



January 20, 2023

Delivered via electronic mail

Mr. Nathan C. Chase, Jr. (nchase@robinsonbradshaw.com)
Robinson, Bradshaw & Hinson, P.A.
101 N. Tryon St., Ste. 1900
Charlotte, NC 28246

RE: Response to “Status of Public Records Requests Submitted by Blue Cross Blue Shield of North Carolina”

Dear Mr. Chase:

On January 18, 2023, the public records request coordinator for the North Carolina Department of the State Treasurer (“DST”) received your letter delivered on behalf of your client Blue Cross Blue Shield of North Carolina (“BCBS”) and titled “Status of Public Records Requests Submitted by Blue Cross Blue Shield of North Carolina.”

In your letter, you stated that BCBS made two distinct requests for public records related to the North Carolina State Health Plan for Teachers and State Employees’ (“Plan”) Request for Proposal #270-20220830TPAS (“TPA RFP”), in which BCBS participated. BCBS made its first request on December 15, 2022 (“December 15 Request”), and a second request on December 20, 2022 (“December 20 Request”). Next, you referred to a letter delivered by your colleague, Mr. Sawchak, also on behalf of BCBS and titled “Blue Cross Blue Shield of North Carolina’s Request for Protest Meeting on Request for Proposal #270-20220830TPAS” (“Protest Letter”) on January 12, 2023. Finally, you stated that it is “over one month after [BCBS] made its first request” and suggested that not receiving such records after a month “clashes with the statutory directive” of the Public Records Act to provide records “as promptly as possible.”

As I’m sure your client, BCBS, appreciates, under the duties imposed on the Plan by contract and the Public Records Act, the Plan is not permitted to disclose confidential and trade secret information and faces legal liability if such disclosure occurs. As part of the Plan’s fulfillment of its contractual and statutory duties, the Plan’s contracting staff communicated via email with all three TPA RFP bidders, including your client BCBS, on December 20, 2022. That email requested the bidders’ review and redaction of confidential and trade secret information in documents related to the TPA RFP according to the terms of the TPA RFP, to which all bidders agreed. The email clearly stated that the deadline for these redactions was 4:00 PM, Monday, January 9, 2023. All three bidders—including BCBS—did not submit their redacted documents to the Plan until January 9, 2023. Thus, despite the apparent length of time since BCBS’ public records requests, there have only

been eight state business days, including today, since the Plan received the bidders' redacted documents.

Further, it is Plan policy to refrain from releasing procurement-related materials until after that procurement's "silent period" is lifted, which the Plan was required to extend to cover responses to bidders' protest letters, including Mr. Sawchak's Protest Letter sent on behalf of BCBS. The "silent period" is intended to preserve the integrity of the procurement process, uphold the neutrality and professionalism of those involved, and ensure respectful consideration for the time and resource commitments made by bidding vendors.

The Plan's staff are diligently compiling the materials submitted by participating bidders by Monday, January 9, 2023—materials amounting to thousands of pages per bidder even with the Plan's modernized RFP process. Plan staff are then required to review and confirm the redactions to prevent disclosure of bidders' trade secret and confidential information. BCBS is already aware that prompt and diligent fulfillment of these regular post-procurement public record requests reasonably and regularly takes multiple weeks, sometimes longer.

For example, following BCBS' unsuccessful bid for the Plan's Pharmacy Benefit Management Services Request for Proposal (RFP #270-20210521PBMS), BCBS' counsel submitted a public records request nearly identical to the December 15 Request. That request, received by DST on January 11, 2022, was completed with all responsive materials provided to BCBS on July 1, 2022. At no point from January 2022 to July 2022 did BCBS question the promptness of the Plan's staff in the fulfillment of that post-procurement public record request.

Recognizing the increased time and burden upon the Plan's staff caused by these additional records review duties, and understanding BCBS' desire to obtain responsive records as quickly as possible, please know that BCBS is welcome to waive its contractual and statutory rights to confidentiality and re-submit its documents with all redactions removed. Doing so may speed the records review and production process by a third. Please notify us as soon as possible if BCBS would like to take this course of action.

DST and the Plan are committed to producing all responsive documents promptly in conformance with the Public Records Act and all contractual and statutory duties concerning confidential and trade secret information.

Sincerely,

/s/ Joel Heimbach

Joel Heimbach
Assistant General Counsel
North Carolina State Health Plan