North Carolina State Health Plan
FOR TEACHERS AND STATE EMPLOYEES
A Division of the Department of State Treasurer

STATE TREASURER OF NORTH CAROLINA
DALE R. FOLWELL, CPA

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January 20, 2023

***Delivered via U.S. certified mail and electronic mail***

John K. Edwards (jedwards@jw.com)
Jackson Walker L.L.P.
1401 McKinney Street, Suite 1900
Houston, Texas 77010

**RE: Response to "Notice of Protest and Request for Meeting: Intent to Award Contract for Request for Proposal No. 270-20220830TPAS — Third Party Administrative Services for The North Carolina State Health Plan for Teachers and State Employees"**

Dear Mr. Edwards:

On January 13, 2023, the North Carolina State Health Plan for Teachers and State Employees ("Plan") received your letter delivered on behalf of your client UMR, Inc. ("UMR") and titled "Notice of Protest and Request for Meeting: Intent to Award Contract for Request for Proposal No. 270-20220830TPAS — Third Party Administrative Services for The North Carolina State Health Plan for Teachers and State Employees" ("Protest Letter"). This response is intended to answer that request pursuant to § 15 of Attachment B of the Request for Proposal ("RFP") #270-20220830TPAS ("TPA RFP"). The service period for this new third-party administrative services contract begins two years from now.

After carefully reviewing the reasons and requests stated in your Protest Letter, I have determined that your positions are without merit and am therefore denying your requests.

## THE NORTH CAROLINA STATE HEALTH PLAN

The North Carolina Department of State Treasurer ("DST") is an agency of the State of North Carolina, led by the State Treasurer of North Carolina ("Treasurer"). The Plan, a division of DST, is a benefit program of the State of North Carolina that provides healthcare benefits to eligible North Carolina teachers, active State employees, retired teachers and State employees, and their dependents in accordance with applicable federal and state law and the Plan's regulations and policies. Established by N.C. Gen. Stat. § 135-48.20, the Board of Trustees for the Plan ("Board"), entrusted with fiduciary responsibilities, decides key matters and assists the Treasurer and the Plan. The Board is a bipartisan body that includes trustees representing key segments of the population the Plan serves, including active State employees, teachers, and retired State employees.

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Due to rapidly increasing healthcare costs, funding that has not increased at the same rate, and the aging and declining health of the Plan member pool (due in part to the inability to attract young and healthy dependents into the Plan because of high family premiums), the Plan is facing a $4.2 billion budget gap over the next five years. This is an existential threat to the Plan.

This budget shortfall is in addition to the liability the Plan faces for future healthcare needs, which the Treasurer and the Board have been working to address for the last six years. The Treasurer and the Board have made it the Plan's explicit policy to cap or reduce the Plan's costs and implement strategic initiatives that will enable the Plan to lower dependent premiums to attract younger, healthier members to the Plan. The Plan has implemented finance-improving measures across the Plan's entire area of operations, including implementation of modest premiums for members who had been paying nothing for their coverage, improved cost savings from the 2023–2025 Pharmacy Benefit Manager contract, and significant cost savings from the 2021–2023 Medicare Advantage contract, to name a few.

Despite the Plan's ongoing efforts, healthcare costs continue to rise, and the budget shortfall persists, threatening the financial sustainability of the Plan for its current and future members, as well as the ability of the Plan to comply with N.C. Gen. Stat. § 135-48.1 *et seq.* and other applicable laws.

As a part of the high priority of reducing costs, the Treasurer and the Board have also made seeking transparency in healthcare costs a priority of the Plan. The ultimate goal for the transparency of healthcare costs is improved healthcare outcomes for Plan members at lower costs. To that end, the Plan implemented the Clear Pricing Project ("CPP"), partnering with thousands of healthcare providers to promote affordable, quality care and to increase transparency, predictability, and value for Plan members, in addition to reducing costs to the Plan.

Lastly, consistent with the Plan's authorizing statutes, the Treasurer set a priority for the Plan to update, improve, and streamline its Request for Proposals procurement process. In the past, the Plan's procurement process was overly laborious and time-consuming, producing reams of documentation without discernible improvement in the performance of the Plan's vendors.

RFP #270-20220830TPAS, the TPA RFP, was the second RFP to be revised and operated according to this modernization strategy, but the first RFP qualifying under N.C. Gen. Stat. § 135-48.34 as exempt from the requirements of Article 3 of Chapter 143. Modernization of the RFP process and the TPA RFP included these objectives:

1) Ensure that vendors are able and willing to work with the Plan to meet the priorities and requirements of the Plan and the RFP without qualification.

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2) Avoid "micromanaging" every possible detail from the outset to provide the Plan flexibility and adaptability; instead, use Administrative Decision Memos and Business Requirements Documents to implement initiatives as needed.

3) Refine the scope of work to focus on the Plan's key, non-negotiable items and move those items to the Minimum Requirements portion of the RFP.

4) Increase the overall objective analysis of RFPs by moving away, as much as reasonably possible, from subjective parsing of vendors' own descriptions of their capabilities.

5) Revise the scoring methodology to ensure fair and objective scoring, efficient analysis by the Evaluation Committee, clarity for the Board, the decision-maker, and alignment with the Plan's priorities.

To achieve these objectives in the TPA RFP, the Plan exercised its judgment to restructure the RFP in the following ways: limiting vendor responses to the scope of work requirements presented in Attachments K and L to "Confirm" or "Does Not Confirm"; equally weighting each technical requirement; scoring technical requirements as either zero or one; and revising the cost analysis to reflect the importance the Plan places on the three components—six points for Network Pricing, two points for Administrative Fees, and two points for Pricing Guarantees.

In addition, the Plan structured the TPA RFP to support and clarify the Board's decision-making role, which is established in N.C. Gen. Stat. § 135-48.33(a). The Treasurer and the Plan do not view the Board as a mere "rubber stamp," so the Plan took steps to enable careful, thoughtful evaluation, deliberation, and full participation by the Board. One result was that, rather than being screened out by the Evaluation Committee, all three vendor proposals were presented to the Board for their review. It was *the Board* that then voted, unanimously, to award to Aetna Life Insurance Company ("Aetna") the new third-party administration services contract, which will begin two years from now.

The determining priorities mentioned above governed the Plan's judgments and the structure and evaluation of the TPA RFP.

**PROCESS FOR REQUEST FOR PROPOSAL #270-20220830TPAS**

The modernized TPA RFP was made publicly available via the Interactive Purchasing System, the State's online contracting portal, on August 30, 2022. By its terms, the TPA RFP mandated that "[t]he State shall conduct a comprehensive, fair, and impartial evaluation of the proposals." The TPA RFP process consisted of two main stages: first, interested vendors submitted responses to the "Minimum Requirements Proposal" portion; after establishing their ability to meet the Plan's minimum requirements, vendors then submitted responses to the Technical Proposal and Cost Proposal portions of the TPA RFP.

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As with all of the Plan's RFPs, this was a voluntary process, and no vendor was mandated by contract or law to participate. Before any vendor submissions were made, the Plan held a conference call with interested vendors on September 1, 2022, regarding the TPA RFP structure and process. BCBS, Aetna, Cigna Insurance Company, and UMR, participated in that call. The Plan then issued Addendum #1 to the TPA RFP on September 16, 2022, responding to questions submitted by these interested vendors and making changes to several areas of the TPA RFP. Three of the interested vendors—BCBS, Aetna, and UMR, Inc.— submitted responses in the first stage of the process, the Minimum Requirements Proposal, by the deadline on September 26, 2022.

The Minimum Requirements Proposal, the components of which were defined in Section 2.7.1 of the TPA RFP, ensured each vendor could meet basic operational prerequisites to perform TPA services. The TPA Minimum Requirements Table included in TPA RFP Section 5.1 elicited key information from each vendor, such as: experience with large, self-funded clients, data security practices, financial health and stability, and demonstrated compliance with federal health information privacy law and regulations.

Vendors were also required to complete "Attachment K: Minimum Requirements Response" as the form for submitting responses to TPA RFP Sections 5.1.1 through 5.1.11. As noted above, the responses to the items listed in Attachment K were required to be either "Confirm" or "Does Not Confirm." As specific terms of the third-party administrative services contract, responses that were incomplete or did not comply with these requirements were subject to rejection.

In accordance with the terms of the TPA RFP, the Evaluation Committee then considered each vendor's comprehensive Minimum Requirements Proposal response with the assistance of subject matter experts in data security, finance, and federal health information privacy law. After the Evaluation Committee determined that each vendor met the Plan's minimum requirements stated in the TPA RFP, the vendors were given access to the worksheets and data files necessary to complete the second stage, responding to the Technical and Cost Proposals. Again, the vendors had the opportunity to ask questions relating to the RFP, specifically the technical and cost components. The Plan issued Addendum #2 to the TPA RFP on October 14, 2022, responding to all questions submitted by the three vendors.

The contents of the Technical and Cost Proposals were set forth in TPA RFP Section 2.7.2. Notably, the Technical Proposal consisted of 310 requirements divided into eleven main categories addressing matters ranging from member enrollment to plan design to finance and banking and more. Vendors were required to complete and submit "Attachment L: Technical Requirements Response," which again requested vendors to simply confirm their ability to meet the Plan's stated requirements. The purpose of requiring clarity and accuracy from all interested vendors was to reduce subjective interpretations on the part of

Plan staff and to avoid negation or qualification of an ability to meet a Plan technical requirement through an explanatory description.

"Attachment A: Pricing" of the RFP comprised the Cost Proposal, which was scored based on three primary components: Network Pricing, Administrative Fees, and Network Pricing Guarantees. To complete the Network Pricing exercise, each vendor was given access to some actual Plan claims data and then asked to reprice the claims according to the vendor's expected network discounts. This enabled the Plan to understand the financial value of each vendor's network while also implicitly demonstrating the breadth of that network. The Administrative Fees component represented the cost charged to the Plan by the vendor for performance under the TPA RFP, and the Network Pricing Guarantees component was where each vendor could offer compensation back to the Plan if their network fails to deliver promised discounts (particularly due to rises in healthcare costs). The Cost Proposal itself consisted of ten total points a vendor could score: six points for its Network Pricing, two points for its Administrative Fees, and two points for its Network Pricing Guarantees. The Evaluation Committee, with assistance from its actuarial and health benefits consultant, The Segal Company ("Segal"), evaluated each vendor's Proposal responses and scored them according to the terms of the TPA RFP.

As set out in the TPA RFP, the requirements in the Technical Proposal constituted half of each vendor's score and those in the Cost Proposal constituted the other half. For the Technical Proposal component, vendors were ranked based on the total points earned out of the 310 available. The vendor earning the fewest points out of the total 310 received the rank of one. The vendor earning the most points out of the total 310 received the highest rank. To avoid subjectivity or favoritism, the TPA RFP specified that if two vendors earned the same number of points by meeting the requirements in the Technical Proposal, they would be equally ranked. In its response to the Technical Proposal's requirements, UMR and one other vendor confirmed all 310 items. Thus, UMR's and that vendor's proposals tied on the Technical Requirements, and each received the (highest) rank of three.

The scoring and ranking methodology for the Cost Proposal was similar and also explained in the TPA RFP. Vendors were ranked based on the total Cost Proposal points earned out of the 10 available. The vendor earning the fewest points out of the total 10 received the rank of one, and the vendor earning the most points out of the total 10 received the highest rank. As with the Technical Proposal, multiple vendors earning the same Cost Proposal score were equally ranked. UMR's response earned seven points, which was the lowest score compared to the other vendors' proposals, so UMR received the rank of one for the Cost Proposal.

After reviewing the responses to the requirements of the Technical and Cost Proposals and combining the rankings, UMR earned a final score of four, while the other two vendors earned scores of six and four. Thus, the Evaluation Committee presented all three vendors to the Plan's Board for their consideration with a recommendation to award the third-party administrative services contract to the vendor with the highest total score. During its

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meeting on December 14, 2022, the Board unanimously voted to award this contract to Aetna.

**UMR'S CLAIM LACKS MERIT**

In the Protest Letter, you claim that "the State failed to conduct a 'comprehensive, fair, and impartial evaluation' as required by the RFP and applicable law," implying that the Plan's actions were arbitrary. Protest Letter, p. 4. Therefore, you contend the award of the TPA RFP should be stayed, rescinded, and put out to bid again.

Your assertions regarding the TPA RFP and its award are not supported by the facts and, therefore, are without merit. Generally, your claim fails by:

> (1) Misplacing the authority to award the TPA contract with the TPA RFP Evaluation Committee. The Plan's governing statutes are clear—the authority to award a contract of this amount resides solely with the Board. N.C. Gen. Stat. § 135-48.33(a). The TPA RFP was explicit that the authority to award the contract resided with the Board. Pursuant to the TPA RFP, the Evaluation Committee may make a recommendation to the Board; however, it is solely the Board's decision what weight it provides that recommendation, what factors it considers, and to whom to award a contract. Accordingly, pursuant to the TPA RFP and statutory authority, all three qualifying vendors were placed before the Board for its consideration and one was recommended by the Evaluation Committee. The Board then had independent authority to select any or none of these vendors. As you know, the bipartisan Board unanimously voted to award the contract to Aetna.
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> (2) Incorrectly asserting that if a requirement of the TPA RFP, or the way that requirement is valued, analyzed, or scored, did not match UMR's priorities then there must not exist a fair, good faith, and reasoned decision by the Plan involving that item. UMR is welcome to prioritize its own interests, establish its own internal mechanisms and procedures, and arrive at decisions contrary to the Plan's decisions; however, UMR's or any other vendor's pecuniary gain or internal objectives are not objectives of the Plan, nor is the Plan mandated to operate according to a vendor's internal mechanisms, procedures, and objectives. The Plan is tasked with fairly and in good faith structuring and reviewing the RFP process and the TPA RFP in order to achieve its given objectives and priorities in service of the best interests of the Plan's members.

More particularly, you assert that, under the Plan's objectives, the TPA RFP was not performed in good faith and in a fair manner. This assertion does not align with the process as it actually occurred. For example, the TPA RFP Evaluation Committee was commissioned to objectively review and score each proposal in accordance with the pre-developed criteria in the TPA RFP and to make a recommendation for award based on fair and ethical review practices. Those pre-developed criteria were created to achieve the


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objectives given to the Plan, such as increasing the objective analysis of the RFP process and the TPA RFP in particular. The Plan instructed and required Segal to perform its analysis in the same good faith and fair manner.

Next, you assert that, under the Plan's objectives, the Plan did not obtain sufficient information to make a reasonable decision—creating the false impression that the TPA RFP, its development, and its review were a cursory affair that only relied upon scant facts and a lack of knowledge. Again, your claim does not align with the reality of the TPA RFP. The TPA RFP required vendors to provide the Plan substantial data for its review and a myriad of binding contractual assents (without qualification) to essential requirements to ensure that the Plan had the knowledge and assurances to confirm that its objectives would be met.

Specifically, you argue that, if UMR were in the Plan's position, UMR would have used "at a minimum" the Uniform Data Submission ("UDS") or similar third-party database as part of the network cost evaluation in the TPA RFP. Protest Letter, p. 9. You contend that, because Segal did not perform the UDS comparison or similar database analysis and the Plan did not require such database analysis, the Plan's and Segal's decisions on this point were unreasoned. The key facts and reasoning that undergirded the Plan's decision to not include a requirement to use UDS or a similar database, as well as Segal's decision not to perform an analysis using the same databases, include the following:

> (1) Segal rarely relies on such database analysis in the case of self-funded non-federal government plans that are the size and scope of the Plan. While UDS and other similar databases might be helpful for smaller self-funded plans in smaller localities and states or for those with smaller populations, UDS and similar databases are less meaningful to the Plan due to its size and scope.
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> (2) UDS and other similar databases are based on self-reported data and, more specifically, UDS relies upon utilization assumptions. Conversely, the Plan uses its own robust, trustworthy claims data showing actual—not assumed—utilization. Databases built on federal price transparency requirements are too new, not group-specific, not built-up enough, and cost-prohibitive to be fully meaningful to the Plan. UMR's COB database review is limited and low-volume, so it is not meaningful to the Plan. Finally, there are concerns about the accuracy and relevance of UDS and similar databases, which emphasizes their low (if any) value to the Plan, especially considering their costs.
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> (3) UDS and similar databases are based on historic and dated claims data—often at least a year old. Such data was not relevant to the TPA RFP's claims repricing exercise in which vendors were expected to "reprice each claim line based on provider contracts in place, or near-future contract improvements bound by letters of intent, at the time of the repricing." TPA RFP, Attachment A: Pricing § 1.2.1.

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(4) Segal performed a thorough analysis of all cost proposals. Where Segal expressed concerns about the viability of the data, the Plan performed its due diligence through the clarification process, issued a subsequent BAFO to verify that data, and then obtained Segal's review.

After consideration of such facts and reasoning, it was logical and appropriate for the Plan to not require the use of these databases, for Segal to forego an analysis of any of these databases, and for the Plan to accept and rely upon Segal's conclusion.

Next, due to its funding levels and its statutory framework, the Plan is lean with respect to its staff. This is true at present and historically. Accordingly, the Plan contracts with high quality vendors to provide key services for the Plan. This is as true for third-party administrative services as it is for actuarial and health benefits consulting services, and this is the reason for the Plan's rigorous RFP process. Accordingly, it was reasonable for the Plan to expect and rely upon the knowledge, advice, experience, analysis, and processes of Segal within the areas of its expertise as the Plan's actuarial and health benefits consultant.

Finally, you wrongfully assume that a review of UDS or a similar database is the only reasonable way to hold vendors accountable for their binding assurances, such as those found in Aetna's Cost Proposal. While you suggest that the confirmations made in the TPA RFP may not be binding on the vendor receiving the contract award, let me be clear: they are binding. The Plan will obtain the benefit of its bargain with Aetna. If Aetna fails to comply with what it confirmed was within its ability to perform, the Plan will fully enforce its contractual rights through all necessary legal means, as it does with all vendors.

## CONCLUSION

A neutral examination of the facts shows that the Plan's recently completed TPA RFP and its structure, process, scoring, and award were conducted carefully, professionally, in good faith, in a fair and reasonable manner, and in the best interest of the Plan's members consistent with the Plan's, the Board's, and the Treasurer's fiduciary responsibilities. Following its objectives, the Plan carefully considered the critical facts and arrived at decisions regarding RFP structure, process, scoring, and award that were logically connected with those objectives.

Your claim that "the State failed to conduct a 'comprehensive, fair, and impartial evaluation' as required by the RFP and applicable law" and that the award to Aetna was "based upon an arbitrary, capricious, and erroneous network cost analysis" is without merit. Protest Letter, p. 4, 8. Therefore, I have determined that a meeting to further discuss UMR's protest of the award would serve no purpose. I understand UMR's disappointment at the award of the TPA RFP and that this is not the outcome they desired; however, I am constrained to consider the facts and law as they exist.

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I nonetheless desire to thank UMR for their participation in the TPA RFP process—each bidder increases competition, which moves the Plan closer to achieving its overall goals of reducing the Plan's costs, improving the Plan's solvency, and lowering dependent premiums, all to maintain the Plan's sustainability for this and the next generation of those who teach, protect, or otherwise serve. I have appreciated this opportunity to engage in a factual, thoughtful, and transparent review of the Plan's contracting process for the third-party administrative services contract going into effect two years from now, and I welcome UMR's future bids on RFPs.

Sincerely,

Sam Watts
Interim Executive Administrator
North Carolina State Health Plan