got accepted?

**WILLIAM CLARK:** When I look at the transition or the expedited transition, Saint Francis was not prepared for that. It happened too early, didn't have all the people in place to start beginning to do that, did not have the right infrastructure in place, which was really one of the reasons that I was hired, to help build that.

**McKINNEY:** Are you aware of anybody within Saint Francis making that-- making the department aware that they weren't prepared for the transition or did it just happen?

**WILLIAM CLARK:** Senator, I, I don't know. Those people who were responsible for that are no longer part of Saint Francis. The team members that are still with Saint Francis who don't work in the Eastern Service Area are part of the corporate structure. As I've talked to them, they've all relayed that we weren't prepared, wrong staffing structure in place at the time, the wrong support structure, just wasn't ready to go yet.

**McKINNEY:** All right, thank you.

**WILLIAM CLARK:** Yes, sir.

**ARCH:** Senator Hansen.

**M. HANSEN:** Thank you, Chairman Arch, and thank you, Mr. Clark. Just to follow up on Senator McKinney's question, have-- about, about the potential of data being misrepresented-- have you-- has Saint Francis

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ever had somebody or caught an employee putting improper or falsified data into a database like N-FOCUS?

**WILLIAM CLARK:** Have we ever taught them how to do that, was that the question?

**M. HANSEN:** No, have you ever caught-- has an employee ever been caught for doing that and reprimanded?

**WILLIAM CLARK:** Yes.

**M. HANSEN:** You have? Yes?

**WILLIAM CLARK:** Yes, sir.

**M. HANSEN:** Can you give us frequency of just-- of how many times that has happened to your knowledge?

**WILLIAM CLARK:** To my knowledge, it's been infrequent, but it has happened. And when those situations have transpired, obviously works within the HR arena that the appropriate action has been taken.

**M. HANSEN:** OK and do you have any sort of internal audit procedures to catch or, or track that? In other words, how did you catch the people that you did catch?

**WILLIAM CLARK:** We do have internal audits. We have leaders, supervisors, and directors who are auditing a certain percent of the information, inside information on a monthly basis want to making sure that we are complying with the requirements to see if we are having any challenges, as you're discussing. We also have a completely separate team that focuses on data and that team also goes in there and audits as well. And so we have a-- I'll say disinterested, in other words, they're not in their normal chain, looking at the data from that lens as well.

**M. HANSEN:** All right, thank you.

**ARCH:** Other questions? Senator Cavanaugh.

**M. CAVANAUGH:** Thank you. Thank you, Mr. Clark, for being here today. I have a lot of questions. I'm going to try and synthesize them to be not too many. You mentioned that the transition happened too early and you didn't have the right people in the right place, but then previously, you said something about a mobile response unit. Was I

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hearing you correctly? Did the Department of Health and-- our Department of Health and Human Services promise you a mobile response unit to move up the date of the transition?

**WILLIAM CLARK:** Correct. From my internal discussions with team members, to help move the transition to a quicker period of time, DHHS said that they would support what they called mobile crisis response teams.

**M. CAVANAUGH:** Who did they tell that to?

**WILLIAM CLARK:** The leaders of Saint Francis at the time.

**M. CAVANAUGH:** And that would be Father Bobby and, and Mr. Blythe?

**WILLIAM CLARK:** I would say that's probably more on the program side, ma'am, than the CEO and COO.

**M. CAVANAUGH:** OK.

**WILLIAM CLARK:** So if you think of program people who are actually doing the work, that's what I'm saying.

**M. CAVANAUGH:** OK and that never came to fruition?

**WILLIAM CLARK:** Correct.

**M. CAVANAUGH:** Are you aware of any further conversations between Saint Francis Ministries--

**WILLIAM CLARK:** No, ma'am, I'm not.

**M. CAVANAUGH:** --about it? OK. And going back to the beginning of your testimony today, you said that you came to Saint Francis Ministries from the merging of St. John's Military School.

**WILLIAM CLARK:** Correct.

**M. CAVANAUGH:** And you, you said that they merged together?

**WILLIAM CLARK:** Correct.

**M. CAVANAUGH:** So can you explain that to me a little bit more? Were they-- did they have the same board or what-- how did they merge together?

**WILLIAM CLARK:** They were not aligned at all. They are both tied-- faith based from the Episcopal faith perspective. St. John's had made the decision to close after 131 years of operations. When that announcement was made, Bobby Smith approached the school about the potential of exploring a merger between the two. Saint Francis Ministries, the corporate office, was in Salina, Kansas, which is the exact same location as St. John's Military School and there was discussions of the potential of Saint Francis Ministries utilizing that campus to further services for children and families.

**M. CAVANAUGH:** Did they use--

**WILLIAM CLARK:** The boards are-- excuse me-- the boards are completely different, not aligned at all.

**M. CAVANAUGH:** Did they utilize the campus then?

**WILLIAM CLARK:** Currently, the corporate office of Saint Francis Ministries has moved onto the campus. We have partnered with other entities inside the city--

**M. CAVANAUGH:** And--

**WILLIAM CLARK:** --to utilize that campus.

**M. CAVANAUGH:** And were any assets that were with St. John's turned over to Saint Francis or how did the-- that merge look?

**WILLIAM CLARK:** All of the assets were turned over to Saint Francis.

**M. CAVANAUGH:** So another question about the board, does the board of-- does Saint Francis Ministries' board weigh in on large contracts such as the one with the state of Nebraska?

**WILLIAM CLARK:** I'm going to answer from my perspective as the current president and CEO. Whenever there's a contract dealing with a state entity, I take it to the finance committee for official review, which includes showing them the budget. We have discussions with that. Once they're satisfied, then we take it to the full board for ratification and approval. I cannot speak if that process was in place prior to me assuming my position.

**M. CAVANAUGH:** Prior to you being on leadership?

**WILLIAM CLARK:** Prior to me taking over as the president and CEO.

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**M. CAVANAUGH:** So when you joined in November of 2019, up until October of 2020, you're not aware of that being the process?

**WILLIAM CLARK:** I was not part of the board meeting structure.

**M. CAVANAUGH:** But you have access to previous board meeting minutes?

**WILLIAM CLARK:** I could go back and look at them. That's true, I could.

**M. CAVANAUGH:** OK. So-- OK, I'll, I'll just ask one more question because I have too many. So the, the hearing that we had-- the public input hearing that we had, I don't know if you saw it or if, if it was reported back to you, but we had a foster parent come and testify and she informed the committees that herself and several other foster parents had been told by staff members at PromiseShip-- or sorry, not PromiseShip-- at Saint Francis Ministries that they would be removed from-- their children were being removed from their home and they would no longer be foster parents if they came and testified. Has anything been done to look into that and to find answers as to whether or not that happened and why that happened?

**WILLIAM CLARK:** I'm aware of that that came out of that hearing. And so on the 8th of September, shortly "thereafterwards," I sent the executive director of compliance and executive director of support operations, which safety and security fall underneath his purview, to meet with that specific caregiver and also providers in the Omaha area. They discussed any potential allegations regarding threats. The caregiver at the time stated to that team I sent up there that the foster parents stated that they could not be involved in the hearing in which you referred to. During that hearing-- during that meeting, the caregiver did not state that they were threatened. They just said they were told by the case manager that that-- they couldn't participate. On September 10, two days later, as we continued the investigation, we spoke with the case manager directly about the allegation that was made. In that discussion, the case manager stated that the caregiver really wanted to speak to a judge about the case itself. The case manager stated that she advised the caregiver that she needed to speak with a GAL, guardian ad litem, initially and the forum on the 31st was not the place to do that. The case manager says in no way did she threaten the provider-- excuse me, the--

**M. CAVANAUGH:** Foster parent.

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**WILLIAM CLARK:** --the caregiver, thank you. And so what we found, that it was inconclusive. We could not-- between talking to the caregiver and the case manager, found no, no threat. We did do some professional development on how to articulate oneself.

**M. CAVANAUGH:** So the foster parent who testified said that she was there on behalf of other foster parents who were told the same thing and that they didn't have the same caseworker. Was that looked into?

**WILLIAM CLARK:** Can you state that again?

**M. CAVANAUGH:** There were multiple caseworkers--

**WILLIAM CLARK:** Correct.

**M. CAVANAUGH:** --telling multiple foster parents not to come testify in front of these committees and only one came to represent them all.

**WILLIAM CLARK:** When we met with the caregiver we're referencing, that question was asked and we asked if the caregiver would be willing to share other names that we could contact so we could explore that. That was not provided. With that, if there are other caregivers who would like to talk, I'm more than willing to do that.

**M. CAVANAUGH:** So she stated that very publicly and, and we asked questions about it and, and now you've had a conversation with her and she did not provide those names. I assume that she would have told those, those people-- and I could be assuming incorrectly, that you asked for those names and that they should talk to you if they want to. It sounds like this is maybe another opportunity for an increase in due diligence into the processes. Because if it's more than one case manager that's telling foster parents these things, that they can't talk to us, their state senators, then that's not one case manager doing it, that is management telling them.

**WILLIAM CLARK:** I don't know if the caregiver in this case went back to those other caregivers and said I just met with them. They'd like to meet with you. I don't think anybody knows that except for the caregiver herself.

**M. CAVANAUGH:** Right.

**WILLIAM CLARK:** I think we are making a, a concerted effort to talk to the families we work with if they have complaints and we would love to sit down and hear them to try to get to the right answer to make sure

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we're all working together. Since I've taken over, we've, we've created a compliance department and so the executive director comes up here to do that, to have those type of sit-down sessions. I'll go back to what I did the Senator over here, we can always get better. I do feel like we were making strides to move forward and be transparent with families. And if we hear of a problem, we address it very quickly.

**M. CAVANAUGH:** I bring it up because for me to hear from a constituent, a person who lives in our state who feels fear to come and talk to their state senators, that-- to me, that's a significant concern, a very significant concern. And the fact that they say that they are there representing additional people, I feel personally warrants the utmost scrutiny, so I will just leave it at that.

**ARCH:** Thank you. Are there any other questions? Senator Murman.

**MURMAN:** Thank you. I want to preface my question with-- and I'll admit this is a little bit anecdotal, but I talked to a family that has more than one foster child and more, more-- and adopted more than one foster. They're a great family. I won't say too much because I don't want to give away who they are, but one of the I think foster and adoptions was through Saint Francis and this has been several-- quite a few years ago, maybe as many as ten, I'm not sure. But with Saint Francis, they said they had a really good experience. They always talked to the same person when they called in and got the same person, got a hold of them real easy. And with DHHS, first of all, they couldn't ever get through and if they got through, it was a different person every time, so apparently Saint Francis did a great job with them. But my question is with the financial difficulties that Saint Francis has had, is there a temptation to maybe provide a better service for the-- who you serve in Kansas or in that immediate area more than in Nebraska?

**WILLIAM CLARK:** Absolutely not. The contracts are, are completely different. They're tracked financially different. We have to give accountability of the funds that are spent by state differently to include showing how we utilize, in this case, the funds from the state of Nebraska to support the work in the ESA. Those reports are, are turned in monthly.

**MURMAN:** OK, thank you.

**ARCH:** Other questions? Senator McKinney.

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**McKINNEY:** Thank you. Do you think you guys do a better job not doing case management in the western part of the state?

**WILLIAM CLARK:** I think we do great work in western Nebraska. I also think that in the Eastern Service Area, we do tremendous work as well. We can get better. I need to hire more people who are dedicated to that. The work that we're doing-- and when you go back and look at, once again, the statistics that come out of the Children's Bureau of Health and Human Services and you look at such things as maltreatment, we're doing exceptionally well. Kids are remaining safe. Our challenge has remained the caseload ratio, which we want to bring down. But the team that's in Omaha does incredible work.

**McKINNEY:** Do you think after your probationary period that you guys will not be sanctioning any more or will you show that you've improved?

**WILLIAM CLARK:** The licensing piece is not really tethered to case management, so you're asking just about the license. I think once we've got the employees in place, which we're just about there, there's a better understanding now, I think between DHHS and Saint Francis of the requirement. When I look at what we're being asked to do and the former provider, it's a bit different. The standard is different. Am I confident that once we solve the challenge, we can move forward? I am.

**McKINNEY:** All right, thank you.

**ARCH:** Other questions? Senator Day.

**DAY:** Thank you, Chairman Arch, and thank you for being here, Mr. Clark. So I think we established that Saint Francis was operating in the state of Nebraska before this contract was bid. Is that correct--

**WILLIAM CLARK:** Yes, ma'am.

**DAY:** --in Grand Island? But then it was said that when the contract was bid, that Saint Francis was not aware of what state statute requires for caseload ratios.

**WILLIAM CLARK:** Correct.

**DAY:** So my question is how are you operating in a state and not aware of what the state requires in terms of caseload ratios?

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**WILLIAM CLARK:** It's a different type of work.

**DAY:** OK.

**WILLIAM CLARK:** In western Nebraska, we focus on foster care and foster care homes, not doing case management. The statute is tied to case management, which we do in the eastern side, so we do different work in different parts of the state.

**DAY:** OK.

**WILLIAM CLARK:** And so when Saint Francis came up here, they were using their experience on the western side of understanding Nebraska's statute, which did not really apply because it's a different type of work.

**DAY:** OK, so there was nothing in the work that you were doing in Grand Island that would require you to understand caseload ratios in the state?

**WILLIAM CLARK:** Correct.

**DAY:** OK, thank you.

**ARCH:** Other questions? Seeing none, we also want to give you a chance if you have any closing remarks you want to make sure we understand.

**WILLIAM CLARK:** You know, I appreciate the opportunity to be here, as I stated at the beginning. We are striving very diligently to be transparent and open. When we have a gap or a seam, we own it right now. We'll continue to do that. We remain committed in a-- what I consider very unprecedented time, environment. Kids in the Eastern Service Area, when you look at maltreatment, you look at safety, are doing exceptionally well. If you look at what Nebraska has done from a federal perspective and how they've improved overall, Saint Francis has had a significant impact on that because of performance. The past 90 days, we have improved our performance significantly in all aspects. Whether it be in the courtroom, whether that be in caseload ratio, whether that's be getting, getting better with CFSR data at the national level, we're committed to that. We have great team members in Omaha. Our regional vice president is sitting right behind me, works tirelessly with her team to care for kids because that's what it's about is caring for kids. So I appreciate the time to be here. If there are other questions that the committee has that you want to get

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to the Saint Francis team, I'm more than happy to entertain those, to be as transparent as possible.

**ARCH:** Thank you. And with that, we will close the hearing for the day on LR29. Thank you all for attending.