

STATE OF NORTH CAROLINA  
DURHAM COUNTY

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
23 INS 738

BLUE CROSS AND BLUE SHIELD OF )  
NORTH CAROLINA, )  
)  
Petitioner, )  
)  
v. )  
)  
NORTH CAROLINA STATE )  
HEALTH PLAN FOR )  
TEACHERS AND STATE )  
EMPLOYEES, )  
)  
Respondent, )  
)  
and )  
)  
Aetna LIFE INSURANCE COMPANY, )  
)  
Respondent-Intervenor. )

**RESPONDENT'S**  
**MOTION IN LIMINE**

---

Pursuant to the provisions of 26 NCAC 03 .0101, Rules 7 and 16 of the North Carolina Rules of Civil Procedure, and Rules 402, 403 and 802 of the North Carolina Rules of Evidence, Respondent North Carolina State Health Plan for Teachers and State Employees (the “Plan”) hereby respectfully moves the tribunal for an order *in limine* prohibiting the parties, their counsel, and their witnesses from offering any evidence referencing the following matters. As set forth herein, certain evidence to be offered by Blue Cross is inadmissible under the North Carolina Rules of Evidence and should be excluded:

**1. Terms of the RFP.** In its petition for contested case hearing, Petitioner raised a number of issues regarding the design choices made by the Plan while developing the RFP and some of the terms resulting from those choices. For example, Petitioner stated that the “scoring

and decision-making method [set out in the RFP] has no sound basis.” (Pet. ¶ 83). However, following discovery, Petitioner made the choice to narrow significantly the scope of its challenge to the Plan’s decision. After Respondent-Intervenor moved for partial summary judgment on the grounds that Petitioner had waived any objection to the terms of the RFP, Petitioner repeatedly represented to this tribunal that “Blue Cross NC is seeking to enforce the RFP’s terms, *not to challenge them.*” (Resp. in Opp’n to Mots. For Summ. J., pp. 61, 63) (emphasis added). At the same time, Blue Cross withdrew its expert designated to testify about flaws in the design of the RFP. (Resp. in Opp’n to Mot. to Exclude, p. 2, n.1). The prehearing order further confirms this decision in that Petitioner’s issue list contains no issues asking this tribunal to find any errors in the design or terms contained in the RFP.

Nonetheless, on January 31, 2024, in deposition testimony designated for use as substantive evidence at trial under Rule 32 of the North Carolina Rules of Civil Procedure, Blue Cross has included extensive testimony regarding decisions made in the development of the RFP and the RFP’s terms that it intends to introduce. That testimony includes the following :

- **All designated deposition testimony of Vanessa Davison**, former contracting agent for the Plan. The proffered testimony of Ms. Davison relates to the drafting of the RFP, the evaluation criteria, the benefits and drawbacks of the non-narrative format adopted by the Plan in the RFP, the relative weight various criteria in the RFP should be given, and the decision-making process in deciding how to structure the RFP. Petitioner’s testimony designations for Ms. Davison are attached hereto as **Exhibit A** for the Court’s review.
- **Certain designated deposition testimony of Dale Folwell**, North Carolina State Treasurer, specifically Page 19:2-9, Page 19:12-19, Page 24:13-22, Page 25:4-25:17,

Pages 42:2-44:25, Page 45:18-22, Pages 46:18-47:14, and Pages 56:12-57:10. The proffered testimony of Treasurer Folwell specified above is directed toward what criteria should have been included in the RFP and the relative weight each deserves in an RFP process. Petitioner's testimony designations for Treasurer Folwell are attached hereto as **Exhibit B** for the Court's review.

- **Certain designated deposition testimony of Caroline Smart**, senior director of plan integration for the Plan, specifically Page 30:22-31:15, 78;20-79:1, and 55:4-12. The proffered testimony of Ms. Smart specified above is directed toward the Plan's non-narrative format in the RFP and scoring methodology, including the use of ranks to determine a final score. Petitioner's testimony designations for Ms. Smart are attached hereto as **Exhibit C** for the Court's review.
- **Certain designated deposition testimony of Stuart Wohl**, Senior Vice President and East Region Leader, The Segal Company Eastern States. Much of the proffered testimony of Mr. Wohl concerns the evaluation and scoring of network access and disruption, neither of which were part of the evaluation criteria in the RFP, specifically Pages 82:8-23, 135:4-13, 152:1-6, 153:24-154:17, 160:3-10, 168:7-11, 178:20-179:8, 181:20-182:25, and 184:14-185:2. Other proffered testimony concerns the scoring methodology in Section 3.4 of the RFP, specifically Pages 199:21-202:21, 203:14-204:6, 205:7-206:22, 215:19-217:1, 220:10-221:21 and 222:6-19. Petitioner's testimony designations for Mr. Wohl are attached hereto as **Exhibit D** for the Court's review.

The tribunal should exclude this testimony and any other evidence suggesting that the RFP's terms were not appropriate. Such evidence has no purpose other than to call into question the wisdom

of the terms of the RFP, which terms Blue Cross has repeatedly confirmed that it is not challenging. Consequently, all such evidence is irrelevant, and should be excluded under NC Rules of Evidence 402.

In addition, the admission of such evidence will require the Plan to put on rebuttal testimony and evidence to support the propriety of the RFP terms and design, all of which should be unnecessary since Blue Cross does not challenge those things. This evidence would needlessly prolong and complicate the hearing and risk confusion of the issues. Therefore, such testimony and evidence should also be excluded under Rule 403.

**2. Expert reports.** The reports of Blue Cross’s expert, Gregory Russo, are included in the previously numbered deposition exhibits (to be marked at trial as joint exhibits) as Exhibit 417 (initial report) and Exhibit 420.<sup>1</sup> Mr. Russo’s reports are voluminous and contain a lengthy account of the RFP process—in which Mr. Russo was not involved and of which he has no first-hand knowledge.

Each of the experts designated in this case, including Mr. Russo, will be called to testify live. As such, their reports, which were prepared for purposes of advancing discovery, should not be admitted into evidence, as they will be cumulative of the testimony offered.

The reports are also hearsay, inadmissible under Rule 802, N.C. Rules of Evidence. “[T]he great weight of authority appears to hold that expert reports are generally inadmissible absent a contrary stipulation by the parties.” *SMD Software v. Emove*, No. 5:08-CV-403-FL, 2014 WL 12634915, at \*3 (E.D.N.C. May 5, 2014). *See also Hunt v. City of Portland*, 599 Fed. Appx. 620,

---

<sup>1</sup> Digital copies of the joint exhibits, including Exhibits 417 and 420, were provided to the Court February 6, 2024, as directed by the ALJ in the Amended Notice of Hearing dated January 25, 2024.

621 (9<sup>th</sup> Cir. 2013) (holding expert report was hearsay and district court erred by admitting it into evidence); *Sigler v. Am. Honda Motor Co.*, 532 F.3d 469, 481 (6<sup>th</sup> Cir. 2008) (finding district court erred by considering unsworn expert reports, which it characterized as “hearsay evidence”); *Boone v. Moore*, 980 F.2d 539 (8<sup>th</sup> Cir. 1992) (holding that non-testifying expert’s report was inadmissible hearsay and trial court erred in admitting it as substantive evidence); *Pender v. Bank of Am. Corp.*, No. 3:05-CV-00238-GCM, 2016 WL 7320894 (W.D.N.C. Dec. 15, 2016) (reiterating earlier ruling that expert reports are inadmissible hearsay). North Carolina courts follow the same general rule. *See, e.g., In re A.W.*, 283 N.C. App. 127, 872 S.E.2d 399, ¶ 28-30 (affirming admission of reports of expert who conducted a child medical examination but only because such reports fell within the hearsay exceptions as statements for medical diagnosis and business records).

Moreover, to the extent Mr. Russo does not offer live testimony on any of the opinions and assumptions contained in his reports, the reports have no relevance to the opinions Mr. Russo and Blue Cross offer at trial. It would be inappropriate and unfairly prejudicial to allow Mr. Russo to offer opinions via his report he does not address live.

### **PRAYER FOR RELIEF**

For the reasons set forth above, Respondent Plan respectfully requests that the Administrative Law Judge exclude *in limine* the exhibits and testimony set forth herein, including:

1. The identified deposition testimony of Vanessa Davison, Treasurer Folwell, Caroline Smart, and Stuart Wohl;
2. All other evidence challenging the design and terms of the RFP; and
3. The expert reports of all parties expert witnesses.

**REQUEST FOR EXPEDITED ADJUDICATION AND HEARING**

The Plan respectfully requests an in-person hearing pursuant to 26 NCAC 03 .0115(b) unless the Tribunal decides in its discretion to rule on the papers.

This the 7th day of February 2024.

North Carolina State Health Plan for  
Teachers and State Employees

/s/ J. Benjamin Garner

J. Benjamin Garner  
N.C. State Bar No. 41257  
[Ben.Garner@nctreasurer.com](mailto:Ben.Garner@nctreasurer.com)

Aaron Vodicka  
N.C. State Bar No. 55199  
[Aaron.Vodicka@nctreasurer.com](mailto:Aaron.Vodicka@nctreasurer.com)  
3200 Atlantic Avenue  
Raleigh, NC 27607  
Telephone: 919.814.4430

FOX ROTHSCHILD LLP

/s/ Marcus C. Hewitt

Robert H. Edmunds, Jr.  
N.C. State Bar No. 6602  
[bedmunds@foxrothschild.com](mailto:bedmunds@foxrothschild.com)

Marcus C. Hewitt  
N.C. State Bar No. 23170  
[mhewitt@foxrothschild.com](mailto:mhewitt@foxrothschild.com)  
Elizabeth Sims Hedrick  
N.C. State Bar No. 38513  
[ehedrick@foxrothschild.com](mailto:ehedrick@foxrothschild.com)  
434 Fayetteville Street, Suite 2800  
Raleigh, NC 27601  
Telephone: 919.755.8700  
Facsimile: 919.755.8800

*Counsel for Respondent*

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing document was uploaded electronically with the Office of Administrative Hearings, causing electronic service, as defined in 26 N.C.A.C. 03 .0501(4), to be made upon the following:

ROBINSON, BRADSHAW & HINSON, P.A.

Matthew W. Sawchak

[msawchak@robinsonbradshaw.com](mailto:msawchak@robinsonbradshaw.com)

Stephen D. Feldman

[sfeldman@robinsonbradshaw.com](mailto:sfeldman@robinsonbradshaw.com)

Nathan C. Chase, Jr.

[nchase@robinsonbradshaw.com](mailto:nchase@robinsonbradshaw.com)

Erik R. Zimmerman

[EZimmerman@robinsonbradshaw.com](mailto:EZimmerman@robinsonbradshaw.com)

Emily Schultz

[ESchultz@robinsonbradshaw.com](mailto:ESchultz@robinsonbradshaw.com)

Doug Jarrell

[DJarrell@robinsonbradshaw.com](mailto:DJarrell@robinsonbradshaw.com)

Ben DeCelle

[BDecelle@robinsonbradshaw.com](mailto:BDecelle@robinsonbradshaw.com)

MORNINGSTAR LAW GROUP

Shannon Joseph

[sjoseph@morningstarlawgroup.com](mailto:sjoseph@morningstarlawgroup.com)

*Counsel for Petitioner Blue Cross and Blue Shield of North Carolina, Inc.*

WYRICK ROBBINS YATES & PONTON LLP

Lee M. Whitman

[lwhitman@wyrick.com](mailto:lwhitman@wyrick.com)

Benjamin N. Thompson

[bthompson@wyrick.com](mailto:bthompson@wyrick.com)

Sophia V. Blair

[sblair@wyrick.com](mailto:sblair@wyrick.com)

*Counsel for Respondent-Intervenor Aetna Life Insurance Company*

This the 7th day of February 2024.

*/s/ Marcus C. Hewitt*  
Marcus C. Hewitt

**EXHIBIT A**  
**Petitioner's testimony designations for**  
**Vanessa Davison**

DESIGNATION	SOURCE	
15:02 - 16:03	<p><b>Davison, Vanessa 2023-08-25</b></p> <p>15:02 Q. On the first page of this Exhibit 1, this</p> <p>15:03 LinkedIn printout, under Summary, the language says:</p> <p>15:04 Over 20 years' experience in purchasing and</p> <p>15:05 contracting with the State of North Carolina at</p> <p>15:06 multiple agencies.</p> <p>15:07 Did I read that correctly?</p> <p>15:08 A. Yes.</p> <p>15:09 Q. And did you write that?</p> <p>15:10 A. Yes.</p> <p>15:11 Q. Is that an accurate description of your</p> <p>15:12 experience?</p> <p>15:13 A. Yes.</p> <p>15:14 Q. The next bullet says: Soliciting</p> <p>15:15 competition for purchase of services for the State.</p> <p>15:16 Did I read that correctly?</p> <p>15:17 A. Yes.</p> <p>15:18 Q. And would you say that's an accurate</p> <p>15:19 description of your experience?</p> <p>15:20 A. Yes.</p> <p>15:21 Q. Next bullet: Creation of contracts with</p> <p>15:22 enforceable terms and conditions, deliverables and</p> <p>15:23 timetables tied to reimbursement.</p> <p>15:24 Is that correctly read?</p> <p>15:25 A. Yes.</p> <p>16:01 Q. Is that as accurate description of your</p> <p>16:02 experience?</p> <p>16:03 A. Yes.</p>	
16:21 - 16:24	<p><b>Davison, Vanessa 2023-08-25</b></p> <p>16:21 Q. Was your title "contracting agent" the</p> <p>16:22 entire time that you were employed at the State</p> <p>16:23 Health Plan from 2021 to 2023?</p> <p>16:24 A. Yes.</p>	
49:06 - 49:16	<p><b>Davison, Vanessa 2023-08-25</b></p> <p>49:06 Q. And what was your role with regard to</p> <p>49:07 managing that process for the 2022 TPA RFP?</p> <p>49:08 A. Well, my name's on the face of it.</p> <p>49:09 Q. Yeah.</p> <p>49:10 A. Yeah.</p> <p>49:11 Q. You would say you're the manager of that</p>	

DESIGNATION	SOURCE	
	49:12 RFP?	
	49:13 A. Yeah.	
	49:14 Q. Okay. Anybody else have that	
	49:15 responsibility shared with you?	
	49:16 A. Not officially.	
46:17 - 46:23	<b>Davison, Vanessa 2023-08-25</b>	
	46:17 Who would you put	
	46:18 as lead drafter of the TPA RFP?	
	46:19 A. From an administrative standpoint, that	
	46:20 would be me.	
	46:21 Q. Okay.	
	46:22 A. I took lead on kind of constructing the	
	46:23 RFP with documents, verbiage that was fed to me.	
104:22 - 106:21	<b>Davison, Vanessa 2023-08-25</b>	
	104:22 Q. Can the criteria change after the RFP is	
	104:23 issued?	
	104:24 A. The evaluation criteria?	
	104:25 Q. Yes, ma'am.	
	105:01 A. I don't believe so.	
	105:02 Q. If they did, would that be problematic?	
	105:03 A. Yeah.	
	105:04 Q. Why?	
	105:05 A. Because you've put out a request for	
	105:06 proposals, under a certain set of written criteria.	
	105:07 And then what you're implying is, if you decide to	
	105:08 change that criteria in the extreme that's uncool.	
	105:09 I don't think you can do that.	
	105:10 Q. What if you issue the RFP and say, as the	
	105:11 person who would be evaluating it, "we'll decide	
	105:12 later how to evaluate it"?	
	105:13 A. No, you can't do that.	
	105:14 Q. Why not?	
	105:15 A. Potential bidders need to know how they're	
	105:16 going to be evaluated. It's just aboveboard.	
	105:17 Q. Why is that important?	
	105:18 A. Because you're trying to communicate what	
	105:19 you want, how it's going to be evaluated -- and so	
	105:20 that offerers understand how they're going to be	
	105:21 graded, shall we say.	
	105:22 Q. And --	

DESIGNATION	SOURCE	
	105:23 A. You can't be secretive. None of this is	
	105:24 secretive.	
	105:25 Q. In your 20-plus years of experience in	
	106:01 purchasing and contracting in the State of North	
	106:02 Carolina, have you ever seen an instance where the	
	106:03 evaluation criteria have changed or been decided	
	106:04 after an RFP is issued?	
	106:05 A. No, I haven't.	
	106:06 Q. Would you be surprised if you did?	
	106:07 A. Yeah, I'd be surprised.	
	106:08 Q. Would you consider it to be unfair if that	
	106:09 happened?	
	106:10 A. I would -- I would consider it to be	
	106:11 unfair, and it shouldn't happen. I mean, in my	
	106:12 experience, for an example, if a bid is put out and	
	106:13 for some reason after the bid is put out, maybe	
	106:14 legitimately, it's realized that there was a	
	106:15 critical error like that, then, in my opinion, you	
	106:16 should cancel the bid and, you know, correct it, and	
	106:17 then put the bid back out in a matter of days or	
	106:18 weeks or months or whatever.	
	106:19 I mean, you can't just -- you can't say	
	106:20 you're going to do one thing and then change it	
	106:21 midstream.	
138:07 - 138:11	<b>Davison, Vanessa 2023-08-25</b>	
	138:07 Q. As a vendor, if I thought, I think I can	
	138:08 give them what they need but technically I'm not	
	138:09 sure I can comply exactly with the letter of this	
	138:10 requirement, would that vendor check "yes, confirm"	
	138:11 or "no, does not confirm"?	
138:15 - 138:21	<b>Davison, Vanessa 2023-08-25</b>	
	138:15 A. I don't know. Seems like that vendor	
	138:16 would have a quandary.	
	138:17 BY MS. SCHULTZ:	
	138:18 Q. If the yes/no approach has the benefits	
	138:19 that you've said here today, why had it not been	
	138:20 implemented before 2022?	
	138:21 A. I don't know.	
165:11 - 165:14	<b>Davison, Vanessa 2023-08-25</b>	
	165:11 Q. So normally if a requirement is very	

DESIGNATION	SOURCE	
	<p>165:12 important, it would be given more weight than a less</p> <p>165:13 important requirement?</p> <p>165:14 A. It could be, yes.</p>	
165:20 - 165:25	<p><b>Davison, Vanessa 2023-08-25</b></p> <p>165:20 Q. If requirements have equal weight --</p> <p>165:21 A. Uh-huh.</p> <p>165:22 Q. -- does that typically mean that they're</p> <p>165:23 equally important?</p> <p>165:24 A. It could. That could be the inference.</p> <p>165:25 Q. What else can it mean?</p>	
166:03 - 166:08	<p><b>Davison, Vanessa 2023-08-25</b></p> <p>166:03 A. Could just mean that people are tired of</p> <p>166:04 doing this, and they're just going to throw the same</p> <p>166:05 amount of points on it.</p> <p>166:06 BY MS. SCHULTZ:</p> <p>166:07 Q. It makes counting up easier.</p> <p>166:08 A. It's true.</p>	
167:08 - 167:20	<p><b>Davison, Vanessa 2023-08-25</b></p> <p>167:08 Q. Because of the way the Plan equally</p> <p>167:09 weighted cost and technical proposals, do you</p> <p>167:10 understand it's possible that the lowest-cost bidder</p> <p>167:11 could lose the RFP, meaning not be awarded the most</p> <p>167:12 points in the RFP structure, based on not confirming</p> <p>167:13 a single technical proposal?</p> <p>167:14 A. Yes, I understand that.</p> <p>167:15 Q. Do you understand that could be the case</p> <p>167:16 even if the lowest-cost bidder's cost was millions</p> <p>167:17 of dollars lower than the next bidder?</p> <p>167:18 A. Yes.</p> <p>167:19 Q. Tens of million of dollars?</p> <p>167:20 A. Yeah.</p>	
168:25 - 169:06	<p><b>Davison, Vanessa 2023-08-25</b></p> <p>168:25 Q. Based on the way the RFP scoring is</p> <p>169:01 structured, a technical -- based on the way the RFP</p> <p>169:02 scoring is structured, a vendor could be awarded 309</p> <p>169:03 of 310 technical proposal points and not get the</p> <p>169:04 most points overall, meaning between the technical</p> <p>169:05 and cost proposal, despite being the lowest bid by</p> <p>169:06 tens of millions of dollars. Is that correct?</p>	

DESIGNATION	SOURCE
169:09 - 169:09	<b>Davison, Vanessa 2023-08-25</b> 169:09 A. It's possible, yes.
169:22 - 169:23	<b>Davison, Vanessa 2023-08-25</b> 169:22 MS. SCHULTZ: We're showing the witness 169:23 what's been marked Exhibit 7.
171:07 - 171:07	<b>Davison, Vanessa 2023-08-25</b> 171:07 Q. At the first comment, it's numbered VD1
171:11 - 172:12	<b>Davison, Vanessa 2023-08-25</b> 171:11 Q. You write: Sharon, I'm concerned that 171:12 with only a handful of exceptions, this SOW only 171:13 asks vendors to confirm statements to provide 171:14 services. 171:15 And in parenthesis, you say (very few 171:16 "describe" "provide" statements.) This RFP does not 171:17 allow vendors to demonstrate their abilities to 171:18 provide services. This will not allow the 171:19 evaluation committee to, italicized, evaluate and 171:20 score the responses accordingly. Is the assumption 171:21 that vendors that meet the minimum requirements are 171:22 very qualified and competent to perform services 171:23 under the contract and there's less need to evaluate 171:24 their abilities? 171:25 If a vendor confirms they will perform per 172:01 the RFP and has the lowest cost, they will be 172:02 awarded the contract. If, during implementation or 172:03 soon thereafter, the Plan realizes the awarded 172:04 vendor is unable to perform, even though they agreed 172:05 they could, what will the Plan do? Is this a risk 172:06 the Plan is willing to take on? 172:07 And the last paragraph says: I understand 172:08 the Plan's leadership feels this different approach 172:09 to writing an RFP and evaluating responses will be 172:10 quicker, but I wonder about the outcome of this 172:11 approach. I guess we will know in a few months, 172:12 exclamation point. Smiley face.
173:01 - 173:24	<b>Davison, Vanessa 2023-08-25</b> 173:01 A. I would say that without asking -- I was 173:02 questioning if, without asking offerers to describe 173:03 and provide information, would the Plan basically

DESIGNATION	SOURCE	
	<p>173:04 get what they needed to, to understand the offerer's</p> <p>173:05 ability to provide the services, if it would be good</p> <p>173:06 enough.</p> <p>173:07 I also was expressing that -- there's a</p> <p>173:08 couple of other ideas here, you know, also</p> <p>173:09 questioning, you know, if a vendor was awarded the</p> <p>173:10 contract, regardless, and if they had problems, you</p> <p>173:11 know, is that a risk that the Plan was willing to</p> <p>173:12 take? Tying that back to not -- potentially not</p> <p>173:13 understanding more, from a narrative standpoint,</p> <p>173:14 what a vendor could do or couldn't do. Just, you</p> <p>173:15 know, like they said, they're confirming it.</p> <p>173:16 Last idea is I'm expressing that, you</p> <p>173:17 know, even though I understand this is the way we're</p> <p>173:18 going to roll out with this RFP, I'm just wanting to</p> <p>173:19 make sure that everyone has thought it through. I</p> <p>173:20 mean, I stand by the comment then and now. It's my</p> <p>173:21 opinion. I'm not saying that this approach was</p> <p>173:22 wrong; I'm not saying it was right. I'm basically,</p> <p>173:23 just saying, "Hey, has everyone thought this</p> <p>173:24 through?"</p>	
186:23 - 187:14	<p><b>Davison, Vanessa 2023-08-25</b></p> <p>186:23 Q. Do you know whether Segal did the analysis</p> <p>186:24 of the cost proposals?</p> <p>186:25 A. I believe, yes, that's -- they -- we</p> <p>187:01 contracted with them to provide some analysis,</p> <p>187:02 support, as we've talked about earlier, for the Plan</p> <p>187:03 with regard to the cost analysis. Yes, they were</p> <p>187:04 definitely involved in that.</p> <p>187:05 Q. Do you know whether the Plan did the same</p> <p>187:06 analysis in-house?</p> <p>187:07 A. I don't -- I really, truly don't know.</p> <p>187:08 Q. Do you know whether the Plan checked</p> <p>187:09 Segal's work?</p> <p>187:10 A. I don't know that for a fact. I would</p> <p>187:11 hope that they would have.</p> <p>187:12 Q. Why would you hope that they would have?</p> <p>187:13 A. Because it's always good to inspect what</p> <p>187:14 you expect.</p>	

**EXHIBIT B**  
**Petitioner's testimony designations for**  
**Treasurer Dale Folwell**

DESIGNATION	SOURCE
6:02 - 6:04	<b>Folwell, Dale 2023-09-21</b> 6:02 DALE R. FOLWELL, 6:03 having been first duly sworn to tell the truth, was 6:04 examined and testified as follows:
6:06 - 6:18	<b>Folwell, Dale 2023-09-21</b> 6:06 BY MS. JOSEPH: 6:07 Q. Good morning. 6:08 A. Hey. 6:09 Q. Are you Dale R. Folwell, State 6:10 treasurer of North Carolina? 6:11 A. I am. 6:12 Q. And you were elected to that position 6:13 by the people of North Carolina? 6:14 A. Correct. 6:15 Q. Are you a CPA? 6:16 A. I am. 6:17 Q. What is a CPA? 6:18 A. Certified public accountant.
7:13 - 7:20	<b>Folwell, Dale 2023-09-21</b> 7:13 Q. And you understand that we're here 7:14 today in connection with the bid protest that Blue 7:15 Cross of North Carolina filed in connection with 7:16 the 2022 third-party administrator request for 7:17 proposals which awarded the State Health Plan's 7:18 contract for third-party administrator services to 7:19 Aetna Life Insurance Company? 7:20 A. Yes.
9:07 - 9:09	<b>Folwell, Dale 2023-09-21</b> 9:07 If you don't understand any question 9:08 that I ask, will you, please, tell me? 9:09 A. Be glad to.
9:12 - 9:19	<b>Folwell, Dale 2023-09-21</b> 9:12 Q. In this case, the State Health Plan 9:13 stated in a filing in this case that you would be, 9:14 quote, a key witness in this case, and that your 9:15 deposition would need to be taken. 9:16 Are you aware of that? 9:17 A. I am. 9:18 Q. On what subjects do you believe that

DESIGNATION	SOURCE
	9:19 you are "a key witness"?
9:24 - 10:02	<b>Folwell, Dale 2023-09-21</b> 9:24 THE WITNESS: I am the State treasurer 9:25 of North Carolina. I presume that my name is 10:01 mentioned in that regard on lots of different 10:02 things.
10:04 - 10:05	<b>Folwell, Dale 2023-09-21</b> 10:04 Q. On what subjects are you -- do you 10:05 understand that you are a witness?
10:08 - 10:11	<b>Folwell, Dale 2023-09-21</b> 10:08 Q. In this case. 10:09 A. In this case, I presume that I'm being 10:10 deposed because I am the chairman of the Board of 10:11 the State Health Plan.
10:15 - 10:20	<b>Folwell, Dale 2023-09-21</b> 10:15 Q. Do you disagree that you're a key 10:16 witness? 10:17 A. No. 10:18 Q. As treasurer, you have administrative 10:19 and managerial authority of the State Health Plan? 10:20 A. Yes.
10:22 - 10:25	<b>Folwell, Dale 2023-09-21</b> 10:22 Is the State 10:23 Health Plan managed, operated, and administered by 10:24 the treasurer in the North Carolina Department of 10:25 State Treasurer?
11:03 - 11:05	<b>Folwell, Dale 2023-09-21</b> 11:03 THE WITNESS: Yes, that's an event 11:04 that, I guess, has occurred over the last 11:05 12 years.
15:14 - 15:25	<b>Folwell, Dale 2023-09-21</b> 15:14 Q. Who did you interact with the most 15:15 regarding the decision to issue the RFP? 15:16 A. The executive director. 15:17 Q. Who did you interact with the most 15:18 about the decision or the way to design the RFP? 15:19 A. No one. 15:20 Q. And who did you interact with during

DESIGNATION	SOURCE
	15:21 the process of evaluating the RFP?
	15:22 A. No one.
	15:23 Q. In your role as treasurer, you have a
	15:24 fiduciary duty to the State Health Plan?
	15:25 A. And everyone else and every other plan.
16:01 - 17:03	<b>Folwell, Dale 2023-09-21</b>
	16:01 Q. In your role as treasurer, you have a
	16:02 fiduciary duty to the State Health Plan and its
	16:03 members?
	16:04 A. Absolutely.
	16:05 Q. And what do you understand your role as
	16:06 a fiduciary requires you to do or consider as you
	16:07 attend to your work for the State Health Plan?
	16:08 A. To exercise a loyalty and duty of care
	16:09 to them and them only.
	16:10 Q. Does it require you to consider the
	16:11 best interests of the Plan.
	16:12 A. Absolutely.
	16:13 Q. The best interest of the Plan's
	16:14 members?
	16:15 A. And the sustainability of the Plan.
	16:16 Q. Does it require you to consider access
	16:17 to medical care for the Plan's members?
	16:18 A. Yes. My bias is toward members.
	16:19 Q. Does your fiduciary duty require you to
	16:20 consider affordability of care for members?
	16:21 A. That's well documented yesterday,
	16:22 today, and tomorrow.
	16:23 Q. So yes?
	16:24 A. Yes.
	16:25 Q. As a fiduciary of the State Health Plan
	17:01 and its members, do you consider cost savings to be
	17:02 important?
	17:03 A. Yes.
17:13 - 17:15	<b>Folwell, Dale 2023-09-21</b>
	17:13 What role do considerations about cost
	17:14 play in making decisions about what is in the best
	17:15 interest of the Plan and its members?
17:18 - 17:25	<b>Folwell, Dale 2023-09-21</b>
	17:18 THE WITNESS: We are focused on premium

DESIGNATION	SOURCE	
	17:19	cost to our members, out-of-pocket cost
	17:20	our members, and cost to the Plan in general.
	17:21	BY MS. JOSEPH:
	17:22	Q. So in making decisions about the best
	17:23	interests of the Plan's members, you do consider
	17:24	cost?
	17:25	A. Yes.
18:01 - 18:04	<b>Folwell, Dale 2023-09-21</b>	
	18:01	Q. Is it an important consideration?
	18:02	A. Yes.
	18:03	Q. Is it a critical?
	18:04	A. Yes.
18:20 - 18:25	<b>Folwell, Dale 2023-09-21</b>	
	18:20	As a fiduciary, is ensuring that the
	18:21	Plan's members have access to health care providers
	18:22	to meet their needs something that you consider in
	18:23	your work as treasurer?
	18:24	A. Yes.
	18:25	Q. Is it important?
19:01 - 19:09	<b>Folwell, Dale 2023-09-21</b>	
	19:01	A. Yes.
	19:02	Q. Is it important to consider whether a
	19:03	member has access to a particular provider within,
	19:04	say, a 20-minute drive?
	19:05	A. I'm always focused on access to health
	19:06	care.
	19:07	Q. And does access to health care include
	19:08	travel time to find a provider?
	19:09	A. Sure.
19:12 - 19:19	<b>Folwell, Dale 2023-09-21</b>	
	19:12	Q. Is considering what inconveniences or
	19:13	disruptions will be caused to Plan members part of
	19:14	the role of a fiduciary of the State Health Plan?
	19:15	A. I think all these things are important
	19:16	when it comes to our bias toward member and member
	19:17	services, member access and quality.
	19:18	Q. So that's a yes?
	19:19	A. Yes.
20:05 - 20:23	<b>Folwell, Dale 2023-09-21</b>	

DESIGNATION	SOURCE	
	<p>20:05 Q. Is whether a change in the Plan,  20:06 whether that change will be a significant  20:07 disruption to providers or members, a factor in  20:08 deciding whether to make a change?  20:09 A. Yeah, I think anything -- all these  20:10 topics are important when you're responsible for  20:11 the health care of those that teach, protect, and  20:12 otherwise serve is my answer.  20:13 Q. So is that a yes?  20:14 A. That's my answer. Thank you.  20:15 Q. Well, I'm not sure I understand your  20:16 answer, so I'm going to ask it again.  20:17 Is whether a change will be a  20:18 significant disruption to providers or Plan members  20:19 one of the factors that you --  20:20 A. Yes, it is one of the factors.  20:21 Q. And you agree that disruption can  20:22 impact members to -- access to health care  20:23 providers?</p>	
21:01 - 21:07	<p><b>Folwell, Dale 2023-09-21</b>  21:01 THE WITNESS: Member disruption is a  21:02 very important -- is a factor in these  21:03 decisions.  21:04 BY MS. JOSEPH:  21:05 Q. And disruption can impact members'  21:06 access to health care?  21:07 A. Uh-huh. Yes.</p>	
21:17 - 21:18	<p><b>Folwell, Dale 2023-09-21</b>  21:17 Disruption has the potential to affect  21:18 continuity of care, does it not?</p>	
21:21 - 21:25	<p><b>Folwell, Dale 2023-09-21</b>  21:21 THE WITNESS: Disruption in any aspect  21:22 of anything we do can -- always has the  21:23 potential of being negative or positive.  21:24 BY MS. JOSEPH:  21:25 Q. And a negative impact can be a</p>	
22:01 - 22:06	<p><b>Folwell, Dale 2023-09-21</b>  22:01 disruption to access to care which affects  22:02 continuity of care?</p>	

DESIGNATION	SOURCE
	22:03 A. Or could be positive.
	22:04 Q. It could be. But it could affect
	22:05 continuity of care in a negative way, could it not?
	22:06 A. Yes.
24:13 - 24:15	<b>Folwell, Dale 2023-09-21</b>
	24:13 Q. All right. Between cost savings and
	24:14 network, which is more critical to the Plan's
	24:15 members?
24:18 - 24:22	<b>Folwell, Dale 2023-09-21</b>
	24:18 THE WITNESS: All of them.
	24:19 BY MS. JOSEPH:
	24:20 Q. Neither is more important than the
	24:21 other?
	24:22 A. They're all important.
25:04 - 25:05	<b>Folwell, Dale 2023-09-21</b>
	25:04 Q. If you had to rank them, how would you
	25:05 rank them?
25:08 - 25:17	<b>Folwell, Dale 2023-09-21</b>
	25:08 THE WITNESS: Between what and what?
	25:09 BY MS. JOSEPH:
	25:10 Q. Cost savings and provider network
	25:11 access.
	25:12 A. They're both equally important.
	25:13 Q. Who was running the RFP process, and by
	25:14 that I mean the 2022 RFP process for the State
	25:15 Health Plan?
	25:16 A. That was run by the executive director,
	25:17 Dee Jones.
26:11 - 26:21	<b>Folwell, Dale 2023-09-21</b>
	26:11 Q. Who is Sam Watts?
	26:12 A. Sam Watts is the current executive
	26:13 director of the State Health Plan.
	26:14 Q. Are you aware that he submitted an
	26:15 affidavit in this case?
	26:16 A. When?
	26:17 Q. At any time. Are you aware that he
	26:18 submitted an affidavit in this case?
	26:19 A. Yes.
	26:20 Q. Did you review that affidavit?

DESIGNATION	SOURCE
	26:21 A. No.
27:08 - 27:16	<b>Folwell, Dale 2023-09-21</b>
	27:08 Shannon, I may just have a bad memory,
	27:09 but have you got a copy of that affidavit?
	27:10 MS. JOSEPH: I don't. It's
	27:11 Paragraph 44, though.
	27:12 MR. HEWITT: Of what affidavit? I
	27:13 don't remember.
	27:14 MS. JOSEPH: The affidavit he submitted
	27:15 in support of the motion to disqualify
	27:16 Robinson Bradshaw.
32:08 - 32:19	<b>Folwell, Dale 2023-09-21</b>
	32:08 Q. In Mr. Watts' affidavit, he also said
	32:09 that: (Reading)
	32:10 Under the supervision,
	32:11 guidance, and direction of the
	32:12 treasurer and Department, the State
	32:13 Health Plan's evaluation committee
	32:14 recommended to award the State Health
	32:15 Plan third-party administrator
	32:16 services contract to Aetna.
	32:17 Did you supervise, guide or direct the
	32:18 evaluation committee's recommendation?
	32:19 A. No.
35:22 - 35:25	<b>Folwell, Dale 2023-09-21</b>
	35:22 Q. What direction did you give to the
	35:23 people involved in drafting the RFP?
	35:24 A. Zero.
	35:25 Q. Who did draft the RFP?
36:01 - 36:14	<b>Folwell, Dale 2023-09-21</b>
	36:01 A. That was an assignment that was given
	36:02 to Dee Jones and her staff at the State Health
	36:03 Plan.
	36:04 Q. What guidance did you give about the
	36:05 design or drafting of the RFP?
	36:06 A. None.
	36:07 Q. What did you do to supervise the
	36:08 drafting of the RFP?
	36:09 A. None.

DESIGNATION	SOURCE	
	<p>36:10 Q. What direction did you give about 36:11 evaluating the responses to the RFP? 36:12 A. None. 36:13 Q. What guidance did you provide about 36:14 evaluating the responses to the RFP?</p>	
36:20 - 36:23	<p><b>Folwell, Dale 2023-09-21</b> 36:20 A. None. 36:21 Q. -- about evaluating the responses to 36:22 the RFP? 36:23 A. None.</p>	
37:03 - 37:19	<p><b>Folwell, Dale 2023-09-21</b> 37:03 Q. What did you do to supervise the 37:04 evaluation of the responses submitted to the RFP? 37:05 A. Nothing. 37:06 Q. Did you get any reports about the 37:07 evaluation of the responses submitted to the RFP? 37:08 A. No. 37:09 Q. Who was in charge of the scoring of the 37:10 RFP responses? 37:11 A. The responsibility for this entire 37:12 process were with Dee Jones, the executive director 37:13 of the State Health Plan. 37:14 Q. So was she in charge of the scoring of 37:15 the RFP responses? 37:16 A. Ultimately. 37:17 Q. Did you do anything to review the work 37:18 that was being done to score the RFP responses? 37:19 A. No.</p>	
38:18 - 38:20	<p><b>Folwell, Dale 2023-09-21</b> 38:18 Q. What is your understanding of what the 38:19 responsibilities of the evaluation committee were 38:20 for evaluating the cost proposal?</p>	
38:22 - 38:23	<p><b>Folwell, Dale 2023-09-21</b> 38:22 THE WITNESS: To evaluate the cost, 38:23 both short- and long-term cost.</p>	
39:06 - 39:16	<p><b>Folwell, Dale 2023-09-21</b> 39:06 Q. Would you expect the evaluation 39:07 committee to review the responses of bidders to the 39:08 RFP?</p>	

DESIGNATION	SOURCE	
	<p>39:09 A. Yes, I have high expectations that the  39:10 people involved in this process share the same bias  39:11 toward members and the same fiduciary  39:12 responsibility that I have, which is to exercise a  39:13 loyalty and duty of care to those individuals.  39:14 Q. Would that duty include reviewing the  39:15 responses of bidders to the RFP and all its  39:16 aspects?</p>	
39:19 - 39:25	<p><b>Folwell, Dale 2023-09-21</b></p> <p>39:19 THE WITNESS: I expect that the duty of  39:20 the evaluation committee would be to exercise  39:21 a loyalty and duty of care, yes.  39:22 BY MS. JOSEPH:  39:23 Q. And in exercising that duty of loyalty  39:24 and duty of care, you would expect them to review  39:25 the responses of the bidders to the RFP?</p>	
40:01 - 40:04	<p><b>Folwell, Dale 2023-09-21</b></p> <p>40:01 A. Yes.  40:02 Q. Would you expect them to use their own  40:03 experience or analysis to review the bidders'  40:04 responses?</p>	
40:07 - 41:18	<p><b>Folwell, Dale 2023-09-21</b></p> <p>40:07 THE WITNESS: I would expect that they  40:08 would do what any human being does in terms  40:09 of focusing on what's in the best interest of  40:10 our members, using their knowledge and their  40:11 experience.  40:12 BY MS. JOSEPH:  40:13 Q. Do you know who Segal is, the company  40:14 "Segal"?  40:15 A. I do.  40:16 Q. Who is it?  40:17 A. They're a actuarial firm who analyzes  40:18 things on behalf of the State Health Plan. They  40:19 are a firm, I think, has had a relationship with  40:20 this office long before I was the treasurer. I say  40:21 that with a slight degree of hesitation because  40:22 whether it's an actuary or an evaluating firm, many  40:23 of these firms, the personnel stays the same, but  40:24 they change names. And that's why my hesitation.</p>	

DESIGNATION	SOURCE	
	40:25	Q. Do you understand whether Segal had any
	41:01	responsibility for evaluating the 2022 RFP?
	41:02	A. We have an in-house actuary, but we
	41:03	also use Segal for evaluation purposes. For
	41:04	example, they are the evaluator of this OPEP
	41:05	committee that I mentioned earlier in this
	41:06	deposition.
	41:07	Q. Do you have any understanding of
	41:08	whether Segal was involved in reviewing the
	41:09	responses of bidders to the RFP?
	41:10	A. I don't know that they were involved,
	41:11	but generally speaking, most things dealing with
	41:12	the State Health Plan, at almost every level, they
	41:13	are involved.
	41:14	Q. So it wouldn't surprise you if they
	41:15	were involved in reviewing the RFP responses?
	41:16	A. Correct.
	41:17	Q. And if they were involved in reviewing
	41:18	the RFP responses --
41:20 - 41:21	<b>Folwell, Dale 2023-09-21</b>	
	41:20	Q. -- would you expect the evaluation
	41:21	committee to review Segal's work?
41:24 - 41:25	<b>Folwell, Dale 2023-09-21</b>	
	41:24	THE WITNESS: Yes.
	41:25	
43:02 - 43:14	<b>Folwell, Dale 2023-09-21</b>	
	43:02	Q. Just asking for your understanding,
	43:03	appreciating that you say that you're not the
	43:04	subject matter expert.
	43:05	Do you know whether the evaluation of
	43:06	the responses of the RFP included comparing the
	43:07	provider networks of each bidder?
	43:08	A. I'm sure that the information regarding
	43:09	the provider network was -- is always an important
	43:10	part of everything that we do at the State Health
	43:11	Plan, and I would expect that this would be no
	43:12	different.
	43:13	Q. So you expect that the provider
	43:14	networks of each bidder were compared?

DESIGNATION	SOURCE	
43:16 - 43:22	<p><b>Folwell, Dale 2023-09-21</b></p> <p>43:16 THE WITNESS: I expect that those</p> <p>43:17 things were taken into consideration.</p> <p>43:18 BY MS. JOSEPH:</p> <p>43:19 Q. Which things?</p> <p>43:20 A. Provider network.</p> <p>43:21 Q. That they were compared and taken into</p> <p>43:22 consideration?</p>	
43:24 - 44:07	<p><b>Folwell, Dale 2023-09-21</b></p> <p>43:24 THE WITNESS: I expect, based on my</p> <p>43:25 confidence in Dee Jones as a person and as a</p> <p>44:01 professional, that these are the types of</p> <p>44:02 things that she would have take -- and her</p> <p>44:03 committee would have taken into account</p> <p>44:04 regarding the evaluation.</p> <p>44:05 BY MS. JOSEPH:</p> <p>44:06 Q. So you don't know whether there was a</p> <p>44:07 comparison of provider network of bidders?</p>	
44:10 - 44:25	<p><b>Folwell, Dale 2023-09-21</b></p> <p>44:10 THE WITNESS: I have never had any</p> <p>44:11 dealings with her where the provider network</p> <p>44:12 is not part of any evaluation or equation</p> <p>44:13 that she would -- on any subject.</p> <p>44:14 BY MS. JOSEPH:</p> <p>44:15 Q. Do you know whether the provider</p> <p>44:16 network of each bidder was compared?</p> <p>44:17 A. That would be a question -- the answer</p> <p>44:18 is, that would be a question better asked of the</p> <p>44:19 evaluation committee members.</p> <p>44:20 Q. So you don't know?</p> <p>44:21 A. I don't know everything.</p> <p>44:22 Q. And this is one you don't know, right?</p> <p>44:23 A. I assume that the member network was as</p> <p>44:24 important a part of any evaluation here or on</p> <p>44:25 anything else that we do.</p>	
45:18 - 45:20	<p><b>Folwell, Dale 2023-09-21</b></p> <p>45:18 Q. To evaluate a provider network in a RFP</p> <p>45:19 situation, is it important to compare bidders'</p> <p>45:20 provider networks?</p>	

DESIGNATION	SOURCE
45:22 - 45:22	<b>Folwell, Dale 2023-09-21</b> 45:22 THE WITNESS: Yes.
46:18 - 46:20	<b>Folwell, Dale 2023-09-21</b> 46:18 Q. Were you aware that in evaluating the 46:19 responses to the RFP, the Plan decided not to do a 46:20 disruption analysis?
46:22 - 46:22	<b>Folwell, Dale 2023-09-21</b> 46:22 THE WITNESS: No.
46:24 - 46:25	<b>Folwell, Dale 2023-09-21</b> 46:24 Q. Would you think a disruption analysis 46:25 would be important?
47:03 - 47:11	<b>Folwell, Dale 2023-09-21</b> 47:03 THE WITNESS: I think that everything 47:04 is important and -- but I trust the 47:05 professionalism and the fiduciary 47:06 responsibilities of the executive director of 47:07 the State Health Plan and her reports to do 47:08 what's needed to be done in this process. 47:09 BY MS. JOSEPH: 47:10 Q. When you say "everything is important," 47:11 would that include evaluating disruption?
47:14 - 47:15	<b>Folwell, Dale 2023-09-21</b> 47:14 THE WITNESS: I think anytime anything 47:15 is disruptive, that could be important.
53:09 - 54:22	<b>Folwell, Dale 2023-09-21</b> 53:09 Q. So the past performance of Blue Cross 53:10 did not influence the RFP process or award process 53:11 in this case? 53:12 A. The State Health Plan has the authority 53:13 to issue an RFP. The State Health Plan has the 53:14 authority to design an RFP process which is 53:15 transparent and where the rules don't change. And 53:16 I'm confident that that occurred. 53:17 Q. To your knowledge, did the past 53:18 performance of Blue Cross influence the 53:19 recommendation in decision to award the third-party 53:20 administrator contract to a bidder other than Blue 53:21 Cross?

DESIGNATION	SOURCE	
	53:22	A. No.
	53:23	Q. No, it did not?
	53:24	A. Correct.
	53:25	Q. You mentioned objectivity. What is
	54:01	"objectivity"?
	54:02	A. The way that the presentation was made
	54:03	to the State Health Plan by the evaluation
	54:04	committee on how they came up with their
	54:05	recommendation to the State Health Plan Board.
	54:06	Q. And what qualities make something
	54:07	objective or objectivity?
	54:08	A. I don't know.
	54:09	Q. You're using the word, and I'm trying
	54:10	to understand what you mean by it.
	54:11	A. Okay. I think that when you're dealing
	54:12	with something that is this important, that as much
	54:13	objectivity as you can have in the scoring process,
	54:14	the better the process is. That's all I'd have to
	54:15	say about the word "objectivity."
	54:16	Q. What is "subjectivity"?
	54:17	A. Subjectivity is where factors that you
	54:18	can't manage what you can't measure, and factors
	54:19	that are not in the questions, not in the RFP could
	54:20	play a part in the decision on anything. And I
	54:21	don't think that occurred here.
	54:22	Q. And so subjectivity is bad?
54:24 - 54:24	<b>Folwell, Dale 2023-09-21</b>	
	54:24	THE WITNESS: Yes.
55:02 - 55:18	<b>Folwell, Dale 2023-09-21</b>	
	55:02	Q. It's important to have a fair and
	55:03	impartial RFP process, right?
	55:04	A. Correct.
	55:05	Q. And what I hear you saying is that
	55:06	objectivity plays an important part of having a
	55:07	fair and impartial RFP process?
	55:08	A. Yes. And this is not the first RFP on
	55:09	the State Health Plan in the last half century.
	55:10	It's happened many, many, many times. And I
	55:11	presume in every instance, your client was awarded
	55:12	the contract. So that's -- this is not the first

DESIGNATION	SOURCE
	55:13 RFP we've ever done on the State Health Plan. It's
	55:14 not the first RFP I have done on the State Health
	55:15 Plan since I've been the treasurer either.
	55:16 Q. Generally, the more objective, the
	55:17 better?
	55:18 A. Correct.
56:12 - 56:15	<b>Folwell, Dale 2023-09-21</b>
	56:12 Q. And if there were subjective
	56:13 considerations for the scoring of the RFP, would
	56:14 that affect whether the RFP was as fair and
	56:15 impartial as it could be?
56:18 - 56:23	<b>Folwell, Dale 2023-09-21</b>
	56:18 THE WITNESS: I don't think that
	56:19 it's -- it's a worthy goal to remove --
	56:20 reduce and remove all subjectivity.
	56:21 BY MS. JOSEPH:
	56:22 Q. Because subjectivity can affect
	56:23 impartiality?
56:25 - 57:04	<b>Folwell, Dale 2023-09-21</b>
	56:25 THE WITNESS: That's just how I feel
	57:01 about subjectivity.
	57:02 BY MS. JOSEPH:
	57:03 Q. So your view of subjectivity is it can
	57:04 affect impartiality?
57:07 - 57:10	<b>Folwell, Dale 2023-09-21</b>
	57:07 THE WITNESS: The objectivity is -- the
	57:08 RFP process for the integrity of the system
	57:09 and the integrity of process needs to be as
	57:10 objective as possible, objective as possible.
83:04 - 83:07	<b>Folwell, Dale 2023-09-21</b>
	83:04 Q. Would you expect as a fiduciary of the
	83:05 Plan that costs should be considered in deciding
	83:06 which bidder to award the third-party administrator
	83:07 contract to?
83:09 - 83:09	<b>Folwell, Dale 2023-09-21</b>
	83:09 THE WITNESS: Yes.
91:24 - 91:25	<b>Folwell, Dale 2023-09-21</b>
	91:24 MS. JOSEPH: All right. Ms. Brauser,

DESIGNATION	SOURCE
	91:25 we got one to mark. This will be 300.
92:10 - 92:12	<b>Folwell, Dale 2023-09-21</b>
	92:10 Q. This document is several pages, so if
	92:11 you'll take your time looking through it.
	92:12 A. Uh-huh.
92:15 - 92:25	<b>Folwell, Dale 2023-09-21</b>
	92:15 Have you had a chance to look through
	92:16 it?
	92:17 A. Sure.
	92:18 Q. Okay. This is an e-mail from
	92:19 April Parker on January 5th, 2023, subject line,
	92:20 "Press clips, Jan. 5, 2023," produced by the State
	92:21 Health Plan.
	92:22 Who is April Parker?
	92:23 A. She works in the communications
	92:24 division.
	92:25 Q. And you received this e-mail?
93:01 - 93:06	<b>Folwell, Dale 2023-09-21</b>
	93:01 A. Correct.
	93:02 Q. Let's look at some of the press clips
	93:03 that are included in this e-mail.
	93:04 Turning to the page that is marked at
	93:05 the bottom 89466.
	93:06 A. I'm there.
93:09 - 93:25	<b>Folwell, Dale 2023-09-21</b>
	93:09 Q. In the second full paragraph, it reads:
	93:10 (Reading)
	93:11 A change of this magnitude is
	93:12 a great opportunity for fresh
	93:13 perspective, Folwell said, and we look
	93:14 forward to working closely with Aetna
	93:15 to create new ways to provide price
	93:16 transparency, increase access and
	93:17 quality, while lowering the cost of
	93:18 health care.
	93:19 Did I read that correctly?
	93:20 A. You did.
	93:21 Q. Is that a statement that you made?
	93:22 A. Yes.

DESIGNATION	SOURCE	
	<p>93:23 Q. When you refer to "price transparency,"</p> <p>93:24 what do you mean there?</p> <p>93:25 A. People knowing what they're paying.</p>	
94:06 - 94:15	<p><b>Folwell, Dale 2023-09-21</b></p> <p>94:06 Q. Is it -- do you know whether Blue Cross</p> <p>94:07 did not confirm any requirement that related to</p> <p>94:08 transparency?</p> <p>94:09 A. I don't know.</p> <p>94:10 Q. The statement also says -- refers to</p> <p>94:11 "lowering the cost of health care and increasing</p> <p>94:12 access and quality."</p> <p>94:13 A. Correct.</p> <p>94:14 Q. Let's take up cost.</p> <p>94:15 A. Uh-huh.</p>	
94:19 - 94:22	<p><b>Folwell, Dale 2023-09-21</b></p> <p>94:19 Between Aetna's response to the RFP and</p> <p>94:20 Blue Cross' response to the RFP, what would make</p> <p>94:21 Aetna's ability to lower the cost of health care an</p> <p>94:22 opportunity here?</p>	
94:25 - 95:19	<p><b>Folwell, Dale 2023-09-21</b></p> <p>94:25 THE WITNESS: I didn't look at the cost</p> <p>95:01 between Blue Cross and Aetna. I relied on</p> <p>95:02 the evaluation committee to evaluate those</p> <p>95:03 costs, along with the scoring by Segal. And</p> <p>95:04 these terms that you're asking me about are</p> <p>95:05 terms that I apply to everything generally in</p> <p>95:06 this building, but especially as it relates</p> <p>95:07 to health care.</p> <p>95:08 BY MS. JOSEPH:</p> <p>95:09 Q. So would there have been the same</p> <p>95:10 opportunities with Blue Cross to provide price</p> <p>95:11 transparency?</p> <p>95:12 A. I don't know.</p> <p>95:13 Q. One way or the other? Don't know one</p> <p>95:14 way or the other?</p> <p>95:15 A. I don't know.</p> <p>95:16 Q. And what about increasing access and</p> <p>95:17 quality, was there something in Aetna's RFP that</p> <p>95:18 tended to indicate that there would be greater</p> <p>95:19 access and quality of care than Blue Cross'?</p>	

DESIGNATION	SOURCE	
95:22 - 97:01	<p><b>Folwell, Dale 2023-09-21</b></p> <p>95:22 THE WITNESS: I am always thinking  95:23 about and focused on transparency, increased  95:24 access, quality, and lowering the cost of  95:25 health care. And that has nothing to do  96:01 with -- that is something that I've been  96:02 saying for six years.  96:03 BY MS. JOSEPH:  96:04 Q. Because it's important to the Plan's  96:05 members?  96:06 A. Yes.  96:07 Q. At the bottom of the same page we're  96:08 looking at, it says: (Reading)  96:09 Folwell said that partnering  96:10 with Aetna, which already employs more  96:11 than 10,000 people in North Carolina,  96:12 quote, will create a lot of new  96:13 opportunities for the SHP and the  96:14 members we serve, end quote.  96:15 Did you say that?  96:16 A. Yes.  96:17 Q. What about partnering with Aetna will  96:18 create a lot of new opportunities for the Plan?  96:19 A. I think the opportunities, as I heard  96:20 them as evaluated by the evaluation committee that  96:21 was presented to the Board of Trustees, made me  96:22 feel that this contract would result in a system  96:23 that was more transparent and had increased access,  96:24 increased quality, and lowering health care costs.  96:25 Q. When you mean "increased access" you  97:01 mean to providers?</p>	
97:03 - 97:10	<p><b>Folwell, Dale 2023-09-21</b></p> <p>97:03 THE WITNESS: Members.  97:04 BY MS. JOSEPH:  97:05 Q. Members' access to providers?  97:06 A. Yes.  97:07 Q. And do you remember what it was about  97:08 the presentation that made you conclude that there  97:09 would be increased access to providers?  97:10 A. No.</p>	

DESIGNATION	SOURCE
98:12 - 98:25	<b>Folwell, Dale 2023-09-21</b> 98:12 Q. Couple pages over on 89471. 98:13 A. Uh-huh. 98:14 Q. At the top. 98:15 It reads: (Reading) 98:16 Folwell told Carolina Journal 98:17 in a phone interview Wednesday that 98:18 potential contractors were asked to 98:19 bid on the same set of rules and 98:20 considerations, including cost saving 98:21 and technical requirements, to keep 98:22 the SHP solvent. 98:23 Did I read that correctly? 98:24 A. You did. 98:25 Q. Did you say that?
99:01 - 99:07	<b>Folwell, Dale 2023-09-21</b> 99:01 A. Yes. 99:02 Q. It also says: (Reading) 99:03 We have no choice but to drive 99:04 transparency, higher quality, higher 99:05 access, and lower cost into our State 99:06 Health Plan, he said. 99:07 A. Correct, I said that.
99:10 - 99:10	<b>Folwell, Dale 2023-09-21</b> 99:10 Q. How did the RFP address quality?
99:13 - 99:22	<b>Folwell, Dale 2023-09-21</b> 99:13 THE WITNESS: I did not design the RFP, 99:14 I did not score the RFP, and so I cannot 99:15 answer your question about how it addressed 99:16 transparency. 99:17 BY MS. JOSEPH: 99:18 Q. Oh, I'm sorry, I said higher quality. 99:19 A. Higher quality. 99:20 Q. Same answer? 99:21 A. Correct. 99:22 Q. Would it be important to evaluate that?
99:25 - 100:25	<b>Folwell, Dale 2023-09-21</b> 99:25 THE WITNESS: I think all these things 100:01 are important.

DESIGNATION	SOURCE	
	100:02	BY MS. JOSEPH:
	100:03	Q. Higher access is important?
	100:04	A. Yes.
	100:05	Q. Lower cost is important?
	100:06	A. Yes.
	100:07	Q. Two paragraphs down: (Reading)
	100:08	In a press release, the
	100:09	treasurer's office characterized the
	100:10	deal with the Aetna as, quote,
	100:11	partnership that focuses on
	100:12	transparency and lower costs, end
	100:13	quote.
	100:14	Do you agree with that statement?
	100:15	A. Yes.
	100:16	Q. How does the partnership with Aetna
	100:17	focus on transparency?
	100:18	A. The -- I was not involved in the
	100:19	designing of the RFP nor the scoring or the
	100:20	evaluation of the RFP.
	100:21	The part of this quote that's important
	100:22	to -- regarding the lower cost is the information
	100:23	that I was giving regarding the cost savings of the
	100:24	contract.
	100:25	Q. So the part of this statement that's
101:01 - 101:03	<b>Folwell, Dale 2023-09-21</b>	
	101:01	most important is the lower costs?
	101:02	A. It's all important. All four of the
	101:03	things that I talk about are important.
101:06 - 102:01	<b>Folwell, Dale 2023-09-21</b>	
	101:06	So you said, "The part of this quote
	101:07	that's important to -- regarding the lower cost is
	101:08	the information that I was given regarding the cost
	101:09	savings to the contract."
	101:10	What do you mean by that?
	101:11	A. The cost savings of the contract were
	101:12	estimated to be \$140 million over the life of the
	101:13	five-year contract. And I'm always talk about --
	101:14	in this deposition regarding this RFP or anything
	101:15	that I talk about, I always talk about these four
	101:16	things together, period.

DESIGNATION	SOURCE
	101:17 Q. And by the cost savings being
	101:18 140 million, is that what you said?
	101:19 A. That's what our evaluator said.
	101:20 Q. Over the life of the five-year
	101:21 contract, compared to what?
	101:22 A. That was what was said as it relates to
	101:23 the cost savings of the contract, the
	101:24 administrative and other costs to the contract.
	101:25 Q. And that amount would be saved compared
	102:01 to Blue Cross' proposal?
102:03 - 102:17	<b>Folwell, Dale 2023-09-21</b>
	102:03 THE WITNESS: Normally when someone
	102:04 says or information is brought to me about
	102:05 cost savings, it's referring to cost savings
	102:06 over the contract that's currently in place,
	102:07 which has nothing to do with RFP.
	102:08 BY MS. JOSEPH:
	102:09 Q. Do you know what the cost savings would
	102:10 have been over the life of a five-year contract
	102:11 under Blue Cross' proposal?
	102:12 A. I do not. Nor did I know this until it
	102:13 was presented to us upstairs.
	102:14 Q. Upstairs?
	102:15 A. In the closed session.
	102:16 Q. Oh, in the Board meeting?
	102:17 A. Uh-huh.
104:03 - 104:05	<b>Folwell, Dale 2023-09-21</b>
	104:03 Q. Going backwards in that exhibit, back
	104:04 to 89466.
	104:05 A. Okay.
104:09 - 105:25	<b>Folwell, Dale 2023-09-21</b>
	104:09 Q. It starts, "Ardis Watkins." The second
	104:10 sentence reads: (Reading)
	104:11 She said in a statement that
	104:12 the State Health Plan is at a
	104:13 crossroads and that, quote, without
	104:14 significant savings, end quote, more
	104:15 costs will shift to employees who
	104:16 already struggle to afford plans that
	104:17 cover family members.

DESIGNATION	SOURCE	
	<p>104:18 Do you agree that without significant  104:19 savings, costs will shift to employees?  104:20 A. I don't speak for Ardis Watkins.  104:21 Ardis Watkins and her association have been  104:22 fighting this battle for much longer than when I  104:23 was the State treasurer. And they always are  104:24 concerned about the increased costs to State  104:25 employees. They have been interested partners in  105:01 understanding that our State Health Plan employees  105:02 and our Board of Trustees have done almost  105:03 everything humanly possible to prevent the runaway  105:04 costs of health care off the backs of State  105:05 employees.  105:06 The result of that has been the  105:07 freezing of family premiums for six years when the  105:08 cost of health care has gone up at double digits,  105:09 and especially in relation to the amount of funding  105:10 we get from the General Assembly. In addition to  105:11 that, we've done not only freezing family premiums,  105:12 but not adjusting copays and deductibles. I think  105:13 you're aware of that. And in addition, we have  105:14 taken advantage of our largeness and negotiated  105:15 contracts where all the savings associated with  105:16 those contracts are put into keeping the plan  105:17 solvent.  105:18 I inherited a \$33 billion unfunded  105:19 health care liability. According to Pew Research  105:20 five years ago, that puts the per capita debt  105:21 insolvency of our State Health Plan right behind  105:22 the State of Illinois.  105:23 So this is not just about the balance  105:24 sheet solvency of this Plan, it's about how the  105:25 Plan is going to remain solvent and it not result</p> <p>106:01 - 106:21 <b>Folwell, Dale 2023-09-21</b></p> <p>106:01 in increased copays, increased deductibles, and  106:02 increased premiums for State employees.  106:03 Q. So you've referred to her --  106:04 Ms. Watkins' organization. That's the State  106:05 Employees Association of North Carolina?  106:06 A. SEANC.</p>	

DESIGNATION	SOURCE	
	106:07	Q. That's the acronym?
	106:08	A. Correct.
	106:09	Q. "Fighting this battle"?
	106:10	A. Long before I was the treasurer.
	106:11	Q. And the battle is?
	106:12	A. Transparent and lower health care
	106:13	costs.
	106:14	Q. So you all are on the same side of the
	106:15	battle?
	106:16	A. Yes.
	106:17	Q. So I know you said you don't speak for
	106:18	her and her organization. You'd agree that
	106:19	significant savings are important to the Plan's
	106:20	ability to keep costs from being shifted to
	106:21	employees?
106:23 - 107:03	<b>Folwell, Dale 2023-09-21</b>	
	106:23	THE WITNESS: I think significant
	106:24	savings and everything we do at the
	106:25	treasurer's office, with the pension plan,
	107:01	the 401(k), 457, State Health Plan or the
	107:02	prescription drug plan, are all important in
	107:03	sustaining and keeping the Plan solvent.
107:13 - 107:25	<b>Folwell, Dale 2023-09-21</b>	
	107:13	Q. You've been handed what's been marked
	107:14	as Exhibit 301. It's an e-mail from April Parker
	107:15	dated January 9th, 2023, subject line "Press Clips,
	107:16	January 9, 2023."
	107:17	Please take as much time as you want to
	107:18	to review that.
	107:19	A. Okay.
	107:20	Q. And you're a recipient on this e-mail,
	107:21	correct?
	107:22	A. Yes.
	107:23	(Witness reviews document.)
	107:24	Q. All right. Looking at the page that is
	107:25	89503, so towards the back.
108:06 - 109:03	<b>Folwell, Dale 2023-09-21</b>	
	108:06	Q. In the second full paragraph --
	108:07	A. Okay.
	108:08	Q. -- four or five lines down, it says in

DESIGNATION	SOURCE	
	108:09	bold, "State Health Plan woes." Well, "woes" is
	108:10	not bold.
	108:11	Do you see that?
	108:12	A. I do.
	108:13	Q. It reads: (Reading)
	108:14	Asked what the main reasons
	108:15	for this ouster were and whether
	108:16	BCBSNC had been meeting contract
	108:17	expectations, Folwell said the
	108:18	decision largely came down to the
	108:19	scoring system, but he also cited
	108:20	concerns with transparency and said
	108:21	the State Health Plan is facing
	108:22	significant financial challenges.
	108:23	Did you -- did I read that correctly?
	108:24	A. You did.
	108:25	Q. Did they report correctly what your
	109:01	response was?
	109:02	A. As far as I know. I give a lot of
	109:03	responses, so . . .
109:04 - 109:09	<b>Folwell, Dale 2023-09-21</b>	
	109:04	Q. You said, according to this article:
	109:05	(Reading)
	109:06	The decision largely came down
	109:07	to the scoring system.
	109:08	Was the decision not based entirely on
	109:09	the scoring system?
109:11 - 110:01	<b>Folwell, Dale 2023-09-21</b>	
	109:11	THE WITNESS: It was based on the RFP
	109:12	being issued in a consistent and fair basis,
	109:13	evaluation committee evaluating the results
	109:14	of the RFP by the vendors, and then
	109:15	presenting the recommendation to the State
	109:16	Health Plan Board. As I said -- stated
	109:17	previously, I always talk about -- on
	109:18	anything related to this about -- not just
	109:19	this contract, about quality, access,
	109:20	transparency, and cost.
	109:21	BY MS. JOSEPH:
	109:22	Q. Quality, transparency, access, and

DESIGNATION	SOURCE
	109:23 cost?
	109:24 A. Yes.
	109:25 Q. And were those considerations in
	110:01 deciding which bidder to award the contract to?
110:03 - 110:10	<b>Folwell, Dale 2023-09-21</b>
	110:03 THE WITNESS: No. Those -- those --
	110:04 the decision by the State Health Plan Board
	110:05 to award the contract to Aetna was based on
	110:06 the evaluation -- the recommendation made to
	110:07 them by the evaluation committee.
	110:08 BY MS. JOSEPH:
	110:09 Q. Which was based on the RFP only?
	110:10 A. Yes.
119:01 - 119:10	<b>Folwell, Dale 2023-09-21</b>
	119:01 Who is Daniel Baum?
	119:02 A. Daniel Baum is a person that we have
	119:03 worked with on the CVS Caremark contract, which is
	119:04 our PBM.
	119:05 Q. "PBM" being pharmacy benefits manager?
	119:06 A. Yes. And I'm not -- I'm not sure
	119:07 exactly what Daniel's title is.
	119:08 Q. He does not work at the Office of State
	119:09 Treasurer?
	119:10 A. Correct.
119:23 - 120:04	<b>Folwell, Dale 2023-09-21</b>
	119:23 Q. How long have you known him?
	119:24 A. I would say -- well, I didn't know him
	119:25 before I came to Raleigh. I'm not -- I can predict
	120:01 how old he is, but I can't tell much anymore at my
	120:02 age how old people are. But I would say that I may
	120:03 have first met him at the latter part of my tenure
	120:04 in the General Assembly.
120:23 - 121:06	<b>Folwell, Dale 2023-09-21</b>
	120:23 Do you have a
	120:24 view of his integrity and trustworthiness?
	120:25 A. I've never had any reason to question
	121:01 his trustworthiness -- what was the first word?
	121:02 Q. Integrity.
	121:03 A. Integrity or trustworthiness.

DESIGNATION	SOURCE
	121:04 Q. And you trust him?
	121:05 A. I have never had any reason not to
	121:06 trust his trustworthiness and integrity.
122:18 - 122:25	<b>Folwell, Dale 2023-09-21</b>
	122:18 Q. Before the decision to issue the RFP,
	122:19 so let's say before April 2022, did you talk with
	122:20 Mr. Baum about Aetna?
	122:21 A. I don't recall that, no.
	122:22 Q. Did you meet with him regularly?
	122:23 A. No.
	122:24 Q. Did you meet with him infrequently?
	122:25 A. No.
123:01 - 123:14	<b>Folwell, Dale 2023-09-21</b>
	123:01 Q. Did you meet with him in your role as
	123:02 State treasurer?
	123:03 A. Not that I recall.
	123:04 Q. Do you know whether he met with
	123:05 Dee Jones?
	123:06 A. I have no idea.
	123:07 Q. If Dee Jones testified that you met
	123:08 with Mr. Baum frequently, would you disagree with
	123:09 her?
	123:10 A. Well, is that what she said?
	123:11 Q. I don't have it to show it to you, but
	123:12 I will represent to you that I believe that she
	123:13 did.
	123:14 A. Okay.
123:16 - 123:22	<b>Folwell, Dale 2023-09-21</b>
	123:16 THE WITNESS: That would not be
	123:17 accurate.
	123:18 BY MS. JOSEPH:
	123:19 Q. So you disagree with that?
	123:20 A. Yeah.
	123:21 Q. Did you meet with him at all?
	123:22 A. I don't recall.
130:06 - 130:11	<b>Folwell, Dale 2023-09-21</b>
	130:06 Q. How would you describe the relationship
	130:07 you have with Blue Cross?
	130:08 A. Like a lot of other relationships, glad

DESIGNATION	SOURCE	
	130:09	to see them at times and frustrated other times.
	130:10	But that -- that goes with any vendor to the State
	130:11	treasurer's office.
130:18 - 131:23	<b>Folwell, Dale 2023-09-21</b>	
	130:18	Q. Have you all disagreed between the
	130:19	State treasurer's office and Blue Cross on certain
	130:20	legislative initiatives?
	130:21	A. All I can say is what legislative
	130:22	initiatives that we've forwarded, and I don't know
	130:23	what Blue Cross' positions are on those.
	130:24	Q. In the past, have you disagreed?
	130:25	A. When -- if there were instances where
	131:01	Blue Cross said that they were opposed to certain
	131:02	types of legislation, then obviously, we would
	131:03	disagree. But that's not something that's ever
	131:04	said.
	131:05	Q. That's what?
	131:06	A. Ever said. They don't -- there are
	131:07	things that happen in the legislature where you
	131:08	don't know why something stops or why it goes. And
	131:09	so to the extent that Blue Cross Blue Shield ever
	131:10	said anything publicly in being in opposition to
	131:11	something that we were trying to do on behalf of
	131:12	our members, then in those instances, we were
	131:13	opposed.
	131:14	Q. And did you communicate your
	131:15	dissatisfaction to Blue Cross about that?
	131:16	A. Yes.
	131:17	Q. And you were aggravated with them?
	131:18	A. No, I was just -- I was -- felt like it
	131:19	was my responsibility at the highest levels of Blue
	131:20	Cross, with the CEO or the chairman of the Board,
	131:21	that when things that we were having difficulty
	131:22	with weren't happening, that I would communicate
	131:23	that with them. But that really never happened.
147:09 - 147:15	<b>Folwell, Dale 2023-09-21</b>	
	147:09	EXAMINATION
	147:10	BY MR. HEWITT:
	147:11	Q. Good afternoon, Treasurer. As you
	147:12	know, I'm Marc Hewitt. I'm counsel in this matter,

DESIGNATION	SOURCE	
	<p>147:13 outside counsel, I should say, for the Respondent,  147:14 State Health Plan. I do have a few areas of  147:15 follow-up questions.</p>	
150:18 - 151:01	<p><b>Folwell, Dale 2023-09-21</b></p> <p>150:18 Q. Okay. Did the Board of Trustees  150:19 actually vote on or make the decision to issue the  150:20 RFP?  150:21 A. They did not. And when I answered that  150:22 question previously, I misspoke, and I'm correcting  150:23 the record with my answer to you now.  150:24 Q. Okay. Who did make that decision?  150:25 A. The executive director of the State  151:01 Health Plan.</p>	
151:22 - 152:13	<p><b>Folwell, Dale 2023-09-21</b></p> <p>151:22 Q. Were you aware that the Segal company  151:23 was involved with the evaluation of the RFP  151:24 responses?  151:25 A. The Segal company has been involved in  152:01 most anything that has to do with the evaluation of  152:02 utilization and financial matters at the State  152:03 Health Plan, including this RFP process.  152:04 Q. Yes, sir.  152:05 So would it surprise you if the Segal  152:06 company had taken the bidders' cost proposals and  152:07 scored them and then presented Segal's scores to  152:08 the evaluation committee in this RFP?  152:09 A. No, that would not surprise me.  152:10 Q. Okay. Do you think that would be  152:11 consistent with Segal's responsibilities to the  152:12 Plan?  152:13 A. Yes.</p>	
153:09 - 153:13	<p><b>Folwell, Dale 2023-09-21</b></p> <p>153:09 If Dee Jones and the Plan's senior  153:10 leadership had determined that network access and  153:11 disruption didn't need to be scored or compared in  153:12 this RFP, is that a decision that you would have  153:13 agreed with?</p>	
153:15 - 153:18	<p><b>Folwell, Dale 2023-09-21</b></p> <p>153:15 THE WITNESS: I would have honored the</p>	

DESIGNATION	SOURCE	
	153:16	accountability and responsibility that I gave
	153:17	to Dee Jones to -- and her staff to evaluate
	153:18	what needs that they have inside the RFP.
153:21 - 153:25	<b>Folwell, Dale 2023-09-21</b>	
	153:21	And similar question. But if Dee Jones
	153:22	and the State Health Plan leadership had determined
	153:23	that network access and disruption would show up in
	153:24	network pricing, is that also something that you
	153:25	would agree with?
154:01 - 154:11	<b>Folwell, Dale 2023-09-21</b>	
	154:01	A. Yes.
	154:02	Q. There was also some questions earlier
	154:03	on the record about the importance of objectivity.
	154:04	And there were some questions about whether or not
	154:05	it was a worthy goal to reduce or remove
	154:06	subjectivity from the RFP process.
	154:07	So my question is, in your -- to your
	154:08	understanding, can an RFP be or ever be 100 percent
	154:09	objective?
	154:10	A. It cannot. The goal should be to
	154:11	reduce subjectivity.
155:08 - 155:09	<b>Folwell, Dale 2023-09-21</b>	
	155:08	Q. And let me have you look at what's
	155:09	previously been marked as Deposition Number 14.
155:14 - 155:18	<b>Folwell, Dale 2023-09-21</b>	
	155:14	Q. What is it?
	155:15	A. Presentation of Third-Party
	155:16	Administrative Services of the RFP on December 14th
	155:17	of 2022 to the Board of Trustees in executive
	155:18	session.
157:24 - 157:25	<b>Folwell, Dale 2023-09-21</b>	
	157:24	Q. And according to the table at least,
	157:25	Aetna's number is .3 percent higher than Blue
158:01 - 158:12	<b>Folwell, Dale 2023-09-21</b>	
	158:01	Cross' number?
	158:02	A. That's correct.
	158:03	Q. And so as far as this comparison goes,
	158:04	Blue Cross has the lowest combined three-year cost
	158:05	by .3 percent; is that fair to say?

DESIGNATION	SOURCE
158:06	A. On the cost side, yes.
158:07	Q. All right. And so given that, did you
158:08	or the Board of Trustees have any concerns about
158:09	approving Aetna instead of Blue Cross for -- or
158:10	excuse me, awarding the contract to Aetna instead
158:11	of Blue Cross?
158:12	A. Not to my knowledge.

**EXHIBIT C**  
**Petitioner's testimony designations for**  
**Caroline Smart**

DESIGNATION	SOURCE	
7:06 - 7:11	<p><b>Smart, Caroline 2023-09-13</b></p> <p>7:06 Q. Good morning, Ms. Smart. We met before</p> <p>7:07 we started. I'm Steve Feldman at Robinson Bradshaw.</p> <p>7:08 I represent Blue Cross.</p> <p>7:09 Could you state your full name for the</p> <p>7:10 record, please.</p> <p>7:11 A. Caroline Webb Smart.</p>	
8:04 - 8:09	<p><b>Smart, Caroline 2023-09-13</b></p> <p>8:04 Q. Who is your employer, Ms. Smart?</p> <p>8:05 A. Department of State Treasurer.</p> <p>8:06 Q. Within the Department of State</p> <p>8:07 Treasurer, what is your title?</p> <p>8:08 A. I am the senior director of plan</p> <p>8:09 integration for the State Health Plan.</p>	
11:04 - 11:10	<p><b>Smart, Caroline 2023-09-13</b></p> <p>11:04 Q. Am I correct you were the business owner</p> <p>11:05 of the 2022 TPA RFP?</p> <p>11:06 A. That's correct.</p> <p>11:07 Q. What does that term, "business owner,"</p> <p>11:08 mean?</p> <p>11:09 A. It means I have overall responsibility</p> <p>11:10 for the management of the contract.</p>	
12:16 - 13:08	<p><b>Smart, Caroline 2023-09-13</b></p> <p>12:16 Q. What were your responsibilities as</p> <p>12:17 business owner of the 2022 TPA RFP?</p> <p>12:18 A. I have overall responsibility to make</p> <p>12:19 sure the RFP is developed on time and on schedule</p> <p>12:20 and that all the subject matter experts hit the</p> <p>12:21 targets that we establish.</p> <p>12:22 So once a decision is made for this or</p> <p>12:23 any other RFP to go on the street that the business</p> <p>12:24 owner is responsible for, you develop a schedule</p> <p>12:25 and you kind of communicate that schedule to others</p> <p>13:01 so they know when their pieces are going to be due.</p> <p>13:02 And this particular RFP, once I</p> <p>13:03 developed the schedule and I tell everybody here's</p> <p>13:04 what you are going to have to do when, then I make</p> <p>13:05 the first pass at the draft of the business</p> <p>13:06 requirements, and I start by looking at the</p>	

DESIGNATION	SOURCE	
	<p>13:07 previous RFP and making changes, and then those are 13:08 shared with the various business owners.</p>	
30:22 - 31:15	<p><b>Smart, Caroline 2023-09-13</b></p> <p>30:22 Q. When you referred to the optional things 30:23 or the "nice-to-haves," those optional things or 30:24 nice-to-haves are what appear as technical 30:25 requirements but non-minimum requirements in the 31:01 RFP? 31:02 A. Yes. 31:03 Q. When was the time when you approached 31:04 Ms. Jones to suggest that a discussion begin about 31:05 streamlining RFPs? 31:06 A. Well, I had talked to her off and on for 31:07 a couple years, actually, about we had to find some 31:08 better ways, more efficient ways to do this. 31:09 When she came to me about doing the TPA 31:10 RFP, you know, I did say to her we are going to 31:11 have to do this in a more streamlined fashion to 31:12 hit this timeline. Because it usually takes us 31:13 longer to put one together, and I think that's 31:14 where we just really accelerated how we could get 31:15 this done.</p>	
78:20 - 79:01	<p><b>Smart, Caroline 2023-09-13</b></p> <p>78:20 Q. When does a scoring system typically 78:21 come to finalization relative to a date that a -- 78:22 prior to the date that an RFP is posted? 78:23 A. Well, I would say that varies by RFP, 78:24 but the general concept would hopefully be done at 78:25 least 30 days before the posting. But I have seen 79:01 RFPs go down to the wire.</p>	
36:22 - 39:05	<p><b>Smart, Caroline 2023-09-13</b></p> <p>36:22 Q. Did you study the substance of Segal's 36:23 analysis in connection with this RFP? 36:24 A. Study it? No. 36:25 Q. Did you in your role as business owner 37:01 of the 2022 TPA RFP gain an understanding of Segal's 37:02 analysis related to the RFP? 37:03 A. I as a business owner had no more 37:04 contact with them on that piece than anybody else 37:05 on the evaluation team. So we were -- the</p>	

DESIGNATION	SOURCE	
37:06	evaluation team was presented with their analysis	
37:07	and we all looked at it together. But no, I had no	
37:08	other specific conversation with them.	
37:09	Q. You said -- let me take a step back.	
37:10	When you referred to the "evaluation	
37:11	team," what were you referring to?	
37:12	A. There is a team made up of -- from the	
37:13	Plan, I believe we have a list of them. I couldn't	
37:14	even tell you who they are right this minute. But	
37:15	there's an evaluation team that reviews the content	
37:16	of the RFPs, and we are -- that team reviews and	
37:17	assigns the scores and -- I don't know any other	
37:18	way to put it. We evaluate the responses. We do	
37:19	that for all the technical responses and then we're	
37:20	presented with the cost proposal information from	
37:21	Segal.	
37:22	Q. Did the evaluation committee ultimately	
37:23	assign scores to bidders' proposals on the cost	
37:24	proposal?	
37:25	A. The evaluation team didn't assign	
38:01	scores. The evaluation team assigned scores on the	
38:02	technical proposal. We went through question by	
38:03	question, and we watched the contract folks tally	
38:04	up the scores as we went along. So from that	
38:05	perspective we went through and tallied them up.	
38:06	On the cost proposal side, we were	
38:07	presented with the findings, and I think there were	
38:08	two rounds of those because there was a BAFO that	
38:09	came back. And then we were presented with the	
38:10	findings. Once presented with the findings on how	
38:11	they were put together, we would have voted to	
38:12	approve or not approve, and we ultimately approved	
38:13	the recommendation that came from them. That	
38:14	included the scores, which were then added to the	
38:15	technical scores.	
38:16	Q. So Segal presented findings to the	
38:17	evaluation committee on the bidders' cost proposals;	
38:18	right?	
38:19	A. Correct.	
38:20	Q. What substantive review did the	
38:21	evaluation committee perform about the findings that	

DESIGNATION	SOURCE	
	38:22	Segal presented to the evaluation committee?
	38:23	A. So the evaluation committee read -- only
	38:24	read what was provided to them. Matt's team -- so
	38:25	Matt and Charles Sceiford would have reviewed and
	39:01	done any follow-up information with Segal about
	39:02	whatever they did. But the evaluation committee
	39:03	would not have done that, because, quite frankly,
	39:04	the evaluation team for the most part are not
	39:05	subject matter experts on the cost proposal.
40:11 - 41:15	<b>Smart, Caroline 2023-09-13</b>	
	40:11	Q. We are now going to go through a list of
	40:12	every person on the evaluation committee, whether a
	40:13	voting or advisory member, who evaluated Segal's
	40:14	analysis of the cost proposals for the 2022 RFP. Is
	40:15	that fair?
	40:16	A. That's fair.
	40:17	Q. Mr. Sceiford is one?
	40:18	A. Yes.
	40:19	Q. Mr. Rish is one?
	40:20	A. Yes.
	40:21	Q. Other than Mr. Sceiford and Mr. Rish,
	40:22	without referring to any documents can you remember
	40:23	any other person on the evaluation team, voting or
	40:24	advisory, who reviewed Segal's analysis of cost
	40:25	proposals?
	41:01	A. I believe, but I do not know for a fact,
	41:02	that Kendall Bourdon also looked at it, but she
	41:03	would have been looking at it from a technical
	41:04	perspective to make sure it was conforming to the
	41:05	rules of the evaluation, not to the financial
	41:06	aspect of it.
	41:07	Q. Ms. Bourdon is not an actuary, is she?
	41:08	A. No. Which is why I am saying she's more
	41:09	from a technical, to make sure we are following the
	41:10	rules we put out on the RFP, but she would not have
	41:11	been evaluating Segal's work.
	41:12	Q. Other than Mr. Rish and Mr. Sceiford,
	41:13	are you aware of any other member of the evaluation
	41:14	committee for the 2022 TPA RFP who reviewed Segal's
	41:15	substantive analysis of the bidders' cost proposals?

DESIGNATION	SOURCE
41:18 - 41:18	<b>Smart, Caroline 2023-09-13</b> 41:18 A. No, I'm not.
42:17 - 42:21	<b>Smart, Caroline 2023-09-13</b> 42:17 Q. Now seeing this full list of evaluation 42:18 committee members, is there anyone else on this list 42:19 of evaluation committee members who reviewed Segal's 42:20 analysis of bidders' cost proposals? 42:21 A. Not that I'm aware of.
43:15 - 43:22	<b>Smart, Caroline 2023-09-13</b> 43:15 Q. I'm going to hand you a document marked 43:16 as Exhibit 11. 43:17 Have you seen this document before? 43:18 A. Yes. 43:19 Q. What is Exhibit 11? 43:20 A. This is the letter of agreement that's 43:21 going to outline the services that we may need 43:22 Segal to perform in conjunction with the TPA RFP.
44:25 - 45:08	<b>Smart, Caroline 2023-09-13</b> 44:25 Q. At the bottom of page 1 there's a 45:01 section of the agreement that says "Obligations of 45:02 Segal" in bold. 45:03 Do you see that? 45:04 A. Yes. 45:05 Q. It says "Segal shall," and under that 45:06 there are 10 items, under "Segal shall." 45:07 Do you see that? 45:08 A. Yes.
45:23 - 48:04	<b>Smart, Caroline 2023-09-13</b> 45:23 Q. So as of June 16, 2022, from your 45:24 perspective as business owner of the 2022 of TPA 45:25 RFP, the items listed in 1 through 10 under 46:01 "Obligations of Segal" in Exhibit 11 are tasks or 46:02 projects that the Plan believed were -- might be 46:03 needed from Segal? 46:04 A. Correct. 46:05 Q. Looking at item 5 in that list, item 5 46:06 says, "Help prepare and attend oral presentations 46:07 onsite at the Plan as requested by the Plan." 46:08 Do you see that?

DESIGNATION	SOURCE	
46:09	A. Yes.	
46:10	Q. So is it fair to say as of	
46:11	June 16, 2022, the Health Plan at least thought it	
46:12	would be -- thought it was possible that the Plan	
46:13	might invite oral presentations in connection with	
46:14	this RFP?	
46:15	A. That's correct.	
46:16	Q. Item 4 says "Provide a disruption	
46:17	analysis based on the geo-access reporting	
46:18	requirement in the RFP."	
46:19	Do you see that?	
46:20	A. Yes.	
46:21	Q. What is a disruption analysis?	
46:22	A. It takes the current population and the	
46:23	providers and determines whether or not another	
46:24	vendor has a similar network, so we can understand	
46:25	if we would have members that would no longer have	
47:01	access to the same providers they had today.	
47:02	So you're trying to measure the	
47:03	network -- the current network versus any potential	
47:04	network to ensure we have capacity, the right level	
47:05	of capacity for our members.	
47:06	Q. What is a network, as you just used that	
47:07	term?	
47:08	A. A network of providers is what I'm	
47:09	talking about. So in-network providers, those are	
47:10	the providers that a member can go see and receive	
47:11	in-network benefits. If we don't have a strong	
47:12	network, then there are implications that the	
47:13	member may have to pick up a larger cost share	
47:14	because there's not a provider in their area.	
47:15	So the network is who the vendor would	
47:16	contract with, and they agree on whatever their	
47:17	payment terms are.	
47:18	I don't know any better way to explain	
47:19	that than that.	
47:20	Q. What is the importance, if any, of the	
47:21	TPA's network to the members of State Health Plan?	
47:22	A. The importance to the members is, again,	
47:23	we have an in- and out-of-network benefit, and we	
47:24	want our members to have access to a broad-based	

DESIGNATION	SOURCE	
	<p>47:25 variety of providers that they can go to and get</p> <p>48:01 quality care in network.</p> <p>48:02 Q. Fair to say that the breadth and quality</p> <p>48:03 of healthcare providers in a TPA network is critical</p> <p>48:04 to the Plan's members?</p>	
48:07 - 48:14	<p><b>Smart, Caroline 2023-09-13</b></p> <p>48:07 A. I would say it's very important.</p> <p>48:08 Q. Very important, but not critical?</p> <p>48:09 A. Not critical, yes.</p> <p>48:10 Q. So as of June 16, 2022, the Plan thought</p> <p>48:11 it was at least possible that Segal might provide a</p> <p>48:12 disruption analysis in connection with the 2022 TPA</p> <p>48:13 RFP?</p> <p>48:14 A. That is correct.</p>	
57:18 - 58:11	<p><b>Smart, Caroline 2023-09-13</b></p> <p>57:18 Q. Based on your experience, what are the</p> <p>57:19 features of a robust network?</p> <p>57:20 A. Well, you want -- you want to make sure</p> <p>57:21 there's sufficient providers in there to meet your</p> <p>57:22 members' needs. You have got to have them both</p> <p>57:23 from the specialty perspective, primary care,</p> <p>57:24 behavioral health, making sure you have a broad</p> <p>57:25 range of providers available, and appropriate</p> <p>58:01 geographic areas too.</p> <p>58:02 I will say in a state like North</p> <p>58:03 Carolina where there's a lot of rural areas, it is</p> <p>58:04 harder just in general for all -- for the rural</p> <p>58:05 areas to have access to specialty, and a lot of</p> <p>58:06 members travel into the metropolitan areas. But</p> <p>58:07 that's not just a North Carolina phenomenon; it's</p> <p>58:08 any state that has rural areas, usually you have to</p> <p>58:09 travel a little bit more. But you want to make</p> <p>58:10 sure you have reasonable access for all your</p> <p>58:11 members.</p>	
94:03 - 94:24	<p><b>Smart, Caroline 2023-09-13</b></p> <p>94:03 Q. I want to ask about 5.1.3(b). It says</p> <p>94:04 "Vendor will provide a network that will support</p> <p>94:05 Plan members residing in all 100 counties in North</p> <p>94:06 Carolina and throughout the United States."</p> <p>94:07 Do you see that language?</p>	

DESIGNATION	SOURCE	
	94:08	A. Yes.
	94:09	Q. Who would have evaluated whether any
	94:10	bidder met this minimum requirement?
	94:11	A. Well, this requirement, like every other
	94:12	one in the minimums and throughout the technical,
	94:13	they just had to confirm there was no validation
	94:14	done for this piece.
	94:15	Q. What does it mean -- what does the word
	94:16	"support" mean in 5.1.3(b)?
	94:17	A. Well, I wish I could say I was as
	94:18	thoughtful about the words that I have in there
	94:19	that I think you might think I was, but it meant we
	94:20	were going to have a network that was available for
	94:21	members to access.
	94:22	Q. Was there any sort of minimum support
	94:23	that you had in mind when you drafted 5.1.3(b)?
	94:24	A. No.
53:25 - 54:01	<b>Smart, Caroline 2023-09-13</b>	
	53:25	Q. Let's turn to Exhibit 15, which is the
	54:01	evaluation committee memo.
54:04 - 55:12	<b>Smart, Caroline 2023-09-13</b>	
	54:04	Q. To ensure, if we turn to the third page
	54:05	of Exhibit 15?
	54:06	A. Yes.
	54:07	Q. So looking at the table at the top, it
	54:08	says below are the points and ranking for the
	54:09	technical proposals?
	54:10	A. Yes.
	54:11	Q. You can see that Aetna and UMR scored
	54:12	310 out of 310 on final technical points; right?
	54:13	A. Correct.
	54:14	Q. So they finished first? Their rank was
	54:15	first?
	54:16	A. Correct.
	54:17	Q. But that ranking was then converted to a
	54:18	final score of 3?
	54:19	A. Correct.
	54:20	Q. So just I'm straight, the steps are
	54:21	first assign points out of 310; correct?
	54:22	A. Correct.

DESIGNATION	SOURCE	
	54:23 Q. Then second, assign a ranking: first,	
	54:24 second or third; correct?	
	54:25 A. Correct.	
	55:01 Q. And lastly, convert that ranking into a	
	55:02 different final score; correct?	
	55:03 A. Correct.	
	55:04 Q. Who are the persons who came up with the	
	55:05 scoring system that you just described?	
	55:06 A. I was not in the room when that	
	55:07 discussion -- I would be making assumptions.	
	55:08 But -- the contracting team is always ultimately	
	55:09 responsible for putting that together.	
	55:10 Q. So you were not one of the persons who	
	55:11 came up with the scoring system?	
	55:12 A. Correct.	
169:24 - 170:03	<b>Smart, Caroline 2023-09-13</b>	
	169:24 Q. The points that were assigned in the	
	169:25 actual scoring, 310 for technical and up to 10 for	
	170:01 cost, those themselves were not weighted 50/50;	
	170:02 correct?	
	170:03 A. Correct.	
62:05 - 62:09	<b>Smart, Caroline 2023-09-13</b>	
	62:05 Q. So at the time that the Plan awarded the	
	62:06 TPA contract to Aetna in December 2022, what factual	
	62:07 information, if any, did the Plan have about Aetna's	
	62:08 capabilities to satisfy the technical requirements	
	62:09 in the 2022 RFP?	
62:12 - 62:19	<b>Smart, Caroline 2023-09-13</b>	
	62:12 A. We had their confirmation that they	
	62:13 could do it.	
	62:14 Q. Other than the confirmations and	
	62:15 technical proposal that you just described, did the	
	62:16 Plan have any other factual information from Aetna	
	62:17 about its capabilities to satisfy the technical	
	62:18 requirements in the RFP?	
	62:19 A. No.	
186:23 - 187:07	<b>Smart, Caroline 2023-09-13</b>	
	186:23 Q. Did you or the evaluation committee	
	186:24 consider asking vendors for narrative answers on	

DESIGNATION	SOURCE
	186:25 technical requirements with the narrative answers
	187:01 being constrained by word limits?
	187:02 A. No.
	187:03 Q. Did you or the evaluation committee
	187:04 consider asking vendors for in-person presentations
	187:05 on the technical requirements that had the greatest
	187:06 impact on plan members?
	187:07 A. No.
100:03 - 100:09	<b>Smart, Caroline 2023-09-13</b>
	100:03 Q. So imagine if a bidder confirms a
	100:04 requirement and the Plan evaluation committee sees
	100:05 that the requirement has been confirmed, but in
	100:06 truth the bidder does not know what that requirement
	100:07 actually requires.
	100:08 Should that bidder have earned one point
	100:09 under the RFP scoring system?
100:14 - 100:16	<b>Smart, Caroline 2023-09-13</b>
	100:14 A. Yes. Because, again, if they are
	100:15 awarded the contract, they will have to do whatever
	100:16 they said yes to.
105:02 - 105:06	<b>Smart, Caroline 2023-09-13</b>
	105:02 Q. Do you think it would have
	105:03 been appropriate for the evaluation committee to
	105:04 initiate discussions with any bidder about the
	105:05 bidder's capabilities to perform any technical
	105:06 requirement?
105:09 - 105:13	<b>Smart, Caroline 2023-09-13</b>
	105:09 A. I don't think that would be necessary --
	105:10 was necessary.
	105:11 Q. The question is not whether it's
	105:12 necessary. I'm asking whether it would have
	105:13 been appropriate for the evaluation committee --
105:16 - 105:16	<b>Smart, Caroline 2023-09-13</b>
	105:16 A. No. Uh-uh.

**EXHIBIT D**  
**Petitioner's testimony designations for**  
**Stuart Wohl**

DESIGNATION	SOURCE
19:11 - 19:13	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>19:11 Q. Does any Segal entity employ you?</p> <p>19:12 A. I hope so, yes.</p> <p>19:13 Q. Which is it?</p>
19:15 - 19:22	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>19:15 MS. KOSKI: For the sake of the record,</p> <p>19:16 Mr. Wohl is an employee of The Segal Company</p> <p>19:17 (Eastern States), Inc., which is a wholly owned</p> <p>19:18 subsidiary of the holding company of Segal, Inc.</p> <p>19:19 BY MR. SAWCHAK:</p> <p>19:20 Q. Ms. Koski has helpfully clarified. Does that</p> <p>19:21 strike you as correct, Mr. Wohl?</p> <p>19:22 A. Yes.</p>
22:01 - 22:08	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>22:01 Q. Your biography, Exhibit 200, says that your</p> <p>22:02 title is senior vice president east. Is that still your</p> <p>22:03 title?</p> <p>22:04 A. I would say something's missing from that</p> <p>22:05 title.</p> <p>22:06 Q. What would you -- how would you state your</p> <p>22:07 title?</p> <p>22:08 A. Senior vice president east region leader.</p>
30:08 - 30:23	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>30:08 I asked you earlier whether you supervised</p> <p>30:09 Segal's work on the RFP, and your answer was, in</p> <p>30:10 substance, depends what you mean by supervise; correct?</p> <p>30:11 A. Yes.</p> <p>30:12 Q. In what sense did you supervise Segal's work on</p> <p>30:13 this RFP?</p> <p>30:14 A. I made sure we had an agreement with the State</p> <p>30:15 to do the work. I worked with a team to make sure we</p> <p>30:16 met the deliverables and that we provide the State the</p> <p>30:17 information -- excuse me -- the state health plan the</p> <p>30:18 information that they needed.</p> <p>30:19 Q. Is there a sense in which you did not supervise</p> <p>30:20 Segal's work on the RFP?</p> <p>30:21 A. I don't dig into the numbers and look at that</p> <p>30:22 sort of analysis. So it depends how you define</p> <p>30:23 "supervise."</p>

DESIGNATION	SOURCE
24:09 - 24:12	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>24:09 Q. As you can imagine, we're here to talk about</p> <p>24:10 Segal's work for the state health plan. How long has</p> <p>24:11 Segal been engaged by the plan overall?</p> <p>24:12 A. Our first engagement began in 2010, I believe.</p>
53:01 - 53:05	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>53:01 Q. Can you ballpark the fees that Segal earns from</p> <p>53:02 the state health plan per year?</p> <p>53:03 A. Sure.</p> <p>53:04 Q. What is the ballpark figure?</p> <p>53:05 A. 800,000 to a million, depending on the year.</p>
27:20 - 27:25	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>27:20 Q. Do you supervise engagements in which Segal</p> <p>27:21 helps clients with RFPs?</p> <p>27:22 A. Yes.</p> <p>27:23 Q. Did you do that for the RFP in 2022 that is</p> <p>27:24 involved in this case?</p> <p>27:25 A. Yes.</p>
77:24 - 78:06	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>77:24 Are you familiar with Exhibit 11?</p> <p>77:25 A. Yes.</p> <p>78:01 Q. What is this?</p> <p>78:02 A. This is a letter of agreement for Segal to help</p> <p>78:03 the state health plan on the 2022 third-party</p> <p>78:04 administration request for proposal.</p> <p>78:05 Q. And you signed this; right?</p> <p>78:06 A. Yes.</p>
82:08 - 82:23	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>82:08 Q. On Pages 1 and 2, there's a section entitled</p> <p>82:09 "Obligations of Segal," and it goes on to say, "Segal</p> <p>82:10 shall," and then there's a list of items.</p> <p>82:11 Do you see that?</p> <p>82:12 A. Yes.</p> <p>82:13 Q. .4 under the list says, "Provide a disruption</p> <p>82:14 analysis based on the GeoAccess reporting requirement in</p> <p>82:15 the RFP."</p> <p>82:16 Did Segal do that?</p> <p>82:17 A. No.</p> <p>82:18 Q. Why not?</p>

DESIGNATION	SOURCE	
	<p>82:19 A. The State decided they did not want it.</p> <p>82:20 Q. How did you become aware of that decision of</p> <p>82:21 the State not to do it?</p> <p>82:22 A. I believe Steve Kuhn asked them that question,</p> <p>82:23 and they responded.</p>	
153:24 - 154:04	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>153:24 Q. In the passage of Section 1.1, the second line</p> <p>153:25 reads -- first and second lines read: "This includes a</p> <p>154:01 broad provider network with the least disruption and</p> <p>154:02 with competitive pricing."</p> <p>154:03 So is it correct that minimizing disruption was</p> <p>154:04 a goal of this RFP process?</p>	
154:06 - 154:17	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>154:06 THE WITNESS: I do not know.</p> <p>154:07 BY MR. SAWCHAK:</p> <p>154:08 Q. And Segal did not do anything, as far as you're</p> <p>154:09 aware, to directly measure which network provided the</p> <p>154:10 least disruption?</p> <p>154:11 A. Other than as part of the cost analysis, no.</p> <p>154:12 Q. Other than that.</p> <p>154:13 Did the RFP require the bidders to achieve a</p> <p>154:14 minimum level of network access?</p> <p>154:15 A. I don't know what the minimum qualification --</p> <p>154:16 I'm sure they mentioned there were some at the</p> <p>154:17 beginning. Other than that, I do not know of any.</p>	
160:03 - 160:10	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>160:03 Q. Did you do anything to look at the volume of</p> <p>160:04 out-of-network claims on anything narrower than a</p> <p>160:05 statewide basis?</p> <p>160:06 A. I don't believe so.</p> <p>160:07 Q. So did you study, in any way, whether people in</p> <p>160:08 particular geographies of North Carolina would lack</p> <p>160:09 sufficient in-network providers?</p> <p>160:10 A. We did not.</p>	
178:20 - 179:08	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>178:20 Q. So what's being shown digitally is Exhibit 211</p> <p>178:21 to this deposition.</p> <p>178:22 Do you recognize this to be Aetna's completed</p> <p>178:23 Attachment A-2 to its cost proposal?</p>	

DESIGNATION	SOURCE	
	178:24 A. That's -- the heading says it's Exhibit A-2. I	
	178:25 don't know if it's completed or final, or -- I don't	
	179:01 know anything about it.	
	179:02 Q. I'll represent to you that it was produced to	
	179:03 us as that, as Aetna's completed Exhibit A-2.	
	179:04 A. Okay.	
	179:05 Q. And as I say, it bore a Bates Number SHP 1779.	
	179:06 In terms of the general form of Attachment A-2,	
	179:07 was it prepared by Segal?	
	179:08 A. Yes, I believe so.	
181:20 - 182:05	<b>Wohl, Stuart 2023-09-15</b>	
	181:20 Q. Mr. Wohl, thanks for your patience with the	
	181:21 tech preparations.	
	181:22 On the Providers By County tab, this is asking	
	181:23 the bidders to come up with a -- an enumeration of the	
	181:24 different types of providers within each county; is that	
	181:25 right?	
	182:01 A. Yes.	
	182:02 Q. So if the bidders used inconsistent	
	182:03 definitions, one bidder to the next, in the	
	182:04 categorizations, the results wouldn't be comparable	
	182:05 across the bidders; is that right?	
182:07 - 182:07	<b>Wohl, Stuart 2023-09-15</b>	
	182:07 THE WITNESS: Yes.	
182:09 - 182:25	<b>Wohl, Stuart 2023-09-15</b>	
	182:09 Q. Would you go with me to the Provider Listing	
	182:10 tab on this workbook.	
	182:11 The instructions say: "Complete the following	
	182:12 table, including all data for providers within the	
	182:13 network you specified above"; correct?	
	182:14 A. Yes.	
	182:15 Q. And in Aetna's case, the proposed network has	
	182:16 made choice POS, Roman numeral II?	
	182:17 A. That's what it says, yes.	
	182:18 Q. Is this table -- this tab in the workbook, is	
	182:19 it limited to providers in the state of North Carolina?	
	182:20 A. I do not know.	
	182:21 Q. And, again, here, you see the Specialty column.	
	182:22 You're not aware of anything that locked down	
	182:23 definitions of those specialties, bidder -- one bidder	

DESIGNATION	SOURCE	
	182:24	to another, are you?
	182:25	A. No.
184:14 - 184:17	<b>Wohl, Stuart 2023-09-15</b>	
	184:14	Q. Let me represent to you that here, in Aetna's
	184:15	filled-out A-2, every entry in the Proposed Network
	184:16	column is a Y. So that would signify that every
	184:17	provider was listed as under contract; right?
184:19 - 184:19	<b>Wohl, Stuart 2023-09-15</b>	
	184:19	THE WITNESS: Yes.
184:21 - 185:02	<b>Wohl, Stuart 2023-09-15</b>	
	184:21	Q. And you're not aware -- going back to your
	184:22	earlier testimony -- of anything that Segal did with
	184:23	these A-2s?
	184:24	A. I am not aware of that.
	184:25	Q. Are you aware of anything the plan did with
	185:01	these A-2s?
	185:02	A. No.
130:18 - 132:19	<b>Wohl, Stuart 2023-09-15</b>	
	130:18	Q. Let me show you another exhibit. This is 209.
	130:19	(Petitioner's Exhibit Number 209,
	130:20	Correspondence, Bates Number SHP 0086102 - 86111,
	130:21	was marked for Identification.)
	130:22	THE WITNESS: Thank you.
	130:23	BY MR. SAWCHAK:
	130:24	Q. This is an e-mail exchange between the state
	130:25	health plan people and Segal people; is that right?
	131:01	A. Yes.
	131:02	Q. And this is before the letter of agreement with
	131:03	the plan that we saw as Exhibit 11; is that right?
	131:04	Before the signed version of Exhibit 11?
	131:05	A. Yes.
	131:06	Q. Because that was in June of 2022, Exhibit 11
	131:07	was?
	131:08	A. I believe so.
	131:09	Q. Is the context of this e-mail exchange
	131:10	preparation for a 2022 RFP?
	131:11	A. Yes.
	131:12	Q. Mr. Rish's e-mail on 86103, I'd like to look
	131:13	at, please.

DESIGNATION	SOURCE	
	131:14	And there's an attachment to the exhibit or --
	131:15	I should correct my description of the exhibit. This is
	131:16	an e-mail exchange that attached a marked-up document;
	131:17	is that right?
	131:18	A. Yes.
	131:19	Q. And is the marked-up document a draft of your
	131:20	letter of agreement with the state health plan?
	131:21	A. No.
	131:22	Q. What is it?
	131:23	A. It's a draft of proposal from Segal to help the
	131:24	state health plan before -- help the -- help the state
	131:25	health plan on their TPA RFP.
	132:01	Q. So this is a -- this is Segal framing how the
	132:02	work on the TPA RFP might be done?
	132:03	A. And the types of services and the cost, yes.
	132:04	Q. So given that it was a proposal, why did the
	132:05	plan mark it up?
	132:06	A. Because they want -- I don't know, actually.
	132:07	They probably wanted to look at it. It's not unusual
	132:08	for us to work back and forth with them to make sure
	132:09	we're all on the same page.
	132:10	Q. In Mr. Rish's e-mail on 86103, Mr. Rish says,
	132:11	in the second paragraph -- in the second sentence of the
	132:12	second paragraph, "As we've noted in previous
	132:13	conversations, we're all working under an incredibly
	132:14	tight timeline, so I'd like to get something scheduled
	132:15	early next week for discussion."
	132:16	Would you agree that the timeline was
	132:17	incredibly tight?
	132:18	A. It was faster than usual.
	132:19	Q. And why is it that the timeline was so tight?
132:21 - 133:05	<b>Wohl, Stuart 2023-09-15</b>	
	132:21	THE WITNESS: They wanted enough time that if
	132:22	there was a change, there was time to implement it
	132:23	properly, is my understanding.
	132:24	BY MR. SAWCHAK:
	132:25	Q. If there was a change in TPAs --
	133:01	A. Yes.
	133:02	Q. -- they would implement it properly.
	133:03	A. Yes. Sorry.

DESIGNATION	SOURCE	
	<p>133:04 Q. Why didn't the plan just shoot for a later 133:05 start to the service of the new TPA than it did?</p>	
133:07 - 133:14	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>133:07 THE WITNESS: I do not -- I do not know. 133:08 BY MR. SAWCHAK: 133:09 Q. The -- the service of Aetna as a new TPA will 133:10 begin on the first day of 2025; right? 133:11 A. Correct. 133:12 Q. And could the plan have avoided this incredibly 133:13 tight timeline by pushing that out and have a less 133:14 time-pressured RFP process?</p>	
133:17 - 133:22	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>133:17 THE WITNESS: Sure. 133:18 BY MR. SAWCHAK: 133:19 Q. But it did not do that. 133:20 A. No. 133:21 Q. Could the plan have started the RFP work 133:22 earlier --</p>	
133:24 - 134:04	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>133:24 BY MR. SAWCHAK: 133:25 Q. -- than it did? 134:01 A. Sure. 134:02 Q. But it didn't -- do you have any understanding 134:03 of why it didn't start the RFP work earlier? 134:04 A. No.</p>	
134:11 - 134:16	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>134:11 Q. Let's look, please, at the attachment. There 134:12 are a couple marginal comments that say "MR1," "MR2." 134:13 Looks like you see the first one there that says "MR1." 134:14 Are those Matt Rish's comments, would you say? 134:15 A. It just says "MR." I'll have to make that 134:16 assumption, yes.</p>	
135:04 - 135:11	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>135:04 Q. On the top of page 86107, the commenter on what 135:05 is changed from B to C makes an insertion saying: 135:06 "Segal will provide a disruption analysis based on the 135:07 GeoAccess reporting requirement in the RFP"; is that 135:08 right? 135:09 A. Yes.</p>	

DESIGNATION	SOURCE	
	<p>135:10 Q. So at this point in the process, Segal is being 135:11 asked to do a disruption analysis?</p>	
135:13 - 135:13	<p><b>Wohl, Stuart 2023-09-15</b> 135:13 THE WITNESS: Yes.</p>	
137:08 - 137:25	<p><b>Wohl, Stuart 2023-09-15</b> 137:08 Q. And look with me, please, at 86108 in the 137:09 middle. There's an insert here I'd like to read to you. 137:10 It says: "Segal understands that there is no 137:11 margin for error in the timeline for this RFP. Segal 137:12 agrees to meet all turnaround time specified by the plan 137:13 for all deliverables specified for this project. It is 137:14 incumbent upon Segal to adhere to the project 137:15 specifications and time frames as any inaccuracies or 137:16 errors will be detrimental to the overall success of the 137:17 project." 137:18 That's language that the plan inserted here; is 137:19 that right? 137:20 A. Yes. 137:21 Q. You said before that this was a proposal. Why 137:22 would the plan be making insertions of this nature to 137:23 your proposal? 137:24 A. They just wanted it to be clear to us. They 137:25 wanted to make a statement that we understood.</p>	
138:25 - 139:09	<p><b>Wohl, Stuart 2023-09-15</b> 138:25 Have you ever seen another client modify one of 139:01 your proposals to say that there's no margin for error 139:02 in the timeline? 139:03 A. We have -- I've never seen this language put in 139:04 before, that I remember. 139:05 Q. Have you seen the substance of this message 139:06 inserted into one of your proposals? 139:07 A. Inserting the proposal, no. But I've seen it 139:08 in the agreements where if you don't hit deadlines, 139:09 there are penalties or other things that can happen.</p>	
93:19 - 93:23	<p><b>Wohl, Stuart 2023-09-15</b> 93:19 Q. Let me show you another exhibit. This is 93:20 another e-mail that we received yesterday. And this 93:21 will be marked as Exhibit 203. 93:22 THE WITNESS: Thank you.</p>	

DESIGNATION	SOURCE	
	93:23 BY MR. SAWCHAK:	
94:04 - 95:02	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>94:04 Bottom e-mail is from Ms. Smith to you, and</p> <p>94:05 then there are a couple e-mails with Ms. Smith included</p> <p>94:06 in some way; three or four of them I see. And then on</p> <p>94:07 the first page of the exhibit there are four e-mails</p> <p>94:08 internal to Segal; okay?</p> <p>94:09 Is that right?</p> <p>94:10 A. Yes.</p> <p>94:11 Q. And the overall time frame of this e-mail</p> <p>94:12 string -- strike that.</p> <p>94:13 This is from your e-mail system?</p> <p>94:14 A. It appears to be, yes.</p> <p>94:15 Q. Any reason to think it's not true and accurate?</p> <p>94:16 A. No.</p> <p>94:17 Q. And it relates to your work on the RFP?</p> <p>94:18 A. Yes.</p> <p>94:19 Q. This is -- in the overall arc of the RFP, this</p> <p>94:20 is late September 2022. That's about five weeks or so</p> <p>94:21 before the cost proposals from bidders were due; is that</p> <p>94:22 right?</p> <p>94:23 A. Sounds right to me. I don't remember the date</p> <p>94:24 they were due.</p> <p>94:25 Q. I'll represent to you that the cost proposals</p> <p>95:01 from bidders were due on November 9.</p> <p>95:02 Does that sound about right?</p>	
95:04 - 96:20	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>95:04 THE WITNESS: Sounds about right.</p> <p>95:05 I'm sorry.</p> <p>95:06 BY MR. SAWCHAK:</p> <p>95:07 Q. So this is about five weeks before that; right?</p> <p>95:08 A. Yes.</p> <p>95:09 Q. And the gist of this exchange is that Ms. Smith</p> <p>95:10 is asking Segal to report its analysis a day earlier</p> <p>95:11 than at least Mr. Kuhn had anticipated; is that a fair</p> <p>95:12 summary?</p> <p>95:13 A. Yes.</p> <p>95:14 Q. And you -- let me draw your attention to the</p> <p>95:15 top e-mail. And, again, this is from you -- the "from"</p> <p>95:16 line is second.</p>	

DESIGNATION	SOURCE	
	95:17 A. (Witness nodding.)	
	95:18 Q. You say -- or you write: "I spoke with Matt R	
	95:19 (after I told Sharon she was giving our team a heart	
	95:20 attack)."	
	95:21 Sharon is Sharon Smith?	
	95:22 A. Yes.	
	95:23 Q. And -- so this is five weeks before the cost	
	95:24 analysis is due; correct?	
	95:25 A. Yes.	
	96:01 Q. And the state health plan is asking for a	
	96:02 one-day acceleration of the results; correct?	
	96:03 A. Yes.	
	96:04 Q. And that was enough to give your team a heart	
	96:05 attack with five weeks' advance notice?	
	96:06 A. There was some joking in there. They	
	96:07 understood this was -- this was just some levity.	
	96:08 Q. But look at -- please, at the fourth e-mail	
	96:09 down in the string from Mr. Kuhn to you at 11:29 a.m. on	
	96:10 the 28th of September.	
	96:11 Do you see that?	
	96:12 A. Yes.	
	96:13 Q. Second sentence reads: "I've been concerned	
	96:14 all along with the limited time they have given us to	
	96:15 turn this around, and now they want us to reduce this by	
	96:16 a day?"	
	96:17 That's not joking, is it?	
	96:18 A. No.	
	96:19 Q. He's seriously concerned about the ability to	
	96:20 get the job done properly, isn't he?	
96:23 - 97:06	<b>Wohl, Stuart 2023-09-15</b>	
	96:23 THE WITNESS: It was a -- as I said earlier, it	
	96:24 was a tight time frame. Anything that makes it	
	96:25 faster, we just wanted -- it just gets us concerned.	
	97:01 We wanted to make sure we did the right job and do	
	97:02 it accurately.	
	97:03 BY MR. SAWCHAK:	
	97:04 Q. So even five weeks before the work on the cost	
	97:05 proposal began, a one-day shortening was enough to be	
	97:06 concerning, at least to Mr. Kuhn; correct?	
97:08 - 97:17	<b>Wohl, Stuart 2023-09-15</b>	

DESIGNATION	SOURCE
	97:08 THE WITNESS: Based on what that says, I'd say
	97:09 yes.
	97:10 BY MR. SAWCHAK:
	97:11 Q. Do you have any reason to think that's an
	97:12 incorrect reading of Mr. Kuhn's reaction?
	97:13 A. No. But I think the overall timetable is
	97:14 something like ten days. And one day is 10 percent of
	97:15 that time, so --
	97:16 Q. And ten days is a pretty short time?
	97:17 A. Yes.
168:07 - 168:09	<b>Wohl, Stuart 2023-09-15</b>
	168:07 Q. Is -- is the breadth of network access
	168:08 something important to the welfare of the members of the
	168:09 state health plan?
168:11 - 168:11	<b>Wohl, Stuart 2023-09-15</b>
	168:11 THE WITNESS: Yes.
151:24 - 152:06	<b>Wohl, Stuart 2023-09-15</b>
	151:24 Q. Is there anything about the analysis of the
	151:25 networks or providers -- strike that.
	152:01 Was any analysis of the networks done in this
	152:02 RFP other than as reflected in the pricing?
	152:03 A. Not that I'm aware of.
	152:04 Q. You're not aware of anything the plan would
	152:05 have done that Segal didn't do?
	152:06 A. I'm not aware of anything.
146:01 - 146:10	<b>Wohl, Stuart 2023-09-15</b>
	146:01 Q. So would you be surprised to learn that Segal
	146:02 people had had direct interactions with Aetna people?
	146:03 A. Segal people on the team who were talking about
	146:04 the North Carolina bid or just Segal people talking to
	146:05 Aetna?
	146:06 Q. The first of those. This -- the people working
	146:07 on this proposal.
	146:08 A. I don't remember anybody having contact with
	146:09 anybody about this bid.
	146:10 Q. Would you be surprised if they had --
146:12 - 146:16	<b>Wohl, Stuart 2023-09-15</b>
	146:12 THE WITNESS: Yes.
	146:13 BY MR. SAWCHAK:

DESIGNATION	SOURCE	
	146:14 Q. -- had direct contact with Aetna?	
	146:15 A. About this bid, yes.	
	146:16 Q. Would that strike you as improper?	
146:18 - 146:21	<b>Wohl, Stuart 2023-09-15</b>	
	146:18 THE WITNESS: Depends when it happened.	
	146:19 BY MR. SAWCHAK:	
	146:20 Q. What -- when would it be proper? When would it	
	146:21 be improper?	
146:23 - 147:16	<b>Wohl, Stuart 2023-09-15</b>	
	146:23 THE WITNESS: If it happened during our	
	146:24 analysis, then it would be improper because	
	146:25 everything goes through the State.	
	147:01 BY MR. SAWCHAK:	
	147:02 Q. Okay.	
	147:03 A. We did nothing directly with them.	
	147:04 Q. At what time in the process would you consider	
	147:05 it proper?	
	147:06 A. Generally, we don't -- unless the client	
	147:07 instructs us, we don't talk to the bidders in advance.	
	147:08 Q. Even before the RFP goes out the door?	
	147:09 A. Yes.	
	147:10 Q. Do you -- why not?	
	147:11 A. It would -- it could be misconstrued as	
	147:12 favoritism. Who knows what the conversation was about?	
	147:13 But it happens, because a lot of times vendors call us	
	147:14 about something trying to get information, and we can't	
	147:15 avoid those conversations, but we say we can't talk	
	147:16 about it. It's just safer that way.	
191:17 - 192:07	<b>Wohl, Stuart 2023-09-15</b>	
	191:17 Q. Let me speak now of the scoring of the cost	
	191:18 proposal, once the bids came in.	
	191:19 Did Segal take the lead on that?	
	191:20 A. Yes.	
	191:21 Q. But the plan reviewed Segal's work?	
	191:22 A. The plan had a summary of our results and our	
	191:23 suggested -- our suggested scores.	
	191:24 Q. So the plan reviewed the work, but at a high	
	191:25 level of summary?	
	192:01 A. I don't -- yes. I don't believe they dug into	
	192:02 the spreadsheets and recalculated numbers, as far as I	

DESIGNATION	SOURCE
	192:03 know.
	192:04 Q. And did Segal's leading role on the cost
	192:05 scoring, including -- did it include the assignment of
	192:06 points to the various elements of the cost proposal?
	192:07 A. Based on a criteria that defined the RFP, yes.
58:21 - 58:23	<b>Wohl, Stuart 2023-09-15</b>
	58:21 Q. Several of the witnesses for the plan have
	58:22 testified that Segal essentially ran the show on the
	58:23 cost proposal.
59:01 - 59:05	<b>Wohl, Stuart 2023-09-15</b>
	59:01 BY MR. SAWCHAK:
	59:02 Q. I'm paraphrasing.
	59:03 A. (Witness nodding.)
	59:04 Q. Do you have any reason to disagree with that
	59:05 description?
59:08 - 59:12	<b>Wohl, Stuart 2023-09-15</b>
	59:08 BY MR. SAWCHAK:
	59:09 Q. Please answer.
	59:10 A. No.
	59:11 Q. You have no reason to disagree with it?
	59:12 A. No.
76:02 - 76:04	<b>Wohl, Stuart 2023-09-15</b>
	76:02 Q. On the scoring of the cost proposal, was there
	76:03 anyone at the state health plan who understood every
	76:04 detail of your analysis?
76:08 - 76:13	<b>Wohl, Stuart 2023-09-15</b>
	76:08 THE WITNESS: Charles Sceiford looked at
	76:09 aspects of it. I don't know whether he understood
	76:10 every detail of it.
	76:11 BY MR. SAWCHAK:
	76:12 Q. Anyone else who had the most detailed
	76:13 understanding of your work on the cost proposal?
76:17 - 76:17	<b>Wohl, Stuart 2023-09-15</b>
	76:17 THE WITNESS: Not that I know of.
199:21 - 202:03	<b>Wohl, Stuart 2023-09-15</b>
	199:21 Q. Let me show you a new exhibit, which I think
	199:22 would be 215.
	199:23 (Petitioner's Exhibit Number 215,

DESIGNATION	SOURCE	
199:24	Correspondence, Bates Number SHP 0086294 - 0086297,	
199:25	was marked for Identification.)	
200:01	BY MR. SAWCHAK:	
200:02	Q. And 213, Mr. Wohl -- 213, Mr. Wohl, we'll be	
200:03	going back to in a minute. But I want to show you a	
200:04	color version of something that overlaps with 213.	
200:05	This is an e-mail string among state health	
200:06	plan people and Segal people; is that right?	
200:07	A. Yes.	
200:08	Q. Any reason to think this is not a true and	
200:09	accurate copy of that e-mail string?	
200:10	A. No.	
200:11	Q. Look with me, please, at the bottom e-mail on	
200:12	page 86294 and then the e-mail that follows it in the	
200:13	vertical arrangement, which is an e-mail from Mr. Kuhn	
200:14	to Mr. Rish and others at 10:33 a.m. on August 24th.	
200:15	Do you see that pairing?	
200:16	A. Yes.	
200:17	Q. And the Rish e-mail at 9:26 a.m. on Thursday	
200:18	August 25, you see how it says, "See my thoughts below	
200:19	in red"?	
200:20	A. Yes.	
200:21	Q. So if you look at the below e-mail, August 22,	
200:22	2022 -- sorry, August 24, 2022, at 10:33 a.m., is it	
200:23	fair to think, from the e-mail above, that the black	
200:24	text is the original e-mail from Mr. Kuhn and the red	
200:25	text is text interlineated by Mr. Rish in his reply?	
201:01	A. Yes.	
201:02	Q. Okay. In this red interlineation, Mr. Rish	
201:03	writes on .1 -- well, let me -- let me -- let me	
201:04	describe to you the exchange in .1 and see if you read	
201:05	it the same way I do.	
201:06	.1 in the Kuhn e-mail on the 24th at 10:33 --	
201:07	are you with me there?	
201:08	A. Yes.	
201:09	Q. So the black text reads, from Mr. Kuhn, "The	
201:10	current cost specifications don't mention scoring. Is	
201:11	it correct to assume that the scoring specifics will be	
201:12	in the technical specifications?"	
201:13	And then the red response is from Mr. Rish;	
201:14	right? And he says, "I would appreciate Segal drafting	

DESIGNATION	SOURCE	
	<p>201:15 some language on the scoring. Then we will drop it in</p> <p>201:16 accordingly. If you could get me something ASAP today,</p> <p>201:17 that would be most appreciated."</p> <p>201:18 Is that -- is that a fair account of the</p> <p>201:19 exchange, that Mr. Kuhn asks where the description of</p> <p>201:20 the scoring is, and Mr. Rish replies, saying, "Could you</p> <p>201:21 actually draft some today"?</p> <p>201:22 A. Yes.</p> <p>201:23 Q. Do you remember those events?</p> <p>201:24 A. No.</p> <p>201:25 Q. Does the fact that he -- strike that.</p> <p>202:01 This is six days before the RFP went out;</p> <p>202:02 right?</p> <p>202:03 A. Yes.</p>	
202:04 - 202:12	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>202:04 Q. What's your reaction to the fact that Mr. Rish</p> <p>202:05 is asking Segal to draft the RFP language on a same-day</p> <p>202:06 basis six days before the RFP went out?</p> <p>202:07 A. I have no reaction to it.</p> <p>202:08 Q. Does it seem unusual for the way this</p> <p>202:09 proposal -- this RFP happened?</p> <p>202:10 A. I don't know.</p> <p>202:11 Q. Does it seem in keeping with the rest of -- the</p> <p>202:12 way the -- the rest of the RFP went --</p>	
202:14 - 202:21	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>202:14 BY MR. SAWCHAK:</p> <p>202:15 Q. -- timingwise?</p> <p>202:16 A. We just had to make sure everything was in</p> <p>202:17 there. Something was missing, and they talked about how</p> <p>202:18 to add it.</p> <p>202:19 Q. And -- and they asked for it to be added on a</p> <p>202:20 same-day basis.</p> <p>202:21 A. That appears to be the case.</p>	
203:14 - 204:06	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>203:14 So, now, Exhibit 214 is -- is -- its first</p> <p>203:15 numbered page is 9224 -- strike that -- 92423?</p> <p>203:16 A. 92423.</p> <p>203:17 Q. Thank you, Mr. Wohl.</p> <p>203:18 The top -- I'd like to ask you about the top</p> <p>203:19 e-mail of -- of this chain.</p>	

DESIGNATION	SOURCE	
	<p>203:20 Well, first of all, this e-mail is Mr. Kuhn</p> <p>203:21 sending a draft of cost proposal scoring numbers and</p> <p>203:22 criteria; is that right?</p> <p>203:23 A. Yes.</p> <p>203:24 Q. And the e-mail is addressed to yourself and to</p> <p>203:25 Matt.</p> <p>204:01 Is the Matt, Matt Kersting, from the context?</p> <p>204:02 A. Yes.</p> <p>204:03 Q. So he writes, "Stu/Matt, could one of you</p> <p>204:04 review the text in the attached. I spoke to Matt in</p> <p>204:05 trying to provide as much detail without handcuffing us.</p> <p>204:06 We need to get this to them as soon as possible."</p>	
222:06 - 222:19	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>222:06 BY MR. SAWCHAK:</p> <p>222:07 Q. And in a ranking-based system -- let me ask you</p> <p>222:08 a little bit more about the workings of a rank-based</p> <p>222:09 system.</p> <p>222:10 Imagine a situation where the second-place</p> <p>222:11 bidder is only very slightly off the pace of the best</p> <p>222:12 bidder. Compare that to a situation where the</p> <p>222:13 second-place bidder is considerably off the pace of the</p> <p>222:14 best bidder, but in both cases, the rank is the</p> <p>222:15 second-place rank. In a system like this with</p> <p>222:16 rank-based points, the outcome would be the same in</p> <p>222:17 those two situations, wouldn't it?</p> <p>222:18 A. I don't believe so. I think it could have been</p> <p>222:19 3-1-1, depending on if the results showed that way.</p>	
215:19 - 216:03	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>215:19 (Petitioner's Exhibit Number 217, 2019 RFP for</p> <p>215:20 The North Carolina State Health Plan, was marked for</p> <p>215:21 Identification.)</p> <p>215:22 BY MR. SAWCHAK:</p> <p>215:23 Q. Mr. Wohl, do you recognize this to be the 2019</p> <p>215:24 RFP for the state health plan's 20 -- for the state</p> <p>215:25 health plan's third-party administrator?</p> <p>216:01 A. That's what it says on the cover.</p> <p>216:02 Q. Will you look with me at the bottom of page 21</p> <p>216:03 of the exhibit.</p>	
216:11 - 217:01	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>216:11 Q. At the bottom of page 21, there's a description</p>	

DESIGNATION	SOURCE	
	<p>216:12 of the scoring of the cost proposal. There's some talk</p> <p>216:13 about the networks. You see that in the first</p> <p>216:14 paragraph. And then I -- I want to focus on the</p> <p>216:15 language that follows that.</p> <p>216:16 It says, "The following calculations were used.</p> <p>216:17 The vendor with the lowest total cost will be awarded</p> <p>216:18 the maximum number of 10,000 points allocated for this</p> <p>216:19 component. The vendor with the next lowest cost and</p> <p>216:20 remaining bids will be given a pro rata share of the</p> <p>216:21 total number of points allocated for this component.</p> <p>216:22 Equals lowest bid/bid being evaluated."</p> <p>216:23 And that slash signifies division, doesn't it?</p> <p>216:24 A. Yes.</p> <p>216:25 Q. Is this an example of ratio-based scoring?</p> <p>217:01 A. Yes.</p>	
205:07 - 206:22	<p><b>Wohl, Stuart 2023-09-15</b></p>	
	<p>205:07 (Petitioner's Exhibit Number 216,</p> <p>205:08 Correspondence, Bates Number SHP 0092427 - 92432,</p> <p>205:09 was marked for Identification.)</p> <p>205:10 BY MR. SAWCHAK:</p> <p>205:11 Q. So this is another related e-mail chain to the</p> <p>205:12 e-mail we just looked at with -- with discussion within</p> <p>205:13 Segal; is that right?</p> <p>205:14 For example, the Stu/Matt e-mail that I read to</p> <p>205:15 you in the last exhibit is at the bottom of 92429.</p> <p>205:16 Do you see that?</p> <p>205:17 A. Yes.</p> <p>205:18 Q. And then I want to just ask you about the sort</p> <p>205:19 of e-mail discussion that continues up from here, if I</p> <p>205:20 might.</p> <p>205:21 In the e-mail immediately above Mr. Kuhn's</p> <p>205:22 e-mail, that is to say the -- the e-mail from you,</p> <p>205:23 toward the bottom of 92429, do you see that e-mail?</p> <p>205:24 It's dated August 25 at 10:55 a.m.</p> <p>205:25 A. Yes.</p> <p>206:01 Q. You ask -- or you say, "So my basic question,</p> <p>206:02 will each bidder get a -- a portion of the points (say</p> <p>206:03 three for network pricing) based on the ratio of lowest</p> <p>206:04 cost bidder/bidder's cost?"</p> <p>206:05 Is -- is that idea of apportioning points based</p>	

DESIGNATION	SOURCE	
	206:06	on a ratio like that? Is that's what -- is that's what
	206:07	described by the term "ratio scoring"?
	206:08	A. I believe so.
	206:09	Q. So can you just describe ratio scoring in your
	206:10	own words.
	206:11	A. If I'm bidding on to do job, and I bid \$100 to
	206:12	do it and somebody else bid \$90 to do it, I'd only get
	206:13	90 percent of the points, 90 divided by 100. That's --
	206:14	that's what that could mean.
	206:15	Q. Okay.
	206:16	A. There's lots of other ways it could be done,
	206:17	but that's what that implies to me.
	206:18	Q. Did this RFP end up using ratio scoring?
	206:19	A. No.
	206:20	Q. Why not?
	206:21	A. There were discussions of many ways, and they
	206:22	came to agreement to a different way.
220:10 - 221:16	<b>Wohl, Stuart 2023-09-15</b>	
	220:10	Q. So look with me, please, on page 70464.
	220:11	This is -- am I right that this is a draft of
	220:12	the top-level scoring of the cost proposal or a template
	220:13	for it, I should say?
	220:14	A. Yes.
	220:15	Q. And so look with me at the rightmost two
	220:16	columns.
	220:17	What this is doing in the second-to-last column
	220:18	is totaling the score of the network pricing, the fees,
	220:19	and the pricing guarantees as totaling those through --
	220:20	through adding -- right? -- into a total score in points
	220:21	in the second-to-last column?
	220:22	A. Yes.
	220:23	Q. And then it's assigning a rank to the points?
	220:24	A. Yes.
	220:25	Q. So here there are two second-place bidders;
	221:01	right? Namely, Bidder 1 and Bidder 3?
	221:02	A. Or two third-place bidders, but, yes.
	221:03	Q. Two nonprevailing bidders. There's a tie --
	221:04	A. We're tied.
	221:05	Q. -- of nonprevailing scores?
	221:06	A. Yes.

DESIGNATION	SOURCE	
	<p>221:07 Q. How did -- who decided that the number of</p> <p>221:08 rank-based points to be assigned to that score was two</p> <p>221:09 as opposed to one or zero?</p> <p>221:10 A. This was just illustrative of the -- this has</p> <p>221:11 nothing to do with the actual results. This was</p> <p>221:12 illustration of what we might give them.</p> <p>221:13 Q. But was it an illustration of how the point</p> <p>221:14 assignments would work?</p> <p>221:15 A. No. Other than the highest points got the</p> <p>221:16 higher score.</p>	
221:19 - 221:21	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>221:19 What was Segal's proposal here about how</p> <p>221:20 nonprevailing outcomes ought to get rank-based points?</p> <p>221:21 A. I don't think this had a proposal.</p>	
241:19 - 241:22	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>241:19 BY MR. THOMPSON:</p> <p>241:20 Q. Mr. Wohl, good afternoon. It's been a long day</p> <p>241:21 for you, and I'm mindful of the time. I just have just</p> <p>241:22 a few questions, if I could.</p>	
244:03 - 244:10	<p><b>Wohl, Stuart 2023-09-15</b></p> <p>244:03 Q. And, similarly, as to the cost aspect of the</p> <p>244:04 evaluation criteria contained in Section 3.4, do you</p> <p>244:05 have any question in your mind that the State of</p> <p>244:06 North -- the state health plan made an award decision</p> <p>244:07 that was in the best interest of the State of North</p> <p>244:08 Carolina and its plan participants?</p> <p>244:09 A. Aetna won the bid, so I'll say I don't have any</p> <p>244:10 doubt of that.</p>	