

CITY OF MILWAUKEE ADMINISTRATIVE REVIEW APPEALS BOARD

Transcript of the Testimony of:

TRANSCRIPTION

May 04, 2018



1 STATE OF WISCONSIN
2 CITY OF MILWAUKEE
3 ADMINISTRATIVE REVIEW APPEALS BOARD
4 MAY 4, 2018

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1 CHAIRMAN VINCENT BOBOT: Administrative Review
2 Appeals Board meeting for May 4th, 2018. Ah, I am the
3 chairperson of the board. My name is Vincent Bobot. To my
4 immediate right is board member Brad Hoeschen. To his
5 right is Steve Fritsche.

6 MR. STEVE FRITSCHKE: Good morning.

7 CHAIRMAN VINCENT BOBOT: To my immediate left is
8 Linda Elmer; she's our administrative assistant. And to
9 her left is Bill Averill.

10 MR. BILL AVERILL: Good morning.

11 ATTORNEY EMERY HARLAN: Good morning.

12 CHAIRMAN VINCENT BOBOT: It is our policy, ah,
13 that we always have the city go first, unless there's
14 something unusual. It is my understanding that the city
15 will present its case first to the board and then at that
16 time, the appellant will have his opportunity to sup - ah,
17 supply us with the information witnesses he chose for us to
18 hear. All witnesses will be sworn in our by our
19 administrative assistant and, ah, the city may com - ah,
20 commence. Could you just state your name for the record,
21 please?

22 MR. STEVE FRITSCHKE: Ah, Mr. Chairman, before we
23 begin, I just have a question.

24 CHAIRMAN VINCENT BOBOT: Yes.

25 MR. STEVE FRITSCHKE: Um, what is our role here?

1 Is this where we're going to determine whether or not the
2 city acted appropriately and followed procedure? And if
3 not, the case is sent back to the city department for
4 further review?

5 CHAIRMAN VINCENT BOBOT: Ah, that's what I would
6 anticipate.

7 MR. STEVE FRITSCHKE: Okay.

8 CHAIRMAN VINCENT BOBOT: Mr. Hoeschen, do you
9 have any -

10 MR. BRAD HOESCHEN: I, I would disagree. I think
11 we're making a final decision today on whether or not the
12 department acted properly. Ah, I, I, I don't think it's a
13 matter of whether or not the city followed procedure. I
14 think did the city act properly? If it did, the matter is
15 completed. They've already awarded the contract.

16 MR. STEVE FRITSCHKE: Right. If it didn't, what's
17 the -

18 MR. BRAD HOESCHEN: If it didn't, then -

19 MR. STEVE FRITSCHKE: - the solution?

20 MR. BRAD HOESCHEN: - then we define what the
21 remedy is. It would be the burden of the appellant to tell
22 us what the remedy should be, whether that be the award of
23 the contract or that be cash damages or something else that
24 we haven't contemplated. Ah, and we can determine whether
25 or not they have sufficiently proven that that's a proper

1 remedy.

2 MR. STEVE FRITSCHKE: Okay.

3 CHAIRMAN VINCENT BOBOT: And the reason I kind of
4 hedge on it as well is because we don't know what the
5 result's going to be.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Ah, well,
7 and -

8 MR. BRAD HOESCHEN: But the city has made its
9 determination.

10 CHAIRMAN VINCENT BOBOT: Yes.

11 MR. BRAD HOESCHEN: And it is our job, in my
12 view, to determine whether or not the city's determination
13 was proper.

14 ASSISTANT CITY ATTORNEY KATHY BLOCK: Ah - at
15 some point, and it doesn't have to be now, I would like an
16 opportunity to be heard on that matter; um, what this
17 board's authority is with regard to, um, its ability to
18 either award damages or fashion a remedy. Um, and if it's
19 not now, that's fine, um, but obviously, I would like to
20 reserve, um, some time at some point to be heard on that
21 issue.

22 CHAIRMAN VINCENT BOBOT: I agree. So, um, you
23 may commence.

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. Um,
25 I would like to just ask a few questions of Mr. Harlan, ah,

1 himself. Um, I - they're not numerous. So, if we could
2 just kind of get his testimony out of the way, that'd be
3 great. Oh, and just as a kind of an initial matter, um, we
4 had discussed putting together, um, a binder of the
5 exhibits that he had proposed - I think you have in your e-
6 book - of, um, for use, ease of use, for the witnesses who
7 would be testifying. I don't have any objection to those
8 being offered. If we could just sort of offer them
9 jointly, um, and have them available for the witnesses that
10 are testifying, um, I think that would be appropriate. I
11 only have one additional, um, exhibit, which is the, um,
12 complete copy of the proposal that was submitted by Quarles
13 & Brady, um, for disclosure counsel services; I have copies
14 of that. Mr. Harlan, um, actually requested a full copy of
15 that recently, um, and I have copies for everyone here and
16 for the witnesses, as well, and obviously for Mr. Harlan,
17 as well.

18 CHAIRMAN VINCENT BOBOT: I guess the only issue I
19 have or the question I have for you is, the questions
20 you're going to ask of Mr. Harlan, is he a witness to this
21 matter?

22 MR. BRAD HOESCHEN: Exactly what I was wondering.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well -

24 MR. BRAD HOESCHEN: Is Mr. Harlan a fact witness?

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: - I think

1 he absolutely is.

2 MR. BRAD HOESCHEN: And do you object to him then
3 participating as counsel for MWH?

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well, they
5 actually relate to his participation as counsel for Quarles
6 & Brady.

7 CHAIRMAN VINCENT BOBOT: It's very -

8 MR. BRAD HOESCHEN: It's interesting, isn't it?

9 CHAIRMAN VINCENT BOBOT: Well, it's very
10 problematic from my standpoint.

11 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well, I
12 think it's - this is the problem, um, and I'll lay out my
13 argument right now. The proposal itself was signed by
14 Quarles & Brady, not by MWH. The appeal was filed by
15 Quarles & Brady and MWH. I believe Mr. Harlan, obviously,
16 is employed by MWH. I don't know that he was retained at
17 any point by Quarles & Brady and I would like to know
18 whether or not that's the case. I don't think MWH is the
19 proper party and interest here. I don't know that he was
20 retained by Quarles & Brady. And I think if that's the
21 case, I don't know that we have any proper party here who
22 is represented and I think the appeal should be dismissed
23 in its entirety on that basis.

24 MR. BRAD HOESCHEN: Well, but Ms. - I'm sorry,
25 Mr. Chair.

1 CHAIRMAN VINCENT BOBOT: Mr. Hoe - Mr. Hoeschen.

2 MR. BRAD HOESCHEN: Ms. Block, a, ah, a - he
3 represents as an attorney that he represents Quarles &
4 Brady.

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: Has he
6 represented that -

7 MR. BRAD HOESCHEN: Well, sure -

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: - at any
9 point?

10 MR. BRAD HOESCHEN: - he's - yes -

11 ATTORNEY EMERY HARLAN: We found, we found -

12 MR. BRAD HOESCHEN: Hold on, Mr. Harlan.

13 ATTORNEY EMERY HARLAN: Oh.

14 MR. BRAD HOESCHEN: His, his appeal to our board
15 was Emery Harlan as attorney for MWH and Quarles & Brady.

16 ASSISTANT CITY ATTORNEY KATHY BLOCK: Has he
17 represented that? When?

18 MR. BRAD HOESCHEN: That's what the appeal was;
19 that's the appeal - the appeal that was filed with us. I -
20 it's - let me get it.

21 CHAIRMAN VINCENT BOBOT: Well, that was my
22 understanding, too, but -

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: Every piece
24 of paperwork has been filed on MWH's letterhead.

25 MR. BRAD HOESCHEN: I'm -

1 ASSISTANT CITY ATTORNEY KATHY BLOCK: I believe -
2 I believe he represents MWH.

3 MR. BRAD HOESCHEN: But MWH can be counsel for
4 Quarles & Brady.

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: Sure, it
6 could. Has he been retained by Quarles & Brady?

7 ATTORNEY EMERY HARLAN: It's -

8 MR. BRAD HOESCHEN: Does that matter?

9 ATTORNEY EMERY HARLAN: It's, it's in the appeal
10 on the second page.

11 MR. BRAD HOESCHEN: Right.

12 ATTORNEY EMERY HARLAN: And of course, we just
13 had - we had a previous hearing, that issue wasn't raised.
14 I would argue, even if it was an issue, it certainly had
15 been waived.

16 MR. BRAD HOESCHEN: Nah. Ah, but do you have the
17 appeal?

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: I do.

19 MR. BRAD HOESCHEN: So the appeal is filed, ah,
20 as Emery K. Harlan on behalf of MWH Law Group, LLP and
21 Quarles & Brady, LLP. I mean, I trust the word of the
22 lawyer that he represents his client. You're suggesting
23 that you want to contest whether or not Quarles & Brady is
24 actually his client?

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yes.

1 MR. BRAD HOESCHEN: Ah, who have you put on your
2 witness list from Quarles & Brady to ask about that?

3 ASSISTANT CITY ATTORNEY KATHY BLOCK: I haven't
4 filed a witness list. You typically get witness lists, ah,
5 from your parties in front of the ARAB?

6 UNKNOWN MALE SPEAKER: No, ma'am.

7 MR. BRAD HOESCHEN: No, we do not.

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: Do you
9 require them?

10 MR. BRAD HOESCHEN: Well, go ahead and call
11 somebody from Quarles & Brady. Go ahead and call them;
12 have them come over and ask them. But I don't think that
13 asking an attorney who his client is is an appropriate
14 question of -

15 ASSISTANT CITY ATTORNEY KATHY BLOCK: Why not?

16 MR. BRAD HOESCHEN: - a client. Because the -
17 well, first of all, the attorney's going to tell you,
18 "Yes." But, secondly, it's -

19 ASSISTANT CITY ATTORNEY KATHY BLOCK: Under oath
20 he -

21 MR. BRAD HOESCHEN: - attorney client
22 relationship.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: - will?

24 MR. BRAD HOESCHEN: It's an attorney client
25 relationship. It's up to you; it's, it's your call -

1 CHAIRMAN VINCENT BOBOT: The only -

2 MR. BRAD HOESCHEN: - as the chair. I -

3 CHAIRMAN VINCENT BOBOT: The only problem is if I
4 - the problem here is once you call him as a witness -

5 MR. BRAD HOESCHEN: Then I'm concerned about
6 whether or not -

7 CHAIRMAN VINCENT BOBOT: Then it's a problem.

8 MR. BRAD HOESCHEN: I - yeah. And so, is this a
9 tactic in order to disqualify Mr. Harlan from representing
10 his client?

11 CHAIRMAN VINCENT BOBOT: I have the same
12 concerns. You call him as a, a witness -

13 MR. BRAD HOESCHEN: Mr. Chair -

14 CHAIRMAN VINCENT BOBOT: - I don't know if we can
15 allow him then to represent -

16 MR. BRAD HOESCHEN: Mr. Chair?

17 CHAIRMAN VINCENT BOBOT: Yes, Mr. Hoeschen?

18 MR. BRAD HOESCHEN: Mr. Harlan, would you consent
19 to calling someone from Quarles & Brady to come here and
20 testify as to whether or not the firm is a client of yours?

21 ATTORNEY EMERY HARLAN: Yes, if that person's
22 available. I mean, this is just outrageous. Um, frankly,
23 I've had very -

24 UNKNOWN MALE SPEAKER: Oh, I'm sorry.

25 ATTORNEY EMERY HARLAN: - interactions with Ms.

1 Block.

2 CHAIRMAN VINCENT BOBOT: Can you pull the mic up
3 a little bit?

4 ATTORNEY EMERY HARLAN: Oh, yes. Yes. I - this
5 is just really unprofessional in my opinion. We, we've had
6 very amic - amicable relations in terms of exchanging
7 information -

8 MR. BRAD HOESCHEN: I mean, she's entitled to
9 zealously represent her client, so -

10 ATTORNEY EMERY HARLAN: Yeah. Yeah, but come on,
11 we have a - we have a manner of professionalism in the bar.
12 If this was an issue, she should have given it - given
13 notice and not try to, ah, exact the surprise at the
14 hearing that wastes everybody's time.

15 MR. BRAD HOESCHEN: But Mr. Bobot and I -

16 ATTORNEY EMERY HARLAN: But -

17 MR. BRAD HOESCHEN: - are trying to find a
18 solution that allows you to continue as counsel for your
19 client while still making sure she has the satisfaction of
20 question.

21 ATTORNEY EMERY HARLAN: The, the other issue that
22 I would raise is to the extent there was even a legal
23 issue. This issue wasn't raised; we've had - this is the
24 second hearing. We've had - this matter has been pending.
25 Ah, I don't believe that she has the ability to raise this

1 issue after having consented to it.

2 MR. BRAD HOESCHEN: But you -

3 ATTORNEY EMERY HARLAN: Ah -

4 MR. BRAD HOESCHEN: You actually agreed with Ms.
5 Block that the only purpose of that hearing was to
6 determine whether or not we had jurisdiction. She - I
7 don't think she waived that argument because the - we all
8 agreed the only purpose of our last hearing was to
9 determine whether or not we had jurisdiction. We
10 determined we had jurisdiction. I mean, I agree with you
11 this likely -

12 ATTORNEY EMERY HARLAN: Right, but she's -

13 MR. BRAD HOESCHEN: - could have been handled -

14 ATTORNEY EMERY HARLAN: - coming with a question
15 whether I can -

16 MR. BRAD HOESCHEN: - more elegantly.

17 ATTORNEY EMERY HARLAN: - work in, in
18 representing the, ah, Quarles & Brady in this matter. So
19 that issue was just as pertinent in the initial proceeding
20 as it is this one. Ah, if you believe her position is she
21 didn't raise it in the initial proceeding before this board
22 and so, I would maintain you can dispose of this because
23 she has consented to this and has waived the issue.

24 CHAIRMAN VINCENT BOBOT: I - Mr. Hoeschen, ah,
25 disagrees with your position and quite frankly, so do I.

1 Ah, I just know if you become a witness to this, as far as
2 I'm concerned, someone else is going to have to take your
3 place for the further proceedings.

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. I
5 am, I am happy to accept without putting Mr. Harlan under
6 oath his representation that Quarles & Brady has retained
7 him.

8 CHAIRMAN VINCENT BOBOT: Have they -

9 ATTORNEY EMERY HARLAN: Okay.

10 CHAIRMAN VINCENT BOBOT: - retained you?

11 ATTORNEY EMERY HARLAN: Yeah, I filed a document
12 with the board saying that I'm the attorney for both of the
13 parties in this matter. I mean, what else do I need to do?

14 CHAIRMAN VINCENT BOBOT: Well, that's what you -

15 ATTORNEY EMERY HARLAN: I'm not going to get into
16 what the nature of the retention is but I made the
17 representation. I'm a lawyer; I know what that means. I
18 don't know what else I can tell you.

19 CHAIRMAN VINCENT BOBOT: Does that satisfy you?

20 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yes.

21 CHAIRMAN VINCENT BOBOT: Okay. Well, we've got
22 one issue taken care of. You can proceed.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: Alright. I
24 only have - well, and I guess if this is going to be
25 bringing up a fact question, I'll have to just make my

1 argument and leave it at that. So now we'll move on to Ms.
2 Kelsey's testimony.

3 CHAIRMAN VINCENT BOBOT: Thank you.

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: Thank you.

5 CHAIRMAN VINCENT BOBOT: Ah, Ms. Kelsey, ah,
6 would you raise your right hand, please?

7 MS. LINDA ELMER: Do you solemnly affirm [sic]
8 the pains and penalties of perj [sic] in the state of
9 Wisconsin that the testimony about to give is the truth,
10 the whole truth, and nothing but the truth?

11 MS. RHONDA KELSEY: Yes.

12 CHAIRMAN VINCENT BOBOT: And could you state your
13 name for the record, please?

14 MS. RHONDA KELSEY: Rhonda Kelsey.

15 CHAIRMAN VINCENT BOBOT: And could you spell your
16 last name?

17 MS. RHONDA KELSEY: K-e-l-s-e-y.

18 CHAIRMAN VINCENT BOBOT: Okay, your witness, Ms.
19 Block.

20 ASSISTANT CITY ATTORNEY KATHY BLOCK: Thank you.
21 Rhonda, can you speak generally about the nature of the
22 difference between a bid and an RFP? Just generally for
23 the benefit of the board.

24 MS. RHONDA KELSEY: Sure. Um, so, so a bid is a
25 competitive procurement process that the city uses to

1 receive responses from contractors, um, to provide a good
2 or service to the city.

3 MR. BRAD HOESCHEN: Mr. Chair -

4 MS. RHONDA KELSEY: The -

5 CHAIRMAN VINCENT BOBOT: Ah, ah, I'm just going
6 to interrupt. I just wanted to let her finish the
7 question.

8 MR. BRAD HOESCHEN: Okay, sorry.

9 CHAIRMAN VINCENT BOBOT: Could you just give us a
10 little background on her job?

11 MR. BRAD HOESCHEN: Well what, what do you do for
12 a living, Ms. Kelsey?

13 ASSISTANT CITY ATTORNEY KATHY BLOCK: [Laughter]
14 Sure, sorry.

15 MS. RHONDA KELSEY: I am the purchasing director
16 for the city of Milwaukee.

17 CHAIRMAN VINCENT BOBOT: Okay.

18 MR. BRAD HOESCHEN: And how long have you held
19 that position?

20 MS. RHONDA KELSEY: I've held that position since
21 2008.

22 MR. BRAD HOESCHEN: And how long have you worked
23 for the city of Milwaukee?

24 MS. RHONDA KELSEY: I've worked for the city of
25 Milwaukee since 1996.

1 MR. BRAD HOESCHEN: And what other positions have
2 you held with the city?

3 MS. RHONDA KELSEY: Um, what other positions did
4 I hold?

5 MR. BRAD HOESCHEN: With the city -

6 MS. RHONDA KELSEY: Um, I -

7 MR. BRAD HOESCHEN: Yes.

8 MS. RHONDA KELSEY: - I started in the budget
9 office as a budget analyst. I moved on to, um, head - what
10 is now known as the Office of Small Business Development;
11 it was known as the Equal Opportunities Enterprise program.
12 Um, the Equal Rights Commission was also a part of the
13 department at the time but I would say the equivalent of
14 that department, um, now is the Office of Small Business
15 Development, which I believe you all are familiar with.
16 Um, from there I went on to serve as, um, Mayor Tom
17 Barrett's, um, policy coordinator for his first term and
18 then I was appointed to serve as the purchasing director in
19 2008.

20 MR. BRAD HOESCHEN: And what does the purchasing
21 office do?

22 MS. RHONDA KELSEY: So we are responsible for
23 administering the procurement process for city departments.
24 City departments submit, um, procurement requests to us via
25 the form of a requisition. Um, we issue - um, back to, um,

1 Attorney Block's question - we will administer the process
2 for the solicit - solicitation of bids from the contracting
3 community, as well as requests for proposals.

4 MR. BRAD HOESCHEN: So is it fair that
5 effectively, any product or service purchased by the city
6 comes through your department?

7 MS. RHONDA KELSEY: The majority of them. Now,
8 construction is a different, um, bailiwick. Um,
9 construction contracts are led by the Department of Public
10 Works so for the most part, we, um, handle the procurement
11 process for things like vehicles, water chemicals, paper,
12 various other, um, types of commodities and services,
13 professional services, legal services; this very, ah,
14 service that we're talking about today would be another
15 example. There are some departments, other departments
16 that have a certain level of independent contracting
17 authority. DNS, they handle demolition contracts. Um,
18 library, they have a certain level of independent
19 contracting authority, as well. Does that -

20 MR. BRAD HOESCHEN: Mr. Chair - thank you, Ms.
21 Kelsey.

22 MS. RHONDA KELSEY: Sure.

23 CHAIRMAN VINCENT BOBOT: Well, ah -

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay.

25 CHAIRMAN VINCENT BOBOT: - do you just want to

1 restate your question? Cause -

2 ASSISTANT CITY ATTORNEY KATHY BLOCK: Sure.

3 CHAIRMAN VINCENT BOBOT: - I wanted to wait until
4 she finished and I was going to ask for a little
5 background.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Sure. And
7 I appreciate that. Okay, so can you describe, I guess,
8 then generally a, a bid process and how that works?

9 MS. RHONDA KELSEY: So, so a - the bid process is
10 a procurement process whereby we're looking at awarding the
11 contract based on pretty much low, the low bid, in
12 accordance with the specifications that we've included in
13 the bid document itself, which is, um, advertised in the
14 Daily Reporter, if it's a formal bid, which is at \$50,000.
15 We also advertise the solicitation of bid responses on the
16 city's website via e-notify. Um, so it really is for the
17 most part a cut and dry, um, process. We do - after the
18 receipt, after bids come in - um, we, um, there's a review
19 of those responses by the purchasing department. Um, our
20 department makes a recommendation to the user department,
21 which may be the police department for the purchase of
22 squad cars. Um, we would then ask that department to
23 review that recommendation and sign off on it to ensure
24 that, you know, the recommendation and award is, um, sound.
25 The RFP process is what we consider to be an exception to

1 bid process because we're looking at other factors beyond
2 just pricing and compliance with the specifications.
3 There, um, we use award criteria, um, and so there are
4 points that a proposer can earn; um, a maximum of typically
5 100 points. Um, bonus points are typically, um, offered to
6 proposers, SBE participation, as well as, um, LBE
7 participation. So 25 points may be allocated - or could be
8 earned - um, relative to a proposer's methodology. Twenty-
9 five points may be designated, um, for experience. And so,
10 um, there are a number of factors that are used to
11 determine who the highest ranked proposer is. There's
12 also, obviously as you know at this point, um, an
13 evaluation committee that's involved in that process. Um,
14 so each, um, evaluator that sits on that committee reviews
15 the proposals that we receive. Um, there's, there's a
16 meeting that takes place. Um, that group then has to come
17 to consensus to make a determination as to who the highest
18 ranked proposer, um, is. Um, backing up just on the front
19 end, if, um, there are some particular requirements that we
20 would include in the request for proposal that, um, the
21 compliance with those requirements. So if the SBE
22 participation were a requirement or if we had, let's just
23 say, you know, living wage requirements and their
24 particular forms that would be required for submission with
25 that, with the proposal, that would work is, um, conducted

1 by the purchasing agent before those proposals are sent on
2 to the committee. Um -

3 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay, so
4 let's just back up a little.

5 MS. RHONDA KELSEY: Hmm-hmm.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay, so in
7 a bid process, is it fair to say that there are
8 specifications that are drafted and so long as the bidder
9 who submits a bid is responsible and responsive as deemed
10 by the - you, the purchasing director -

11 MS. RHONDA KELSEY: Hmm-hmm.

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: - that the
13 lowest bid will get the contract?

14 MS. RHONDA KELSEY: Correct.

15 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay.

16 MS. RHONDA KELSEY: And compliant, yeah.

17 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yep.

18 MS. RHONDA KELSEY: Provided they -

19 ASSISTANT CITY ATTORNEY KATHY BLOCK: They -

20 MS. RHONDA KELSEY: The lowest complying bidder -

21 ASSISTANT CITY ATTORNEY KATHY BLOCK: Right.

22 MS. RHONDA KELSEY: - is the terminology that we
23 use -

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: Right.

25 MS. RHONDA KELSEY: - to order.

1 CHAIRMAN VINCENT BOBOT: What -

2 ASSISTANT CITY ATTORNEY KATHY BLOCK: Whereas -

3 CHAIRMAN VINCENT BOBOT: What was that
4 terminology again?

5 MS. RHONDA KELSEY: The lowest complying bidder.

6 CHAIRMAN VINCENT BOBOT: Thank you.

7 ASSISTANT CITY ATTORNEY KATHY BLOCK: Whereas in
8 an RFP process, you - the, the specifications might be
9 slightly less specific, um, you know, as opposed to a bid
10 where you would say, "We want XYZ." In a proposal
11 situation, you might say, for instance, "We want an
12 attorney who has experience doing this sort of work and we,
13 you know, would want to see what your, um, some
14 references," -

15 MS. RHONDA KELSEY: Right.

16 ASSISTANT CITY ATTORNEY KATHY BLOCK: - "for
17 doing this sort of work."

18 MS. RHONDA KELSEY: Hmm-hmm.

19 ASSISTANT CITY ATTORNEY KATHY BLOCK: And then a
20 team evaluates that - the proposals that are submitted
21 based on various criteria that are given a, um, percentage
22 weight.

23 MS. RHONDA KELSEY: Hmm-hmm.

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: And then a,
25 um, best ranked proposer is selected and then negotiations

1 would be entered into with that -

2 MS. RHONDA KELSEY: If necessary.

3 ASSISTANT CITY ATTORNEY KATHY BLOCK: - proposal.

4 MS. RHONDA KELSEY: Hmm-hmm.

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: Right.

6 ATTORNEY EMERY HARLAN: Can I interpose an
7 objection? I -

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: Oh, of
9 course.

10 ATTORNEY EMERY HARLAN: I -

11 CHAIRMAN VINCENT BOBOT: What would, what would
12 the objection be?

13 ATTORNEY EMERY HARLAN: I will, ah, stipulate
14 that this isn't a bid process so I don't know why we're
15 talking about bids. This is a RFP process.

16 ASSISTANT CITY ATTORNEY KATHY BLOCK: No, I'm
17 sorry. I was just trying to get the background of how the
18 - they function. And I'm, I'm -

19 CHAIRMAN VINCENT BOBOT: I -

20 ASSISTANT CITY ATTORNEY KATHY BLOCK: - done
21 talking about bids.

22 CHAIRMAN VINCENT BOBOT: I, I'll over - overrule
23 your objection because I think she's just trying to explain
24 the, the, the universe of what goes on with the bidding and
25 I do realize it's an F - RFP.

1 ATTORNEY EMERY HARLAN: Thank you, sir.

2 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yep. So
3 let's, let's turn to then -

4 MS. RHONDA KELSEY: Hmm-hmm.

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: - um, what
6 would happen with the Local Business Enterprise program?
7 And in the binder there's a copy of the, um, chapter 365,
8 which deals with the Local Enterprise program in case you
9 need to refer to it.

10 MS. RHONDA KELSEY: Hmm-hmm.

11 ASSISTANT CITY ATTORNEY KATHY BLOCK: Can you
12 explain the Local Business Enterprise program and how that
13 works in an RFP situation?

14 MS. RHONDA KELSEY: Okay. So, again, a proposer
15 can receive 10 points for LBE participation, provided that
16 they meet certain criteria, which -

17 MR. BRAD HOESCHEN: Mr. Chair?

18 MS. RHONDA KELSEY: - and I need to -

19 CHAIRMAN VINCENT BOBOT: Yes, Mr. Hoeschen?

20 MR. BRAD HOESCHEN: Ms. Kelsey, what does LBE
21 stand for?

22 MS. RHONDA KELSEY: Oh, I'm sorry.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: [Laughter]
24 Sorry.

25 MS. RHONDA KELSEY: Local Business Enterprise,

1 um, program. So for bids - and again, I - this helps me
2 explain it to you and I want to make sure that you have
3 clarity - those points are awarded - we consider it to be
4 bid incentive. So it's different from SBE participation
5 whereby we may require, um, that a prime contractor sub
6 with a SBE firm. So under the RFP process, again, they can
7 earn up to 10 points. A proposer - and this is, um, this
8 is an advantage, if you will, that the prime contractor is
9 able to take advantage of, as opposed to an SBE firm, which
10 is at the sublevel, typically - um, so the firm is required
11 to submit an LBE affidavit verifying that, you know, they
12 have property, or lease property, in the city of Milwaukee,
13 that they've been in business for more than one year and
14 all of that, the, the criteria is specified in the
15 ordinance and in the form. That form has to be signed and
16 notarized by the prime contractor. Um, the - if a prime
17 contractor owns or leases additional property, the, um, the
18 property that is located or leased in the city of Milwaukee
19 must, in terms of space, um, be the largest piece of
20 property, if you will, or in terms of square footage or
21 acreage.

22 CHAIRMAN VINCENT BOBOT: So in this -

23 MS. RHONDA KELSEY: So if -

24 CHAIRMAN VINCENT BOBOT: - particular contract,
25 this 10 points represents 10 points out of the total 100-

1 some they could get?

2 MS. RHONDA KELSEY: So - right.

3 CHAIRMAN VINCENT BOBOT: If -

4 MS. RHONDA KELSEY: So there's a base of 100 and
5 then you can earn an additional 10 points for -

6 CHAIRMAN VINCENT BOBOT: So this would be then -

7 MS. RHONDA KELSEY: - LBE -

8 CHAIRMAN VINCENT BOBOT: - 100-some -

9 MS. RHONDA KELSEY: - on top of it.

10 MR. BRAD HOESCHEN: She called them bonus points.

11 MS. RHONDA KELSEY: Bonus, bonus points.

12 CHAIRMAN VINCENT BOBOT: So this would be the -
13 this would be a bonus point.

14 MS. RHONDA KELSEY: Correct.

15 CHAIRMAN VINCENT BOBOT: Okay.

16 MR. BRAD HOESCHEN: So there's still a 100 point
17 maximum.

18 MS. RHONDA KELSEY: Correct.

19 MR. BRAD HOESCHEN: But someone could
20 conceivably, if they got all 100 points, have 110 -

21 MS. RHONDA KELSEY: Yes.

22 MR. BRAD HOESCHEN: - but it would be unlikely to
23 get more.

24 MS. RHONDA KELSEY: It's not likely.

25 MR. BRAD HOESCHEN: Okay.

1 MS. RHONDA KELSEY: But, you know -

2 CHAIRMAN VINCENT BOBOT: I just want to clarify -

3 MS. RHONDA KELSEY: - provided that they meet the
4 criteria set forth in the, in the ordinance. Yeah.

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: So the
6 Local Business Enterprise program, or LBE, that is a
7 program that's intended to benefit the prime contractor -

8 MS. RHONDA KELSEY: Correct.

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: - or the
10 bidders or proposers on a contract, correct?

11 MS. RHONDA KELSEY: Yes.

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay.

13 MS. RHONDA KELSEY: Yes.

14 ASSISTANT CITY ATTORNEY KATHY BLOCK: So now
15 we've kind of talked about that and it's really, it's, it's
16 intended to, um, or it's geared toward the location,
17 literally the location, of the bidder or proposers
18 business.

19 MS. RHONDA KELSEY: Hmm-hmm.

20 ASSISTANT CITY ATTORNEY KATHY BLOCK: Is that
21 fair to say?

22 MS. RHONDA KELSEY: Yes.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. So
24 then let's just talk about the Small Business Enterprise
25 program or SBE program.

1 MS. RHONDA KELSEY: Okay.

2 ASSISTANT CITY ATTORNEY KATHY BLOCK: And I think
3 that's tabbed - it is tabbed - at number six in the set of
4 exhibits; it's chapter 370. Okay. Now that program, I
5 think it's fair to say, works differently than -

6 MS. RHONDA KELSEY: Yes.

7 ASSISTANT CITY ATTORNEY KATHY BLOCK: - the LBE
8 program.

9 MS. RHONDA KELSEY: Correct.

10 ASSISTANT CITY ATTORNEY KATHY BLOCK: Correct?

11 MS. RHONDA KELSEY: Correct.

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. Now
13 can you just generally - without really dealing with this
14 contract - just generally talk about how that program
15 works?

16 MS. RHONDA KELSEY: Okay. So typically, so
17 here's the process. A user department will submit a
18 requisition to purchasing, let's just say, for legal
19 services. Um, that procurement request is then reviewed by
20 the Office of Small Business Development to make a
21 determination as to whether or not we should include what
22 we call an SBE requirement in the contract or in the bid.
23 So the Office of Small Business Development may inform
24 purchasing staff that, yes, there are two or more, you
25 know, there has to be more than one SBE firm certified in a

1 particular category in order to include a participation,
2 SBE participation requirement in a, in a contract. So they
3 may say, "Yes, we have five or more firms certified in this
4 area. We would like for you to include, um, SBE
5 participation on this particular bid or contract." Um,
6 city departments are required to meet certain goals
7 annually. So for construction, um, that goal is 25 percent
8 for SBE participation. For professional services, it's 18
9 percent. So we have the flexibility to - we may, we may
10 place a 40 percent requirement in a bid or in a contract,
11 particularly with contracts that are led by my department
12 because there aren't a lot of SBE firms that are certified
13 to provide squad cars, water chemicals, you know, to ensure
14 that the water is, you know, um, safe to drink, um, things
15 like that. Um, so, so we would and we would include that
16 in the bid. Um, for an RFP, typically what we'll do, um,
17 is we'll say a proposer can earn a certain number of
18 points, bonus points, similar to SBE but it, um, the, the
19 process is - so the proposer or bidder has to submit Form A
20 in the bid. Because we want to make sure that the process
21 is fair for everybody, they must identify the, the SBE
22 firm; they have to identify who the SBE firm is. Um,
23 because, because again, we want to - we obviously want to
24 know if there is going to be a subcontracting relationship
25 with an SBE firm, we want to know who that firm is and we

1 just - the Office of Small Business Development needs to
2 obviously track that information for purposes of, you know,
3 measuring the outcomes of, um, the work that they do. Um,
4 so, um, proposers, bidders, are - and it's stipulated in
5 the bid or in the RFP - um, that they must submit this form
6 identifying who the SBE firm is, um, so that, um, the
7 committee or, you know, based on a bid scenario, um, that
8 the, that the purchasing agent can evaluate whether or not
9 the SBE firm is legitimate, whether or not the work that,
10 you know, whether or not they're certified, whether or not
11 they can actually perform the work, etcetera. It's no
12 different than any other, you know, form that we would
13 require for different, other types of requirements like
14 living wage or, again, the LBE affidavit. It's stipulated
15 that you must submit this form. Otherwise, your proposal
16 may be - or your bid - may be rejected. And we have to
17 have, you know, clear guidelines and procedures for
18 everyone so as to maintain the fairness and integrity of
19 the process. We can't say to one bidder, "Oh, you can do
20 this," but another bidder, proposer can do that. I mean,
21 and that - from my perspective, from a procurement
22 perspective, then you start to sort of tamper our - with
23 the integrity of fairness of the process. So does that -
24 was that -

25 CHAIRMAN VINCENT BOBOT: Well, now you mention

1 this was bonus points? Or is it part of the 100 points?

2 MS. RHONDA KELSEY: So for an RFP, it could be -
3 it is bonus points, not a requirement, but it could be.

4 CHAIRMAN VINCENT BOBOT: No, in this particular -

5 MR. BRAD HOESCHEN: In, in this -

6 CHAIRMAN VINCENT BOBOT: - in this particular -

7 MR. BRAD HOESCHEN: - specific, in this specific
8 -

9 MS. RHONDA KELSEY: And going back to this
10 solicitation?

11 CHAIRMAN VINCENT BOBOT: In this particular case.

12 MS. RHONDA KELSEY: It was points. It was
13 points.

14 CHAIRMAN VINCENT BOBOT: So it was not bonus
15 points; it was points.

16 MS. RHONDA KELSEY: Bonus points, I'm sorry.
17 Bonus points.

18 CHAIRMAN VINCENT BOBOT: Oh, bonus points. And
19 how many, how many bonus points?

20 MS. RHONDA KELSEY: Ten.

21 CHAIRMAN VINCENT BOBOT: Okay.

22 MR. BRAD HOESCHEN: Ten for LBE and 10 for -

23 MS. RHONDA KELSEY: And for -

24 MR. BRAD HOESCHEN: - SBE.

25 MS. RHONDA KELSEY: - SBE.

1 MR. BRAD HOESCHEN: Alright.

2 MS. RHONDA KELSEY: So then the next amount -

3 MR. BRAD HOESCHEN: A total of 20 additional
4 points.

5 MS. RHONDA KELSEY: - could be 120, yes.

6 CHAIRMAN VINCENT BOBOT: And, and -

7 MS. RHONDA KELSEY: Yes.

8 MR. STEVE FRITSCHKE: And, and Mr. Chairman, I
9 have a question.

10 CHAIRMAN VINCENT BOBOT: Yes, Mr. Fritzsche?

11 MR. STEVE FRITSCHKE: Depending on the contract,
12 ah, the RFP, do those numbers change? Could a contract
13 have like 25 points for, for an SBE component? You said
14 there were 10 for each in this particular one. Does that
15 mean that number can change depending on the RFP?

16 MS. RHONDA KELSEY: Typically, it's ten. No, we
17 wouldn't, we wouldn't, you know, inform proposers that they
18 can earn up to 25 points for SBE because, again, the max is
19 one hundred. I mean, there's just a limit that - no, it
20 wouldn't change, to answer your question.

21 MR. STEVE FRITSCHKE: And -

22 MS. RHONDA KELSEY: I don't want to complicate
23 it.

24 MR. STEVE FRITSCHKE: - a second question is, um,
25 if a bidder, um, has, is presenting a SBE component, ah,

1 subcontractor, you just contact the SBE office to verify
2 that they're certified?

3 MS. RHONDA KELSEY: Yes.

4 MR. STEVE FRITSCHKE: Okay.

5 CHAIRMAN VINCENT BOBOT: And you may -

6 MS. RHONDA KELSEY: And, typically - yeah.

7 CHAIRMAN VINCENT BOBOT: You may continue,
8 Attorney Block.

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay, so
10 just to summarize this, there - the departments have annual
11 overall goals -

12 MS. RHONDA KELSEY: Right.

13 ASSISTANT CITY ATTORNEY KATHY BLOCK: -
14 participation goals.

15 MS. RHONDA KELSEY: Yes.

16 ASSISTANT CITY ATTORNEY KATHY BLOCK: Depending
17 on the category of contract.

18 MS. RHONDA KELSEY: Right.

19 ASSISTANT CITY ATTORNEY KATHY BLOCK: And there
20 are three different con - categories -

21 MS. RHONDA KELSEY: Hmm-hmm.

22 ASSISTANT CITY ATTORNEY KATHY BLOCK: - correct?

23 MS. RHONDA KELSEY: Hmm-hmm.

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: And they
25 may meet those goals after consultation with the Office of

1 Small Business Development. Um, depending on how many
2 certified, um, small business, um, certified small
3 businesses there are in the, um, type of contract that
4 they're letting -

5 MS. RHONDA KELSEY: Yes.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: - um, by
7 arriving at contract requirements for certain contracts or
8 not; they might not set - they might set a zero percentage.

9 MS. RHONDA KELSEY: Right, they may say, "No, we
10 don't have any firms certified in this area." Therefore,
11 we wouldn't, -

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: There's -

13 MS. RHONDA KELSEY: - include points or we
14 wouldn't include a requirement for SBE participation.

15 CHAIRMAN VINCENT BOBOT: But in this contract
16 there were.

17 MS. RHONDA KELSEY: Yes.

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well -

19 MS. RHONDA KELSEY: Points that, that a proposer
20 could earn.

21 CHAIRMAN VINCENT BOBOT: Yes.

22 MS. RHONDA KELSEY: Yes.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: And I, I
24 plan -

25 MS. RHONDA KELSEY: Bonus points.

1 ASSISTANT CITY ATTORNEY KATHY BLOCK: - to talk
2 about this contract more specifically but since we're kind
3 of on the topic, let's talk about this contract more
4 specifically. Um, in this case, we're in consultation with
5 the Office of Small Business Development. Um, there was
6 not a requirement set, is that correct?

7 ATTORNEY EMERY HARLAN: I'm, I'm going to object.
8 I don't know if, if she's laid a foundation that purchasing
9 actually talked -

10 ASSISTANT CITY ATTORNEY KATHY BLOCK: Ah, I, fair
11 enough. Um -

12 CHAIRMAN VINCENT BOBOT: Well, I'll sustain that
13 then. You may - you may put together a live framework and
14 for us to -

15 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yes.

16 ATTORNEY EMERY HARLAN: I don't think there's
17 testimony that Ms. Kelsey's office even contacted the Small
18 Business -

19 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well, I can
20 certainly ask that question [laughter].

21 MS. RHONDA KELSEY: And I, so -

22 CHAIRMAN VINCENT BOBOT: Well, hold on, Ms.
23 Kelsey. We - you have to wait until a question is put
24 forth to you.

25 MS. RHONDA KELSEY: Oh, I'm sorry.

1 CHAIRMAN VINCENT BOBOT: Yeah, Attorney Block
2 will decide what she's going to ask you and -

3 ASSISTANT CITY ATTORNEY KATHY BLOCK: [Laughter]
4 With -

5 CHAIRMAN VINCENT BOBOT: - Mr. Harlan will -

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: With regard
7 to this specific contract at issue, um, did you contact,
8 um, or did someone in your office contact the Office of
9 Small Business Development?

10 MS. RHONDA KELSEY: With the award of the
11 contract?

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: No, not -
13 but prior to the award, when you were putting together the
14 RFP, are you aware, ah, whether or not the Office of Small
15 Business Development was contacted -

16 MS. RHONDA KELSEY: The Office -

17 ASSISTANT CITY ATTORNEY KATHY BLOCK: - with
18 regard to this contract?

19 MS. RHONDA KELSEY: The Office of Small Business
20 Development has to sign off on the request for exception to
21 bid, OSBD Analysis Participation form. So that is where
22 they conduct their initial review as to whether or not
23 points or a requirement would be included in a particular,
24 um, procurement.

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: And with

1 regard to this contract, what was the result of that, um,
2 sign off?

3 MS. RHONDA KELSEY: That we would include points,
4 the 10 points, the 10 bonus points.

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. And
6 -

7 ATTORNEY EMERY HARLAN: Can I just -

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: - what
9 would -

10 ATTORNEY HARLAN EMERY: Can, can I raise an
11 objection, ah -

12 CHAIRMAN VINCENT BOBOT: What's the objection?

13 ATTORNEY HARLAN EMERY: So, we have exchanged
14 discovery in this matter in, in the sense that we have made
15 an open records request and we subpoenaed documents and
16 Block has provided us with a fair amount of material
17 related to this procurement. The document that the witness
18 testified about, um, was not one of them. Ah, that - we
19 never got anything from the Small Business Department
20 indicating that they had signed off and decided that points
21 would be appropriate for this procurement and, ah, so we
22 don't have that material.

23 CHAIRMAN VINCENT BOBOT: Any response to that,
24 Attorney Block?

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well, ah,

1 all I can say is I was not involved in the public records
2 request that preceded it. My understanding of the subpoena
3 was you asked for questions related to the evaluation of
4 the RFP. That's not a document related to the evaluation
5 of the RFP; that's something that would have happened
6 before the RFP was even put together.

7 MS. RHONDA KELSEY: Right.

8 ATTORNEY EMERY HARLAN: We, we asked for all
9 records relating to the RFP itself.

10 ASSISTANT CITY ATTORNEY KATHY BLOCK: No, that's
11 not accurate.

12 ATTORNEY EMERY HARLAN: Okay.

13 CHAIRMAN VINCENT BOBOT: Well -

14 ATTORNEY EMERY HARLAN: I'll, I'll withdraw the
15 objection and go ahead and -

16 CHAIRMAN VINCENT BOBOT: Okay, you may continue.
17 He's withdraw - he's withdrawing his objection.

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, so with
19 regard to the - and now I lost my train of thought - ah,
20 um, oh, okay. So with regard to the, um - you received a,
21 or, you received a, um, sign off back from Nikki - or,
22 excuse me, from the Office of Small Business Development
23 and I assume that was Nikki Purvis, correct?

24 MS. RHONDA KELSEY: Yes.

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay, who's

1 the head of -

2 MS. RHONDA KELSEY: Or a staffer.

3 ASSISTANT CITY ATTORNEY KATHY BLOCK: - yeah.

4 MS. RHONDA KELSEY: Yes.

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: The Office
6 of Small -

7 MS. RHONDA KELSEY: The office.

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: - Business
9 Development.

10 MS. RHONDA KELSEY: Yes.

11 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, that
12 suggested you include a 10 point bonus on this contract?

13 MS. RHONDA KELSEY: Yes.

14 ASSISTANT CITY ATTORNEY KATHY BLOCK: And what
15 would the reason for that be? Are you aware?

16 MS. RHONDA KELSEY: What would be the reason why
17 a -

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: For -

19 MS. RHONDA KELSEY: - determination was made
20 relative to including bonus points -

21 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yes.

22 MS. RHONDA KELSEY: - as opposed to requirement?

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yes.

24 MS. RHONDA KELSEY: Because with an RFP, um, and
25 the nature of this particular RFP, this service, it just

1 makes more sense to allow for - it, it's different from -
2 I'm trying to give an example of, um, a situation where it
3 would be - just because the nature of an RFP, quite
4 honestly, we just allow for points as opposed to a
5 requirement. It gives proposers more flexibility to, to
6 basically earn those points.

7 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay, so
8 it's -

9 MS. RHONDA KELSEY: That's the best way to put
10 it. Because we don't want to hard fast dictate something
11 that might not be achievable or doable and that's why we
12 structure, um, that's why we include, um, bonus points as
13 opposed to saying this is a hard fast requirement because
14 we may be in a situation where we don't get responses if
15 we're requiring something that may not be achievable. So
16 we structure it such that proposers are allowed to earn
17 these points and they can earn the maximum but it's not a
18 requirement, if that makes sense. Does that make sense?

19 CHAIRMAN VINCENT BOBOT: But in this particular
20 contract, there was a potential to earn 20 bonus points or
21 just ten?

22 MS. RHONDA KELSEY: Well, with the com - with the
23 LBE and SBE combined, it would be twenty.

24 CHAIRMAN VINCENT BOBOT: And that was with this
25 particular contract.

1 MS. RHONDA KELSEY: Yes, with this proposal.

2 Yes. Yes, with this contract.

3 ASSISTANT CITY ATTORNEY KATHY BLOCK: And let me
4 just ask a follow-up to that, um, question. If - okay, so
5 the, the 10 bonus points would have been allowed for, um,
6 an SBE, correct? Utilization of an SBE?

7 MS. RHONDA KELSEY: Yes.

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: Where would
9 the other 10 points have been, um, earnable from?

10 MS. RHONDA KELSEY: LBE.

11 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, would
12 that have been earnable by every LBE?

13 MS. RHONDA KELSEY: Yes, provided that they
14 qualify and meet the criteria.

15 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay.

16 MS. RHONDA KELSEY: Yes.

17 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay, thank
18 you. Um, okay, so now, I kind of want to now go back to
19 the specifics of this contract and obviously, we've covered
20 a lot of this so I, you know, I guess some of this is going
21 to be duplicative but I want to try and go in a - in a
22 coherent order. Um, you - in developing the RFP document
23 itself -

24 MS. RHONDA KELSEY: Hmm-hmm.

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: - um, what

1 would that all include? Um, you know, what, what goes into
2 the RFP or the Request for Proposal, I'm sorry. The
3 Request for Proposal itself?

4 MS. RHONDA KELSEY: Hmm-hmm.

5 ATTORNEY EMERY HARLAN: Ah, Mr. Chair, just for
6 clarification, I don't know if the question is a general
7 one in terms of what the standard operating procedure is?

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: Oh, sorry.
9 Apologize.

10 ATTORNEY EMERY HARLAN: Or this particular
11 procurement.

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: I -
13 apologies.

14 CHAIRMAN VINCENT BOBOT: Oh, I have to admit, I
15 prefer this particular -

16 ASSISTANT CITY ATTORNEY KATHY BLOCK: And I think
17 that's -

18 CHAIRMAN VINCENT BOBOT: - this particular
19 proposal.

20 ASSISTANT CITY ATTORNEY KATHY BLOCK: - and
21 that's really what I do mean and I think, quite honestly,
22 I, I - if, if I may rephrase the question. Um, I - is it
23 fair to say that this procurement - in, in developing this
24 Request for Proposal, would you say that it followed your
25 standard procedure for developing a, a Request for

1 Proposal?

2 MS. RHONDA KELSEY: Yes.

3 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. So
4 then let's discuss this Request for Proposal -

5 MS. RHONDA KELSEY: Okay.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: -
7 particularly. Um, in putting together this Request for
8 Proposal, um, is it fair to say it included - yeah,
9 specifications -

10 MS. RHONDA KELSEY: All the work.

11 ASSISTANT CITY ATTORNEY KATHY BLOCK: - as to the
12 sort of work and, um, as we previously discussed also, um,
13 criteria for evaluating that were awarded, you know, that
14 percentages to what, you know -

15 MS. RHONDA KELSEY: Weights. Yes.

16 ASSISTANT CITY ATTORNEY KATHY BLOCK: - weights
17 as to how you would have the, the, um, ah, the review panel
18 would evaluate the proposal itself, correct?

19 MS. RHONDA KELSEY: Yes.

20 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. And
21 as we've prior discussed, there was, ah, bonus points for
22 the Local Business Enterprise and that was included, ah,
23 correct, because that was required by ordinance?

24 MS. RHONDA KELSEY: Yes.

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yes. And

1 we've already discussed why there was a Small Business
2 Enterprise requirement.

3 MS. RHONDA KELSEY: Bonus points, yes.

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: Bonus
5 points, I'm sorry. Ah, you mentioned the Form A earlier
6 with regard to the Small Business Enterprise, um, bonus
7 points. Was there - and I guess, let's, um, maybe turn
8 specifically to the proposal itself and there are, let's
9 see, in - I'm turning explicitly to - if you need to
10 refresh your recollection, there are pages in exhibit 10,
11 which is part of the Request for Proposal itself. On page
12 two of that exhibit, um, which you have a copy of the
13 binder in front of you; I've got notes on mine. Um,
14 exhibit 10 -

15 MS. RHONDA KELSEY: Exhibit ten.

16 ASSISTANT CITY ATTORNEY KATHY BLOCK: - is a, um
17 -

18 MS. RHONDA KELSEY: Sorry.

19 ASSISTANT CITY ATTORNEY KATHY BLOCK: - portions
20 of the Request for Proposal.

21 MS. RHONDA KELSEY: Page two?

22 ASSISTANT CITY ATTORNEY KATHY BLOCK: Page two.

23 MS. RHONDA KELSEY: Okay.

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, there
25 is a portion there, um, that speaks to the bonus for SBE

1 participation, is there not?

2 MS. RHONDA KELSEY: Yes, there is.

3 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, so you
4 may use that, perhaps, to refresh your recollection. Does
5 it discuss the Form A?

6 MS. RHONDA KELSEY: Yes.

7 ASSISTANT CITY ATTORNEY KATHY BLOCK: What does
8 it say about the Form A?

9 MS. RHONDA KELSEY: You, you want me to read this
10 entire - basically, what it says is the Office of Small
11 Business Development Contractor Compliance Plan, Form A,
12 must be submitted - must be completed and submitted with
13 your proposal if you intend to utilize an SBE
14 subcontractor. Failure to return these properly completed
15 forms will result in disqual - disqualification from
16 receiving additional points or SBE participation -

17 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay.

18 MS. RHONDA KELSEY: - for SBE participation.

19 ASSISTANT CITY ATTORNEY KATHY BLOCK: And, and
20 how does your, um, department interpret that language?

21 MS. RHONDA KELSEY: It is interpreted such that
22 if you don't submit the form, then you're not eligible to,
23 to earn the points.

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. Now
25 the SBE program, it - let's assume, for the sake of

1 argument, um, in this case -

2 CHAIRMAN VINCENT BOBOT: I'm just going to take
3 one short note. We were just handed the Request for
4 Proposal by opposing counsel.

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay
6 [laughter].

7 ATTORNEY EMERY HARLAN: I -

8 CHAIRMAN VINCENT BOBOT: Um -

9 ATTORNEY EMERY HARLAN: I have copies so I know
10 we sent it electronically but if -

11 CHAIRMAN VINCENT BOBOT: Right.

12 ATTORNEY EMERY HARLAN: As we introduce these
13 exhibits, I'll give you copies I have.

14 CHAIRMAN VINCENT BOBOT: Ah -

15 ATTORNEY EMERY HARLAN: I might as well -

16 ASSISTANT CITY ATTORNEY KATHY BLOCK: Oh, I
17 assumed you had them in the e-book, sorry.

18 MS. LINDA ELMER: We do.

19 MR. AVERILL: They are.

20 CHAIRMAN VINCENT BOBOT: We may, but it's -

21 ASSISTANT CITY ATTORNEY KATHY BLOCK: Oh, okay.

22 CHAIRMAN VINCENT BOBOT: - it's hard to shuffle
23 back and forth -

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: Fair
25 enough.

1 CHAIRMAN VINCENT BOBOT: - in the e-book.

2 ASSISTANT CITY ATTORNEY KATHY BLOCK: Fair
3 enough. Um, on page - so I'm on page two of the RFP, ah,
4 at the bottom of the page there where it talks about the
5 SBE participation. Um, so let's go back to the SBE
6 ordinance generally. If - MWH is a certified SBE firm, is
7 it not?

8 MS. RHONDA KELSEY: Yes, it is.

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yes. Let's
10 assume for the sake of argument, MWH had without Quarles &
11 Brady, um, pro - filed a proposal in response to this
12 procurement and filed a Form A properly.

13 MS. RHONDA KELSEY: Hmm-hmm.

14 ASSISTANT CITY ATTORNEY KATHY BLOCK: Would they
15 have gotten the bonus points?

16 MS. RHONDA KELSEY: Yes.

17 ASSISTANT CITY ATTORNEY KATHY BLOCK: If in this
18 proposal had there been a Form A properly filed and
19 completed, would MWH and Quarles have gotten the bonus
20 points for SBE participation?

21 MS. RHONDA KELSEY: Yes.

22 ASSISTANT CITY ATTORNEY KATHY BLOCK: Did - the
23 gist of my question is in a, in a typical proposal for -
24 let's strike that. The - is it necessary in every case
25 that an SBE firm be a subcontractor in order to receive -

1 MS. RHONDA KELSEY: Yes. Yes, unless we're
2 calling for something different. The RFP is clear about
3 the arrangement should - and this is where the Request for
4 Proposal process is a lot different from the bidding
5 process. If some sort of different arrangement - I mean,
6 that's what it is, typically. Yes, you - the SBE is
7 functioning as a sub to the prime, um, and therefore,
8 providing a particular service as a sub under the contract.
9 Um, if -

10 CHAIRMAN VINCENT BOBOT: Was Form A submitted?

11 MS. RHONDA KELSEY: No.

12 CHAIRMAN VINCENT BOBOT: So the 10 bonus points
13 was not awarded.

14 MS. RHONDA KELSEY: Correct.

15 CHAIRMAN VINCENT BOBOT: Thank you.

16 MS. RHONDA KELSEY: So, I guess I just want to -
17 even if the form were submitted, potentially - and I don't
18 know; I mean, I can't - this - you know, I'm going way back
19 to the fall of 2017 - but it wasn't, it wasn't submitted in
20 the, in the proposal; the RFP was clear about that. And
21 the purchasing agent made a determination that they weren't
22 eligible for the points for that reason; just from a clear
23 black and white perspective. And we have instructions for
24 proposers to follow. We can't change the rules as we go
25 along and because, again, it goes back to what one of my

1 major priorities is, is making sure that the process is
2 fair and ethical. There's a Q and A period for all
3 proposers to ask questions about what is required, any
4 additional clarity. Um, they can also take exceptions to
5 what has been specified in the proposal. So a proposer
6 could say, "Hey, I don't agree with what, you know, you're
7 asking for. This would be a better option." Or, "We're
8 doing something different. Will the city consider,
9 consider this?" It could be considered. That is the
10 opportunity for a firm to ask questions, receive clarity,
11 and make the city aware of the fact that they may be going
12 in a different direction, other than what is being
13 specified or called for in RFP. Because we could then
14 decide to make a change that all proposers would be aware
15 of. Because if we don't do that, then again, going back to
16 what I just said, then we're, we're changing processes and
17 procedures for individual proposers and that's not
18 transparent; that's -

19 CHAIRMAN VINCENT BOBOT: But it wasn't changed -

20 MS. RHONDA KELSEY: - not transparent.

21 CHAIRMAN VINCENT BOBOT: - in this particular
22 case.

23 MS. RHONDA KELSEY: Because that didn't happen.
24 Because -

25 CHAIRMAN VINCENT BOBOT: Oh, well the question is

1 was it changed or wasn't it changed?

2 MS. RHONDA KELSEY: It wasn't.

3 CHAIRMAN VINCENT BOBOT: Thank you.

4 MR. STEVE FRITSCHKE: Mr. Chair, I have a
5 question.

6 CHAIRMAN VINCENT BOBOT: Mr. Fritsche?

7 MR. STEVE FRITSCHKE: Um, so you're not hand
8 holders. If someone submits, ah, a RFP proposal and
9 they're identifying a - as an example - an SBE, ah,
10 subcontractor but they haven't submitted Form A, you don't
11 call them and say, "Hey, I see you've identified the
12 subcontractor. We don't have Form A."

13 MS. RHONDA KELSEY: No.

14 MR. STEVE FRITSCHKE: Okay.

15 MS. RHONDA KELSEY: We don't do that.

16 CHAIRMAN VINCENT BOBOT: You may continue, Ms.
17 Block.

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, in fact
19 if we turn to page three of the, um, disclosure counsel
20 RFP, it states that, um, proposers can ask questions,
21 correct? And there's a process for that?

22 MS. RHONDA KELSEY: Yes.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, in this
24 case, are you aware - did any proposers, um, potential
25 proposers, ask questions?

1 MS. RHONDA KELSEY: Yeah, they - there were quite
2 a few, ah, questions that were, um, presented. And what we
3 do is we respond to those questions and the responses are
4 posted via an addendum; an addendum to the RFP itself and
5 that all proposers are required to sign that addendum, send
6 it back with their proposal, to ensure that they all
7 understand what is being asked, if there are, you know, we
8 may change the date, the closing date for an RFP. That's
9 the vehicle or mechanism that we use to keep all proposers
10 - again, in a very transparent fashion - aware of what
11 we're doing throughout the process. So a proposer could
12 have submitted a question again, like I said, "Hey, we
13 don't like this in the proposal; we don't think this is
14 fair." The city could entertain that and then say we are
15 amending this RFP to change this particular requirement.
16 Then all proposers are informed and aware of that change.
17 That is the process; that is the vehicle for a proposer to
18 question or request any changes to the RFP or obtain
19 clarity.

20 ATTORNEY EMERY HARLAN: I -

21 CHAIRMAN VINCENT BOBOT: But in this particular
22 case, you did not eliminate the Form A requirement.

23 MS. RHONDA KELSEY: We weren't asked to.

24 CHAIRMAN VINCENT BOBOT: No, the question is -

25 MR. BRAD HOESCHEN: Right, that's -

1 CHAIRMAN VINCENT BOBOT: - the [inaudible].

2 MR. BRAD HOESCHEN: I think we're - right, I
3 think we're getting sort of sidetracked on this question
4 issue. The, the real issue here is in order to get the SBE
5 points, you had to submit Form A.

6 MS. RHONDA KELSEY: Correct.

7 MR. BRAD HOESCHEN: And the proposer, or the
8 appellant in this case, did not submit Form A.

9 MS. RHONDA KELSEY: Correct.

10 MR. BRAD HOESCHEN: Okay.

11 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, is, is
12 there, um, any portion of the SBE ordinance that talks
13 about joint ventures? And if I may, I'll refer -

14 MS. RHONDA KELSEY: I think -

15 ASSISTANT CITY ATTORNEY KATHY BLOCK: - you to -

16 MS. RHONDA KELSEY: I think there is, um, but -
17 or used to be years ago.

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: [Laughter]
19 There -

20 MS. RHONDA KELSEY: Um -

21 ASSISTANT CITY ATTORNEY KATHY BLOCK: There is.

22 MS. RHONDA KELSEY: Okay, I thought so.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: [Laughter]

24 MS. RHONDA KELSEY: Right?

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, I'm

1 going to -

2 MS. RHONDA KELSEY: Yes.

3 ASSISTANT CITY ATTORNEY KATHY BLOCK: - refer you
4 to the chapter of -

5 MS. RHONDA KELSEY: Section 12, here, yes.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yes.

7 MS. RHONDA KELSEY: There is reference to it.

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: It defines
9 joint venture, you're correct.

10 MS. RHONDA KELSEY: It defines it; correct.

11 ASSISTANT CITY ATTORNEY KATHY BLOCK: And that
12 definition then becomes relevant, um, if we look at chapter
13 370 and -

14 CHAIRMAN VINCENT BOBOT: I'm sorry -

15 ASSISTANT CITY ATTORNEY KATHY BLOCK: - 370-5(3).

16 MS. RHONDA KELSEY: Dash five, sub three, okay.
17 Yes, it's in two sections, actually; I was looking at
18 another section.

19 ASSISTANT CITY ATTORNEY KATHY BLOCK: And if you
20 want to read that to refresh your recollection.

21 MS. RHONDA KELSEY: Sure. Sure. Participation
22 of Small Business Enterprises and joint ventures with other
23 such businesses and mainstream business entities is
24 encouraged. In the case of a certified joint venture, only
25 that portion of the total dollar value of the contract

1 equal to the percentage of participation of the Small
2 Business Enterprise partner venture and the joint venture
3 shall be counted toward the applicable requirement.

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: And then it
5 - there is an exhibit here, which is number five and, I'm
6 sorry, I keep flipping all the, ah, exhibits. Um, which is
7 a copy of the Form A -

8 MS. RHONDA KELSEY: Yes.

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: - that you
10 would have included in the, ah, RFP? Is that the - is it
11 the form that was included in this, ah, RFP?

12 MS. RHONDA KELSEY: Yes.

13 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, so this
14 is a copy that the winning proposer, I guess, or -

15 MS. RHONDA KELSEY: It is.

16 ASSISTANT CITY ATTORNEY KATHY BLOCK: - best
17 ranked proposer -

18 MS. RHONDA KELSEY: Yes, the highest. Yes.

19 ASSISTANT CITY ATTORNEY KATHY BLOCK: - used?

20 MS. RHONDA KELSEY: Yes.

21 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. Um -

22 UNKNOWN MALE SPEAKER: Thanks.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: - does that
24 indicate what percentage, um, of payments were going to
25 the, ah, in this case the subcontractor?

1 MS. RHONDA KELSEY: Yes, 20 percent.

2 MR. BRAD HOESCHEN: Do you have four? Okay.

3 MS. LINDA ELMER: I -

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: Thank you.

5 MS. LINDA ELMER: Thank you.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay, and
7 then I - we have - can you explain what Bonfire is to me?

8 MS. RHONDA KELSEY: So Bonfire is the software
9 platform that we use to, um, allow, ah, proposers to upload
10 proposals, um, that are being requested by the, um, city.
11 Um, the software platform is also used by, um, the
12 purchasing agent to review the proposals for compliance, as
13 well as the, um, the evaluation committee members to score
14 the proposals, um, to include notes. Um, we're also able
15 to generate some analytics from that software regarding,
16 you know, all of the proposals that have been submitted,
17 you know, dollar amount, number, etcetera, by type. So
18 that's the electronic or digital system that we use to, um,
19 evaluate proposals to - and allow for, um, potential
20 proposers to submit, um, proposals. Years ago, um, they,
21 you know, brought in, um, hard copies. We still do receive
22 a couple of hard copies but years ago, we used to receive
23 like requests like eight or nine, so it's a more
24 streamlined process that we use.

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. And

1 then there was a copy, um, of exhibit three here, which is,
2 I guess, that's what would be sort of like the Bonfire
3 summary of the, the evaluator's notes and comments -

4 MS. RHONDA KELSEY: Yes.

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: - for this
6 RFP. Is that correct?

7 MS. RHONDA KELSEY: Yes.

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, does it
9 indicate to you anything about the Small Business
10 Enterprise points, um, bonus points, um, that - for, um,
11 Quarles & Brady, ah, Quarles & Brady's proposal, um,
12 specifically?

13 MS. RHONDA KELSEY: Yes.

14 ASSISTANT CITY ATTORNEY KATHY BLOCK: Can you
15 tell me what that is?

16 MS. RHONDA KELSEY: It says, um, ah, on the first
17 page, ah, after the cover page, "SBE corrections Quarles &
18 Brady, minus 9.6 SBE points, OSBD plan not submitted for
19 evaluator review as required."

20 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, is
21 there any other note after -

22 MS. RHONDA KELSEY: Um -

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: - that one?

24 MS. RHONDA KELSEY: - let's see. Duane Morris,
25 loss of 3.2 SBE points, no - so, so again, this was a

1 standard across the board; we didn't treat, you know, one
2 proposer different than another. Another proposer didn't
3 earn the points because they also didn't submit Form A.
4 Um, what else here? I don't see anything else about SBE
5 participation. Ah, let's see - so yeah, "Deduct 9.6 points
6 for Quarles & Brady, bonus SBE points zero. Deduct 3.2
7 points for Duane Morris, bonus SBE points to zero."

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay, so
9 Duane Morris was another proposer -

10 MS. RHONDA KELSEY: Yes.

11 ASSISTANT CITY ATTORNEY KATHY BLOCK: - that
12 failed to submit a Form A.

13 MS. RHONDA KELSEY: Correct.

14 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. But,
15 but at some point, there were points that were indicated
16 here. Can you explain why that would be?

17 MS. RHONDA KELSEY: So I think the committee was,
18 um, the committee scored the proposals and gave those firms
19 the points. The purchasing agent then, um -

20 ATTORNEY EMERY HARLAN: I - can I just object to
21 this? Unless there's a foundation that she was actually a
22 part of that process? I mean, she's just speculating in
23 terms of what a committee did. If she was there
24 participating in the process and has firsthand knowledge
25 that's relevant, but if she wasn't there, her opinion of

1 what happens is no better than anybody else's.

2 MS. RHONDA KELSEY: Those are - those are the
3 facts.

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: I, I mean,
5 I think she -

6 MS. RHONDA KELSEY: It's right here; I'm looking
7 at it.

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: I think she
9 can interpret what happens -

10 MS. RHONDA KELSEY: Yeah.

11 ASSISTANT CITY ATTORNEY KATHY BLOCK: - regarding
12 her own software depending on what's - and if, ah, Mr.
13 Harlan wants to offer -

14 CHAIRMAN VINCENT BOBOT: I -

15 ASSISTANT CITY ATTORNEY KATHY BLOCK: - other
16 testimony, he can ask these people.

17 CHAIRMAN VINCENT BOBOT: I guess I'll sustain the
18 objection in that, that I think she can testify to what the
19 conclusions were for one firm scored this, um, 14749 scored
20 that. But she can't testify to how they came to that.

21 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well no,
22 I'm not - I'm not saying she can say why.

23 CHAIRMAN VINCENT BOBOT: She's just explaining
24 why they got points in these certain areas, but that's
25 about it; that's on the form.

1 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well, I -
2 okay, that's fine.

3 CHAIRMAN VINCENT BOBOT: I mean, fair enough?

4 ATTORNEY EMERY HARLAN: Yeah, actually -

5 CHAIRMAN VINCENT BOBOT: She'll be able to say
6 what's on the form when one got this many points but the
7 other person got - the firm got this many points - but
8 that's about the end of it.

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well, I
10 think she can indicate why the, there are changes that were
11 made. Um, I mean, they're - I, I mean, if -

12 CHAIRMAN VINCENT BOBOT: Well -

13 ASSISTANT CITY ATTORNEY KATHY BLOCK: - if it
14 says, "Plan not submitted," I mean, I think she can
15 understand why her software that she, you know, administers
16 has notations that are made, um -

17 CHAIRMAN VINCENT BOBOT: I think - I just think
18 she'd go to - I've got zero points in that area and that's
19 it.

20 MR. BRAD HOESCHEN: It, I - I think the testimony
21 came in, Ms. Block.

22 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. Fair
23 enough. Okay, so let's move on and discuss LBE, ah,
24 programs, specifically, as it related to this contract. Um
25 -

1 MS. RHONDA KELSEY: Let me go back.

2 ASSISTANT CITY ATTORNEY KATHY BLOCK: - did MWH
3 submit an LBE affidavit, um, in connection with this, ah,
4 with the proposal that was filed here?

5 MS. RHONDA KELSEY: Yes.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. And
7 that's attached as, um, oh, let's see, I think that's
8 exhibit fourteen?

9 MS. RHONDA KELSEY: Fourteen, yes.

10 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. Oh,
11 except that's only -

12 MR. BRAD HOESCHEN: I - oh, I'm sorry, Mr. Chair?

13 ASSISTANT CITY ATTORNEY KATHY BLOCK: Oh -

14 CHAIRMAN VINCENT BOBOT: Yes, Mr. Hoeschen?

15 MR. BRAD HOESCHEN: Ms. Block, before you move on
16 -

17 ASSISTANT CITY ATTORNEY KATHY BLOCK: Of course.

18 MR. BRAD HOESCHEN: - ah, Ms. Kelsey, the, the
19 notation, the correction says, "Quarles & Brady, minus 9.6
20 SBE points." Why would 9.6 have been awarded?

21 MS. RHONDA KELSEY: The number?

22 MR. BRAD HOESCHEN: Yes.

23 MS. RHONDA KELSEY: The, the points are - each
24 evaluator on the committee, um, assigns points in that
25 particular category and that, that is a total number of

1 points that, that the committee members determined that
2 Quarles and - that, that should be received for SBE
3 participation. So it could be - it could be 10, it could
4 be, it could be five. It could be four. It could be zero.
5 A firm may even submit the Form A and the committee may
6 evaluate what has been submitted and determine that no
7 points should be earned.

8 MR. BRAD HOESCHEN: So there are five members of
9 the committee and they each get two points to award and
10 somebody awarded .6 at some point? Okay.

11 UNKNOWN MALE SPEAKER: Did you hear that?

12 UNKNOWN FEMALE SPEAKER: Yeah.

13 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well, and I
14 guess -

15 MS. RHONDA KELSEY: [Inaudible] write down -

16 ASSISTANT CITY ATTORNEY KATHY BLOCK: I'll just -

17 MS. RHONDA KELSEY: - the individual -

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: I'll just
19 ask you here and this maybe will draw out, um, the
20 committee's attention. Um, if we're looking at Duane
21 Morris', um, which is the other firm that, ah, apparently
22 did not submit a Form A - we're looking at page three of
23 four of their, ah, little summary score.

24 MS. RHONDA KELSEY: I can't find it.

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, about

1 halfway down the page it says, "SBE participation bonus
2 points."

3 MS. RHONDA KELSEY: Duane Morris, okay.

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: Ah, if you
5 could note what's, ah, um, if you can, ah, let me know
6 what's noted there by committee member for points awarded
7 there -

8 MS. RHONDA KELSEY: Um -

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: - if you
10 get there.

11 MS. RHONDA KELSEY: What, what page?

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: Page three
13 of four.

14 MS. RHONDA KELSEY: Page three of four.

15 MR. BRAD HOESCHEN: Duane Morris is part of the
16 back -

17 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yes, Duane
18 Morris.

19 MS. RHONDA KELSEY: Yep.

20 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, we've
21 got Richard Lee, David Anderson, Jerry Allen, and Jeremy
22 McKenzie -

23 MS. RHONDA KELSEY: Hmm-hmm.

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: - and
25 Dennis Yaccarino.

1 MS. RHONDA KELSEY: Right.

2 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, they
3 awarded differing amounts of points for SBE participation,
4 correct?

5 MS. RHONDA KELSEY: Yeah.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Out of a
7 total of ten?

8 MS. RHONDA KELSEY: Yes.

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, some
10 were awarded zero, some were awarded five, and some were
11 awarded six, correct?

12 MS. RHONDA KELSEY: Yes.

13 ASSISTANT CITY ATTORNEY KATHY BLOCK: So, um,
14 they just awarded differing amounts of points, correct?

15 MS. RHONDA KELSEY: They're allowed to do.

16 ASSISTANT CITY ATTORNEY KATHY BLOCK: Right.
17 Okay. So, I'm -

18 MR. BRAD HOESCHEN: I see it. And if you look on
19 Quarles & Brady's on page three of three -

20 ASSISTANT CITY ATTORNEY KATHY BLOCK: Right.

21 MR. BRAD HOESCHEN: - the same thing happened
22 there.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: Right.

24 MR. BRAD HOESCHEN: Four of the five evaluators
25 awarded 10 out of 10 and one evaluator, for some reason -

1 ASSISTANT CITY ATTORNEY KATHY BLOCK: [Laughter]

2 MR. BRAD HOESCHEN: - only awarded eight out of
3 ten. Alright, thank you.

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: And I've got
5 - this is, um - I'm just going to use this for like one
6 thing.

7 MS. LINDA ELMER: Thank you.

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: This is a
9 full copy of the - of Quarles & Brady's, um, response to
10 the RFP; so this is their complete proposal. And on page -
11 huh, it ends up being, I guess, page -

12 ATTORNEY EMERY HARLAN: And I'd find this -
13 excuse me.

14 ASSISTANT CITY ATTORNEY KATHY BLOCK: Oh, I'm
15 sorry.

16 ATTORNEY EMERY HARLAN: Is it - does it - is this
17 going to be sixteen? Or -

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah, I
19 guess I would make it sixteen? Although, I, I should note
20 that I noticed when I was coming down here, their taxpayer
21 employer number - the taxpayer, um, identification number
22 is on this so we need to redact this before we admit it -

23 ATTORNEY EMERY HARLAN: No objection to that.

24 CHAIRMAN VINCENT BOBOT: And if I - if this is
25 going to be exhibit sixteen?

1 ATTORNEY EMERY HARLAN: And just for the record,
2 did we admit all the other things in the binder? All the
3 exhibits that were -

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: They're in
5 the e-book? I mean, I'm certainly - no objections.

6 CHAIRMAN VINCENT BOBOT: Well, why don't we just
7 go through that real quick.

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yep.

9 CHAIRMAN VINCENT BOBOT: I know we have exhibit
10 three, five, 10, um, did I miss any? Three, five, 10 and
11 then there was -

12 MR. BRAD HOESCHEN: This is sixteen.

13 CHAIRMAN VINCENT BOBOT: - sixteen. But was
14 there other than three, five, 10 or sixteen?

15 ATTORNEY EMERY HARLAN: Why - I think that the -
16 what was contemplated was everything that we sent was by
17 mutual agreement to be part of the record.

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: I have no
19 objection -

20 CHAIRMAN VINCENT BOBOT: Okay.

21 ASSISTANT CITY ATTORNEY KATHY BLOCK: - to that.

22 CHAIRMAN VINCENT BOBOT: So noted.

23 MR. BRAD HOESCHEN: Is that okay with you? Okay.
24 Our counsel said -

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: [Inaudible]

1 ordinances don't need to get moved but -

2 CHAIRMAN VINCENT BOBOT: That's fine. Policy -

3 ASSISTANT CITY ATTORNEY KATHY BLOCK: - but, but
4 I'm - again, no objection.

5 CHAIRMAN VINCENT BOBOT: Okay.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. Um,
7 so tab B, page 11, um, you get a copy [laughter]. Tab B,
8 page 11, um, binding signatures for RFP and contract. Um,
9 Ms. Kelsey, can you please indicate who is listed as the
10 proposer's firm?

11 MS. RHONDA KELSEY: Quarles & Brady.

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, is MWH
13 listed on that page in any way?

14 MS. RHONDA KELSEY: Not that I can see, no.

15 ASSISTANT CITY ATTORNEY KATHY BLOCK: And we
16 discussed earlier that the LBE, um, program, the Local
17 Business Enterprise program, is a, ah, a program that's
18 intended to benefit the prime contractor or the proposer.
19 Is that correct?

20 MS. RHONDA KELSEY: Yes.

21 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay, so
22 now turning to specifically to - now we don't need to use
23 this exhibit -

24 MS. RHONDA KELSEY: Okay.

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: - cause

1 it's really only need for - um, we can now look
2 specifically to, um, exhibit 14, which is the Local
3 Business Enterprise Program Affidavit of Compliance
4 submitted by MWH. On page - I guess this would be really
5 page three of the form, which is sort of an additional for
6 you need to submit if you've got more than one property
7 location - is that correct?

8 MS. RHONDA KELSEY: Yes.

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, can you
10 tell me how many properties are listed there?

11 MS. RHONDA KELSEY: Four.

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. And
13 so one of those is in Milwaukee, correct?

14 MS. RHONDA KELSEY: Yes.

15 ASSISTANT CITY ATTORNEY KATHY BLOCK: And the
16 others are not, correct?

17 MS. RHONDA KELSEY: Yes.

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: And they're
19 not in - well, it doesn't matter; they're not in Milwaukee,
20 or they're not in Wisconsin - but they're not - um, can you
21 tell me, um, why the, ah, why the, um, proposal of Quarles
22 & Brady was not awarded LBE points?

23 MS. RHONDA KELSEY: A determination was made
24 that, um, because additional properties were listed -

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: Hmm-hmm.

1 MS. RHONDA KELSEY: - in this form, um, that, you
2 know, the combined square footage or, um, the office space,
3 if you will, in these other locations, um, didn't meet the
4 criteria set forth in the affidavit whereby we say that the
5 majority, um, of the, you know, owned or leased space by
6 the prime, um, has to represent, um, the majority of the
7 proposer's office space. So a determination was made that
8 they were not - that they didn't meet the criteria and
9 that's why they didn't earn, um, the 10 points for SBE
10 participation.

11 MS. RHONDA KELSEY: So it wasn't because there
12 was only one property in Milwaukee and three properties
13 that were outside Milwaukee. You just didn't go one verses
14 three, did you?

15 ASSISTANT CITY ATTORNEY KATHY BLOCK: Drilling
16 down at that level of detail, one verses three?

17 MS. RHONDA KELSEY: I mean, you didn't just count
18 the number of properties. Or did you?

19 MS. RHONDA KELSEY: I think a determination was
20 made, they're three -

21 ATTORNEY EMERY HARLAN: I'm going to object
22 because it -

23 MS. RHONDA KELSEY: There are three that -

24 CHAIRMAN VINCENT BOBOT: Hold on one second, Ms.
25 Kelsey; there's an objection.

1 ATTORNEY EMERY HARLAN: I guess the objection is
2 the witness doesn't have personal knowledge, which is
3 pretty apparent. She's saying, "I'm going to guess that's
4 why the decision was made." So as to the extent she's
5 testifying about why the decision was made without any
6 foundation that she was involved in that decision -

7 ASSISTANT CITY ATTORNEY KATHY BLOCK: Fair
8 enough.

9 ATTORNEY EMERY HARLAN: - or made the decision, I
10 -

11 CHAIRMAN VINCENT BOBOT: I'll sustain it.

12 ATTORNEY EMERY HARLAN: - would strike -

13 ASSISTANT CITY ATTORNEY KATHY BLOCK: Fair
14 enough.

15 ATTORNEY EMERY HARLAN: Okay.

16 MR. AVERILL: Mr. Chair?

17 MR. BRAD HOESCHEN: Mr. Chair?

18 CHAIRMAN VINCENT BOBOT: Ah, Mr. Hoeschen? Well -

19 MR. BRAD HOESCHEN: Actually, Mr. Averill was
20 first.

21 CHAIRMAN VINCENT BOBOT: Mr. Averill?

22 MR. AVERILL: Thank you, Mr. Chair. I have a
23 question for Ms. Kelsey.

24 MS. RHONDA KELSEY: Yes?

25 MR. AVERILL: Ms. Kelsey, can you tell me the

1 square footage of properties one, two, three, and four?

2 MS. RHONDA KELSEY: Yes. Um, I was told by Mr.
3 Harlan, um, 3,000 square feet for the Milwaukee office.
4 For the office in Iowa, I was told 2,444 square feet. And
5 for the Chicago location, I was informed that there was no
6 office; um, they just use that location for, um, conference
7 space. Um, and then for Indiana, the Indiana office, I was
8 informed that, um, it was a business that is being operated
9 in a house and this was all after the - this is - I was
10 informed of this October 9th, 2017.

11 MR. AVERILL: Mr. Chair, as a follow-up?

12 CHAIRMAN VINCENT BOBOT: Yes, Mr. Averill.

13 MR. AVERILL: So the property that was operated
14 in a house, presumably the house does have some square
15 footage but you don't know the size of the house? Or how
16 much of that house was being operated as an office?

17 MS. RHONDA KELSEY: I was not provided with that
18 information.

19 MR. AVERILL: Thank you.

20 MR. BRAD HOESCHEN: Mr. Chair?

21 CHAIRMAN VINCENT BOBOT: Mr. Hoeschen?

22 MR. BRAD HOESCHEN: Ms. Kelsey, even if a
23 determination had been made that LBE participation was
24 appropriate for Quarles & Brady, would the award have
25 automatically been 10 points? Or would the reviewers have

1 had the ability, like they did with the SBE, for some
2 reason to award something less than ten?

3 MS. RHONDA KELSEY: They would - it would have
4 been, it would have been automatic for the most part.

5 MR. BRAD HOESCHEN: It's an automatic 10 points.
6 So it's not like the SBE where, where they were initially
7 awarded 9.6 because someone thought for whatever reason
8 they only deserved eight out of ten.

9 MS. RHONDA KELSEY: Correct.

10 MR. BRAD HOESCHEN: Okay. So it's 10 or nothing
11 on the LB.

12 MS. RHONDA KELSEY: It's 10 or nothing.

13 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. So
14 did - and I'll ask the question that we kind of got to
15 before - um, did you, ah, make the determination as to
16 whether or not, excuse me, the Local Business Enterprise,
17 um, affidavit, ah, demonstrated - or did you make the
18 initial determination, let's say, as to whether or not the
19 Local Enterprise - the Local Business Enterprise program
20 criteria were met, um, when the Request for Proposal was
21 evaluated?

22 MS. RHONDA KELSEY: I did not.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: Did you at
24 some point, um, evaluate or consider whether or not that
25 was a proper determination?

1 MS. RHONDA KELSEY: At, at the point that, um,
2 the open records request was received, I did look into it
3 further -

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay.

5 MS. RHONDA KELSEY: - as MWH is aware of.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay.

7 Thank you. And so, was that prior to the award of the
8 contract?

9 MS. RHONDA KELSEY: No.

10 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay, thank
11 you.

12 MR. BRAD HOESCHEN: Mr. Chair?

13 CHAIRMAN VINCENT BOBOT: Mr. Hoeschen?

14 MR. BRAD HOESCHEN: Ah, Ms. Kelsey, when someone
15 receives their SBE designation, they get a document and
16 they are declared an SBE, correct?

17 MS. RHONDA KELSEY: Yes.

18 MR. BRAD HOESCHEN: How does - does someone
19 receive an LBE designation that they carry around with
20 them?

21 MS. RHONDA KELSEY: No.

22 MR. BRAD HOESCHEN: So it's made on a case by
23 case basis each time you receive an RFP.

24 MS. RHONDA KELSEY? Yes.

25 MR. BRAD HOESCHEN: So it's possible that the

1 next time you looked at Quarles & Brady's RFP, you could
2 determine they were an LBE.

3 MS. RHONDA KELSEY: Yes.

4 MR. BRAD HOESCHEN: Alright. Thank you.

5 CHAIRMAN VINCENT BOBOT: You may continue,
6 Attorney Block.

7 ASSISTANT CITY ATTORNEY KATHY BLOCK: Just give
8 me a second. I think I don't have anything further.

9 CHAIRMAN VINCENT BOBOT: Okay, I just have one
10 quick question. Do you know the total dollar amount that
11 was budgeted or set aside for this particular RFP?

12 MS. RHONDA KELSEY: I do not have the dollar
13 value of the contract -

14 CHAIRMAN VINCENT BOBOT: In other words -

15 MS. RHONDA KELSEY: - with me. I don't -

16 CHAIRMAN VINCENT BOBOT: - was there a limit? Do
17 you know if there was a limit?

18 MS. RHONDA KELSEY: I'm, I'm pretty sure - yeah,
19 we - in, in the contract document itself, we will - we
20 identified the actual dollar amount of the contract award
21 and I, I don't, I don't have that -

22 ASSISTANT CITY ATTORNEY KATHY BLOCK: Is -

23 MS. RHONDA KELSEY: - in front of me; I
24 apologize.

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: Is your

1 question, you know, an estimate before the contract's lets
2 that -

3 ATTORNEY EMERY HARLAN: Um -

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: - if we go
5 over -

6 MR. BRAD HOESCHEN: Because they each request the
7 - they submit their own requests in their different prices.

8 CHAIRMAN VINCENT BOBOT: Well, that's the point
9 I'm kind of driving at is obviously, what we're talking
10 about here is money for providing services and have you at
11 least identified - in other words, do you have an RFP? My
12 limit on this RFP, I'm going to pull the plug after
13 \$100,000 or \$150,000.

14 MS. RHONDA KELSEY: So during the negotiation
15 process, we sort of get into the number; we don't, we don't
16 share that up front. But again, if you are interested in
17 the actual contract award amount, I can share that -

18 CHAIRMAN VINCENT BOBOT: Well, what's the -

19 MS. RHONDA KELSEY: - with you cause -

20 CHAIRMAN VINCENT BOBOT: - actual award?

21 MS. RHONDA KELSEY: I, I, I, I, I don't know
22 offhand.

23 MR. BRAD HOESCHEN: Ms. Black, is that a number
24 you could stipulate to or you don't -

25 MS. RHONDA KELSEY: I don't have the contract in

1 front -

2 ASSISTANT CITY ATTORNEY KATHY BLOCK: I have -

3 MS. RHONDA KELSEY: - of me.

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: No, I
5 really couldn't.

6 CHAIRMAN VINCENT BOBOT: Do you -

7 ASSISTANT CITY ATTORNEY KATHY BLOCK: I mean,
8 there's, there's any number of factors that could go into
9 that.

10 MR. BRAD HOESCHEN: No -

11 ASSISTANT CITY ATTORNEY KATHY BLOCK: I mean -

12 MR. BRAD HOESCHEN: - do you know what the number
13 of this contract that's -

14 ASSISTANT CITY ATTORNEY KATHY BLOCK: Oh, I have
15 absolutely -

16 MR. BRAD HOESCHEN: - been awarded?

17 ASSISTANT CITY ATTORNEY KATHY BLOCK: - no idea,
18 nor could I even say. I mean, it's a multi-year contract;
19 things could change. I mean, budgets change. The
20 departments could make different decisions about policy. I
21 mean -

22 CHAIRMAN VINCENT BOBOT: Well, that's why I asked
23 if there was a limit. I didn't ask - yeah, yeah, I -

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: No.

25 MS. RHONDA KELSEY: I mean -

1 CHAIRMAN VINCENT BOBOT: I understand -

2 ASSISTANT CITY ATTORNEY KATHY BLOCK: I mean, now
3 there's not. I mean, now I could tell you right now what
4 the not to exceed amount is. I could tell you what that is
5 but that could change. I mean, I'm sure we have a right to
6 terminate the contract tomorrow -

7 CHAIRMAN VINCENT BOBOT: No, I -

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: - and
9 probably we could add another \$2 million dollars. I mean,
10 there's no - there's no limit to what could be spent or
11 what might, they might decide to do.

12 MR. BRAD HOESCHEN: She just gave Mr. Harlan his
13 remedy; they could terminate the contract tomorrow
14 [laughter].

15 ATTORNEY EMERY HARLAN: Thank you.

16 MR. BRAD HOESCHEN: [Laughter]

17 ASSISTANT CITY ATTORNEY KATHY BLOCK: Oh, yeah.
18 Try that. Watch how fast I run to circuit court
19 [laughter].

20 CHAIRMAN VINCENT BOBOT: Well, fair enough. Ah,
21 your witness.

22 ATTORNEY EMERY HARLAN: Okay. Ms. Kelsey, good
23 morning. How are you?

24 MS. RHONDA KELSEY: Good, how are you?

25 ATTORNEY EMERY HARLAN: Excellent, thank you.

1 Um, I'm confused about this LBE thing, um, because your
2 testimony seems to be - if I understand it - that only the
3 person who signed - only the entity that signed the
4 proposal or the prime to use your, your term, only their
5 status, ah, is what dictates whether you get LBE -

6 CHAIRMAN VINCENT BOBOT: You have to use -

7 MR. BRAD HOESCHEN: Mr. Harlan, they can't hear
8 you.

9 ATTORNEY EMERY HARLAN: Oh -

10 CHAIRMAN VINCENT BOBOT: You have to use the mic
11 -

12 ATTORNEY EMERY HARLAN: I'm sorry.

13 CHAIRMAN VINCENT BOBOT: We just a call from the
14 -

15 MR. BRAD HOESCHEN: We are on television -

16 CHAIRMAN VINCENT BOBOT: - people who -

17 MR. BRAD HOESCHEN: - so -

18 CHAIRMAN VINCENT BOBOT: And it's being recorded
19 and they can't pick up his voice.

20 ATTORNEY EMERY HARLAN: This thing right here?

21 MR. BRAD HOESCHEN: Just pull it closer to you.

22 CHAIRMAN VINCENT BOBOT: Just move it towards
23 you.

24 MR. BRAD HOESCHEN: You're too far away.

25 ATTORNEY EMERY HARLAN: Oh, okay.

1 MR. BRAD HOESCHEN: It's on; you're just too far
2 away from it.

3 ATTORNEY EMERY HARLAN: So, so I'm sorry, I'll
4 start over. Um, so for purposes of determining, ah,
5 whether LBE points are to be assigned, is the decision
6 based upon whether, um, one of the parties to the proposal
7 has that status? Or both? Or you seem to be saying that
8 the rule is since Quarles wasn't an LBE, there weren't
9 points available.

10 MS. RHONDA KELSEY: I didn't say that.

11 ATTORNEY EMERY HARLAN: Oh, okay. So as long as
12 MWH met the criteria for, ah, LBE status, then that's all
13 that it took in order to get the 10 points.

14 MS. RHONDA KELSEY: I'm saying I didn't say that.
15 Um, Attorney Block made the point that Quarles & Brady
16 signed the proposal, the binding signature page. And the
17 LBE program is applicable to the prime. For purposes of
18 this evaluation, obviously we allow for MWH in this
19 scenario to - I mean, it was reviewed, it was submitted.

20 ATTORNEY EMERY HARLAN: Just so I'm clear from -
21 and, and primarily for the board's, ah, purposes, so
22 assuming MWH met the criteria for LBE designation, then the
23 Quarles & Brady MWH proposal would be entitled to the 10
24 points?

25 MS. RHONDA KELSEY: Yes.

1 ATTORNEY EMERY HARLAN: Okay. Now going back to
2 the, ah, affidavit -

3 MS. RHONDA KELSEY: Hmm-hmm.

4 ATTORNEY EMERY HARLAN: - that we submitted - so
5 you have been in the - basically in charge of the
6 purchasing department since 2008.

7 MS. RHONDA KELSEY: Yes.

8 ATTORNEY EMERY HARLAN: And during that time,
9 you've overseen literally hundreds of millions of dollars
10 of purchasing activity. Fair?

11 MS. RHONDA KELSEY: Yes.

12 ATTORNEY EMERY HARLAN: And you understand what
13 the rules and the processes and the guidelines because
14 that's your job.

15 MS. RHONDA KELSEY: Hmm-hmm.

16 ATTORNEY EMERY HARLAN: Right? Is that correct?

17 MS. RHONDA KELSEY: Yes.

18 ATTORNEY EMERY HARLAN: And you also understand
19 that, ah, folks like MWH or other, ah, proposers when they
20 submit documentation to the city making representations
21 about their status, um, they can get in trouble if they are
22 not truthfully providing information about their status,
23 right?

24 MS. RHONDA KELSEY: Yes.

25 ATTORNEY EMERY HARLAN: That's fraud.

1 MS. RHONDA KELSEY: Right.

2 ATTORNEY EMERY HARLAN: Did somebody in your
3 department reach a conclusion essentially then that MWH had
4 engaged in fraud by virtue of, ah, what's been marked as
5 exhibit 14, which is this affidavit, ah, attesting to its
6 LBE status?

7 MS. RHONDA KELSEY: No, and again, it's important
8 to point out that, um, what I share relative to the square
9 footage of the various properties was communicated to me in
10 October, post contract award. So -

11 ATTORNEY EMERY HARLAN: Okay, so the third page
12 of exhibit 14, um, which you said it's your understanding
13 was the basis for the person on your staff's decision to,
14 ah, basically say that MWH wasn't entitled - the MWH
15 Quarles & Brady proposal wasn't entitled to LBE points was
16 based on page three, correct?

17 MS. RHONDA KELSEY: Yes.

18 ATTORNEY EMERY HARLAN: Okay. And, and by that,
19 that person - is that Ms. Jeffries?

20 MS. RHONDA KELSEY: That is the purchasing agent
21 that was working on this -

22 ATTORNEY EMERY HARLAN: Karen Jeffries?

23 MS. RHONDA KELSEY: - proposal.

24 ATTORNEY EMERY HARLAN: Correct?

25 MS. RHONDA KELSEY: RFP. Yes.

1 ATTORNEY EMERY HARLAN: Okay. And your
2 understanding is she made that determination by simply
3 counting up the number of offices.

4 MS. RHONDA KELSEY: That is my understanding.

5 ATTORNEY EMERY HARLAN: Right.

6 MS. RHONDA KELSEY: Yeah.

7 ATTORNEY EMERY HARLAN: And -

8 MS. RHONDA KELSEY: Yes.

9 ATTORNEY EMERY HARLAN: Okay. And based on the
10 LBE program that's set forth in the city ordinances, as you
11 sit here today, you would concede that that's not the
12 appropriate way to make a determination as to whether
13 someone's entitled to the benefits that the city of
14 Milwaukee says should be afforded businesses that meet that
15 standard, correct?

16 MS. RHONDA KELSEY: Yes.

17 ATTORNEY EMERY HARLAN: So counting up the number
18 of offices doesn't get you there, right?

19 MS. RHONDA KELSEY: Yes, I would agree.

20 ATTORNEY EMERY HARLAN: Okay. And, and so it's
21 fair to say then that in the decision to deny the MWH
22 Quarles & Brady proposal those 10 points, that was in
23 error.

24 MS. RHONDA KELSEY: I would not necessarily yes
25 to that because I want to be careful about my response

1 about that because I'm not - I'm still not really clear
2 based on what you submitted later as to whether or not
3 truly the Milwaukee - you know, never - yes, I will just
4 say yes because what we did, quite honestly, is we now have
5 amended this form to get at that information so we can see
6 the actual square footage, so I will say yes.

7 CHAIRMAN VINCENT BOBOT: Ah, yes to - could you -
8 yes to what question? Somewhere we got lost -

9 ATTORNEY EMERY HARLAN: I think the answer is yes
10 that -

11 MS. RHONDA KELSEY: That -

12 ATTORNEY EMERY HARLAN: - the city made an error
13 -

14 MS. RHONDA KELSEY: Well, let me, let me explain
15 for myself; I'll do that. I will say that I think further
16 due diligence should have been done to determine what the
17 square footage was for each of the properties. That did
18 not occur. We've amended the form since then to be more
19 specific about that. As I stated, I think an assumption
20 was made that this particular, um, MWH has four offices and
21 that, um, the three of them are located outside of the city
22 of Milwaukee. So an assumption was made that the combined
23 space, square footage, what have you, exceeded the space at
24 the Milwaukee location. That was an assumption. Um,
25 again, since this, um, has occurred, we've amended this

1 form to ask proposers or bidders to tell us specifically
2 what, um, the square footage is for each business that's
3 located - or, excuse me - that's referenced in the LBE
4 form.

5 MR. BRAD HOESCHEN: Mr. Chair?

6 CHAIRMAN VINCENT BOBOT: Okay, Mr. Hoeschen?

7 MR. BRAD HOESCHEN: Ah, but Ms. Kelsey, I'm
8 confused. Here we are talking about whether or not MWH Law
9 Group qualifies as an LBE. But what I heard you say
10 earlier was that the proposal was, ah, submitted by Quarles
11 & Brady and so the determination as to whether or not they
12 are an LBE falls to Quarles & Brady, not to MWH. Is, is
13 that what I understood?

14 MS. RHONDA KELSEY: Tech - technically in the
15 ordinance, yes, that's true. What I'm saying is throughout
16 the process, MWH was - it was reviewed, those points were
17 reviewed, as it relates to MWH, not Q&B; that wasn't even a
18 thought at the time, is what I'm saying. Technically, it
19 applies to the prime. Yes, technically, that's how it
20 works.

21 MR. BRAD HOESCHEN: And since this RFP has been
22 awarded, have you made that analysis as to Quarles & Brady
23 or not?

24 MR. STEVE FRITSCHKE: You mean reanalysis?

25 MS. RHONDA KELSEY: Yeah, I was just going to -

1 MR. BRAD HOESCHEN: No. No, Quarles & Brady -
2 there's no, there's no affidavit for Quarles & Brady.

3 MR. STEVE FRITSCHKE: Hmm.

4 MR. BRAD HOESCHEN: The only affidavit -

5 MR. STEVE FRITSCHKE: Right, okay.

6 MR. BRAD HOESCHEN: - is for MWH. So, have you -

7 MS. RHONDA KELSEY: I haven't. The contract -

8 MR. BRAD HOESCHEN: Okay.

9 MS. RHONDA KELSEY: - has been awarded, I mean -

10 MR. BRAD HOESCHEN: Right. I understand.

11 MS. RHONDA KELSEY: - what -

12 MR. BRAD HOESCHEN: I understand. Thank you.

13 CHAIRMAN VINCENT BOBOT: Miss -

14 MS. RHONDA KELSEY: If you, if you want to be
15 technical about it, it applies to the prime; Quarles &
16 Brady signed the proposal.

17 MR. BRAD HOESCHEN: So then your pre - then
18 you're finding well, I, I understand your concerns about
19 your office's findings for MWH. But if the prime was
20 Quarles & Brady and you received a proposal where the
21 affidavit was from MWH, Quarles & Brady would get no
22 points; the result would be the same, right?

23 MS. RHONDA KELSEY: If -

24 MR. BRAD HOESCHEN: Because, because Quarles &
25 Brady -

1 MS. RHONDA KELSEY: If, if they did not -

2 MR. BRAD HOESCHEN: - did not submit an
3 affidavit.

4 MS. RHONDA KELSEY: If they would not have
5 submitted an affidavit, they would not have earned the
6 points.

7 MR. STEVE FRITSCHKE: Mr. Chair?

8 ATTORNEY EMERY HARLAN: I don't -

9 CHAIRMAN VINCENT BOBOT: Mister -

10 ATTORNEY EMERY HARLAN: Oh, I'm sorry.

11 CHAIRMAN VINCENT BOBOT: Mr. Fritzsche?

12 MR. STEVE FRITSCHKE: Um, the square footage that
13 is - is that part of the ordinance? Is that part of your,
14 um, pol - how is that - where is that -

15 MS. RHONDA KELSEY: It's in the ordinance.

16 MR. STEVE FRITSCHKE: It's in the ordinance.

17 MS. RHONDA KELSEY: Yes.

18 MR. STEVE FRITSCHKE: So if someone, ah, submits
19 an application, ah, such as we find in, ah, exhibit 14,
20 page three where they're listing four offices, it would
21 lend to confusion, and again, if you're not handholding
22 applicants, it seems to me the burden is on them to, you
23 know, explain that Milwaukee is the largest office.

24 MS. RHONDA KELSEY: I would agree.

25 MR. STEVE FRITSCHKE: Is that fair?

1 MS. RHONDA KELSEY: I think -

2 MR. STEVE FRITSCHKE: I mean -

3 MS. RHONDA KELSEY: - that is absolutely fair
4 assessment.

5 ATTORNEY EMERY HARLAN: Um, so Ms. Kelsey, you
6 said, um, in response to Mister - is it Hoeschen?

7 MR. BRAD HOESCHEN: It is, yes, thank you.

8 ATTORNEY EMERY HARLAN: Mr. Hoeschen's question
9 that in fact, based on how the process or the ordinance
10 works, that the status of the prime is what drives whether
11 these 10 points are awarded. Is that what your testimony
12 was now?

13 MS. RHONDA KELSEY: Yes.

14 ATTORNEY EMERY HARLAN: Can - now when you have
15 the ordinance in front of you on page - on exhibit four -
16 can you direct our attention to where it says that?

17 MS. RHONDA KELSEY: The ordinance on page four?

18 ATTORNEY EMERY HARLAN: Exhibit four, I'm sorry.

19 MR. BRAD HOESCHEN: That's chapter 370? Is that
20 right?

21 ATTORNEY EMERY HARLAN: Ah, 365.

22 CHAIRMAN VINCENT BOBOT: Three -

23 MR. BRAD HOESCHEN: Three sixty-five, thank you.

24 MS. RHONDA KELSEY: If you look at, um, section
25 365-7, it states that a contracting agency shall

1 [inaudible] contract - contrary to federal, state or local
2 law regulation apply an award standard in all formal
3 competitive bids so that an otherwise responsive and
4 responsible bidder, which is a Local Business Enterprise,
5 shall be awarded the contract, provided that its bid does
6 not exceed the lowest bid by more than five percent. So
7 we're referring to the actual bidder, not, not a partner,
8 not a subcontractor. That is where, um, I would offer that
9 information resides.

10 ATTORNEY EMERY HARLAN: We - first of all, I
11 mean, you testified earlier that this isn't a bid process,
12 right? This was a RFP. You testified extensively about
13 the fact that there's a distinction between -

14 MS. RHONDA KELSEY: Yes. So -

15 ATTORNEY EMERY HARLAN: - bids and RFP's,
16 correct?

17 MS. RHONDA KELSEY: I'll go on to speak to the
18 RFP section, which is section B. Um, it's similar language
19 but it, um, it speaks specifically to RFP's. So again,
20 where we're referring to, um, the RFP that's submitted by
21 the, the proposers, the prime proposer; not a sub, not a
22 partner.

23 ATTORNEY EMERY HARLAN: And does the word "prime"
24 appear anywhere in the ordinance in terms of dictating, ah,
25 who drives the award of LBE points?

1 MS. RHONDA KELSEY: In section B it says, "A
2 contracting agency shall, unless contrary to federal,
3 state, or local law regulation, apply an award standard in
4 the composition of scales used to evaluate proposals
5 submitted in response to formal Requests for Proposals to
6 be com - to procure goods or services.

7 ATTORNEY EMERY HARLAN: Yeah, I see that, but I
8 don't see where that says that the only and determining who
9 gets the points, ah, you only look to a prime.

10 MS. RHONDA KELSEY: We're not speaking - the fact
11 that we receive proposals, RFP, from the prime proposer
12 from the prime bidder, we re - we have - we receive
13 proposals and bids from an entity, a firm, a business. It
14 doesn't speak to subcontractors or partners -

15 MR. BRAD HOESCHEN: Mr. Chair?

16 MS. RHONDA KELSEY: - a formal Request for
17 Proposals, not for joint proposals, not for subs.

18 ATTORNEY EMERY HARLAN: Have you reviewed -

19 MR. BRAD HOESCHEN: Mr. Chair?

20 ATTORNEY EMERY HARLAN: Ah, go ahead, I'm sorry,
21 Mr. Hoeschen.

22 MR. BRAD HOESCHEN: Ah, I - can you look at the
23 front of page 16 for me? Or exhibit 16 for me, please?

24 MS. RHONDA KELSEY: Ah -

25 CHAIRMAN VINCENT BOBOT: You may not have

1 sixteen.

2 MS. RHONDA KELSEY: Yes.

3 MR. BRAD HOESCHEN: It's right there.

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: [Laughter]

5 MR. BRAD HOESCHEN: So this says, ah, "Response
6 to City of Milwaukee's Request for Proposal Number 14749
7 [Inaudible] for Disclosure," ah, "Disclosure Counsel
8 Services." It lists the deadline and under that it says,
9 "Quarles & Brady and MHW [sic] Law Group." Doesn't that
10 mean the proposer is both?

11 MS. RHONDA KELSEY: No, what - technically, the
12 proposer is the individual of the firm that signs the
13 binding signature page.

14 MR. BRAD HOESCHEN: On page eleven.

15 MS. RHONDA KELSEY: Correct. We have to know who
16 is submitting a response, who is submitting a bid. At the
17 end of the day, who are we going to cut a check to -

18 MR. BRAD HOESCHEN: That's the contractor.

19 MS. RHONDA KELSEY: - and it is, it is the
20 contractor that signs the binding signature page. We have
21 to have some clarity with that.

22 MR. BRAD HOESCHEN: [Inaudible]

23 CHAIRMAN VINCENT BOBOT: Okay, Mr. Harlan, you
24 had a question?

25 ATTORNEY EMERY HARLAN: So, Ms. Kelsey, up until

1 the point until the award was issued and an appeal filed,
2 did you review any of the proposals that were submitted in
3 connection with this dis - disclosure counsel process?

4 MS. RHONDA KELSEY: I have.

5 ATTORNEY EMERY HARLAN: Well, I understand you
6 have now, but the question is a little bit different. At
7 the time of the proposal process when the evaluation
8 committee was considering it, when RFP was out, did you
9 review any of the proposals?

10 MS. RHONDA KELSEY: Yes.

11 ATTORNEY EMERY HARLAN: Okay. And you saw then
12 what Mr. Hoeschen indicated, that, ah, on the proposal
13 submitted by Quarles & Brady and MWH, both firms were on
14 the cover page, right?

15 MS. RHONDA KELSEY: Hmm-hmm.

16 ATTORNEY EMERY HARLAN: And in the proposal, did
17 you understand how the economics and work division were set
18 forth?

19 MS. RHONDA KELSEY: What do you mean by the
20 economics and works division?

21 ATTORNEY EMERY HARLAN: Well, did the, did the
22 proposal discuss, um -

23 MS. RHONDA KELSEY: Who's the economics and works
24 division?

25 ATTORNEY EMERY HARLAN: Okay, let me, let me

1 clarify that. Did the proposal submitted by MWH and
2 Quarles indicate how the work was going to be divided?

3 MS. RHONDA KELSEY: Yes.

4 ATTORNEY EMERY HARLAN: And what was provided in
5 that proposal?

6 MS. RHONDA KELSEY: The, the joint venture
7 relationship.

8 ATTORNEY EMERY HARLAN: Well, I don't think the
9 term "joint venture," was ever used, but -

10 MS. RHONDA KELSEY: Co-partners. I could go back
11 and - do you want me to turn to the - you -

12 ATTORNEY EMERY HARLAN: I guess, isn't it true
13 that the proposal provided that the work would be divided
14 equally between the two firms?

15 MS. RHONDA KELSEY: Yes.

16 ATTORNEY EMERY HARLAN: Okay. And also, wasn't
17 it set forth expressly in the proposal that the money to be
18 earned in connection with the proposal would be divided
19 equally?

20 MS. RHONDA KELSEY: Yes.

21 ATTORNEY EMERY HARLAN: Okay.

22 MS. RHONDA KELSEY: I believe so.

23 CHAIRMAN VINCENT BOBOT: Well, you qual - you
24 qualified, "I believe so," but do you know? Or - I mean, I
25 only want you to answer what you know.

1 MS. RHONDA KELSEY: I mean, I can go back -

2 CHAIRMAN VINCENT BOBOT: If you have to guess -

3 MS. RHONDA KELSEY: - and check -

4 CHAIRMAN VINCENT BOBOT: Yeah -

5 MS. RHONDA KELSEY: Let me ver -let me verify.

6 CHAIRMAN VINCENT BOBOT: Can you verify -

7 MS. RHONDA KELSEY: Can you give me seven minutes
8 to, um -

9 CHAIRMAN VINCENT BOBOT: Take all the time you
10 need.

11 MS. RHONDA KELSEY: Something of that effect was
12 - um, proposal -

13 CHAIRMAN VINCENT BOBOT: I understand that when
14 you look for something, it becomes very hard to find. You
15 don't want to look for it, it's right in front of you.

16 MS. RHONDA KELSEY: Ah -

17 MR. AVERILL: And when someone points it out,
18 it's even harder.

19 ALL: [Laughter]

20 MS. RHONDA KELSEY: I think it's -

21 ASSISTANT CITY ATTORNEY KATHY BLOCK: Legal
22 disclosure counsel -

23 MS. RHONDA KELSEY: And I don't mind Mr. Harlan
24 like pointing directly to that page if that would help
25 expedite -

1 ASSISTANT CITY ATTORNEY KATHY BLOCK: I'm looking
2 for it, too. I -

3 MS. RHONDA KELSEY: This - yeah, I do - but let's
4 confirm for the record.

5 CHAIRMAN VINCENT BOBOT: Um -

6 MS. RHONDA KELSEY: Um -

7 CHAIRMAN VINCENT BOBOT: I'm just trying to
8 eliminate the guesswork.

9 MS. RHONDA KELSEY: Let's see, proposed - okay,
10 tab D, but I don't have the tabs so be patient with me.
11 Sorry.

12 ATTORNEY EMERY HARLAN: Look at, ah -

13 MR. BRAD HOESCHEN: Yeah, that's -

14 ATTORNEY EMERY HARLAN: Look at tab K.

15 MS. RHONDA KELSEY: Tab K.

16 CHAIRMAN VINCENT BOBOT: [Inaudible] putting you
17 to work.

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah, at
19 the end of that; just before tab L.

20 CHAIRMAN VINCENT BOBOT: [Inaudible]

21 MS. RHONDA KELSEY: I'm not sure - [inaudible].

22 Oh, here we go; here's tab L. Which, um - can you find it?
23 [Inaudible]

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: Are you
25 looking for tab K?

1 ATTORNEY EMERY HARLAN: Yes, tab K.

2 MR. BRAD HOESCHEN: She has it; she's just trying
3 to find the language she needs.

4 MS. RHONDA KELSEY: It's here.

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: Oh, yeah.

6 MR. BRAD HOESCHEN: She, she's got it, Linda.

7 MS. RHONDA KELSEY: It says, um, "Quarles," -

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah.

9 MS. RHONDA KELSEY: "[Inaudible] minimum of 20
10 percent of fees paid to LBE," - does it -

11 MS. LINDA ELMER: [Inaudible]

12 CHAIRMAN VINCENT BOBOT: Yeah, my finger's not
13 working that well.

14 MS. RHONDA KELSEY: [Inaudible]

15 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah, 20
16 percent, it's -

17 MS. RHONDA KELSEY: Oh, yeah. So it says,
18 "Quarles and Brady is," yeah, "committed to a meaningful
19 partnership with qualified LBE, SBE firms," which that,
20 "And has chosen MWH Law Group as its partner. Rather than
21 committing to the city's minimum of 20 percent of fees paid
22 to LBE, SBE firms, all fees will be split evenly between
23 both firms." There it is, yes.

24 ATTORNEY EMERY HARLAN: Thank you. So going back
25 to the, um, this Form A that apparently was the reason why,

1 ah, as your understanding that the, the MWH, um, Quarles
2 proposal had its points - after awarded in the procurement
3 process - withdrawn is because this Form A was not
4 submitted, correct?

5 MS. RHONDA KELSEY: Yes.

6 ATTORNEY EMERY HARLAN: And looking at the Form A
7 that, again, was the basis for your department's decision
8 to withdraw the points, what information does Form A ask
9 for that was not set forth in the proposal?

10 MS. RHONDA KELSEY: A description of the, um,
11 services to be offered by the SBE firm. There's a, um,
12 section right after the general information section of the
13 form.

14 ATTORNEY EMERY HARLAN: You - okay, so we're
15 looking at exhibit five. And can you direct me to -

16 MS. RHONDA KELSEY: It's just right here; the
17 section one, general information required. Um, so there's,
18 there's some lines here, a section, for you to describe the
19 work that will be performed. So in this section, you would
20 have ideally explained your - what you were attempting to
21 do: Your co-venture, your - how you would be involved with
22 this effort.

23 ATTORNEY EMERY HARLAN: So if you look at exhibit
24 five, the, the winning proposer, they described what they
25 were doing.

1 MS. RHONDA KELSEY: Right. I'm just looking at
2 the form; I'm just telling you what that section of the
3 form -

4 ATTORNEY EMERY HARLAN: And, and -

5 MS. RHONDA KELSEY: - is for.

6 ATTORNEY EMERY HARLAN: - I guess the only point
7 I'm making is every piece of information that Form A asks
8 for is in the proposal, right? There's, there's nothing
9 left out of Form A that is not disclosed in the proposal.

10 MR. BRAD HOESCHEN: Mr. Chair?

11 MS. RHONDA KELSEY: Well, the acknowledgement -
12 the acknowledgment piece of the arrangement, etcetera, um,
13 you know, it's a form that, um, you know, typically the
14 prime - cause we want their acknowledgement that this
15 arrangement exists. I mean, that's - you could argue
16 that's in the proposal.

17 CHAIRMAN VINCENT BOBOT: Okay, Mr. Hoeschen, you
18 have -

19 MS. RHONDA KELSEY: You could argue that.

20 MR. BRAD HOESCHEN: Mr. Harlan, your argument
21 here is substance over form?

22 ATTORNEY EMERY HARLAN: Exact - well, my, my
23 argument is -

24 MR. BRAD HOESCHEN: [Inaudible] require the form.
25 I mean, that's the problem. They -

1 ATTORNEY EMERY HARLAN: Well -

2 MR. BRAD HOESCHEN: - they actually get to decide
3 what you have to submit.

4 ATTORNEY EMERY HARLAN: Um, yeah. This board has
5 the authority though to determine whether the process was
6 followed and if not, if this process was not a fair process
7 and an injustice was done to do something about it, and
8 that's why the appeal has been filed.

9 CHAIRMAN VINCENT BOBOT: Fair -

10 ATTORNEY EMERY HARLAN: So -

11 CHAIRMAN VINCENT BOBOT: Fair enough. I, I think
12 you can proceed with the question.

13 ATTORNEY EMERY HARLAN: Right.

14 MR. AVERILL: Mister -

15 ATTORNEY EMERY HARLAN: Just like in, in the
16 situation where firms apply for SBE certification and the
17 department makes a judgement that the person doesn't
18 qualify, I've actually observed hearings where this board
19 has decided, based on the circumstances, that certification
20 should be awarded. Um, so with respect to this Form A, um
21 -

22 CHAIRMAN VINCENT BOBOT: I just want to interrupt
23 you for a moment. You had a, ah, question or a comment -

24 MR. AVERILL: I, I -

25 CHAIRMAN VINCENT BOBOT: - Mr. Averill?

1 MR. AVERILL: - have a question for Ms. Kelsey.

2 MS. RHONDA KELSEY: Hmm-hmm.

3 MR. AVERILL: Um, is it, is it the city's
4 requirement that the form, quote end quote, Form A, be
5 submitted by all proposers?

6 MS. RHONDA KELSEY: Yes.

7 MR. AVERILL: Thank you.

8 CHAIRMAN VINCENT BOBOT: I just want to go on the
9 record on that particular note that's been asked and
10 answered prior to this answer.

11 ATTORNEY EMERY HARLAN: And, and, Ms. Kelsey,
12 that's actually not an accurate response, right? Cause it,
13 it doesn't - first of all, the SBE participation points
14 were optional, am I correct?

15 MR. BRAD HOESCHEN: Is there, is there an
16 objection?

17 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah.

18 CHAIRMAN VINCENT BOBOT: What is the objection?

19 ASSISTANT CITY ATTORNEY KATHY BLOCK: Asked and
20 answered; a ton of times.

21 MR. BRAD HOESCHEN: And -

22 CHAIRMAN VINCENT BOBOT: I will sustain that. I,
23 I'm going to ask -

24 MR. BRAD HOESCHEN: And argumentative.

25 MS. RHONDA KELSEY: It's in black and white in -

1 CHAIRMAN VINCENT BOBOT: No, no. You don't need
2 to respond.

3 ATTORNEY EMERY HARLAN: Am, am I correct that SBE
4 points here were optional points that were available as a
5 bonus?

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Also asked
7 and answered.

8 MR. BRAD HOESCHEN: Yes.

9 CHAIRMAN VINCENT BOBOT: I will sustain that;
10 that that's been answered and that it was available

11 ATTORNEY EMERY HARLAN: Okay.

12 CHAIRMAN VINCENT BOBOT: The LBE and SBE were
13 available 10 and 10, for a total of 20 bonus points.

14 ATTORNEY EMERY HARLAN: So we were discussing,
15 ah, the, the issue of the LBE points. And just so I'm
16 clear, for purposes of this procurement, the purchasing
17 department's decision was that as long as one party to the
18 proposal that works -

19 ASSISTANT CITY ATTORNEY KATHY BLOCK: Also asked
20 and answered.

21 CHAIRMAN VINCENT BOBOT: Well, hold on, let him
22 finish the question because I, I want to see what he says.

23 ATTORNEY EMERY HARLAN: I just want to be clear
24 because we've talked about after the fact justifications
25 verses what the rules for this procurement. Am I clear

1 that for this procurement, what the requirement was, was
2 that one of the participants in a proposal had to meet the
3 criteria for LBE certification in the city ordinance and as
4 long as they did, they were entitled to the 10 points?

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: Asked and
6 answered.

7 MS. RHONDA KELSEY: Yes.

8 ATTORNEY EMERY HARLAN: Is the answer yes?

9 MS. RHONDA KELSEY: Yes.

10 CHAIRMAN VINCENT BOBOT: That's -

11 ATTORNEY EMERY HARLAN: Okay, thank you. So the
12 Form A that, ah, we've been talking about, is this a form
13 prepared by purchasing or is it a different department?

14 MS. RHONDA KELSEY: It's prepared by, um,
15 purchasing.

16 ATTORNEY EMERY HARLAN: So this isn't a form that
17 comes from the Small Business area?

18 MS. RHONDA KELSEY: I'm sorry, it - I apologize
19 for that because at one point, and let me be clear, um, the
20 Office of Small Business Development used to be a division
21 within what was known as the Business Operations Division,
22 so we were all together. So I'm, I'm thinking from that
23 lens; this is an OSBD form, because it was our form because
24 we were together. I apologize for the record. This is an
25 OSBD form, yes.

1 ATTORNEY EMERY HARLAN: Now during your, ah,
2 examination by the, by corporation counsel, ah, or city
3 attorney's office, um, you, you indicated that in order to,
4 to be able to get SBE bonus points, a firm had to be in the
5 status of a subcontractor.

6 MS. RHONDA KELSEY: No, I didn't say that. I
7 didn't say that.

8 ATTORNEY EMERY HARLAN: Okay, then I, I
9 misunderstood you. So it didn't matter what the status of
10 the firm was for purposes of a firm being entitled to the
11 SBE bonus points, as long as they had SBE certification,
12 ah, and completed Form A.

13 MS. RHONDA KELSEY: Yes.

14 ATTORNEY EMERY HARLAN: Okay. So turning to
15 exhibit 10, if you look at the third to the last sentence,
16 it reads: "The Office of Small Business Development
17 Contractor Compliance Plan Form A must be completed and
18 submitted with your proposal if you intend to use an SBE
19 subcontractor."

20 MS. RHONDA KELSEY: Hmm-hmm.

21 CHAIRMAN VINCENT BOBOT: Is that a yes? I mean,
22 you have -

23 MS. RHONDA KELSEY: That's how it works.

24 CHAIRMAN VINCENT BOBOT: - to verbalize.

25 MS. RHONDA KELSEY: That's not a reason -

1 CHAIRMAN VINCENT BOBOT: No, you -

2 MR. BRAD HOESCHEN: You just said, "Uh-huh."

3 CHAIRMAN VINCENT BOBOT: You have to verbalize
4 it.

5 MS. RHONDA KELSEY: Oh, yes. I'm sorry. I'm
6 sorry, I need some more coffee. I'm sorry.

7 ATTORNEY EMERY HARLAN: So for the expressed -
8 the rules of the role for this procurement was that the
9 Form A is only required in two conditions. If both
10 conditions are met, there is - you're seeing SBE points and
11 you have an SBE on your team and that -

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: Objection;
13 drawing a legal conclusion [laughter].

14 CHAIRMAN VINCENT BOBOT: I'm going to sustain
15 that.

16 ATTORNEY EMERY HARLAN: Okay. So am I correct
17 then, looking at the rules that your office established for
18 this procurement, if a SBE firm was not operating as a
19 subcontractor, there was no requirement under the rules
20 that your office established for the Form A.

21 MS. RHONDA KELSEY: No, I'm not saying that.

22 ATTORNEY EMERY HARLAN: Well, how do you, how do
23 you, I guess, harmonize that with what you just read?

24 MS. RHONDA KELSEY: Because that's typically the
25 way it works. This is unusual. That doesn't discount

1 anything else; you just need to submit some Form A. I
2 don't, I don't know how else to explain that.

3 ATTORNEY EMERY HARLAN: Okay. So if I - again,
4 this -

5 MS. RHONDA KELSEY: Is that why you chose -

6 CHAIRMAN VINCENT BOBOT: No -

7 MS. RHONDA KELSEY: Can I ask a question?

8 CHAIRMAN VINCENT BOBOT: Just answer -

9 MS. RHONDA KELSEY: Can I ask him a question?

10 CHAIRMAN VINCENT BOBOT: Just answer questions
11 put to you because I don't want -

12 MS. RHONDA KELSEY: Sorry.

13 ATTORNEY EMERY HARLAN: So -

14 CHAIRMAN VINCENT BOBOT: - arguing. I mean, you
15 clearly say you have to submit Form A. It wasn't done.

16 ATTORNEY EMERY HARLAN: Right.

17 MS. RHONDA KELSEY: Right.

18 ATTORNEY EMERY HARLAN: So exhibit 10 was
19 prepared by your office, correct?

20 MS. RHONDA KELSEY: Exhibit ten.

21 MR. BRAD HOESCHEN: Where are you reading -

22 MS. RHONDA KELSEY: Ah, yes.

23 MR. BRAD HOESCHEN: - that? Exhibit ten?

24 MR. STEVE FRITSCHKE: Yes, what page.

25 MR. BRAD HOESCHEN: Yeah.

1 ATTORNEY EMERY HARLAN: Oh, so exhibit 10 -

2 MS. RHONDA KELSEY: Yes.

3 ATTORNEY EMERY HARLAN: - page two.

4 MR. BRAD HOESCHEN: Right.

5 ATTORNEY EMERY HARLAN: Ah, under the SBE
6 participation box.

7 MR. BRAD HOESCHEN: Yep. Uh-huh.

8 ATTORNEY EMERY HARLAN: The sentence I read was,
9 I think, like the third from the bottom: "The Office of
10 Small Business Development," - are you guys there yet?

11 MR. BRAD HOESCHEN: Yep.

12 MR. STEVE FRITSCHKE: Yep.

13 ATTORNEY EMERY HARLAN: "The Office of Small
14 Business Development Contractor Compliance Plan Form A,"
15 which is what we've been discussing, "must be completed and
16 submitted with your proposal if you intend to utilize an
17 SBE subcontractor." Right?

18 MR. BRAD HOESCHEN: Subcontractor.

19 MS. RHONDA KELSEY: It says that, yes.

20 ATTORNEY EMERY HARLAN: So what that means is if
21 the SBE firm is in some other capacity, not serving as a
22 subcontractor, that form is not required for this
23 procurement.

24 MS. RHONDA KELSEY: It doesn't mean that. That,
25 that's, that's not what that means.

1 ATTORNEY EMERY HARLAN: Okay. What does the term
2 "subcontractor" mean based on your understanding of the
3 term as a person in charge of the department that put this
4 procurement together?

5 MS. RHONDA KELSEY: A subcontractor's a
6 subcontractor. The -

7 ATTORNEY EMERY HARLAN: Okay.

8 MS. RHONDA KELSEY: - sub to a prime contract.

9 ATTORNEY EMERY HARLAN: In your experience, Ms.
10 Kelsey, have you ever seen a subcontractor contractor
11 relationship when both parties in that relationship are
12 dividing the money equally and the work equally.

13 MS. RHONDA KELSEY: I've never seen -

14 CHAIRMAN VINCENT BOBOT: Hold on, hold on a
15 second. I only want you to answer it if you know it. If
16 you don't know it, say you don't know it.

17 MS. RHONDA KELSEY: Okay.

18 CHAIRMAN VINCENT BOBOT: I don't want you
19 speculating.

20 MS. RHONDA KELSEY: Okay. Restate the question,
21 thank you.

22 ATTORNEY EMERY HARLAN: Based on your knowledge -
23 you have extensive experience in procurement for the city,
24 correct?

25 MS. RHONDA KELSEY: Yes.

1 ATTORNEY EMERY HARLAN: And in fact, under your
2 watch, every year millions of dollars are overseen by you
3 and your office, correct? In terms of purchases?

4 MS. RHONDA KELSEY: Yes.

5 ATTORNEY EMERY HARLAN: And my, my only question
6 is have you ever seen a subcontractor contractor
7 relationship when both parties are equally dividing the
8 work and the money?

9 MS. RHONDA KELSEY: No.

10 ATTORNEY EMERY HARLAN: Okay, thank you.

11 MR. BRAD HOESCHEN: Mr. Har - Mr. Chair?

12 CHAIRMAN VINCENT BOBOT: Mr. Hoeschen?

13 MR. BRAD HOESCHEN: Mr. Harlan, are you telling
14 us that Quarles & Brady read this provision and made the
15 determination that they didn't need to submit Form A
16 because they didn't have a subcontractor?

17 ATTORNEY EMERY HARLAN: Absolutely. That's
18 exactly what I'm telling you.

19 MR. BRAD HOESCHEN: That's naïve.

20 ATTORNEY EMERY HARLAN: Okay. Well, I, I beg to
21 differ but that's exactly what -

22 CHAIRMAN VINCENT BOBOT: I just think it's a
23 stretch.

24 ATTORNEY EMERY HARLAN: Okay.

25 MR. BRAD HOESCHEN: Alright. I, I understand

1 your argument.

2 ATTORNEY EMERY HARLAN: So let me, let me ask it
3 this way, Ms. Kelsey. What, what is a subcontractor?

4 CHAIRMAN VINCENT BOBOT: I - I'm going to -

5 ATTORNEY EMERY HARLAN: I mean, she's using -
6 these are the operative words in the proposal in the RFP
7 that her office designed and drafted and submitted that
8 everyone had to operate under. And I think it's a very
9 fair question to understand -

10 CHAIRMAN VINCENT BOBOT: You can answer -

11 ATTORNEY EMERY HARLAN: - what subcontractor
12 means?

13 CHAIRMAN VINCENT BOBOT: - if you, if you can, I
14 guess.

15 MS. RHONDA KELSEY: What is the definition of a
16 subcontractor?

17 ATTORNEY EMERY HARLAN: Your office used the
18 term, so -

19 MS. RHONDA KELSEY: Sub to a prime contractor.

20 ATTORNEY EMERY HARLAN: I'm sorry?

21 MS. RHONDA KELSEY: The sub to a prime
22 contractor.

23 ATTORNEY EMERY HARLAN: And when you say a "sub,"
24 does that mean that one is working for the other?

25 MS. RHONDA KELSEY: You could interpret it that

1 way, yes. Yes.

2 MR. BRAD HOESCHEN: Mr. Chair?

3 CHAIRMAN VINCENT BOBOT: Yes, Mr. Hoeschen?

4 MR. BRAD HOESCHEN: But, Mr. Harlan, let's read
5 the second full sentence of that bonus paragraph then. It
6 says, "Proposers who utilize a city certified SBE vendor
7 for this contract will be eligible for up to 10 additional
8 points for subcontracting a portion of the work with a city
9 certified SBE vendor." So you only get those points if you
10 use a subcontractor. If you are arguing that Quarles &
11 Brady and MWH were simply one bidder, you're not eligible.

12 ATTORNEY EMERY HARLAN: Um, Mr. Hoeschen, let me,
13 first of all, the record is clear. Ms. Kelsey has
14 testified as a person who's in charge of the procurement
15 that a firm did not necessarily have to be in that capacity
16 in order to get the SBE points. Did she test - so testify
17 -

18 MR. BRAD HOESCHEN: But you don't get it both
19 ways, Mr. Harlan. You're saying you didn't have to submit
20 Form A because you weren't a subcontractor but then on the
21 other side of the coin, you're asking us to say, "Well, but
22 you don't have to read this language that says you only get
23 the points if you have a subcontractor."

24 ATTORNEY EMERY HARLAN: Ah, Mr. Hoeschen, I'm,
25 I'm not asking you that. I, I - Ms. Kelsey testified

1 clearly on the record that the points were not a function
2 of being a subcontractor. That's what she said; that's the
3 testimony. You can't unscramble that. That's her
4 testimony. Her office was in charge of the procure - of
5 the procurement. That's what she testified.

6 MR. BRAD HOESCHEN: But she also testified that
7 subcontractor doesn't mean subcontractor for purses - for
8 purposes of the Form A and you're telling us to ignore
9 that.

10 ATTORNEY EMERY HARLAN: I don't think that's -

11 MR. BRAD HOESCHEN: You, you get one or the
12 other; you don't get them both.

13 ATTORNEY EMERY HARLAN: Ah, I'll move on cause I
14 think -

15 MS. RHONDA KELSEY: Okay.

16 ATTORNEY EMERY HARLAN: - the record is clear but
17 I do just want to finish the questioning about what is a
18 subcontractor because I think the words obviously matter in
19 the procurement; that's what we're here for.

20 ASSISTANT CITY ATTORNEY KATHY BLOCK: And I, and
21 I'm sorry, I'm just going to interrupt for two seconds and
22 say obviously, we're getting up to 11:00. I know, ah, Mr.
23 Anderson has to leave by noon and we -

24 CHAIRMAN VINCENT BOBOT: Ah, how much more time
25 for -

1 ASSISTANT CITY ATTORNEY KATHY BLOCK: - have
2 another witness who's going to have problems this
3 afternoon, so.

4 CHAIRMAN VINCENT BOBOT: How much more time for
5 the questioning -

6 ATTORNEY EMERY HARLAN: Um -

7 CHAIRMAN VINCENT BOBOT: - that you anticipate
8 for Ms. Kelsey?

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: And I -

10 ATTORNEY EMERY HARLAN: Probably another, ah,
11 five minutes at the most?

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: Oh, okay.
13 I'm sorry.

14 ATTORNEY EMERY HARLAN: I'll move on.

15 MR. BRAD HOESCHEN: [Inaudible]

16 CHAIRMAN VINCENT BOBOT: [Inaudible] I do, too.

17 ATTORNEY EMERY HARLAN: Ah, Ms. Kelsey, when did
18 you become aware of the issues relating to, ah, I guess,
19 two bidders not receiving, ah, or basically having their
20 points withdrawn that had been awarded in the procurement
21 process?

22 MS. RHONDA KELSEY: Recently.

23 ATTORNEY EMERY HARLAN: Okay, so not until after
24 the award was made was that decision something that you
25 were aware of. And was that decision made by the

1 evaluation committee or was it made by your office?

2 MS. RHONDA KELSEY: The decision to rescind the
3 points?

4 ATTORNEY EMERY HARLAN: Yes.

5 MS. RHONDA KELSEY: My office.

6 ATTORNEY EMERY HARLAN: Okay. So the evaluation
7 committee went through, assigned SBE points, and your
8 office made the decision to withdraw the points, correct?

9 MS. RHONDA KELSEY: Yes.

10 ATTORNEY EMERY HARLAN: Okay. And so the, the
11 evaluation committee was never afforded an opportunity to,
12 um, make a decision about whether the points should be
13 awarded or not.

14 MS. RHONDA KELSEY: Yes.

15 ATTORNEY EMERY HARLAN: Okay. And is there
16 somewhere in the RFP documents, um, or the city's
17 ordinance, that allows in a RFP process the purchasing
18 department to make that decision?

19 MS. RHONDA KELSEY: The process is such that the
20 compliance review for the different requirements does occur
21 on the front end of the process. So the proposal should be
22 sent to the committee with that compliance review for the
23 different, um, requirements beforehand. But that wasn't
24 the case.

25 ATTORNEY EMERY HARLAN: So the, the new - the

1 standard operating procedure for, ah, how procurement
2 should be handled in the RFP context - if, if I understand
3 your testimony - for whatever reason wasn't followed in
4 this case.

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: If you're
6 aware.

7 CHAIRMAN VINCENT BOBOT: Or if you understand the
8 question.

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: [Laughter]

10 MS. RHONDA KELSEY: Can you restate the question?

11 ATTORNEY EMERY HARLAN: Well, you said normally
12 the compliance process happens before the folks on the
13 evaluation committee get the proposals.

14 MS. RHONDA KELSEY: Yes.

15 ATTORNEY EMERY HARLAN: So they know, for
16 instance, if someone is not compliant.

17 MS. RHONDA KELSEY: So in checking for forms and
18 things like that, that, that would happen beforehand, yes.

19 ATTORNEY EMERY HARLAN: Right. And that didn't
20 happen here.

21 MS. RHONDA KELSEY: Correct.

22 ATTORNEY EMERY HARLAN: Okay. With respect to
23 the Quarles & Brady and MWH proposal, you, you've indicated
24 that one problem with the proposal was the failure to
25 submit this Form A, given that the proposal team was

1 seeking SBE points, correct?

2 MS. RHONDA KELSEY: Restate the question, I'm
3 sorry.

4 ATTORNEY EMERY HARLAN: Let me ask it a different
5 way. Other than the fact that the Quarles & Brady MWH
6 proposal omitted Form A, were there any other defects, any
7 other things missing, any other things omitted from the
8 proposal that would suggest that it was a sloppy proposal?

9 MS. RHONDA KELSEY: Not that I'm aware of.

10 ATTORNEY EMERY HARLAN: Okay. Did they fail to
11 follow - did the proposal fail to follow the city's rules
12 and guidelines in any other respect?

13 MS. RHONDA KELSEY: Not that I'm aware of.

14 ATTORNEY EMERY HARLAN: So the, the only thing
15 that was amiss was this Form A that you maintain, ah,
16 needed to be filed in order to get the SBE points.

17 MS. RHONDA KELSEY: Yes.

18 ATTORNEY EMERY HARLAN: Is that, "Yes?"

19 MS. RHONDA KELSEY: Yes.

20 ATTORNEY EMERY HARLAN: Okay. Did you, did you
21 look at, ah, exhibit two? I just want to confirm that
22 that's your email correspondence with a representative of
23 Quarles & Brady on the date and time indicated?

24 MS. RHONDA KELSEY: Yes, it is.

25 ATTORNEY EMERY HARLAN: Okay. Going back to the,

1 ah, LBE form, ah, affidavit that was submitted by, ah, MWH
2 in connection with the MWH Quarles bid.

3 MS. RHONDA KELSEY: Hmm-hmm.

4 ATTORNEY EMERY HARLAN: There was a question
5 raised about, ah, what was listed on the last page in terms
6 of property.

7 MS. RHONDA KELSEY: Hmm-hmm.

8 ATTORNEY EMERY HARLAN: Does that page ask for
9 information about leases?

10 MS. RHONDA KELSEY: No.

11 CHAIRMAN VINCENT BOBOT: What was the answer?

12 MS. RHONDA KELSEY: No.

13 CHAIRMAN VINCENT BOBOT: Okay.

14 ATTORNEY EMERY HARLAN: And it asks for business
15 property, correct? It asks for locations of business
16 property, right?

17 MS. RHONDA KELSEY: Um, space is not - the amount
18 of space is not referenced, correct.

19 ATTORNEY EMERY HARLAN: Well, not only that, but
20 it asks about business property, so that's computers,
21 notebooks, desks. Business property is not just leases,
22 right?

23 MS. RHONDA KELSEY: No, that's not the -

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: That calls
25 for legal conclusion.

1 MS. RHONDA KELSEY: That's not -

2 ASSISTANT CITY ATTORNEY KATHY BLOCK: Objection.

3 MS. RHONDA KELSEY: - the intent of the
4 ordinance.

5 CHAIRMAN VINCENT BOBOT: Hold on a second.

6 MS. RHONDA KELSEY: It's relative -

7 CHAIRMAN VINCENT BOBOT: There's an objection.

8 MS. RHONDA KELSEY: Oh, I'm sorry.

9 CHAIRMAN VINCENT BOBOT: Ah, I guess -

10 ATTORNEY EMERY HARLAN: I, I just want to address
11 there was a concern raised by the board that maybe MWH was
12 responsible for confusing, ah, the purchasing officials in
13 this particular instance and the point I'm making is that
14 this asks for where your business property is located. It
15 doesn't say, "Where you have leases." It doesn't ask that
16 question. So if you are properly putting information on
17 this form, it requires you to list, literally, the location
18 in terms of city, whatever, where you have property, which
19 we did.

20 ASSISTANT CITY ATTORNEY KATHY BLOCK: And you're
21 free to make that argument to the board.

22 ATTORNEY EMERY HARLAN: It's not an argument;
23 it's, it's on the form.

24 CHAIRMAN VINCENT BOBOT: Well, I think you stated
25 that pretty clearly and I think we understand what's going

1 on.

2 ATTORNEY EMERY HARLAN: Okay.

3 CHAIRMAN VINCENT BOBOT: In that regard.

4 ATTORNEY EMERY HARLAN: I'll move on. Thank you.

5 CHAIRMAN VINCENT BOBOT: We don't have any
6 confusion there.

7 ATTORNEY EMERY HARLAN: Going back to the, um,
8 the Form A, um, is it my understanding if - was it your
9 testimony that if MWH was the only bidder for this that it
10 would be, would be required to fill out Form A?

11 MS. RHONDA KELSEY: If it were seeking to qualify
12 for SBE points, yes.

13 ATTORNEY EMERY HARLAN: So it would fill out a
14 Form A, which asks to indicate who was going to subcontract
15 with in terms of an SBE even though it is an SBE?

16 MS. RHONDA KELSEY: The, the intent of the form
17 is to simply provide a description of how the SBE is going
18 to serve under, or operate under, the contract. So it's a
19 - the form is required of all proposers. It's, um - that's
20 what it is.

21 ATTORNEY EMERY HARLAN: Okay.

22 CHAIRMAN VINCENT BOBOT: A follow-up question at
23 this point, if it's appropriate. Was there any objections,
24 lodged by Quarles and Barry - Quarles and Brady - or MWH
25 about having to submit Form A, to your knowledge?

1 MS. RHONDA KELSEY: No.

2 CHAIRMAN VINCENT BOBOT: Thank you.

3 ATTORNEY EMERY HARLAN: Just to follow-up on, ah,
4 Chairman Bobot's question, where in the process would we
5 lodge an objection about Form A, ah, if there was no
6 subcontractor part of the proposal process?

7 MS. RHONDA KELSEY: It's the question and answer
8 process, or period, to obtain clarity about what's being
9 asked for under the proposal or what, you know, any
10 questions that you may have about the forms. It's the
11 process that I referred to earlier, which is typically
12 seven days before, um, the proposals are due.

13 ATTORNEY EMERY HARLAN: Were there any
14 discussions that you were a part of - leaving aside the
15 city attorney - um, were there any discussions with the
16 controller's office about this particular procurement? Did
17 you talk to Mr. Matson, Mr. Lee, about this procurement?

18 MS. RHONDA KELSEY: Yes.

19 ATTORNEY EMERY HARLAN: Okay. At what point?

20 MS. RHONDA KELSEY: Early on. I mean, they have
21 to submit a request, you know, the requisition, the actual
22 forms, clarity would occur, if necessary, regarding any
23 information in a proposal.

24 ATTORNEY EMERY HARLAN: And did you -

25 MS. RHONDA KELSEY: That's just the normal back

1 and form in trying to get an RFP on the street for, um, a
2 firm.

3 ATTORNEY EMERY HARLAN: And did -

4 MS. RHONDA KELSEY: Ah, user department, sorry.

5 ATTORNEY EMERY HARLAN: And were you personally
6 involved in those discussions or was that someone on your
7 staff?

8 MS. RHONDA KELSEY: I don't recall having any
9 conversations directly with Marty or anybody from the
10 comptroller's office about it, no.

11 ATTORNEY EMERY HARLAN: Um, just a couple of
12 additional questions. Um, for clarity's sake, under what
13 circumstances, based on your understanding of the
14 purchasing rules, are departments like - or, or, um, parts
15 of the city government, like the controller's office -
16 allowed to enter into an agreement without going through a
17 competitive bid or an RFP process? Is there a dollar
18 amount?

19 MS. RHONDA KELSEY: Restate that question. I'm
20 sorry.

21 ATTORNEY EMERY HARLAN: Is an RFP / competitive
22 bidding process always required?

23 MS. RHONDA KELSEY: What is required from user
24 departments is, um - no. No. So departments are required
25 to submit a procurement request, a requisition to the

1 purchasing department, when the dollar value of the service
2 is \$5,000 or more.

3 ATTORNEY EMERY HARLAN: Okay.

4 MS. RHONDA KELSEY: That's -

5 ATTORNEY EMERY HARLAN: So if this board, for
6 instance, um -

7 MS. RHONDA KELSEY: They may - I'm sorry.

8 ATTORNEY EMERY HARLAN: - wanted to, as a remedy,
9 simply have MWH / Quarles & Brady added as an additional
10 disclosure counsel firm, if that was the wisdom and
11 judgment of this board, um, is there anything that would
12 preclude them from doing that as far as you know?

13 MS. RHONDA KELSEY: They would have to,
14 obviously, follow city policy and procedure. I mean, that,
15 that's an option. I mean, in accordance with city policy
16 and - policies and procedures. I don't -

17 CHAIRMAN VINCENT BOBOT: [Inaudible]

18 MS. RHONDA KELSEY: - really understand the
19 question, to be honest, where you're going with that. I
20 know where you're going with that, but -

21 ALL: [Laughter]

22 MS. RHONDA KELSEY: I'm sorry.

23 MR. BRAD HOESCHEN: We all did.

24 CHAIRMAN VINCENT BOBOT: I think we realize what
25 he's trying to do is an example we can do as remedy but -

1 MR. BRAD HOESCHEN: [Laughter]

2 CHAIRMAN VINCENT BOBOT: - that would be up to us
3 and then others.

4 MR. BRAD HOESCHEN: We're not going to -

5 MS. RHONDA KELSEY: Yes.

6 CHAIRMAN VINCENT BOBOT: It would not be fair for
7 you to answer that question -

8 MS. RHONDA KELSEY: Yeah.

9 CHAIRMAN VINCENT BOBOT: - cause it would be up
10 to the other people, other than yourself -

11 MS. RHONDA KELSEY: Yes, not my - right?

12 ATTORNEY EMERY HARLAN: I think I'm done.

13 CHAIRMAN VINCENT BOBOT: Any further questions
14 from the city?

15 ASSISTANT CITY ATTORNEY KATHY BLOCK: I do have a
16 couple; I think can - yeah, get them done in, let's say,
17 five minutes. Um, you were earlier asked about the LBE
18 affidavit submitted by MWH and if you concluded that fraud
19 was involved in the submission of that form. In your
20 experience, could there be other explanations why a form
21 submitted might not rise to the level of fraud but might
22 also, um, demonstrate noncompliance with the requirements
23 of the ordinance?

24 MS. RHONDA KELSEY: Yes.

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: And what

1 might those be?

2 UNKNOWN MALE SPEAKER: Negligence.

3 MS. RHONDA KELSEY: Questionable information. I
4 mean, I don't - I mean -

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: A person
6 could make an error or misunderstand their requirements of
7 the ordinance, for instance.

8 MS. RHONDA KELSEY: Right.

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. Um,
10 with regard to the, um, proposal submitted by Quarles &
11 Brady, exhibit 16 that you have in front of you, um, if you
12 skim the table of contents and look at the tabs, um, as
13 opposed to say, the cover page, which indicates both
14 parties there. Um, a lot of the tabs mention "lead
15 disclosure counsel." Is that, ah, correct there on the
16 table of contents page, which is under tab A?

17 MS. RHONDA KELSEY: Yes.

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, and one
19 of them has proposed - ah, tab L - a proposed code
20 disclosure counsel information. Is that correct?

21 MS. RHONDA KELSEY: Yes.

22 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, if just
23 skimming through that, the sections that deal - let's see,
24 one, two, three, four, five - at least deal with lead
25 disclosure counsel information. Um, do those sections, ah,

1 talk primarily about Quarles & Brady or about MWH?

2 MS. RHONDA KELSEY: Quarles & Brady.

3 ASSISTANT CITY ATTORNEY KATHY BLOCK: Thank you.

4 Um, and now I guess my last questions just deal with, um,
5 Form A, um, and we've got a copy of that in - as exhibit
6 five. Um, but speak to it generally; not specifically to
7 the Hurtado [sounds like], um, form.

8 MS. RHONDA KELSEY: Which exhibit? I'm sorry.

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: I'm sorry,
10 exhibit five.

11 MS. RHONDA KELSEY: Okay.

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: In addition
13 to the description of the services that are provided by an
14 SBE subcontractor, um, there are acknowledgments on that
15 form as you testified to, correct?

16 MS. RHONDA KELSEY: Yes.

17 ASSISTANT CITY ATTORNEY KATHY BLOCK: Why might
18 those be important?

19 MS. RHONDA KELSEY: Because we want all of the
20 parties to acknowledge the, the arrangement; what's going
21 to, um, the service that will provided, um, by all parties
22 involved.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: Is that,
24 um, sometimes particularly important that an SBE attest to
25 that information?

1 MS. RHONDA KELSEY: Yes.

2 ASSISTANT CITY ATTORNEY KATHY BLOCK: Why's that?

3 MS. RHONDA KELSEY: Because we don't want to be
4 in a situation where we're possibly dealing with fronts, or
5 pass throughs, or we want to make sure that the
6 relationship is legitimate. So we want the, you know, the
7 SBE firm to attest to the partnership, the - whatever the
8 relationship is. We need them to attest to that.

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. And
10 at the top of page one of that form, um, which for some
11 reason in my copy - I may be looking at it wrong - is kind
12 of on the back. Um, does it indicate that this form must
13 be submitted with, ah, an invitation to bid or a request
14 for proposal?

15 MS. RHONDA KELSEY: Yes.

16 ASSISTANT CITY ATTORNEY KATHY BLOCK: Thanks.
17 Um, is there another means, um, by which a person who's
18 considering, um, submitting a bid or a req - or a proposal
19 in response to Request for Proposal might, um, question or,
20 um, file some sort of appeal process regarding, um,
21 specifications that appear in a proposal or a - or Request
22 for Proposal - or Request for Bid, aside from the question
23 and answer period you mentioned that was present here?

24 MS. RHONDA KELSEY: There's an appeal process for
25 bids, yes.

1 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, after
2 the award that exists, right?

3 MS. RHONDA KELSEY: Um, actually, um, a bidder,
4 um, can actually award the, um - I'm sorry, appeal the
5 actual specifications or the award. So there's two options
6 available.

7 ASSISTANT CITY ATTORNEY KATHY BLOCK: I expect
8 appeals are available for, um, for Request for Proposals,
9 too?

10 MS. RHONDA KELSEY: No.

11 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay. Um,
12 and I think that's all I've got.

13 CHAIRMAN VINCENT BOBOT: Any follow-up questions,
14 Mr. Harlan?

15 ATTORNEY EMERY HARLAN: Just, just a couple
16 follow-ups. I forgot to ask you, um -

17 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well, is
18 that re - re-direct? Or, I forgot to ask -

19 CHAIRMAN VINCENT BOBOT: I don't know what the
20 question is, so -

21 ATTORNEY EMERY HARLAN: Is - was there an
22 interview process contemplated in this proposal process?

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well,
24 again, re - or, I forgot to ask you, or -

25 ATTORNEY EMERY HARLAN: Okay, it's -

1 CHAIRMAN VINCENT BOBOT: I'll let her answer if
2 she knows.

3 MS. RHONDA KELSEY: Interview, of, whom?

4 CHAIRMAN VINCENT BOBOT: It's kind of general.

5 ATTORNEY EMERY HARLAN: Yeah, so as part of the
6 RFP process, is there usually, um, well, strike that. As
7 part of the normal RFP process, um, once the closest, ah,
8 firms in terms of points are narrowed, is there typically
9 an interview process?

10 MS. RHONDA KELSEY: It's an option; it's not a
11 requirement.

12 ATTORNEY EMERY HARLAN: Okay. Do you know if
13 that was contemplated in this particular case?

14 MS. RHONDA KELSEY: Not - no, I don't. I can't
15 answer that.

16 ATTORNEY EMERY HARLAN: Okay. Counsel asked you
17 about, ah, Quarles & Brady being designated as lead,
18 correct?

19 MS. RHONDA KELSEY: She, she asked me if that was
20 referenced in the proposal.

21 ATTORNEY EMERY HARLAN: Yeah.

22 MS. RHONDA KELSEY: Yes.

23 ATTORNEY EMERY HARLAN: And in fact, RFP required
24 that a firm be designated as lead, correct?

25 MS. RHONDA KELSEY: Yes.

1 ATTORNEY EMERY HARLAN: And she also asked you
2 about the fact that Quarles & Brady signed the proposal
3 that came from MWH and Quarles & Brady but in fact, it was
4 only one signature block, um, for a firm to sign, correct?

5 MS. RHONDA KELSEY: Yes. Yes.

6 MR. BRAD HOESCHEN: I don't think he heard you.

7 MS. RHONDA KELSEY: I'm sorry, yes.

8 MR. BRAD HOESCHEN: It's okay.

9 MS. RHONDA KELSEY: Yes.

10 ATTORNEY EMERY HARLAN: Okay. And then, finally,
11 with respect to the acknowledgement significance of the
12 Form A, you would agree if a proposal was coming from two
13 law firms where they set forth what the relationship is,
14 that clearly indicates to all parties involved, as well as
15 the purchaser, what the relationship is, correct?

16 MS. RHONDA KELSEY: Yes.

17 ATTORNEY EMERY HARLAN: And then, the truly final
18 question. On this Form A, um, if you look at the top, it
19 said the, the form must be submitted by everybody, whether
20 you have SBE participation or not. Correct?

21 MS. RHONDA KELSEY: No.

22 ATTORNEY EMERY HARLAN: Doesn't it say that?

23 MS. RHONDA KELSEY: No, regardless of SBE
24 participation or the lack thereof.

25 ATTORNEY EMERY HARLAN: Right. So that means if

1 you have SBE participation or not -

2 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well -

3 ATTORNEY EMERY HARLAN: - you're supposed to fill
4 out that form.

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: You're
6 getting -

7 ATTORNEY EMERY HARLAN: Is that what it says?

8 MS. RHONDA KELSEY: I don't know why it says
9 that; that makes no sense.

10 ATTORNEY EMERY HARLAN: Right.

11 MS. RHONDA KELSEY: We wouldn't ask anybody to
12 submit it if they're not - if there is no SBE involvement.
13 That's a question for OSBD -

14 ATTORNEY EMERY HARLAN: Oh.

15 MS. RHONDA KELSEY: - I'm sorry.

16 ATTORNEY EMERY HARLAN: So that would defy common
17 sense, correct?

18 CHAIRMAN VINCENT BOBOT: Well, we're going to
19 just note that exhibit five has been admitted as evidence.

20 ATTORNEY EMERY HARLAN: And, in fact -

21 CHAIRMAN VINCENT BOBOT: Just [inaudible] from
22 that.

23 ATTORNEY EMERY HARLAN: And, and in fact, you
24 didn't disqualify any firm for their failure to submit that
25 form, correct? Chapman and Cutler was one of the

1 proposers. Was their proposal disqualified because they
2 didn't submit Form A?

3 MS. RHONDA KELSEY: Proposals aren't disqualified
4 for not submitting that form; we don't disqualify proposers
5 for not submitting it. What we say is if you don't submit
6 it, you cannot earn the points associated with it.

7 ATTORNEY EMERY HARLAN: Well, that's not what
8 this form says but that - I think the board can take it for
9 what it's worth. No other questions.

10 CHAIRMAN VINCENT BOBOT: Any further questions,
11 Ms. Block?

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: No.

13 CHAIRMAN VINCENT BOBOT: Um, can this witness be
14 excused?

15 ATTORNEY EMERY HARLAN: Absolutely.

16 CHAIRMAN VINCENT BOBOT: You are excused.

17 MS. RHONDA KELSEY: Thank you so much.

18 ALL: [Laughter]

19 CHAIRMAN VINCENT BOBOT: We're going to take
20 about a four minute break, just -

21 ATTORNEY EMERY HARLAN: Okay.

22 CHAIRMAN VINCENT BOBOT: On the record, Ms.
23 Block, and you now have another witness?

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: Actually,
25 I'm finished calling witnesses and the floor is, ah, Mr.

1 Harlan's.

2 CHAIRMAN VINCENT BOBOT: Okay, at this time, I
3 take it the, ah, other than rebuttal witnesses, you're -

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: Correct.

5 CHAIRMAN VINCENT BOBOT: Okay, Mr. Harlan, you
6 may call your first witness.

7 ATTORNEY EMERY HARLAN: Okay. David?

8 MR. DAVID ANDERSON: Yep.

9 ATTORNEY EMERY HARLAN: And what's your last
10 name, David?

11 MR. DAVID ANDERSON: Anderson.

12 ATTORNEY EMERY HARLAN: Anderson.

13 CHAIRMAN VINCENT BOBOT: So you're going to call
14 David Anderson to the stand. Mr. Anderson, could you raise
15 your right hand, please?

16 MS. LINDA ELMER: Do you solemnly affirm the
17 pains and penalties of perj [sic] in the state of Wisconsin
18 that the test [sic] you're about to give is the truth, the
19 whole truth, and nothing but truth?

20 MR. DAVID ANDERSON: Yes.

21 CHAIRMAN VINCENT BOBOT: Could you spell your
22 last name for the record, Mr. Anderson?

23 MR. DAVID ANDERSON: A-n-d-e-r-s-o-n.

24 CHAIRMAN VINCENT BOBOT: Okay, your witness, Mr.
25 Harlan.

1 ATTORNEY EMERY HARLAN: Ah, Mr. Anderson, I
2 promise this is going to be quick.

3 ALL: [Laughter]

4 MR. DAVID ANDERSON: Thank you.

5 ATTORNEY EMERY HARLAN: So you, you're with PFM,
6 correct?

7 MR. DAVID ANDERSON: Yes.

8 ATTORNEY EMERY HARLAN: Alright, so you're a
9 financial consultant, worked with cities, municipalities,
10 towns, what have you.

11 MR. DAVID ANDERSON: That is correct.

12 ATTORNEY EMERY HARLAN: And, ah, is this the
13 first time you've been on an evaluation panel?

14 MR. DAVID ANDERSON: No.

15 ATTORNEY EMERY HARLAN: Okay, so you've done this
16 on some other occasion.

17 MR. DAVID ANDERSON: Yes.

18 ATTORNEY EMERY HARLAN: Was the process, as far
19 as you observed it, typical of what you see when you've
20 served on other panels?

21 MR. DAVID ANDERSON: There's - this is the first
22 time I used the Bonfire software, so from that perspective
23 it was different.

24 ATTORNEY EMERY HARLAN: Okay.

25 MR. DAVID ANDERSON: So most panels do have

1 scoring processes and things like that but not in a
2 formalized, computer software process, so that part was
3 different.

4 ATTORNEY EMERY HARLAN: And so do you - how did
5 you end up on the panel, if you know?

6 MR. DAVID ANDERSON: I was asked; that's all.

7 ATTORNEY EMERY HARLAN: And by Mr. Lee? Or who
8 was it?

9 MR. DAVID ANDERSON: You know, I think by, ah,
10 the procurement office. I don't know if Mr. Lee gave him -
11 gave my name there or not.

12 ATTORNEY EMERY HARLAN: Okay. Did you discuss
13 being on the panel with Mr. Lee?

14 MR. DAVID ANDERSON: I don't specifically recall
15 that.

16 ATTORNEY EMERY HARLAN: Okay.

17 MR. DAVID ANDERSON: If --

18 ATTORNEY EMERY HARLAN: So you don't know whether
19 prior to you being on the panel you had any discussions
20 with Richard Lee or anyone from the controller's office.

21 MR. DAVID ANDERSON: No.

22 ATTORNEY EMERY HARLAN: Okay. And, um, did the -
23 you mentioned Bonfire so I'm, I imagine at some point you
24 went online to record your scores of the various proposals?

25 MR. DAVID ANDERSON: Right.

1 ATTORNEY EMERY HARLAN: Um, did you all have a
2 meeting of the evaluation committee prior to that?

3 MR. DAVID ANDERSON: No, I did not. I don't
4 believe so.

5 ATTORNEY EMERY HARLAN: There, there wasn't an
6 in-person meeting at all?

7 MR. DAVID ANDERSON: After the - when we went
8 online, there was an in-person meeting.

9 ATTORNEY EMERY HARLAN: Okay. So after you
10 recorded your scores, you all assembled together at the
11 city hall somewhere -

12 MR. DAVID ANDERSON: Right.

13 ATTORNEY EMERY HARLAN: - to discuss your
14 thoughts about the firms.

15 MR. DAVID ANDERSON: Right.

16 ATTORNEY EMERY HARLAN: Was there a discussion
17 about the, ah, potential interview process?

18 MR. DAVID ANDERSON: I don't recall that there
19 was.

20 ATTORNEY EMERY HARLAN: Okay. Um, do you know if
21 it was intended that there'd be an interview process
22 depending on the relative scores of the firms?

23 MR. DAVID ANDERSON: I don't know that.

24 ATTORNEY EMERY HARLAN: You heard a lot - you
25 were here, um, when Ms. Kelsey was testifying - you heard a

1 lot of discussion about SBE and LBE.

2 MR. DAVID ANDERSON: Right.

3 ATTORNEY EMERY HARLAN: Do, do you remember those
4 topics coming up in any of your discussions with your
5 fellow committee members?

6 MR. DAVID ANDERSON: What came up is before our
7 discussion of the, um - not the LBE; I don't remember that
8 one at all. The SBE, the discussion was, um, stopped
9 before it started because the procurement officer said
10 that, that the form wasn't, wasn't there so any point we
11 assigned wouldn't be assigned.

12 ATTORNEY EMERY HARLAN: So in -

13 MR. DAVID ANDERSON: [Inaudible] discuss that.

14 ATTORNEY EMERY HARLAN: Do you remember the woman
15 or the gentleman's name who conveyed that?

16 MR. DAVID ANDERSON: Um, I - you mentioned Ms.
17 Jeffries? Is that -

18 ATTORNEY EMERY HARLAN: Yes. Karen Jeffries.

19 MR. DAVID ANDERSON: Yeah.

20 ATTORNEY EMERY HARLAN: And she was a person that
21 communicated to the evaluation committee that
22 notwithstanding your prior scoring in the SBE category, it
23 didn't make sense to have a discussion in person because
24 the points weren't going to be awarded.

25 MR. DAVID ANDERSON: That's correct.

1 ATTORNEY EMERY HARLAN: Okay. Did you have any
2 role in developing the proposal?

3 MR. DAVID ANDERSON: I don't, I don't recall. I
4 mean, I see a lot of things coming all the time. This
5 happened last summer and I, I just don't recall if I had -
6 was asked to look at it or not.

7 ATTORNEY EMERY HARLAN: Okay. And prior to being
8 part of the evaluation committee, you were serving as a
9 financial advisor to the city, and in particular, working
10 with Mr. Lee and Mr. Matson, correct?

11 MR. DAVID ANDERSON: That's true.

12 ATTORNEY EMERY HARLAN: And as part of that you
13 also worked with the winning bidder in this procurement,
14 Katten Muchin, right?

15 MR. DAVID ANDERSON: That's correct.

16 ATTORNEY EMERY HARLAN: And that's the firm that
17 office is in Chicago.

18 MR. DAVID ANDERSON: That's correct.

19 ATTORNEY EMERY HARLAN: Alright. Just one final
20 question. Um, to the best of your recollection, can you
21 tell us what Ms. Jeffries communicated on the issue of
22 Small Business, um, points not being available, um, because
23 the firms didn't do something?

24 MR. DAVID ANDERSON: Yes, she just said that the
25 proper information was not where - the proper form was not

1 submitted.

2 ATTORNEY EMERY HARLAN: Was there any questioning
3 of her in terms of what she meant by that?

4 MR. DAVID ANDERSON: No, I don't believe so.

5 ATTORNEY EMERY HARLAN: So you obviously read all
6 the proposals, correct?

7 MR. DAVID ANDERSON: That's correct.

8 ATTORNEY EMERY HARLAN: And based on the scoring
9 comments that I saw from you, you seem to have a clear
10 understanding of what the relationship was between the SBE
11 firms and the non-SBE firms that bid together, correct?

12 MR. DAVID ANDERSON: Correct.

13 ATTORNEY EMERY HARLAN: Okay. Even if you were
14 like missing any information to be able to make a scoring
15 decision, correct?

16 MR. DAVID ANDERSON: Correct.

17 ATTORNEY EMERY HARLAN: And you understood how
18 the economics and the work was going to be divided,
19 correct?

20 MR. DAVID ANDERSON: Correct.

21 ATTORNEY EMERY HARLAN: That's all I have.

22 CHAIRMAN VINCENT BOBOT: Any questions from the
23 state?

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: No.

25 CHAIRMAN VINCENT BOBOT: Okay, can this witness

1 be excused?

2 ATTORNEY EMERY HARLAN: [Inaudible]

3 ALL: [Laughter]

4 MR. DAVID ANDERSON: Thank you.

5 MR. AVERILL: Thank you, sir.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Thank you
7 so much for coming. We appreciate it.

8 CHAIRMAN VINCENT BOBOT: Mr. Harlan, your next
9 witness?

10 ATTORNEY EMERY HARLAN: Um, Miss - why don't we
11 call Ms. Jeffries.

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: Oh, I'm
13 sorry. We - okay. Did we talk about that?

14 ATTORNEY EMERY HARLAN: Actually, maybe we can
15 call Ms. Kelsey back.

16 MR. AVERILL: Yeah.

17 ALL: [Laughter]

18 CHAIRMAN VINCENT BOBOT: [Inaudible] she's been
19 excused but obviously, by the look she gave -

20 ATTORNEY EMERY HARLAN: The look she gave me.

21 ALL: [Laughter]

22 MR. BRAD HOESCHEN: That was, that was -

23 CHAIRMAN VINCENT BOBOT: You won't answer your
24 phone.

25 MR. BRAD HOESCHEN: That was the most unimpressed

1 look I have seen since I left home this morning.

2 CHAIRMAN VINCENT BOBOT: Yeah, if somebody who
3 knows her, have you seen her, [inaudible].

4 ALL: [Laughter]

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: Let me know
6 if you know decide to bump [inaudible].

7 ATTORNEY EMERY HARLAN: [Inaudible] Dennis? I
8 don't think [inaudible]. What's the gentleman's name in
9 Budget?

10 ASSISTANT CITY ATTORNEY KATHY BLOCK: Jerry
11 Allens? Dennis and Jerry Allen are the two that are -
12 Dennis, Dennis is from budget.

13 ATTORNEY EMERY HARLAN: Okay.

14 ASSISTANT CITY ATTORNEY KATHY BLOCK: Jerry's
15 from ERS.

16 ATTORNEY EMERY HARLAN: Who, who else is left
17 from the committee?

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well, my
19 colleague who's in L.A. and, ah, Richard.

20 ATTORNEY EMERY HARLAN: Okay. I definitely want
21 Richard.

22 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah,
23 obviously.

24 ATTORNEY EMERY HARLAN: Right.

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: And then

1 [Inaudible] is the only other guy -

2 ATTORNEY EMERY HARLAN: Yeah.

3 ASSISTANT CITY ATTORNEY KATHY BLOCK: - that
4 [inaudible] to us.

5 ATTORNEY EMERY HARLAN: Let's let Mr. Matson stay
6 in his office.

7 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah.

8 ATTORNEY EMERY HARLAN: And, um -

9 MS. RHONDA KELSEY: [Inaudible]?

10 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah, if
11 [inaudible].

12 ATTORNEY EMERY HARLAN: Let me have Dennis,
13 please.

14 ASSISTANT CITY ATTORNEY KATHY BLOCK: Dennis from
15 -

16 ATTORNEY EMERY HARLAN: Yeah.

17 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay.

18 ATTORNEY EMERY HARLAN: And then Jerry -

19 ASSISTANT CITY ATTORNEY KATHY BLOCK: Tell Jerry
20 to -

21 MS. LINDA ELMER: We're still on TV but okay, who
22 -

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: Sorry.

24 CHAIRMAN VINCENT BOBOT: Do you want to have - do
25 you want to have them come up?

1 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah, ah -
2 why don't we - no, Karen's probably going to take a while,
3 would you agree?

4 ATTORNEY EMERY HARLAN: Yeah. She -

5 ASSISTANT CITY ATTORNEY KATHY BLOCK: But can we
6 tell, um, Jerry Allen he's off the hook?

7 MS. LINDA ELMER: Oh, okay.

8 CHAIRMAN VINCENT BOBOT: Would the other
9 witnesses - would that be available after -

10 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah.

11 CHAIRMAN VINCENT BOBOT: - Ms. Jeffries?

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: Karen,
13 we're a little worried about her timing so we want to get
14 her.

15 CHAIRMAN VINCENT BOBOT: I guess what I'm worried
16 about is that they go on a lunch break and they're not
17 available and we'd like to -

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah, well
19 that's true. We might want to just kind of let people
20 know.

21 MS. LINDA ELMER: Okay. Bye.

22 CHAIRMAN VINCENT BOBOT: This - that they'll be
23 called -

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah.

25 CHAIRMAN VINCENT BOBOT: - to -

1 MS. LINDA ELMER: He's very upset about it but
2 he'll -

3 ALL: [Laughter]

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: Maybe just
5 let, um, Dennis and Richard and Marty know they're still on
6 the hook but, you know, we're going -

7 MS. LINDA ELMER: [Inaudible]

8 ASSISTANT CITY ATTORNEY KATHY BLOCK: - into the
9 afternoon.

10 MS. LINDA ELMER: Okay.

11 CHAIRMAN VINCENT BOBOT: It's, ah, that they
12 should stay in the building.

13 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay.

14 MR. BRAD HOESCHEN: [Inaudible]?

15 [INAUDIBLE BACKGROUND CONVERSATION]

16 CHAIRMAN VINCENT BOBOT: I guess that's up to the
17 committee.

18 MR. BRAD HOESCHEN: What do you want to do?

19 UNKNOWN MALE SPEAKER: Do you want to do a
20 bifurcated meeting?

21 MR. BRAD HOESCHEN: Do you want to go to lunch?
22 Or stay for lunch? I mean, I don't mind working through
23 lunch if -

24 MR. AVERILL: I would, I would say let's work
25 through lunch so that -

1 MR. BRAD HOESCHEN: As long as we're done by -

2 CHAIRMAN VINCENT BOBOT: Any objections to -

3 MR. BRAD HOESCHEN: - 1:30 or 2:00.

4 CHAIRMAN VINCENT BOBOT: - if we work through
5 lunch?

6 MR. AVERILL: Yeah, otherwise [inaudible].

7 MR. BRAD HOESCHEN: I, I mean - I have a feeling,
8 ah, if, if we're going to be done by 1:30 or 2:00 by
9 working through lunch, I'm willing to do that. But at some
10 point, lack of food will cause -

11 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay.

12 MR. BRAD HOESCHEN: - lack of attention. Ah, so
13 -

14 ATTORNEY EMERY HARLAN: I think, you know, my
15 perspective is I think the board has an understanding of
16 what the issues are based on the witnesses we've had so
17 far, um, and so that's why his testimony was very quick.
18 So out of respect for you all's time, I'm trying to get
19 through it.

20 CHAIRMAN VINCENT BOBOT: Yeah, I think we also
21 have a pretty good understanding of the issues.

22 ATTORNEY EMERY HARLAN: Okay.

23 MR. AVERILL: But, but also, we should have a
24 full hearing for you -

25 ATTORNEY EMERY HARLAN: Yeah.

1 MR. AVERILL: - to make your full case.

2 ATTORNEY EMERY HARLAN: And we will. In, in
3 terms of - I will, you know, feel very comfortable with
4 what we're doing.

5 CHAIRMAN VINCENT BOBOT: Right.

6 ATTORNEY EMERY HARLAN: But we'll also move
7 expeditiously.

8 MR. LEE: [Inaudible]

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: We're not
10 going to be ready for you for a while, Richard.

11 MR. LEE: Okay.

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: Sorry.
13 Karen, why don't you come up.

14 CHAIRMAN VINCENT BOBOT: Richard, are you -
15 you're free to stay if you'd like.

16 ATTORNEY EMERY HARLAN: Well, we, we actually -

17 CHAIRMAN VINCENT BOBOT: It's just that we need
18 to -

19 ATTORNEY EMERY HARLAN: - reached an agreement -

20 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah, he
21 would prefer not have to witness.

22 CHAIRMAN VINCENT BOBOT: Oh, yeah.

23 ATTORNEY EMERY HARLAN: [Inaudible] on TV.

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: Actually,
25 why don't you sit here, Karen. You don't mind if Karen

1 sits here, do you?

2 MR. BRAD HOESCHEN: No, that's fine.

3 ASSISTANT CITY ATTORNEY KATHY BLOCK: I think it
4 will be easier for -

5 MR. BRAD HOESCHEN: That's fine.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: - Emery to
7 see the witnesses if I'm not leaning all up in -

8 MR. STEVE FRITSCHKE: Could you pull the
9 microphone.

10 MR. BRAD HOESCHEN: Ms. Jeffries, there we go.

11 CHAIRMAN VINCENT BOBOT: Okay. Would you please
12 raise your right hand?

13 MS. LINDA ELMER: Do you solemnly affirm the
14 pains and penalties of perj [sic] in the state of Wisconsin
15 that the testimony you're about to give is the truth, the
16 whole truth, and not [sic] the truth?

17 MS. KAREN JEFFRIES: Yes.

18 CHAIRMAN VINCENT BOBOT: Could you state your
19 name and spell your last name for the record, please?

20 MS. KAREN JEFFRIES: Karen Jeffries, J-e-f-f-r-i-
21 e-s.

22 CHAIRMAN VINCENT BOBOT: Okay, Mr. Harlan, your
23 witness.

24 ATTORNEY EMERY HARLAN: Ah, good - I, I'm
25 assuming it's still morning. Good morning, Ms. Jeffries.

1 How are you?

2 MS. KAREN JEFFRIES: Good morning. Fine, thank
3 you.

4 ATTORNEY EMERY HARLAN: Um, so you're in a
5 purchase, purchasing department. Are you a purchasing
6 agent?

7 MS. KAREN JEFFRIES: Yes, I'm a purchasing
8 specialist.

9 ATTORNEY EMERY HARLAN: Okay.

10 MS. KAREN JEFFRIES: Procurement specialist.

11 ATTORNEY EMERY HARLAN: Okay. How long have you
12 been in the purchasing department, ma'am?

13 MS. KAREN JEFFRIES: Since 2011.

14 ATTORNEY EMERY HARLAN: Okay. And in that time,
15 you've been part of a number of RFP scenarios like the one
16 that this hearing's about?

17 MS. KAREN JEFFRIES: Yes.

18 ATTORNEY EMERY HARLAN: Okay. And you report
19 directly to Ms. Kelsey?

20 MS. KAREN JEFFRIES: Yes.

21 ATTORNEY EMERY HARLAN: Okay. Alright. So how
22 did you get involved in this particular procurement? Did
23 she, Ms. Kelsey, ask you to do that? Or is it
24 automatically come - you have certain departments that you
25 work with?

1 MS. KAREN JEFFRIES: No, it was just assigned by
2 director, Kelsey.

3 ATTORNEY EMERY HARLAN: Okay.

4 MS. KAREN JEFFRIES: Yes.

5 ATTORNEY EMERY HARLAN: And, um, tell me about
6 the evaluation committee process. How did, how did that
7 committee get formed?

8 MS. KAREN JEFFRIES: The department proposes a
9 committee and then that information is shared with the
10 director for a final decision as to is this a complete
11 committee in terms of, ah, evaluation? Um, should anyone be
12 added? So that's a decision that our director would make,
13 so -

14 ATTORNEY EMERY HARLAN: Okay.

15 MS. KAREN JEFFRIES: - that's essentially the
16 process.

17 ATTORNEY EMERY HARLAN: So that's the general
18 process and in this particular case, is that how the
19 process played out?

20 MS. KAREN JEFFRIES: Yes.

21 ATTORNEY EMERY HARLAN: And when you say the
22 department, was that the controller's office?

23 MS. KAREN JEFFRIES: Yes.

24 ATTORNEY EMERY HARLAN: And in particular, was
25 that Mr. Lee?

1 MS. KAREN JEFFRIES: I would have made the email
2 request to Mr. Lee and his response would have been shared
3 with the director, yes.

4 ATTORNEY EMERY HARLAN: Okay. And just for
5 clarity, all the people then who made it on to the
6 evaluation committee essentially were people that Mr. Lee
7 suggested?

8 MS. KAREN JEFFRIES: Correct; proposed by their
9 department, yes.

10 ATTORNEY EMERY HARLAN: Right.

11 MS. KAREN JEFFRIES: And he is their
12 representative that I would work with on this particular
13 solicitation.

14 MR. STEVE FRITSCHKE: Could, could you hold the
15 microphone just a little closer?

16 MS. KAREN JEFFRIES: Sure.

17 MR. STEVE FRITSCHKE: You're just a little - thank
18 you.

19 ATTORNEY EMERY HARLAN: Right. And so, there
20 weren't, for instance, individuals you or Ms. Kelsey
21 suggested who made it on the committee.

22 MS. KAREN JEFFRIES: No.

23 ATTORNEY EMERY HARLAN: Now originally, Mr.
24 Matson was supposed to be on the committee but he wasn't,
25 correct?

1 MS. KAREN JEFFRIES: I'm not sure if he was
2 supposed to be on the committee. He's - as the leader of
3 that department - he should definitely be aware of some of
4 the initial communications but it's not my understanding
5 that he was supposed to be on the committee.

6 ATTORNEY EMERY HARLAN: Okay. And I understand
7 that you all have, you know, various rules in the
8 purchasing area that, that, ah, people follow. One, one of
9 the, one of the most important rules, would you agree, is
10 that basically, once the RFP is on the street, the
11 proposers don't have contact or are not supposed to have
12 contact with anybody on the committee, right?

13 MS. KAREN JEFFRIES: That is correct.

14 ATTORNEY EMERY HARLAN: Right. They're not to
15 ask questions, send them emails, or anything like that,
16 right?

17 MS. KAREN JEFFRIES: Correct.

18 ATTORNEY EMERY HARLAN: Alright.

19 MS. KAREN JEFFRIES: Yes.

20 ATTORNEY EMERY HARLAN: And is it your
21 understanding of the department rules if that were to
22 happen, then the evaluation committee member reports that
23 to purchasing and the committee, correct?

24 MS. KAREN JEFFRIES: We would; that would be the
25 expectation.

1 ATTORNEY EMERY HARLAN: Alright. Now in terms of
2 the RFP for disclosure counsel that is again the subject of
3 this hearing, can it - kind of walk us through how that
4 developed. How did the RFP come together as a document?

5 MS. KAREN JEFFRIES: We get the scope of services
6 from the department and the paperwork is compiled and then
7 loaded into our Bonfire software portal and then a date is
8 determined for it to be actually posted and it's, ah,
9 reviewed by our director to make sure that the scope is,
10 um, complete and then it's posted.

11 ATTORNEY EMERY HARLAN: So is it fair to say the
12 process is kind of hybrid in the sense that the department
13 is providing some of the substantive elements and then
14 there are other elements that are kind of used in all the
15 RFP processes that the purchasing department supplies.

16 MS. KAREN JEFFRIES: Correct.

17 ATTORNEY EMERY HARLAN: And that would, in this
18 particular procurement mean that, for instance, the
19 purchasing department, um, really provided the information
20 about Local Business Enterprise and Small Business
21 Enterprise, correct?

22 MS. KAREN JEFFRIES: Correct.

23 ATTORNEY EMERY HARLAN: That's not something that
24 Mr. Lee or Mr. Matson dictated.

25 MS. KAREN JEFFRIES: Correct.

1 ATTORNEY EMERY HARLAN: Now it's my
2 understanding, um, that there is a process in connection
3 with these proposals when the Office of Small Business
4 looks at what is, what is intended to be procured and makes
5 a decision about whether, ah, there should be a requirement
6 for SBE participation, correct?

7 MS. KAREN JEFFRIES: That's correct.

8 ATTORNEY EMERY HARLAN: And was that process
9 followed in this situation?

10 MS. KAREN JEFFRIES: Yes. A document that, um,
11 is generated by the purchasing division called the Request
12 for Exception to Bid form is submitted to the Office of
13 Small Business Development and that's where the business
14 analysts from their department will take a look at the
15 scope and determine if an SBE requirement is to be placed
16 on the solicitation before it's published.

17 ATTORNEY EMERY HARLAN: And is the reason that
18 there are even SBE requirements because of the city's
19 desire, um, from a policy standpoint to have significant
20 SBE participation in procurements?

21 MS. KAREN JEFFRIES: Ah -

22 ATTORNEY EMERY HARLAN: If you know.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: I was just
24 going to say - thank you.

25 MS. KAREN JEFFRIES: The code of ordinances.

1 ATTORNEY EMERY HARLAN: Right.

2 MS. KAREN JEFFRIES: Yes.

3 ATTORNEY EMERY HARLAN: And based on, ah - okay.

4 And, ah, and based on your knowledge of the procurement
5 process, it has been a area of priority to have SBE
6 participation in the procurement process, right?

7 MS. KAREN JEFFRIES: That is to be checked for
8 each solicitation before it goes out, yes.

9 ATTORNEY EMERY HARLAN: Right. And based on your
10 understanding, it's something that the city and the mayor
11 and the purchasing department is serious about, correct?

12 MS. KAREN JEFFRIES: If you're asking if that's
13 my assumption, that would be a correct assumption.

14 ATTORNEY EMERY HARLAN: Okay. And in this
15 particular case, do you have a recollection of - because
16 apparently, there was no requirement placed on this
17 particular procurement for SBE participation; it was an
18 optional item.

19 MS. KAREN JEFFRIES: Correct.

20 ATTORNEY EMERY HARLAN: Did you have any
21 discussions with the folks in the Office of Small Business
22 Enterprises or Small Business Development in terms of why a
23 decision was made in that regard?

24 MS. KAREN JEFFRIES: No.

25 ATTORNEY EMERY HARLAN: Okay. But you recall

1 getting a document of some sort back from them?

2 MS. KAREN JEFFRIES: Correct.

3 ATTORNEY EMERY HARLAN: Okay. You still have
4 that document?

5 MS. KAREN JEFFRIES: It would be in the file and,
6 again, it would be entitled the Request for Exception to
7 Bidding form.

8 ATTORNEY EMERY HARLAN: Okay. And why is it
9 called Exception to Bidding? Were you asking the
10 department to have an exception for SBE, SBE requirement?

11 MS. KAREN JEFFRIES: I can't speak to why that is
12 the title of the form.

13 ATTORNEY EMERY HARLAN: But in, in sending
14 information to that department, you weren't asking for an
15 exception to the SBE requirement to be made.

16 MS. KAREN JEFFRIES: No.

17 ATTORNEY EMERY HARLAN: Okay.

18 MS. KAREN JEFFRIES: There's a doc - a portion of
19 the document that gives them an opportunity to place a
20 percentage and sign off on that document. Why it's
21 entitled that, I'm not sure.

22 ATTORNEY EMERY HARLAN: Okay.

23 UNKNOWN FEMALE SPEAKER: [Inaudible]

24 ATTORNEY EMERY HARLAN: Okay.

25 UNKNOWN FEMALE SPEAKER: [Inaudible]

1 ATTORNEY EMERY HARLAN: You have the exhibits in
2 front of you?

3 UNKNOWN FEMALE SPEAKER: [Inaudible]

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: Ah, in the
5 binder.

6 ATTORNEY EMERY HARLAN: You can look at number
7 eight.

8 CHAIRMAN VINCENT BOBOT: And Ms. Jeffries, you
9 can look at number eight and after you're done looking at
10 it, you can let us know and you can resume questioning.

11 ATTORNEY EMERY HARLAN: Are you familiar with
12 that document, ma'am?

13 MS. KAREN JEFFRIES: The Purchasing Liaison
14 Manual? Yes.

15 ATTORNEY EMERY HARLAN: And what is it?

16 MS. KAREN JEFFRIES: It is a document that's
17 placed out on our - the city's website to give departments
18 insight as to general processes that are used in the
19 purchasing division and some of our requirements.

20 ATTORNEY EMERY HARLAN: Okay. And this is, would
21 you agree, an important document for purposes of, ah, kind
22 of the rules of the road for the procurement process,
23 correct?

24 MS. KAREN JEFFRIES: Yes, that would be the
25 intent.

1 ATTORNEY EMERY HARLAN: One of the things that I
2 noted, unless I missed it, there's, there's nothing in this
3 document about requiring a Form A; a form from - that talks
4 about the SBE participation, correct?

5 MS. KAREN JEFFRIES: I don't see it referenced.

6 ATTORNEY EMERY HARLAN: Okay. Alright. And I
7 note that this document was amended in February?

8 MS. KAREN JEFFRIES: I -

9 ATTORNEY EMERY HARLAN: Were you -

10 MS. KAREN JEFFRIES: Our procurement - I would
11 not be involved in that. Our procurement administrator
12 would be most likely involved with that -

13 ATTORNEY EMERY HARLAN: Okay.

14 MS. KAREN JEFFRIES: - and any updates to this
15 document. But it is dated - updated February 28, 2018. I
16 can say that.

17 ATTORNEY EMERY HARLAN: Okay.

18 MS. KAREN JEFFRIES: That's printed right there.

19 ATTORNEY EMERY HARLAN: Okay, and you don't know
20 how it was changed from what was in place during the
21 procurement to that date, correct?

22 MS. KAREN JEFFRIES: No.

23 ATTORNEY EMERY HARLAN: And, um, do you know
24 anything about what's provided in paragraph three relative
25 to there not being an appeal process for RFP's?

1 MS. KAREN JEFFRIES: I can't speak to this
2 document. The procurement administrator and our director
3 handle the - this document. We, as agents, don't.

4 ASSISTANT CITY ATTORNEY KATHY BLOCK: Where are
5 you? I'm sorry, where are you?

6 ATTORNEY EMERY HARLAN: It's on page two in the
7 third paragraph. It says in bold, "There is no appeal
8 process for an RFP," which this is, right?

9 ASSISTANT CITY ATTORNEY KATHY BLOCK: I really
10 don't know where you're looking, sorry.

11 MR. BRAD HOESCHEN: Page 41 -

12 ASSISTANT CITY ATTORNEY KATHY BLOCK: It's on
13 page forty-one?

14 MR. BRAD HOESCHEN: It's labeled page 41; it's
15 page two of the -

16 ASSISTANT CITY ATTORNEY KATHY BLOCK: Oh, I -

17 MR. BRAD HOESCHEN: - exhibit.

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: - thank
19 you.

20 CHAIRMAN VINCENT BOBOT: And she did answer the
21 question; she doesn't have any knowledge.

22 MS. KAREN JEFFRIES: I'm sorry.

23 ATTORNEY EMERY HARLAN: Okay.

24 CHAIRMAN VINCENT BOBOT: What leads to that or
25 may not - it sounds like it's beyond her, her, ah, job

1 title, or function.

2 ATTORNEY EMERY HARLAN: Now, did you participate
3 in, in all aspects of this procurement?

4 MS. KAREN JEFFRIES: Yes.

5 ATTORNEY EMERY HARLAN: Okay, so, um, walk us
6 through how the process worked. Ah, you know, once the
7 committee was put together, what, what happened next?

8 MS. KAREN JEFFRIES: Once the committee is put
9 together, the RFP is approved and posted, proposals are
10 due, and they're received, then I look at the documentation
11 that has been received in our Bonfire portal and to be sure
12 that, um, general requirements are met, that binding
13 signatures are there, um, just basic information before I
14 move the proposals to the evaluators. And this is done
15 through the Bonfire software, so it's not a matter of a
16 verbal conversation. It's - I look at the proposals
17 received to see if they are in a form that is reviewable by
18 the evaluators and then I move the proposals, technically,
19 in the Bonfire software to the evaluators and they received
20 emails letting them know that these proposals are now ready
21 for your evaluation process.

22 ATTORNEY EMERY HARLAN: Okay.

23 MS. KAREN JEFFRIES: And once they're reviewed by
24 the evaluators, then the scores are compiled. What I look
25 at are the Local Business Enterprise and to see if the

1 forms are there and if the forms are there, so I'm backing
2 up somewhat before they go to the evaluators. I am looking
3 at the Local Business Enterprise forms that are submitted,
4 or not submitted, when it's not applicable. And I do look
5 at the Office of Small Business Development forms if they
6 are there so that I have an idea of what I am forwarding on
7 for the evaluator's review.

8 ATTORNEY EMERY HARLAN: Okay.

9 MS. KAREN JEFFRIES: So once the review is done,
10 then I look at the scores that are in Bonfire and I -

11 ATTORNEY EMERY HARLAN: Well, let's - before we
12 get to the scoring aspect of it -

13 MS. KAREN JEFFRIES: Okay.

14 ATTORNEY EMERY HARLAN: So the standard operating
15 procedure when, when you run these procurements in RFP
16 context, is - in respect to the LBE forms to the extent
17 it's, ah, applicable - you look at it and then determine
18 whether the proposers have complied with the, um,
19 requirements. Um, and if not, then you so indicate that
20 they have not complied, correct?

21 MS. KAREN JEFFRIES: I look at the forms to see
22 if they are submitted, if they are included, and then I
23 will go ahead and apply the points. Or I will have a
24 conversation with my director to find out if this
25 particular form should have points assigned. But, um, so

1 sometimes I do have to consult with the director but that's
2 after the evaluation process is done by the evaluators and
3 their scores are in Bonfire.

4 ATTORNEY EMERY HARLAN: Okay, so -

5 MS. KAREN JEFFRIES: Hmm-hmm.

6 ATTORNEY EMERY HARLAN: - just so I'm clear about
7 the standard operating procedure, so you're saying that it
8 is not the standard operating procedure to, um, essentially
9 withhold points or disqualify firms that have failed to
10 follow the procurement process in terms of submitting the
11 necessary forms prior to the scoring.

12 MS. KAREN JEFFRIES: It is not the standard
13 process to do that, no.

14 ATTORNEY EMERY HARLAN: Okay. Would it surprise
15 you that Ms. Kelsey said that that was the standard
16 process? Okay, I'll move on. So, so basically in this
17 situation, um, you looked at the, the various proposals,
18 took note of whether they had the LBE affidavit or the SBE
19 form and ultimately, passed the proposals on to the
20 evaluation committee without comment.

21 MS. KAREN JEFFRIES: Right, because they're not
22 responsible for scoring LBE. They would be responsible for
23 scoring the SBE -

24 ATTORNEY EMERY HARLAN: Okay.

25 MS. KAREN JEFFRIES: - aspect of the scoring in

1 Bonfire. So it can move on because that's something that
2 is determined within the purchasing division; never by the
3 evaluators. So there's no reason to hold it up for that.
4 So can you refer me then to, I guess - since exhibit number
5 eight is kind of the critical document that lays out how
6 the, the process is supposed to work - can you refer me to
7 the part of that that says that the evaluation committee
8 does not have decision making authority on the issue of
9 whether LBE bonus points or SBE points are to be awarded?

10 MS. KAREN JEFFRIES: I'm glancing - as I said, I
11 don't offer this or contribute to this - so, um, I don't
12 see any reference to LBE.

13 ATTORNEY EMERY HARLAN: So is it in the city
14 ordinance? Where would I find support for what you said in
15 terms of the fact that the evaluation committee does not
16 score proposals or award points for LBE or SBE?

17 MS. KAREN JEFFRIES: I don't know where you would
18 find it. I don't see SBE or LBE referenced in -

19 ATTORNEY EMERY HARLAN: Okay.

20 MS. KAREN JEFFRIES: - section eight.

21 ATTORNEY EMERY HARLAN: Okay. But aside from
22 exhibit eight, is there anywhere you're aware of where that
23 is set forth? Is it in an ordinance?

24 MS. KAREN JEFFRIES: I can't say I'm aware of it
25 being in writing anywhere.

1 ATTORNEY EMERY HARLAN: Are the - are the, ah,
2 evaluation com - ah, committee members told that they have
3 absolutely no input or discretion in terms of whether LBE
4 bonus points or SBE bonus points are to be awarded?

5 MS. KAREN JEFFRIES: They're two separate
6 categories in the Bonfire software. So when I release the
7 proposals to the committee, the category for SBE is
8 available for them to score. The LBE category is not
9 released to them to score. So -

10 ATTORNEY EMERY HARLAN: Okay, so -

11 MS. KAREN JEFFRIES: - but it's not verbally
12 stated but it's not provided to them to score LBE; only
13 SBE.

14 ATTORNEY EMERY HARLAN: Okay. So the SBE scoring
15 is available to them irrespective of whether a firm has
16 filled out a Form A.

17 MS. KAREN JEFFRIES: It is available to them to
18 score.

19 ATTORNEY EMERY HARLAN: Okay. And so, in this
20 particular instance, the proposals were sent to the
21 committee; no firm was disqualified based upon not having
22 completed Form A.

23 MS. KAREN JEFFRIES: No; no firm was
24 disqualified.

25 ATTORNEY EMERY HARLAN: And in fact, the

1 evaluation committee was asked to conduct an evaluation to
2 award points based on the SBE component.

3 MS. KAREN JEFFRIES: They - that category was
4 provided and they did provide scores for that category.

5 ATTORNEY EMERY HARLAN: Okay. And were they
6 allowed to vote in terms of whether the SBE withdrawal of
7 points was an appropriate measure to take?

8 MS. KAREN JEFFRIES: No, that is a discussion
9 that I had with the director after the scores are received
10 in Bonfire.

11 ATTORNEY EMERY HARLAN: Okay. Now, so, so the
12 proposals went to the evaluation committee, they scored it
13 in Bonfire, and at some point, the evaluation committee got
14 together to meet.

15 MS. KAREN JEFFRIES: Right. I convene a meeting
16 for everyone to come together and talk about their scores
17 and I let them know who the highest ranked proposer is and
18 it gives them an opportunity to talk about their scores
19 that they recorded in Bonfire, as well as any notes that
20 they entered into the Bonfire software.

21 ATTORNEY EMERY HARLAN: So what I'm struggling
22 with is trying to understand the purpose of them meeting
23 after they've scored the proposals. Um, is there a process
24 whereby they can change their scoring?

25 MS. KAREN JEFFRIES: The purpose of the meeting

1 is - first, back up. The assumption is that they have not
2 had an opportunity to meet with each other. They've scored
3 independently in the Bonfire software so as a committee,
4 this is their first opportunity to come together and look
5 at the scores. Their names are not attached to the scores
6 but I show them on a screen the compilation of the scores
7 so that they can see the highest ranked, second ranked,
8 third ranked proposer. So that is the purpose of that
9 initial meeting and, um, yeah, so that would be the
10 purpose.

11 ATTORNEY EMERY HARLAN: Okay. So is, is the
12 standard operating procedure based on how the process
13 normally works that once the committee is aware of the
14 scoring, do they have discretion to be able to change the
15 scoring?

16 MS. KAREN JEFFRIES: It would depend on the
17 circumstance. Say, for example, it's a project that would
18 require demonstrations from top ranked proposers, if they
19 go through the demonstration process for a day or two and
20 see a product, how it actually works, and if they feel they
21 need an opportunity to say, change or revise their scores
22 based on what they read in the proposal and saw in the
23 demonstration, so that would be, um, I can't say, no,
24 they're never given an opportunity to revisit their scores
25 but there'd have to be a true, valid reason to give that

1 opportunity.

2 ATTORNEY EMERY HARLAN: So it's my understanding,
3 um, that one of the potentials here were, was that the
4 committee, um, was contemplating having interviews. Is
5 that correct?

6 MS. KAREN JEFFRIES: That is an opportunity.
7 When I present the agenda, that is one of the items I ask
8 them: Do you feel that you need an interview with the
9 highest ranked proposer or their top two highest ranked
10 proposers? So that is an option that is up to the
11 committee and I would facilitate that process if they felt
12 they needed that.

13 ATTORNEY EMERY HARLAN: Okay. And so that
14 specifically was raised with this evaluation committee.

15 MS. KAREN JEFFRIES: With all committees, if they
16 feel they need an interview or they need demonstrations,
17 hmm-hmm.

18 ATTORNEY EMERY HARLAN: And do you recall what
19 the discussion was, ah, specifically - I don't want you to
20 guess about how it generally happens - but for this
21 procurement, do you recall what was said about the wisdom,
22 um, of, of having interviews or not?

23 MS. KAREN JEFFRIES: I can't recall specifically
24 but the op - if they wanted it, I would have facilitated
25 it. So as a committee, they did not ask for that as

1 something that they needed in order to make a final
2 decision on accepting the highest ranked proposer according
3 to the scores. And the meeting is, again, an opportunity
4 for them to hear from each other what their thoughts were
5 about the proposals and if they felt that they gained an
6 insight that should be revisited in their scores, then
7 again, that would be an opportunity but, um, yeah.

8 ATTORNEY EMERY HARLAN: Okay.

9 MS. KAREN JEFFRIES: Normally they don't revise
10 their scores unless someone on the committee expresses a
11 true need to be able to do that once they gain some
12 insights from that initial discussion.

13 ATTORNEY EMERY HARLAN: So, you -

14 MS. KAREN JEFFRIES: It's not common.

15 ATTORNEY EMERY HARLAN: You mentioned that one of
16 the things that could possibly change the scoring is, for
17 instance, if a, a decision was made by the evaluation
18 committee to have a bidder or proposer do a demonstration.
19 And based on your understanding of the procurement rules,
20 that could allow the committee to, for instance, take a
21 number two ranked proposer and make that person the
22 awardee, correct?

23 MS. KAREN JEFFRIES: The end result; that could
24 be the end result.

25 ATTORNEY EMERY HARLAN: Right. And would the

1 same hold true for interview process? If they were really
2 impressed with a proposer who was the number three ranked
3 proposer and thought based on what was communicated during
4 the interview process, that number three proposer should be
5 the number one proposer. Based on your understanding of
6 the process and the rules, was that permissible?

7 MS. KAREN JEFFRIES: Once they revisit their
8 scores, there could definitely be a change in the ranking.

9 ATTORNEY EMERY HARLAN: Okay. Thank you. So are
10 you - so some of the information we have, ah, exhibit
11 number three, which is data that comes from Bonfire, I
12 believe.

13 MS. KAREN JEFFRIES: Yes.

14 ATTORNEY EMERY HARLAN: Okay. So, um, trying to
15 understand what you inputted verses what the committee
16 inputted. So looking on page one under the Katten Muchin
17 proposal, it says, um, "Comments: Lowest cost," in that
18 evaluation group number one. "Primary reason: Other,
19 recorded on page one of Affidavit of Compliance." What's
20 that mean? Well, first of all, I'm assuming you wrote -
21 you, you inputted that information into Bonfire?

22 MS. KAREN JEFFRIES: Yes, for anything that has
23 my name attached to it, that would be my comments that I
24 added in. For cost, I'm the only person that would
25 evaluate the cost and assign the cost points, and then LBE,

1 hmm-hmm.

2 ATTORNEY EMERY HARLAN: Okay. And it says,
3 "Affidavit of Compliance;" that it was, "Recorded on page
4 one of Affidavit of Compliance." What was recorded?

5 MS. KAREN JEFFRIES: Okay, there - Affidavit of
6 Compliance would indicate that whatever name was there, um,
7 I have there, "No affidavit."

8 ATTORNEY EMERY HARLAN: Well, that's just -
9 that's under the bonus points -

10 MS. KAREN JEFFRIES: Hmm-hmm.

11 ATTORNEY EMERY HARLAN: - category. I'm just
12 trying to figure out what that means. Does that mean that
13 you had notes on the Affidavit of Compliance that you
14 inputted into Bonfire? Or what? What's, what's that mean?

15 MS. KAREN JEFFRIES: I can't say what that means;
16 that's not something that I would have typed in there,
17 "Recorded on page one." That's not something that I would
18 have entered there. My comments are in caps, "NO
19 AFFIDAVIT." So maybe the system - I see that it's repeated
20 again, "Recorded by Karen Jeffries," um, "Recorded by
21 Richard," so it may be the system maybe inputting and
22 printing information there?

23 ATTORNEY EMERY HARLAN: Okay.

24 MS. KAREN JEFFRIES: And it's prefaced with,
25 "Recorded on," "Recorded by." It's not something that I

1 type in.

2 ATTORNEY EMERY HARLAN: Okay. Got it. Going to,
3 um, on that same page under A2, you have, "SBE
4 corrections," and it says, "Quarles & Brady, minus 9.6."
5 So am I correct what that means, um, is that when the
6 points were calculated, they got nine point - that proposal
7 got 9.6 and here a decision is being made by your
8 department or you to take those points away.

9 MS. KAREN JEFFRIES: The decision was made by -
10 after speaking with my director and reviewing all of the
11 scores - the decision was made to take those points away
12 because they did not submit their plan.

13 ATTORNEY EMERY HARLAN: Okay.

14 MS. KAREN JEFFRIES: Hmm-hmm.

15 ATTORNEY EMERY HARLAN: And -

16 MS. KAREN JEFFRIES: And the same for Duane
17 Morris.

18 ATTORNEY EMERY HARLAN: Okay.

19 MS. KAREN JEFFRIES: So that's after the
20 evaluators have entered their scores.

21 ATTORNEY EMERY HARLAN: Okay. And, um, just so
22 I'm clear, your, your testimony is that prior to making the
23 decision to withdraw the 9.6 points, you have a specific
24 recollection of talking with Ms. Kelsey about that issue.

25 MS. KAREN JEFFRIES: About the entire ranking

1 because once I've had the meeting with the committee and I
2 receive an email from the committee pretty much stating
3 that, who they would like to go with, that they are
4 confirming the highest ranked proposer, then I present that
5 information to the director and sit down and share with her
6 who the highest ranked proposer is, second ranked, and what
7 I found in the aspects that I scored and discuss what do I
8 do with this matter here. Because if they don't have their
9 plan, they shouldn't have the points. And if you're going
10 to take away points from one, you take points from the
11 second vendor. So the conver - the conversation was larger
12 than just SBE, LBE. It's a matter of many other aspects
13 before I was - would move into award. Yeah, this would
14 have been part of a bigger conversation with her.

15 ATTORNEY EMERY HARLAN: Okay, so, so in this
16 particular case, you're saying that the evaluation
17 committee voted, they assigned points, and then when the
18 committee got together as a group, by that point in time
19 you had met with Ms. Kelsey and decided that the points
20 should be withdrawn.

21 MS. KAREN JEFFRIES: The points were, were not
22 supported by the required OSBD form and so everything that
23 we publish that says that form was required if you wanted
24 to receive SBE points. So by, by it not being there,
25 that's one thing that I would have presented to her. And

1 the fact that there was a second vendor that received
2 points, so that would -

3 ATTORNEY EMERY HARLAN: Right. I'm just, I'm
4 just trying to understand the timing of it; that, that's
5 it.

6 MS. KAREN JEFFRIES: Okay. That would have been
7 after the committee had provided their scores and I can see
8 that points before this summary is published on our website
9 that would be inaccurate for them to have points so that's
10 a discussion that I would have had so that she knows why
11 I'm removing these points because I'm the only one that -
12 for this RFP - that could go into Bonfire and change the
13 points.

14 ATTORNEY EMERY HARLAN: Okay.

15 MS. KAREN JEFFRIES: So -

16 ATTORNEY EMERY HARLAN: And so that happened
17 before the committee met?

18 MS. KAREN JEFFRIES: No, that would have been
19 after they met and I'm ready to award and it was part of a
20 bigger discussion.

21 ATTORNEY EMERY HARLAN: So how would the
22 committee have been in the position to figure out what they
23 wanted to do without a final determination being made about
24 the points for LBE and SBE?

25 MS. KAREN JEFFRIES: And that would have been

1 when I discussed with her, "This is where it stands right
2 now, this is what was presented to the committee. Now I
3 need to do know what do I do about these SBE points and
4 LBE, as well? Because if the form is there, do we allow
5 and give them the bonus points for LBE?" So it was part of
6 a bigger discussion; what do we do with the forms that are
7 submitted for LBE and SBE.

8 ATTORNEY EMERY HARLAN: Well, but isn't that
9 information that the committee would want to know? So it's
10 one thing if there's a 20 point difference -

11 MS. KAREN JEFFRIES: If the - after that
12 discussion, if the ranking was to change, then yes, I would
13 have to go back to the committee. After that discussion,
14 larger discussion, the ranking did not change. So they
15 were comfortable going with the highest ranked proposer.
16 The ranking did not change.

17 ATTORNEY EMERY HARLAN: Okay. But we now know
18 from Ms. Kelsey's testimony that your department has
19 admitted a mistake as it relates to LBE points being
20 awarded; that was testified to that those 10 points should
21 have been awarded to the Quarles & Brady MWH proposal.
22 That's after the fact. But isn't that information that the
23 committee could have used, for instance, to determine
24 whether they have an interview process or not?

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: Objection;

1 calls for speculation.

2 CHAIRMAN VINCENT BOBOT: Um, would you know? Or
3 would you have to speculate? Would you have to guess?

4 MS. KAREN JEFFRIES: I would have to - I would
5 say speculate because -

6 CHAIRMAN VINCENT BOBOT: Alright, I'll -

7 ATTORNEY EMERY HARLAN: Well -

8 CHAIRMAN VINCENT BOBOT: - sustain it.

9 ATTORNEY EMERY HARLAN: Well, let me ask the
10 question this way. So based on the process and the rules
11 and the procedures, is information like whether a firm went
12 from 80 points to 98 points and, therefore, there was a
13 closer gap between one and two, is that information under
14 the city's rules, under the department's rules, that the
15 committee could have used in making a determination to have
16 a interview process as a final step in the decision making?

17 MS. KAREN JEFFRIES: The question is out there
18 for the committee; I don't know how they would have
19 considered it if -

20 ATTORNEY EMERY HARLAN: No, I -

21 MS. KAREN JEFFRIES: - the points had been
22 closer.

23 ATTORNEY EMERY HARLAN: I'm not asking you to
24 determine -

25 MS. KAREN JEFFRIES: But -

1 ATTORNEY EMERY HARLAN: - what the committee
2 would have done. I'm just simply asking you based on the
3 rules that existed at the time, is that information the
4 committee could have used to decide that they want to bring
5 two firms in for interviews before making a final award?

6 MS. KAREN JEFFRIES: I can't say that it couldn't
7 have been used.

8 ATTORNEY EMERY HARLAN: So the answer is, yes,
9 that is information they could have used.

10 MS. KAREN JEFFRIES: It could have been shared.
11 It would have been useful, I'm sure, but it's up to the
12 committee. When I ask them do they feel they need an
13 interview, um, with the highest ranked proposers,
14 regardless of the gap -

15 CHAIRMAN VINCENT BOBOT: [Inaudible] answer is
16 yes.

17 ATTORNEY EMERY HARLAN: Yeah, ah -

18 CHAIRMAN VINCENT BOBOT: Ah, you know -

19 ATTORNEY EMERY HARLAN: And in fact though, they
20 were deprived of that opportunity for this procurement,
21 correct -

22 MS. KAREN JEFFRIES: They -

23 ATTORNEY EMERY HARLAN: - because they didn't
24 have that information?

25 MS. KAREN JEFFRIES: They were asked if they

1 wanted interviews and the answer was no.

2 ATTORNEY EMERY HARLAN: Right.

3 MS. KAREN JEFFRIES: They felt comfortable with
4 the highest ranked proposer. I don't know if the scores
5 had been closer if that would have affected that decision;
6 I don't know.

7 ATTORNEY EMERY HARLAN: Okay. Now going to - on
8 this LBE issue, LBE issue, same exhibit, number three, just
9 quickly - um, ah, under the bonus point category, um, it
10 says, "No affidavit for the Quarles & Brady MWH proposal."
11 You see that?

12 MS. KAREN JEFFRIES: Yes.

13 ATTORNEY EMERY HARLAN: Towards the middle of the
14 page?

15 MS. KAREN JEFFRIES: Hmm-hmm.

16 ATTORNEY EMERY HARLAN: Those are comments you
17 would have inputted, correct?

18 MS. KAREN JEFFRIES: Yes.

19 ATTORNEY EMERY HARLAN: And that's false?

20 MS. KAREN JEFFRIES: For Quarles & Brady? There
21 was no affidavit.

22 ATTORNEY EMERY HARLAN: In the proposal that was
23 submitted by Quarles & Brady, is it your testimony that
24 there was no affidavit submitted in that proposal?

25 MS. KAREN JEFFRIES: With Quarles & Brady named

1 on the document?

2 ATTORNEY EMERY HARLAN: Right. With, with
3 anybody on the named on the doc - I'm saying you received
4 in Bonfire a proposal that Quarles & Brady submitted,
5 correct?

6 MS. KAREN JEFFRIES: Correct.

7 ATTORNEY EMERY HARLAN: Okay. And there's been
8 testimony from Ms. Kelsey, as long as one of the parties in
9 that proposal, um, submitted an affidavit, ah, that was
10 accurate as to, ah, LBE status, the proposal was entitled
11 to points, correct?

12 MR. BRAD HOESCHEN: I, I'm sorry, for the record,
13 I, I don't believe that was Ms. Kelsey's testimony.

14 ATTORNEY EMERY HARLAN: Well then, I, I think it
15 -

16 MR. BRAD HOESCHEN: You're welcome to ask your
17 question but I don't know that Ms. Kelsey said that.

18 ATTORNEY EMERY HARLAN: What is -

19 MR. BRAD HOESCHEN: I -

20 MS. KAREN JEFFRIES: The -

21 ATTORNEY EMERY HARLAN: Did you have a discussion
22 with -

23 MS. KAREN JEFFRIES: The LBE form -

24 ATTORNEY EMERY HARLAN: Let me -

25 MS. KAREN JEFFRIES: Sorry.

1 ATTORNEY EMERY HARLAN: I'll withdraw the
2 question. Did you have a discussion at some point in the
3 process or after the award as to whether, um, a LB - the
4 LBE points should have been awarded to this proposal?

5 MS. KAREN JEFFRIES: There was no discussion
6 before the award except for a conversation, a larger
7 conversation, with director Kelsey regarding how should
8 this be awarded, given certain facts surrounding this. I
9 know your document, ah, that you submitted stated that
10 you're not aware of a prior contract for a disclosure by
11 counsel services. There was a prior contract and there was
12 a contract in place when this RFP was let and published.
13 So when it was time to -

14 ATTORNEY EMERY HARLAN: Let, let me - I'll
15 withdraw the question because I don't think we're on -
16 we're communicating. So my question is, at any point in
17 time, did you have a discussion with your boss, Ms. Kelsey,
18 about whether the correct determination was made to deny
19 the Quarles & Brady and MWH proposal LBE points? Whether
20 it was yesterday or last year?

21 MS. KAREN JEFFRIES: Yes, there was a discussion
22 about -

23 ATTORNEY EMERY HARLAN: Okay.

24 MS. KAREN JEFFRIES: - the documents submitted
25 for that proposal and whether or not points would apply.

1 ATTORNEY EMERY HARLAN: Okay. And at some point
2 in time, did Ms. Kelsey tell you that looking at this, it
3 looks like that proposal should have received 10 points?

4 MS. KAREN JEFFRIES: No.

5 ATTORNEY EMERY HARLAN: Okay, so she never told
6 you that.

7 MS. KAREN JEFFRIES: No.

8 ATTORNEY EMERY HARLAN: Okay. And your
9 understanding of the rule is that only the person, ah - in
10 this particular instance, Quarles & Brady - only if they
11 had submitted an affidavit would LBE points be awardable.

12 MS. KAREN JEFFRIES: No, that's not true.

13 ATTORNEY EMERY HARLAN: Okay.

14 MS. KAREN JEFFRIES: Either party that's party to
15 the proposal can submit the LBE form for review.

16 ATTORNEY EMERY HARLAN: Right. And if it is a
17 valid LBE form, then either party to the proposal - the SBE
18 or the non-SBE - would be entitled to the 10 points.

19 MS. KAREN JEFFRIES: Yes.

20 ATTORNEY EMERY HARLAN: Okay. So I think that's
21 clear now on the record that the, the evidence from the
22 city is that no matter which one of the parties had the
23 certification, um, who were parties to the proposal, the 10
24 points were to be awarded.

25 MS. KAREN JEFFRIES: And that question,

1 essentially, you can - LBE points can be applicable to
2 either party of a proposal that's generally being asked and
3 answered in prior RFPs in terms of responses to questions
4 received that are published in addendums. So, yes, that is
5 a general understanding that points are available for
6 either party to a proposal.

7 ATTORNEY EMERY HARLAN: Right. And -

8 MS. KAREN JEFFRIES: If it's valid.

9 ATTORNEY EMERY HARLAN: And, um, in this case,
10 you had a discussion with Ms. Kelsey and indicated that you
11 didn't think that LBE points should be awarded to the MWH
12 Quarles & Brady proposal because it appeared that MWH that
13 submitted a affidavit, um, had more offices outside of the
14 city than inside of the city.

15 MS. KAREN JEFFRIES: No. When I talked with her,
16 it was - the form itself was not definitive.

17 ATTORNEY EMERY HARLAN: Okay. So what is - what
18 are you -

19 MS. KAREN JEFFRIES: So what do I do? My
20 question would have been what do I do? Do we give them the
21 points or not? The form itself is not, was not definitive
22 for me so I posed a question to her because I couldn't - I
23 didn't have a definitive answer.

24 ATTORNEY EMERY HARLAN: What is your
25 understanding of the criteria that must be met in order for

1 a person seek - or a business seeking LBE status to get the
2 points awarded to them?

3 MS. KAREN JEFFRIES: It says 50 percent of their
4 real estate where they conduct their business must be in
5 Milwaukee, 50 percent or more, and then there's some other
6 criteria listed on the affidavit. But if the affidavit is
7 submitted and notarized properly, that is a testation to
8 the fact that the vendor or the proposer is affirming that
9 they do qualify in accordance with the criteria that's
10 listed on the affidavit.

11 ATTORNEY EMERY HARLAN: Okay.

12 MS. KAREN JEFFRIES: So that would be my
13 assumption that it's - they're eligible.

14 ATTORNEY EMERY HARLAN: Thank you. And as you
15 sit here today, ma'am, have you discovered any information
16 to indicate that 50 percent or more of the space leased by
17 MWH is outside of the city of Milwaukee?

18 MS. KAREN JEFFRIES: I wouldn't have that
19 information.

20 ATTORNEY EMERY HARLAN: At some point in the
21 procurement process, did you go to the website of MWH as
22 part of a, um, effort to determine whether it met the
23 criteria for LBE points?

24 MS. KAREN JEFFRIES: No.

25 ATTORNEY EMERY HARLAN: Okay. Did you tell

1 somebody that you did that?

2 MS. KAREN JEFFRIES: No.

3 ATTORNEY EMERY HARLAN: Okay. So your conclusion
4 was based strictly on what was set forth in that affidavit.

5 MS. KAREN JEFFRIES: Right.

6 ATTORNEY EMERY HARLAN: Okay. And again, the
7 affidavit did not designate, nor did it ask, that the party
8 designate on an office-by-office basis what square footage
9 was being leased in each location, correct?

10 MS. KAREN JEFFRIES: The property form - there's
11 an affidavit for Local Business Enterprise and then there's
12 a property form. The property form does not, did not ask
13 for square footage. The version that's available now does.

14 ATTORNEY EMERY HARLAN: Okay.

15 MS. KAREN JEFFRIES: And that is published now;
16 the RFP does -

17 ATTORNEY EMERY HARLAN: So -

18 MS. KAREN JEFFRIES: - ask for square footage.

19 ATTORNEY EMERY HARLAN: And not to beat a dead
20 horse, just to wrap this up, when you said that you had
21 concerns about whether the form gave you enough information
22 to make a decision about whether LBE points were awardable,
23 what was supposed to be on the affidavit that wasn't?

24 MS. KAREN JEFFRIES: When I, when I'm asking it
25 is because as a partner on the proposal, my question was in

1 terms of is this acceptable? It has been asked and
2 answered in the past so I'm affirming is this acceptable?
3 Because then they should have the 10 points, which would
4 increase their total points. So that was the gist of my
5 discussion, along with other aspects of how do we move
6 forward here because of other, ah, circumstances
7 surrounding this award.

8 ATTORNEY EMERY HARLAN: I, I know, but I'm still
9 trying to understand what gave you pause about the
10 affidavit submitted by MWH in terms of like what was
11 missing, what was creating confusion on your part about
12 whether they get the 10 points or not?

13 MS. KAREN JEFFRIES: No, I didn't have a question
14 about giving the 10 points; my question was a larger issue.
15 You have the affidavit; that's acceptable in and of itself.
16 It's already been asked. If a partner on a proposal has
17 submitted it, the points are available. So I didn't have a
18 question about the LBE.

19 ATTORNEY EMERY HARLAN: So why didn't we get the
20 points then?

21 MS. KAREN JEFFRIES: After discussing, I'm not
22 sure where that came from. You had one address listed on
23 the property form, if I recall correctly. There was one
24 address listed, so that would look like 100 percent instead
25 of - so you're meeting the 50 percent and then some

1 requirement on the LBE affidavit that says at least 50
2 percent of the acreage, I think we used the term acreage -

3 ATTORNEY EMERY HARLAN: Yes.

4 MS. KAREN JEFFRIES: - is there. So that was not
5 my question when I had a discussion with the director. My
6 question was related to the current contract that was in
7 place. If I'm going to award and award these points - LBE
8 and SBE - what do we do about the current contract with
9 Katten Muchin that was extended in error out to April of
10 2018? So there's another - and I shared that, I shared
11 that - with Attorney Block.

12 ATTORNEY EMERY HARLAN: I'm - okay, so was - let
13 me -

14 MS. KAREN JEFFRIES: So this was -

15 ATTORNEY EMERY HARLAN: - try to unpack that.

16 MS. KAREN JEFFRIES: - a bigger discussion. It
17 wasn't about should they get the LBE or should they not get
18 the LBE points. It was a matter of if I'm going to award
19 to them, I need this current contract that was extended out
20 to April of 2018 but not requested to be extended out. And
21 like I said, I know in your statement you included, um, a
22 reference to the fact that you're not aware of an existing
23 contract before this solicitation. There was - there was a
24 contract in place.

25 ATTORNEY EMERY HARLAN: For disclosure counsel

1 services?

2 MS. KAREN JEFFRIES: For disclosure and bond
3 counsel services combined into one contract.

4 ATTORNEY EMERY HARLAN: When did that occur?

5 MS. KAREN JEFFRIES: It was in place when I was
6 working on this RFP. And so when this was awarded, this
7 was to replace the current contract that had bond counsel
8 and disclosure counsel services on one contract.

9 ATTORNEY EMERY HARLAN: Do you know if that
10 contract that you're referring to was a product of an RFP
11 process?

12 MS. KAREN JEFFRIES: Yes, it was.

13 ATTORNEY EMERY HARLAN: Okay. So -

14 MS. KAREN JEFFRIES: And so my question to the
15 director was if I'm going to award to your organization,
16 what do I do about this current contract that a colleague
17 extended out to April of 2018 in error?

18 ATTORNEY EMERY HARLAN: When you say that it
19 shouldn't have been extended to 2018, first of all, can you
20 identify the colleague who made that decision?

21 MS. KAREN JEFFRIES: Her name is Arvaya - and
22 she's Arvaya, A-r-v-a-y-a.

23 ATTORNEY EMERY HARLAN: She's still with the
24 city?

25 MS. KAREN JEFFRIES: No. No.

1 ATTORNEY EMERY HARLAN: Did she lose her position
2 over this error, did she?

3 MS. KAREN JEFFRIES: [Shakes head]

4 ATTORNEY EMERY HARLAN: Not to your knowledge.

5 MS. KAREN JEFFRIES: No.

6 ATTORNEY EMERY HARLAN: And why did she - why was
7 she in error in, um, I guess, signing off on this
8 extension?

9 MS. KAREN JEFFRIES: That was part of my
10 discussion. Director Kelsey, "Here, I am ready to award
11 this contract. It was published that the effective date of
12 this RFP would have been, what, July of 2017? How am I
13 going to award this to be effective July, August 2017 when
14 the current contract, B10504, has already been extended out
15 to April of 2018?" How did that happen? The comptroller's
16 office did not ask for that extension so, like I said, this
17 was part of a bigger conversation. I need -

18 ATTORNEY EMERY HARLAN: What was the -

19 MS. KAREN JEFFRIES: - the director -

20 ATTORNEY EMERY HARLAN: What was the contract
21 number that was extended improperly?

22 MS. KAREN JEFFRIES: B10504.

23 ATTORNEY EMERY HARLAN: B105 -

24 MS. KAREN JEFFRIES: And I shared that with
25 Attorney Block.

1 MR. STEVE FRITSCH: Mr. Chairman, ah, I'm not
2 sure that this conversation is getting us any closer to the
3 conclusion of this case. Whether or not there was an
4 overlapping contract really doesn't move us forward on this
5 specific issue.

6 CHAIRMAN VINCENT BOBOT: Well -

7 MR. BRAD HOESCHEN: Mr. Chair, may I?

8 CHAIRMAN VINCENT BOBOT: Mr. Hoeschen?

9 MR. BRAD HOESCHEN: Ms. Jeffries, are you
10 suggesting that the LBE points were declined in order to
11 fix an error of extending a contract?

12 MS. KAREN JEFFRIES: Like I - for me, as the
13 procurement specialist, I take the entire situation to the
14 director for direction. What do I do? Even if I award to
15 this vendor, we have this contract that's been extended out
16 until April of 2018 -

17 MR. BRAD HOESCHEN: And it was after that -

18 MS. KAREN JEFFRIES: - and -

19 MR. BRAD HOESCHEN: - conversation that you were
20 instructed to deduct the LBE points?

21 MS. KAREN JEFFRIES: I was instructed - yes. I
22 don't do that on my own; go in and take away points. It
23 was part of a larger discussion; that's what I've been
24 saying. It's part of -

25 ATTORNEY EMERY HARLAN: Can, can I ask that we

1 adjourn -

2 MS. KAREN JEFFRIES: - a larger discussion.

3 ATTORNEY EMERY HARLAN: - um, briefly, for five
4 minutes? I'd like to confer with the city.

5 CHAIRMAN VINCENT BOBOT: Well, I, I just - I, I
6 don't have a problem with that. It's just that I have one
7 question. Even with the 10 points, they're close -

8 MR. BRAD HOESCHEN: No.

9 CHAIRMAN VINCENT BOBOT: - but somebody's still
10 above them.

11 MR. BRAD HOESCHEN: No, they're over. No,
12 they're eight points behind.

13 CHAIRMAN VINCENT BOBOT: Oh.

14 MR. BRAD HOESCHEN: They go to 107.4 and the
15 winner had 105.6.

16 CHAIRMAN VINCENT BOBOT: Okay. We'll have an
17 adjournment for five or 10 minutes.

18 ASSISTANT CITY ATTORNEY KATHY BLOCK: I'm -

19 CHAIRMAN VINCENT BOBOT: Back on the record.

20 ASSISTANT CITY ATTORNEY KATHY BLOCK: And
21 obviously, I'd like to say something if, if I may?

22 CHAIRMAN VINCENT BOBOT: Oh, absolutely.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: Um, I, you
24 know, obviously, I think something was implied by the
25 witness. I'm very concerned about the implications that

1 statement had for a witness who has already testified, um,
2 and her character, um, if not actual possible unethical and
3 criminal conduct that was alleged. Um, I think that the
4 best - frankly, I'm a little concerned about how to proceed
5 at this point without talking to my supervisors to make
6 sure everyone's, um, rights are adequately, um, protected.
7 Um, and I think that, ah, Mr. Harlan has very, um,
8 generously, um, offered to, ah, potentially adjourn, um,
9 the proceedings today and if that's an amenable way to, ah,
10 approach the, ah, ah, rest of the day, I would, ah,
11 certainly appreciate the board's, um, ah, allowance of that
12 way to proceed.

13 CHAIRMAN VINCENT BOBOT: Well, I will tell you
14 that it was my opinion before we even had a discussion that
15 an adjournment was in order. And I know that Mr.
16 Hoeschen's [inaudible], "Well, shouldn't we let this
17 witness, this witness finish?" I, I think we should
18 adjourn. I think, um, I don't know if I see all the stuff
19 that you just mentioned but I think an adjournment's in
20 order. So, I'll entertain a motion -

21 MR. AVERILL: Mr. Chair? I make a motion that we
22 adjourn and hold this matter at the, ah, convenience of the
23 chair.

24 CHAIRMAN VINCENT BOBOT: Okay. I have a motion
25 by Mr. Averill to adjourn. Do I have a second?

1 MR. STEVE FRITSCHKE: Second.

2 CHAIRMAN VINCENT BOBOT: Any objection? So
3 ordered. Ah, we're going to schedule a date though. So
4 we're going to schedule a date that we would come back.
5 Ah, so I guess I'm open to how much time. I will tell you
6 the third week in May I'm going to be out of town. Ah, so,
7 ah -

8 MR. STEVE FRITSCHKE: I'm going to be gone from
9 the 16th on, so -

10 CHAIRMAN VINCENT BOBOT: Okay. How much time do
11 you think you need?

12 ATTORNEY EMERY HARLAN: Ah -

13 UNKNOWN MALE SPEAKER: Is that next week or June?

14 ATTORNEY EMERY HARLAN: I think probably two or
15 three hours, um -

16 MR. BRAD HOESCHEN: No, no -

17 CHAIRMAN VINCENT BOBOT: No, no.

18 MR. BRAD HOESCHEN: How much time -

19 ASSISTANT CITY ATTORNEY KATHY BLOCK: [Laughter]

20 CHAIRMAN VINCENT BOBOT: No -

21 ASSISTANT CITY ATTORNEY KATHY BLOCK: A week.

22 CHAIRMAN VINCENT BOBOT: We're going to get a
23 different day -

24 MR. STEVE FRITSCHKE: Can we, can we do it next
25 week?

1 CHAIRMAN VINCENT BOBOT: Can you do next week?

2 ATTORNEY EMERY HARLAN: Well, one issue - and I
3 leave it to you all's discretion - I mean, so do we have
4 some members who are not present?

5 CHAIRMAN VINCENT BOBOT: Ah, Mister - ah, Chevy
6 Johnson is the only one cause the twins. So -

7 MR. BRAD HOESCHEN: And he won't -

8 CHAIRMAN VINCENT BOBOT: He won't -

9 MR. BRAD HOESCHEN: - be here the next meeting
10 either.

11 CHAIRMAN VINCENT BOBOT: - be here. He won't be
12 here at the next meeting.

13 ASSISTANT CITY ATTORNEY KATHY BLOCK: No.

14 CHAIRMAN VINCENT BOBOT: It's just going to be
15 us.

16 ATTORNEY EMERY HARLAN: Okay. So what, what,
17 what day are you contemplating?

18 MR. BRAD HOESCHEN: We're asking you. Can you do
19 it next week?

20 ATTORNEY EMERY HARLAN: Um -

21 CHAIRMAN VINCENT BOBOT: I'm available the 10th
22 and 11th -

23 ATTORNEY EMERY HARLAN: I don't think that's
24 going to allow me enough time to resolve our issues, so I
25 don't think next week -

1 CHAIRMAN VINCENT BOBOT: Okay.

2 ATTORNEY EMERY HARLAN: - makes sense.

3 MR. BRAD HOESCHEN: Beginning of June?

4 CHAIRMAN VINCENT BOBOT: Okay.

5 ATTORNEY EMERY HARLAN: That, that's fine.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay.

7 CHAIRMAN VINCENT BOBOT: How does June 4th look?

8 MR. STEVE FRITSCHKE: Um, I'm not back until the,
9 ah, eighth.

10 CHAIRMAN VINCENT BOBOT: Oh. Could we do the 8th
11 in the afternoon?

12 MR. STEVE FRITSCHKE: No.

13 MR. BRAD HOESCHEN: Ah, no, I can't do on the 8th
14 in the afternoon.

15 CHAIRMAN VINCENT BOBOT: You want to do it on the
16 13th at our [inaudible] board meeting and you shuffle
17 around that?

18 MR. BRAD HOESCHEN: I -

19 CHAIRMAN VINCENT BOBOT: Linda?

20 MR. BRAD HOESCHEN: I don't think that's a good -

21 ASSISTANT CITY ATTORNEY KATHY BLOCK: [Laughter]

22 MS. LINDA ELMER: Right now we don't have May
23 appeals.

24 MR. BRAD HOESCHEN: Yeah, but I don't think
25 that's a good idea.

1 MS. LINDA ELMER: Okay.

2 CHAIRMAN VINCENT BOBOT: Well, I was thinking
3 about -

4 MR. BRAD HOESCHEN: Well, you said you were gone
5 the third week of May, is that right?

6 CHAIRMAN VINCENT BOBOT: Yes.

7 MR. BRAD HOESCHEN: And you're gone from the 6th
8 to the 8th - ah, 16th, ah Steve, to the eighth?

9 MR. STEVE FRITSCHKE: I'm gone from the 16th to
10 the seventh.

11 MR. BRAD HOESCHEN: Alright.

12 CHAIRMAN VINCENT BOBOT: I was thinking about
13 using the 13th for this and then doing the stuff on the
14 13th at a different date.

15 MR. BRAD HOESCHEN: But it's already been -
16 Linda, has it been published?

17 MS. LINDA ELMER: No.

18 MR. BRAD HOESCHEN: That date?

19 MS. LINDA ELMER: I haven't -

20 MR. BRAD HOESCHEN: No?

21 MS. LINDA ELMER: I just emailed our staff but -

22 ATTORNEY EMERY HARLAN: I, I'm having trouble
23 with -

24 MR. BRAD HOESCHEN: Oh, okay.

25 ATTORNEY EMERY HARLAN: - on my end.

1 MS. LINDA ELMER: Oh, reception?

2 ATTORNEY EMERY HARLAN: Can I -

3 MS. LINDA ELMER: [Inaudible]

4 CHAIRMAN VINCENT BOBOT: You need to get a paper
5 calendar.

6 ALL: [Laughter]

7 CHAIRMAN VINCENT BOBOT: How are you ever going
8 to schedule something when there's -

9 ATTORNEY EMERY HARLAN: Talking about old school,
10 man.

11 CHAIRMAN VINCENT BOBOT: Well, how are you going
12 to schedule something when there's metal on the roof and
13 stuff? You can't break it.

14 MR. BRAD HOESCHEN: What?

15 ATTORNEY EMERY HARLAN: I'll, I'll [inaudible].

16 CHAIRMAN VINCENT BOBOT: Well, haven't you been
17 in places where the stuff doesn't work?

18 MR. BRAD HOESCHEN: No, your calendar isn't
19 connected to - my calendar's in my phone. I don't need the
20 network -

21 CHAIRMAN VINCENT BOBOT: Oh.

22 MR. BRAD HOESCHEN: - for my calendar.

23 CHAIRMAN VINCENT BOBOT: Oh, you don't need the
24 network?

25 MR. BRAD HOESCHEN: Yeah.

1 CHAIRMAN VINCENT BOBOT: I don't do that; I'm a
2 dinosaur.

3 MR. BRAD HOESCHEN: I mean, there's the bigger
4 issue.

5 ALL: [Laughter]

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Just hope
7 [laughter]. I hope I'm free? I vaguely know when I'll be
8 gone.

9 MR. BRAD HOESCHEN: Well, the 13th we already
10 have on the calendar so can you do the thirteenth?

11 ATTORNEY EMERY HARLAN: I'm sorry, I'm checking
12 if -

13 MR. BRAD HOESCHEN: Okay.

14 CHAIRMAN VINCENT BOBOT: The thirteenth -

15 ATTORNEY EMERY HARLAN: You with me? I'm having
16 some technical problems.

17 CHAIRMAN VINCENT BOBOT: Put it in.

18 MR. AVERILL: Do you remember last month
19 [inaudible] -

20 MS. LINDA ELMER: Yeah, we contacted him -

21 ATTORNEY EMERY HARLAN: So, um -

22 MS. LINDA ELMER: He had no -

23 CHAIRMAN VINCENT BOBOT: What [inaudible]?

24 ATTORNEY EMERY HARLAN: I have a deposition that
25 day [inaudible].

1 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah,
2 Rhonda will have to be at Finance and Personnel at 9:00 on
3 the thirteenth.

4 CHAIRMAN VINCENT BOBOT: Okay.

5 MR. BRAD HOESCHEN: But she's finished but if you
6 want her here -

7 ASSISTANT CITY ATTORNEY KATHY BLOCK: Well, I may
8 need her here -

9 MR. BRAD HOESCHEN: - we could schedule -

10 ASSISTANT CITY ATTORNEY KATHY BLOCK: - for
11 rebuttal.

12 MR. BRAD HOESCHEN: Right.

13 CHAIRMAN VINCENT BOBOT: How's the 18th looking?

14 ATTORNEY EMERY HARLAN: Eighteenth of June?

15 CHAIRMAN VINCENT BOBOT: Yes.

16 ATTORNEY EMERY HARLAN: Um, I - I have, I have a
17 trial the following week but as of now, I could make that
18 work.

19 MR. STEVE FRITSCHKE: I can make that work.

20 CHAIRMAN VINCENT BOBOT: Okay. [Inaudible], too?

21 ASSISTANT CITY ATTORNEY KATHY BLOCK: I assume
22 that's a Monday?

23 MS. LINDA ELMER: Yes.

24 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yeah? At
25 9:00 a.m.?

1 MR. BRAD HOESCHEN: Nine a.m.?

2 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yes.

3 MR. BRAD HOESCHEN: That'd be fine.

4 CHAIRMAN VINCENT BOBOT: Yeah, make it 9:00 a.m.

5 MS. LINDA ELMER: June 18th, 9:00 a.m.

6 ASSISTANT CITY ATTORNEY KATHY BLOCK: Did you get
7 that date?

8 UNKNOWN FEMALE SPEAKER: Yes.

9 CHAIRMAN VINCENT BOBOT: And if it does get
10 resolved, you can always let us know.

11 ASSISTANT CITY ATTORNEY KATHY BLOCK: Yes. Okay.

12 CHAIRMAN VINCENT BOBOT: Mr. Harlan, is that
13 alright? The 18th at 9:00 a.m.?

14 ATTORNEY EMERY HARLAN: Yes, sir. Yes, sir.

15 ASSISTANT CITY ATTORNEY KATHY BLOCK: Okay.

16 MS. LINDA ELMER: So the June 13th date and then
17 June -

18 CHAIRMAN VINCENT BOBOT: Yes.

19 MS. LINDA ELMER: Okay.

20 MR. AVERILL: And yes, we made the motion to
21 adjourn so -

22 MS. LINDA ELMER: Yep.

23 ASSISTANT CITY ATTORNEY KATHY BLOCK: Good.

24 MR. AVERILL: - we're done. Thank you, everyone.

25 ASSISTANT CITY ATTORNEY KATHY BLOCK: Thank you.

1 Certification

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| | | | | |
|---|---|--|--|--|
| \$ | 14 66:2 79:5,12 84:19 | 4 | absolutely 6:1 74:15 85:3 105:17 127:15 158:3 183:22 | 24 107:7 117:12 118:9 |
| \$100,000 73:13 | 14749 57:19 88:6 | 40 28:10 | accept 13:5 | address 114:10 178:22,24 |
| \$150,000 73:13 | 16 87:23 120:11 | 41 153:11,14 | acceptable 178:1,2,15 | adequately 184:6 |
| \$2 75:9 | 16th 185:9 188:8, 9 | 4th 2:2 187:7 | accepting 162:2 | adjourn 183:1 184:8,18,22,25 192:21 |
| \$5,000 118:2 | 18 28:8 | 5 | accordance 18:12 118:15 176:9 | adjournment 183:17 184:15 |
| \$50,000 18:14 | 18th 191:13 192:5,13 | 50 176:3,5,16 178:25 179:1 | accurate 37:11 97:12 172:10 | adjournment's 184:19 |
| - | 1996 15:25 | 6 | achievable 39:11,15 | administer 17:1 |
| -let 91:5 | 1:30 140:3,8 | 6 60:10 | acknowledge 121:20 | administering 16:23 |
| 1 | 2 | 6th 188:7 | acknowledgeme nt 95:11,14 125:11 | administers 58:15 |
| 10 23:15 24:7,25 25:5 30:22 31:14 36:4 38:12 40:5,9 43:10,14 47:12 60:3 62:25 64:10, 14 67:9 69:25 70:5,10,12 77:13, 23 80:22 85:11 98:13 99:4 100:15 102:18 103:1 107:7 168:20 174:3,18, 23 178:3,12,14 183:7,17 | 2,444 69:4 | 8 | acknowledgmen ts 121:14 | administrative 2:1,8,19 |
| 100 19:5 25:4,16, 20 30:1 178:24 | 20 31:3 39:20 54:1 93:9,15,21 98:13 168:10 | 80 169:12 | acknowledgmen ts 121:14 | admit 41:14 63:22 64:2 |
| 100- 24:25 | 2008 15:21 16:19 78:6 | 8th 187:10,13 188:8 | acreage 24:21 179:2 | admitted 126:19 168:19 |
| 100-some 25:8 | 2011 143:13 | 9 | act 3:14 | advantage 24:8, 9 |
| 105.6 183:15 | 2017 47:19 69:10 181:12,13 | 9.6 55:18 56:5 59:19,20 70:7 165:4,7,23 | acted 3:2,12 | advertise 18:15 |
| 107.4 183:14 | 2018 2:2 152:15 179:10,20 180:17,19 181:15 182:16 | 98 169:12 | activity 78:10 | advertised 18:13 |
| 10th 186:21 | 25 19:7 28:7 31:13,18 | 9:00 191:2,25 192:4,5,13 | actual 72:20 73:17,20 81:6 86:7 116:21 123:5 184:2 | advisor 133:9 |
| 11 65:7,8 | 28 152:15 | 9th 69:10 | add 75:9 | affected 171:5 |
| 110 25:20 | 2:00 140:3,8 | A | added 118:9 144:12 163:24 | affidavit 24:11 29:14 59:3 66:3 67:4 70:17 78:2 79:5 83:2,4,21 84:3,5 113:1 119:18 156:18 163:19 164:3,4,5, 7,13,19 171:10, 21,24 172:9 174:11 175:13 176:6,10 177:4,7, 11,23 178:10,15 179:1 |
| 11:00 108:22 | 3 | A-N-D-E-R-S-O- N 128:23 | addendum 50:4, 5 | |
| 11th 186:22 | 3,000 69:3 | A-R-V-A-Y-A 180:22 | addendums 175:4 | |
| 12 52:5 | 3.2 55:25 56:6 | a.m. 191:25 192:1,4,5,13 | addition 121:12 | |
| 120 31:5 | 365 23:7 85:21 | A2 165:3 | additional 5:11 24:17 25:5 31:3 44:16 48:4 66:5, | |
| 13th 187:16 188:13,14 190:9 192:16 | 365-7 85:25 | ability 4:17 11:25 70:1 | | |
| | 370 27:4 52:13 85:19 | | | |
| | 370-5(3) 52:15 | | | |

| | | | | |
|---|---|---|---|--|
| affirm 14:7 128:16 142:13 | amenable 184:9 | appeals 2:2 123:8 187:23 | Arvaya 180:21, 22 | 13,16,19,21,23 54:4,6,25 55:5,8, 14,20,23 56:8,11, 14 57:4,8,11,15, 21 58:1,9,13,22 59:2,6,10,13,17 60:13,16,18,25 61:4,9,12,17,20, 24 62:2,6,9,13, 16,20,23 63:1,4, 8,14,18 64:4,8, 18,21,25 65:3,6, 12,15,21,25 66:9, 12,15,18,25 67:15 68:7,13 70:13,23 71:4,6, 10 72:7,22,25 73:4 74:2,4,7,11, 14,17,24 75:2,8, 17 88:4 91:21 92:1,18,24 93:5, 8,15 97:17,19 98:6,19 99:5 101:12 108:20 109:1,9,12 111:5, 9 113:24 114:2, 20 119:15,25 120:5,9,18,22 121:3,9,12,17,23 122:2,9,16 123:1, 7,11,17,23 126:2, 5 127:12,24 128:4 134:24 135:6,12 136:5, 10,14,18,22,25 137:3,7,10,14,17, 19,23 138:1,5,10, 12,18,24 139:4,8, 13 140:11 141:9, 12,20,24 142:3,6 148:23 151:4 153:4,9,12,16,18 168:25 183:18, 20,23 185:19,21 186:13 187:6,21 190:6 191:1,7,10, 21,24 192:2,6,11, 15,23,25 |
| affirming 176:8 178:2 | amended 81:5, 18,25 152:7 | appeared 175:12 | asks 95:7 113:14, 15,20 114:14 115:14 | assume 37:23 44:25 46:10 191:21 |
| afforded 80:14 110:11 | amending 50:15 | appellant 2:16 3:21 51:8 | aspect 155:12 156:25 | assumed 45:17 |
| afternoon 109:3 139:9 187:11,14 | amic 11:6 | applicable 53:3 77:17 155:4,17 175:1 | aspects 154:3 166:7,12 178:5 | assuming 77:22 142:25 163:20 |
| agency 85:25 87:2 | amicable 11:6 | applicants 84:22 | assembled 131:10 | |
| agenda 161:7 | amiss 112:15 | application 84:19 | assessment 85:4 | |
| agent 20:1 29:8 47:21 54:12 56:19 79:20 143:6 | amount 31:2 36:16 54:17 72:10,20 73:17 75:4 113:17 117:18 | applies 82:19 83:15 | assign 163:25 | |
| agents 153:3 | amounts 62:3,14 | apply 86:2 87:3 96:16 155:23 173:25 | assigned 77:5 110:7 132:11 144:1 155:25 166:17 | |
| agree 4:22 12:10 48:6 80:19 84:24 125:12 138:3 146:9 151:21 | analysis 35:21 82:22 | appointed 16:18 | assigns 59:24 | |
| agreed 12:4,8 | analyst 16:9 | approach 184:10 | assistant 2:8,19 4:6,14,24 5:23,25 6:4,11 7:5,8,16, 23 8:1,5,18,25 9:3,8,15,19,23 13:4,20,23 14:4, 20 15:13 17:24 18:2,6 20:3,6,12, 15,17,19,21,24 21:2,7,16,19,24 22:3,5,8,16,20 23:2,5,11,23 26:5,9,12,14,20, 23 27:2,7,10,12 32:9,13,16,19,22, 24 33:6,12,18,23 34:1,10,15,19 35:3,6,12,17,25 36:5,8,25 37:10, 18,25 38:3,5,8, 11,14,18,21,23 39:7 40:3,8,11, 15,17,25 41:8,12, 16,20 42:3,6,11, 16,20,25 43:4,16, 19,22,24 44:3,7, 17,19,24 45:5,16, 21,24 46:2,9,14, 17,22 49:18,23 51:11,15,18,21, 23,25 52:3,6,8, 11,15,19 53:4,9, | |
| agreement 64:17 117:16 141:19 | analysts 148:14 | appropriately 3:2 | | |
| ahead 9:10,11 37:15 87:20 155:23 | analytics 54:15 | approved 154:9 | | |
| all's 140:18 186:3 | Anderson 61:21 108:23 128:8,11, 12,14,20,22,23 129:1,4,7,11,14, 17,21,25 130:6,9, 14,17,21,25 131:3,7,12,15,18, 23 132:2,6,13,16, 19,25 133:3,11, 15,18,24 134:4,7, 12,16,20 135:4 | April 179:9,20 180:17 181:15 182:16 | | |
| alleged 184:3 | annual 32:10 | ARAB 9:5 | | |
| Allen 61:21 136:11 138:6 | annually 28:7 | area 28:4 33:10 58:18 99:17 146:8 149:5 | | |
| Allens 136:11 | anticipate 3:6 109:7 | areas 57:24 | | |
| allocated 19:7 | apologies 41:13 | argue 8:14 95:15, 19 | | |
| allowance 184:11 | apologize 41:9 72:24 99:18,24 | arguing 102:14 107:10 | | |
| allowed 39:16 40:5 62:15 117:16 159:6 | apparent 68:3 | argument 6:13 12:7 14:1 45:1 46:10 95:20,23 106:1 114:21,22 | | |
| alright 13:23 31:1 63:3 72:4 105:25 129:8 133:19 143:21 146:18 147:1 152:6 169:6 188:11 192:13 | apparently 60:21 93:25 149:16 | argumentative 97:24 | | |
| | appeal 6:14,22 7:14,18,19 8:9, 17,19 89:1 96:8 122:20,24 123:4 152:25 153:7 | arrangement 47:3,5 95:12,15 121:20 | | |
| | | arriving 33:7 | | |

| | | | | |
|--|---|---|--|--|
| assumption 81:19,22,24 149:13 160:1 176:13 | 23,25 52:3,6,8, 11,15,19 53:4,9, 13,16,19,21,23 54:4,6,25 55:5,8, 14,20,23 56:8,11, 14,20 57:4,8,11, 15,21 58:1,4,9, 13,22 59:2,6,10, 13,17 60:13,16, 18,25 61:4,9,12, 17,20,24 62:2,6, 9,13,16,20,23 63:1,4,8,12,14, 16,18,23 64:1,4, 8,15,18,21,25 65:3,6,12,15,21, 25 66:9,12,15,18, 25 67:15,21 68:1, 7,9,12,13,15 70:13,23 71:4,6, 10 72:6,7,22,25 73:3,4 74:2,4,7, 11,14,17,24 75:2, 8,15,17,22,25 76:9,12,20,25 77:3,11,15,20 78:1,4,8,12,16, 18,25 79:2,11,18, 22,24 80:1,5,7,9, 17,20 81:9,12 84:8,10 85:5,8, 14,18,21 86:10, 15,23 87:7,18,20 88:4,25 89:5,11, 16,21,25 90:4,8, 12,16,21 91:21 92:1,12,14,18,24 93:1,5,8,15,24 94:6,14,23 95:4, 6,22 96:1,4,10, 13,15 97:11,17, 19 98:3,6,11,14, 19,23 99:5,8,11, 16 100:1,8,14 101:7,12,16,22 102:3,13,16,18 103:1,3,5,8,13,20 104:1,7,9,22 105:1,5,10,17,20, 24 106:2,5,11,17, 20,23 107:12,24 108:10,13,16,20 109:1,6,9,10,12, 14,17,23 110:4,6, 10,15,25 111:5,9, | 11,15,19,22 112:4,10,14,18, 20,25 113:4,8,14, 19,24 114:2,10, 20,22 115:2,4,7, 13,21 116:3,13, 15,19,24 117:3,5, 11,21 118:3,5,8 119:12,15,25 120:5,9,18,22 121:3,9,12,17,23 122:2,9,16 123:1, 7,11,15,17,21,23, 25 124:5,12,16, 21,23 125:1,10, 17,22,25 126:2,3, 5,7,10,14,16,20, 23 127:7,12,15, 21,24 128:4,7,9, 12 129:1,5,8,12, 15,18,24 130:4,7, 12,16,18,22 131:1,5,9,13,16, 20,24 132:3,12, 14,18,20 133:1,7, 12,16,19 134:2,5, 8,13,17,21,24 135:2,6,10,12,14, 20 136:5,7,10,13, 14,16,18,20,22, 24,25 137:2,3,5, 7,8,10,12,14,16, 17,18,19,23 138:1,4,5,10,12, 18,24 139:4,8,13 140:11,14,22,25 141:2,6,9,12,16, 19,20,23,24 142:3,6,24 143:4, 9,11,14,18,21 144:3,5,14,17,21, 24 145:4,10,19, 23 146:6,14,18, 20 147:1,11,17, 23 148:1,8,17,22, 23 149:1,3,9,14, 20,25 150:3,8,13, 17,22,24 151:1,4, 6,11,15,20 152:1, 6,9,13,17,19,23 153:4,6,9,12,16, 18,23 154:2,5,22 155:8,11,14 156:4,6,14,24 157:13,19,21 | 158:1,10,14,19, 25 159:5,11,21 160:11 161:2,13, 18 162:8,13,15, 25 163:9,14 164:2,8,11,23 165:2,13,15,18, 21 166:15 167:3, 14,16,21 168:8, 17,25 169:7,9,20, 23 170:1,8,17,19, 23 171:2,7,13,16, 19,22 172:2,7,14, 18,21,24 173:1, 14,23 174:1,5,8, 13,16,20 175:7,9, 17,24 176:11,14, 20,25 177:3,6,14, 17,19 178:8,19 179:3,11,12,15, 25 180:4,9,13,18, 23 181:1,4,6,18, 20,23,25 182:25 183:3,18,20,23 185:12,14,19,21 186:2,13,16,20, 23 187:2,5,6,21 188:22,25 189:2, 9,15 190:6,11,15, 21,24 191:1,7,10, 14,16,21,24 192:2,6,11,14,15, 23,25 | award 3:22 4:18 18:24 19:3 35:10, 13 60:9 69:24 70:2 71:7 72:20 73:17,20 79:10 86:2,25 87:3 89:1 109:24 123:2,4,5 157:16 159:2 166:13 167:19 170:5 173:3,6 178:7 179:7,18 180:15 181:10,13 182:14 awardable 174:11 177:22 awarded 3:15 24:3 42:13 47:13 59:20 60:10 61:6 62:3,10,11,14,25 63:2 66:22 70:7 74:16 82:22 83:9 85:11 86:5 94:2 96:20 109:20 110:13 132:24 157:9 158:4 168:20,21 173:4, 8 174:24 175:11 176:2 180:6 awardee 162:22 awarding 18:10 aware 35:14 38:15 48:11,14 49:24 50:10,16 71:5 109:18,25 111:6 112:9,13 146:3 157:22,24 160:13 173:10 179:22 |
| <hr/> | | | | |
| B | | | | |
| <hr/> | | | | |
| B105 181:23 | | | | |
| B10504 181:14, 22 | | | | |
| back 3:3 16:25 20:4 30:9 37:21 40:18 45:23 46:5 47:18,25 48:15 50:6 59:1 61:16 78:1 90:10 91:1 93:24 112:25 | | | | |

| | | | | |
|---|---|---|--|--|
| 115:7 116:25 122:12 135:15 150:1 160:1 168:13 183:19 185:4 187:8 | 29:5,7,16 35:21 86:5,6,11 88:16 113:2 117:17 122:13,18,22 134:11 148:12 | 14,20,23 27:2,7, 10,12 32:8,9,13, 16,19,22,24 33:6, 12,18,23 34:1,10, 15,19 35:1,3,6, 12,17,25 36:5,8, 16,24,25 37:10, 18,25 38:3,5,8, 11,14,18,21,23 39:7 40:3,8,11, 15,17,25 41:8,12, 16,20 42:3,6,11, 16,20,25 43:4,16, 19,22,24 44:3,7, 17,19,24 45:5,16, 21,24 46:2,9,14, 17,22 49:17,18, 23 51:11,15,18, 21,23,25 52:3,6, 8,11,15,19 53:4, 9,13,16,19,21,23 54:4,6,25 55:5,8, 14,20,23 56:8,11, 14 57:4,8,11,15, 21 58:1,9,13,21, 22 59:2,6,10,13, 15,17 60:13,16, 18,25 61:4,9,12, 17,20,24 62:2,6, 9,13,16,20,23 63:1,4,8,14,18 64:4,8,18,21,25 65:3,6,12,15,21, 25 66:9,12,15,18, 25 67:15 68:7,13 70:13,23 71:4,6, 10 72:6,7,22,25 73:4 74:2,4,7,11, 14,17,24 75:2,8, 17 77:15 88:4 91:21 92:1,18,24 93:5,8,15 97:17, 19 98:6,19 99:5 101:12 108:20 109:1,9,12 111:5, 9 113:24 114:2, 20 119:15,25 120:5,9,18,22 121:3,9,12,17,23 122:2,9,16 123:1, 7,11,17,23 125:4 126:2,5 127:11, 12,23,24 128:4 134:24 135:6,12 136:5,10,14,18, | 22,25 137:3,7,10, 14,17,19,23 138:1,5,10,12,18, 24 139:4,8,13 140:11 141:9,12, 20,24 142:3,6 148:23 151:4 153:4,9,12,16,18 168:25 179:11 181:25 183:18, 20,23 185:19,21 186:13 187:6,21 190:6 191:1,7,10, 21,24 192:2,6,11, 15,23,25 | 68:11,18,21 69:12,21 71:13 72:5,9,14,16 73:8,18,20 74:6, 22 75:1,7,20 76:6,10,13,16,18, 22 81:7 82:6 83:13 84:9,11 85:22 87:25 88:23 90:23 91:2, 4,6,9,13 92:5,7, 16,20 93:12 95:17 96:9,11,22, 25 97:8,18,22 98:1,9,12,21 99:10 100:21,24 101:1,3,14 102:6, 8,10,14 104:14, 18 105:12,22 106:4,10,13 107:3 108:24 109:4,7,16 111:7 113:11,13 114:5, 7,9,24 115:3,5,22 116:2 118:17,24 119:2,6,9,13 123:13,19 124:1, 4 126:18,21 127:10,13,16,19, 22 128:2,5,13,21, 24 134:22,25 135:8,18,23 136:2 137:24 138:8,11,15,22, 25 139:11,16 140:2,4,20 141:5, 14,17,22 142:11, 18,22 151:8 153:20,24 169:2, 6,8 170:15,18 182:6,8 183:5,9, 13,16,19,22 184:13,24 185:2, 10,17,20,22 186:1,5,8,11,14, 21 187:1,4,7,10, 15,19 188:2,6,12 189:4,7,11,16,21, 23 190:1,14,17, 23 191:4,13,15, 20 192:4,9,12,18 |
| background 15:10 18:5 22:17 139:15 | bidder 20:8,20 21:5 26:17 28:19 29:19,20 31:25 86:4,7 87:12 107:11 115:9 123:3 133:13 162:18 | Block's 17:1 | 22,25 137:3,7,10, 14,17,19,23 138:1,5,10,12,18, 24 139:4,8,13 140:11 141:9,12, 20,24 142:3,6 148:23 151:4 153:4,9,12,16,18 168:25 179:11 181:25 183:18, 20,23 185:19,21 186:13 187:6,21 190:6 191:1,7,10, 21,24 192:2,6,11, 15,23,25 | 68:11,18,21 69:12,21 71:13 72:5,9,14,16 73:8,18,20 74:6, 22 75:1,7,20 76:6,10,13,16,18, 22 81:7 82:6 83:13 84:9,11 85:22 87:25 88:23 90:23 91:2, 4,6,9,13 92:5,7, 16,20 93:12 95:17 96:9,11,22, 25 97:8,18,22 98:1,9,12,21 99:10 100:21,24 101:1,3,14 102:6, 8,10,14 104:14, 18 105:12,22 106:4,10,13 107:3 108:24 109:4,7,16 111:7 113:11,13 114:5, 7,9,24 115:3,5,22 116:2 118:17,24 119:2,6,9,13 123:13,19 124:1, 4 126:18,21 127:10,13,16,19, 22 128:2,5,13,21, 24 134:22,25 135:8,18,23 136:2 137:24 138:8,11,15,22, 25 139:11,16 140:2,4,20 141:5, 14,17,22 142:11, 18,22 151:8 153:20,24 169:2, 6,8 170:15,18 182:6,8 183:5,9, 13,16,19,22 184:13,24 185:2, 10,17,20,22 186:1,5,8,11,14, 21 187:1,4,7,10, 15,19 188:2,6,12 189:4,7,11,16,21, 23 190:1,14,17, 23 191:4,13,15, 20 192:4,9,12,18 |
| backing 19:18 155:1 | bidders 26:10 29:4 82:1 109:19 | board 2:2,3,4,15 7:14 12:21 13:12 14:23 56:1 96:4, 18 114:11,21 118:5,11 127:8 140:15 187:16 | 68:11,18,21 69:12,21 71:13 72:5,9,14,16 73:8,18,20 74:6, 22 75:1,7,20 76:6,10,13,16,18, 22 81:7 82:6 83:13 84:9,11 85:22 87:25 88:23 90:23 91:2, 4,6,9,13 92:5,7, 16,20 93:12 95:17 96:9,11,22, 25 97:8,18,22 98:1,9,12,21 99:10 100:21,24 101:1,3,14 102:6, 8,10,14 104:14, 18 105:12,22 106:4,10,13 107:3 108:24 109:4,7,16 111:7 113:11,13 114:5, 7,9,24 115:3,5,22 116:2 118:17,24 119:2,6,9,13 123:13,19 124:1, 4 126:18,21 127:10,13,16,19, 22 128:2,5,13,21, 24 134:22,25 135:8,18,23 136:2 137:24 138:8,11,15,22, 25 139:11,16 140:2,4,20 141:5, 14,17,22 142:11, 18,22 151:8 153:20,24 169:2, 6,8 170:15,18 182:6,8 183:5,9, 13,16,19,22 184:13,24 185:2, 10,17,20,22 186:1,5,8,11,14, 21 187:1,4,7,10, 15,19 188:2,6,12 189:4,7,11,16,21, 23 190:1,14,17, 23 191:4,13,15, 20 192:4,9,12,18 | |
| bailiwick 17:8 | bidding 22:24 47:4 117:22 150:7,9 | board's 4:17 77:21 184:11 | 68:11,18,21 69:12,21 71:13 72:5,9,14,16 73:8,18,20 74:6, 22 75:1,7,20 76:6,10,13,16,18, 22 81:7 82:6 83:13 84:9,11 85:22 87:25 88:23 90:23 91:2, 4,6,9,13 92:5,7, 16,20 93:12 95:17 96:9,11,22, 25 97:8,18,22 98:1,9,12,21 99:10 100:21,24 101:1,3,14 102:6, 8,10,14 104:14, 18 105:12,22 106:4,10,13 107:3 108:24 109:4,7,16 111:7 113:11,13 114:5, 7,9,24 115:3,5,22 116:2 118:17,24 119:2,6,9,13 123:13,19 124:1, 4 126:18,21 127:10,13,16,19, 22 128:2,5,13,21, 24 134:22,25 135:8,18,23 136:2 137:24 138:8,11,15,22, 25 139:11,16 140:2,4,20 141:5, 14,17,22 142:11, 18,22 151:8 153:20,24 169:2, 6,8 170:15,18 182:6,8 183:5,9, 13,16,19,22 184:13,24 185:2, 10,17,20,22 186:1,5,8,11,14, 21 187:1,4,7,10, 15,19 188:2,6,12 189:4,7,11,16,21, 23 190:1,14,17, 23 191:4,13,15, 20 192:4,9,12,18 | |
| bar 11:11 | bids 17:2 18:18 22:15,21 24:1 86:3,15 87:13 122:25 | Bobot 2:1,3,7,12, 24 3:5,8 4:3,10, 22 5:18 6:7,9 7:1, 21 10:1,3,7,11, 14,17 11:2,15 12:24 13:8,10,14, 19,21 14:3,5,12, 15,18 15:5,9,17 17:23,25 18:3 21:1,3,6 22:11, 19,22 23:19 24:22,24 25:3,6, 8,12,15 26:2 29:25 30:4,6,11, 14,18,21 31:6,10 32:5,7 33:15,21 34:12,22 35:1,5 36:12,23 37:13, 16 39:19,24 41:14,18 45:2,8, 11,14,20,22 46:1 47:10,12,15 48:19,21,25 49:3, 6,16 50:21,24 51:1 52:14 57:14, 17,23 58:3,5,12, 17 59:14 63:24 64:6,9,13,20,22 65:2,5 67:24 | 68:11,18,21 69:12,21 71:13 72:5,9,14,16 73:8,18,20 74:6, 22 75:1,7,20 76:6,10,13,16,18, 22 81:7 82:6 83:13 84:9,11 85:22 87:25 88:23 90:23 91:2, 4,6,9,13 92:5,7, 16,20 93:12 95:17 96:9,11,22, 25 97:8,18,22 98:1,9,12,21 99:10 100:21,24 101:1,3,14 102:6, 8,10,14 104:14, 18 105:12,22 106:4,10,13 107:3 108:24 109:4,7,16 111:7 113:11,13 114:5, 7,9,24 115:3,5,22 116:2 118:17,24 119:2,6,9,13 123:13,19 124:1, 4 126:18,21 127:10,13,16,19, 22 128:2,5,13,21, 24 134:22,25 135:8,18,23 136:2 137:24 138:8,11,15,22, 25 139:11,16 140:2,4,20 141:5, 14,17,22 142:11, 18,22 151:8 153:20,24 169:2, 6,8 170:15,18 182:6,8 183:5,9, 13,16,19,22 184:13,24 185:2, 10,17,20,22 186:1,5,8,11,14, 21 187:1,4,7,10, 15,19 188:2,6,12 189:4,7,11,16,21, 23 190:1,14,17, 23 191:4,13,15, 20 192:4,9,12,18 | |
| Barrett's 16:17 | bifurcated 139:20 | board's 4:17 77:21 184:11 | 68:11,18,21 69:12,21 71:13 72:5,9,14,16 73:8,18,20 74:6, 22 75:1,7,20 76:6,10,13,16,18, 22 81:7 82:6 83:13 84:9,11 85:22 87:25 88:23 90:23 91:2, 4,6,9,13 92:5,7, 16,20 93:12 95:17 96:9,11,22, 25 97:8,18,22 98:1,9,12,21 99:10 100:21,24 101:1,3,14 102:6, 8,10,14 104:14, 18 105:12,22 106:4,10,13 107:3 108:24 109:4,7,16 111:7 113:11,13 114:5, 7,9,24 115:3,5,22 116:2 118:17,24 119:2,6,9,13 123:13,19 124:1, 4 126:18,21 127:10,13,16,19, 22 128:2,5,13,21, 24 134:22,25 135:8,18,23 136:2 137:24 138:8,11,15,22, 25 139:11,16 140:2,4,20 141:5, 14,17,22 142:11, 18,22 151:8 153:20,24 169:2, 6,8 170:15,18 182:6,8 183:5,9, 13,16,19,22 184:13,24 185:2, 10,17,20,22 186:1,5,8,11,14, 21 187:1,4,7,10, 15,19 188:2,6,12 189:4,7,11,16,21, 23 190:1,14,17, 23 191:4,13,15, 20 192:4,9,12,18 | |
| Barry 115:24 | bigger 166:14 167:20 168:6 179:16 181:17 190:3 | Bobot's 116:4 | 68:11,18,21 69:12,21 71:13 72:5,9,14,16 73:8,18,20 74:6, 22 75:1,7,20 76:6,10,13,16,18, 22 81:7 82:6 83:13 84:9,11 85:22 87:25 88:23 90:23 91:2, 4,6,9,13 92:5,7, 16,20 93:12 95:17 96:9,11,22, 25 97:8,18,22 98:1,9,12,21 99:10 100:21,24 101:1,3,14 102:6, 8,10,14 104:14, 18 105:12,22 106:4,10,13 107:3 108:24 109:4,7,16 111:7 113:11,13 114:5, 7,9,24 115:3,5,22 116:2 118:17,24 119:2,6,9,13 123:13,19 124:1, 4 126:18,21 127:10,13,16,19, 22 128:2,5,13,21, 24 134:22,25 135:8,18,23 136:2 137:24 138:8,11,15,22, 25 139:11,16 140:2,4,20 141:5, 14,17,22 142:11, 18,22 151:8 153:20,24 169:2, 6,8 170:15,18 182:6,8 183:5,9, 13,16,19,22 184:13,24 185:2, 10,17,20,22 186:1,5,8,11,14, 21 187:1,4,7,10, 15,19 188:2,6,12 189:4,7,11,16,21, 23 190:1,14,17, 23 191:4,13,15, 20 192:4,9,12,18 | |
| base 25:4 | Bill 2:9,10 | bold 153:7 | 68:11,18,21 69:12,21 71:13 72:5,9,14,16 73:8,18,20 74:6, 22 75:1,7,20 76:6,10,13,16,18, 22 81:7 82:6 83:13 84:9,11 85:22 87:25 88:23 90:23 91:2, 4,6,9,13 92:5,7, 16,20 93:12 95:17 96:9,11,22, 25 97:8,18,22 98:1,9,12,21 99:10 100:21,24 101:1,3,14 102:6, 8,10,14 104:14, 18 105:12,22 106:4,10,13 107:3 108:24 109:4,7,16 111:7 113:11,13 114:5, 7,9,24 115:3,5,22 116:2 118:17,24 119:2,6,9,13 123:13,19 124:1, 4 126:18,21 127:10,13,16,19, 22 128:2,5,13,21, 24 134:22,25 135:8,18,23 136:2 137:24 138:8,11,15,22, 25 139:11,16 140:2,4,20 141:5, 14,17,22 142:11, 18,22 151:8 153:20,24 169:2, 6,8 170:15,18 182:6,8 183:5,9, 13,16,19,22 184:13,24 185:2, 10,17,20,22 186:1,5,8,11,14, 21 187:1,4,7,10, 15,19 188:2,6,12 189:4,7,11,16,21, 23 190:1,14,17, 23 191:4,13,15, 20 192:4,9,12,18 | |
| based 18:11 21:21 29:7 77:6 79:16 80:9 81:2 85:9 96:19 104:2, 22 117:13 134:8 140:16 149:3,4,9 158:21 159:2 160:12,22 162:19 163:3,5 169:10 170:2 177:4 | binder 5:4 23:7 43:13 64:2 151:5 | | 68:11,18,21 69:12,21 71:13 72:5,9,14,16 73:8,18,20 74:6, 22 75:1,7,20 76:6,10,13,16,18, 22 81:7 82:6 83:13 84:9,11 85:22 87:25 88:23 90:23 91:2, 4,6,9,13 92:5,7, 16,20 93:12 95:17 96:9,11,22, 25 97:8,18,22 98:1,9,12,21 99:10 100:21,24 101:1,3,14 102:6, 8,10,14 104:14, 18 105:12,22 106:4,10,13 107:3 108:24 109:4,7,16 111:7 113:11,13 114:5, 7,9,24 115:3,5,22 116:2 118:17,24 119:2,6,9,13 123:13,19 124:1, 4 126:18,21 127:10,13,16,19, 22 128:2,5,13,21, 24 134:22,25 135:8,18,23 136:2 137:24 138:8,11,15,22, 25 139:11,16 140:2,4,20 141:5, 14,17,22 142:11, 18,22 151:8 153:20,24 169:2, 6,8 170:15,18 182:6,8 183:5,9, 13,16,19,22 184:13,24 185:2, 10,17,20,22 186:1,5,8,11,14, 21 187:1,4,7,10, 15,19 188:2,6,12 189:4,7,11,16,21, 23 190:1,14,17, 23 191:4,13,15, 20 192:4,9,12,18 | |
| basic 154:13 | binding 65:8 77:16 88:13,20 154:12 | | 68:11,18,21 69:12,21 71:13 72:5,9,14,16 73:8,18,20 74:6, 22 75:1,7,20 76:6,10,13,16,18, 22 81:7 82:6 83:13 84:9,11 85:22 87:25 88:23 90:23 91:2, 4,6,9,13 92:5,7, 16,20 93:12 95:17 96:9,11,22, 25 97:8,18,22 98:1,9,12,21 99:10 100:21,24 101:1,3,14 102:6, 8,10,14 104:14, 18 105:12,22 106:4,10,13 107:3 108:24 109:4,7,16 111:7 113:11,13 114:5, 7,9,24 115:3,5,22 116:2 118:17,24 119:2,6,9,13 123:13,19 124:1, 4 126:18,21 127:10,13,16,19, 22 128:2,5,13,21, 24 134:22,25 135:8,18,23 136:2 137:24 138:8,11,15,22, 25 139:11,16 140:2,4,20 141:5, 14,17,22 142:11, 18,22 151:8 153:20,24 169:2, 6,8 170:15,18 182:6,8 183:5,9, 13,16,19,22 184:13,24 185:2, 10,17,20,22 186:1,5,8,11,14, 21 187:1,4,7,10, 15,19 188:2,6,12 189:4,7,11,16,21, 23 190:1,14,17, 23 191:4,13,15, 20 192:4,9,12,18 | |
| basically 39:6 44:10 78:5 79:14 109:19 146:10 156:16 | bit 11:3 20:9 89:6 | | 68:11,18,21 69:12,21 71:13 72:5,9,14,16 73:8,18,20 74:6, 22 75:1,7,20 76:6,10,13,16,18, 22 81:7 82:6 83:13 84:9,11 85:22 87:25 88:23 90:23 91:2, 4,6,9,13 92:5,7, 16,20 93:12 95:17 96:9,11,22, 25 97:8,18,22 98:1,9,12,21 99:10 100:21,24 101:1,3,14 102:6, 8,10,14 104:14, 18 105:12,22 106:4,10,13 107:3 108:24 109:4,7,16 111:7 113:11,13 114:5, 7,9,24 115:3,5,22 116:2 118:17,24 119:2,6,9,13 123:13,19 124:1, 4 126:18,21 127:10,13,16,19, 22 128:2,5,13,21, 24 134:22,25 135:8,18,23 136:2 137:24 138:8,11,15,22, 25 139:11,16 140:2,4,20 141:5, 14,17,22 142:11, 18,22 151:8 153:20,24 169:2, 6,8 170:15,18 182:6,8 183:5,9, 13,16,19,22 184:13,24 185:2, 10,17,20,22 186:1,5,8,11,14, 21 187:1,4,7,10, 15,19 188:2, | |

| |
|---|
| bond 180:2,7 Bonfire 54:7,8 55:2 129:22 130:23 147:7 154:11,15,19 155:10 156:3 157:1 158:6 159:10,13,19,20 160:3 163:11,21 164:14 167:12 172:4 bonus 19:5 25:10,11,13 28:18 30:1,3,14, 16,17,18,19 33:25 36:4 38:12, 20 39:12,20 40:5 42:21 43:3,4,6,25 46:15,19 47:12 55:10 56:6,7 61:1 98:5,13 100:4,11 107:5 157:9 158:4 164:9 168:5 171:9 book 5:6 boss 173:17 bottom 46:4 103:9 box 103:6 Brad 2:4 3:10,18, 20 4:8,11 5:22,24 6:2,8,24 7:2,7,10, 12,14,18,25 8:3, 8,11,16,19 9:1,7, 10,16,21,24 10:2, 5,8,13,16,18 11:8,15,17 12:2, 4,13,16 15:3,8, 11,18,22 16:1,5, 7,20 17:4,20 23:17,20 25:10, 16,19,22,25 30:5, 7,22,24 31:1,3 50:25 51:2,7,10 54:2 58:20 59:12, 15,18,22 60:8 61:15 62:18,21, 24 63:2 64:12,23 68:17,19 69:20, 22 70:5,10 71:12, 14,18,22,25 72:4 73:6,23 74:10,12, 16 75:12,16 76:7, 15,17,21,24 77:1 82:5,7,21 83:1,4, 6,8,10,12,17,24 84:2 85:7,19,23 87:15,19,22 88:3, 5,14,18,22 92:13 93:2,6 95:10,20, 24 96:2 97:15,21, 24 98:8 101:2 102:21,23,25 103:4,7,11,18 105:11,13,19,25 107:2,4,18 108:6, 11 109:15 118:23 119:1,4 125:6,8 135:22,25 139:14,18,21 140:1,3,7,12 142:2,5,10 153:11,14,17 172:12,16,19 182:7,9,17,19 183:8,11,14 185:16,18 186:7, 9,18 187:3,13,18, 20,24 188:4,7,11, 15,18,20,24 189:14,18,22,25 190:3,9,13 191:5, 9,12 192:1,3 Brady 5:13 6:6, 14,15,17,20 7:4, 15 8:4,6,21,23 9:2,11 10:19 12:18 13:6 46:11 55:11,18 56:6 59:19 65:11 66:22 69:24 77:15,23 79:15 80:22 82:11,12, 22 83:1,2,16,20, 21,25 88:9 89:13 93:18 105:14 107:11 111:23 112:5,23 115:24 118:9 120:11 121:1,2 124:17 125:2,3 165:4 168:21 171:10, 20,23,25 172:4 173:19 174:10 175:12 Brady's 55:11 62:19 63:9 72:1 break 127:20 138:16 189:13 briefly 183:3 bring 170:4 bringing 13:25 brought 54:21 budget 16:8,9 136:9,12 budgeted 72:11 budgets 74:19 building 139:12 bump 136:6 burden 3:21 84:22 business 16:10, 14 23:6,12,25 24:13 26:6,18,24 27:20,23 29:1 33:1,2 34:5,18 35:9,15,19 36:19 37:22 38:8 42:22 43:1,6 44:11 52:22,23 53:2 55:9 65:17 66:3 69:8 70:16,19 82:2 86:4 87:13 99:17,20,21 100:16 103:10,14 113:14,15,20,21 114:14 133:22 147:20 148:3,13 149:21,22 154:25 155:3,5 176:1,4 177:11 businesses 33:3 52:23 80:14 Bye 138:21 <hr/> C <hr/> calculated 165:6 calendar 189:5, 18,22 190:10 calendar's 189:19 call 9:10,11,25 10:4,12 27:22 49:11 76:13 128:6,13 135:11, 15 called 25:10 48:13 138:23 148:11 150:9 calling 10:19 47:2 127:25 calls 113:24 169:1 capacity 103:21 107:15 caps 164:18 care 13:22 careful 80:25 carry 71:19 cars 18:22 28:13 case 2:15 3:3 6:18,21 23:8 30:11 34:4 45:1 46:24 48:22 49:24 50:22 51:8 52:24 53:25 71:22,23 110:24 111:4 124:13 141:1 144:18 149:15 166:16 175:9 182:3 cash 3:23 categories 32:20 158:6 category 28:1 32:17 59:25 132:22 158:7,8 159:3,4 164:11 171:9 certification 96:16,19 99:3 100:11 174:23 certified 27:25 28:3,12 29:10 32:2 33:2,10 46:6 52:24 107:6,9 chair 6:25 10:2, 13,16 15:3 17:20 23:17 41:5 49:4 59:12 68:16,17, 22 69:11,20 71:12 82:5 84:7 87:15,19 95:10 105:11 107:2 182:7 184:21,23 Chairman 2:1,7, 12,22,24 3:5,8 4:3,10,22 5:18 6:7,9 7:1,21 10:1, 3,7,11,14,17 11:2 12:24 13:8,10,14, 19,21 14:3,5,12, 15,18 15:5,9,17 17:23,25 18:3 21:1,3,6 22:11, 19,22 23:19 24:22,24 25:3,6, 8,12,15 26:2 29:25 30:4,6,11, 14,18,21 31:6,8, 10 32:5,7 33:15, 21 34:12,22 35:1, 5 36:12,23 37:13, 16 39:19,24 41:14,18 45:2,8, 11,14,20,22 46:1 47:10,12,15 48:19,21,25 49:3, 6,16 50:21,24 51:1 52:14 57:14, 17,23 58:3,5,12, 17 59:14 63:24 64:6,9,13,20,22 65:2,5 67:24 68:11,18,21 69:12,21 71:13 72:5,9,14,16 73:8,18,20 74:6, 22 75:1,7,20 76:6,10,13,16,18, 22 81:7 82:6 83:13 84:9,11 85:22 87:25 88:23 90:23 91:2, 4,6,9,13 92:5,7, 16,20 93:12 95:17 96:9,11,22, 25 97:8,18,22 98:1,9,12,21 99:10 100:21,24 101:1,3,14 102:6, 8,10,14 104:14, 18 105:12,22 |
|---|

| | | | | |
|--|--|---|--|---|
| 106:4,10,13 107:3 108:24 109:4,7,16 111:7 113:11,13 114:5, 7,9,24 115:3,5,22 116:2,4 118:17, 24 119:2,6,9,13 123:13,19 124:1, 4 126:18,21 127:10,13,16,19, 22 128:2,5,13,21, 24 134:22,25 135:8,18,23 136:2 137:24 138:8,11,15,22, 25 139:11,16 140:2,4,20 141:5, 14,17,22 142:11, 18,22 151:8 153:20,24 169:2, 6,8 170:15,18 182:1,6,8 183:5, 9,13,16,19,22 184:13,24 185:2, 10,17,20,22 186:1,5,8,11,14, 21 187:1,4,7,10, 15,19 188:2,6,12 189:4,7,11,16,21, 23 190:1,14,17, 23 191:4,13,15, 20 192:4,9,12,18 | check 88:17 91:3 checked 149:7 checking 111:17 190:11 chemicals 17:11 28:13 Chevy 186:5 Chicago 69:5 133:17 chose 2:17 102:5 chosen 93:20 circuit 75:18 circumstance 160:17 circumstances 96:19 117:13 178:6 cities 129:9 city 2:13,14,19 3:2,3,13,14 4:6,8, 14,24 5:23,25 6:4,11 7:5,8,16, 23 8:1,5,18,25 9:3,8,15,19,23 13:4,20,23 14:4, 20,25 15:2,13,16, 23,24 16:2,5,23, 24 17:5,24 18:2,6 20:3,6,12,15,17, 19,21,24 21:2,7, 16,19,24 22:3,5, 8,16,20 23:2,5, 11,23 24:12,18 26:5,9,12,14,20, 23 27:2,7,10,12 28:6 32:9,13,16, 19,22,24 33:6,12, 18,23 34:1,10,15, 19 35:3,6,12,17, 25 36:5,8,25 37:10,18,25 38:3, 5,8,11,14,18,21, 23 39:7 40:3,8, 11,15,17,25 41:8, 12,16,20 42:3,6, 11,16,20,25 43:4, 16,19,22,24 44:3, 7,17,19,24 45:5, 16,21,24 46:2,9, | 14,17,22 48:8,11 49:18,23 50:14 51:11,15,18,21, 23,25 52:3,6,8, 11,15,19 53:4,9, 13,16,19,21,23 54:4,6,10,25 55:5,8,14,20,23 56:8,11,14 57:4, 8,11,15,21 58:1, 9,13,22 59:2,6, 10,13,17 60:13, 16,18,25 61:4,9, 12,17,20,24 62:2, 6,9,13,16,20,23 63:1,4,8,14,18 64:4,8,18,21,25 65:3,6,12,15,21, 25 66:9,12,15,18, 25 67:15 68:7,13 70:13,23 71:4,6, 10 72:7,22,25 73:4 74:2,4,7,11, 14,17,24 75:2,8, 17 78:20 80:10, 13 81:12,21 88:4, 6 91:21 92:1,18, 24 93:5,8,15 97:17,19 98:6,19 99:3,5 100:2 101:12 104:23 107:6,8 108:20 109:1,9,12 111:5, 9 113:24 114:2, 18,20 116:15 117:15 118:14,15 119:14,15,25 120:5,9,18,22 121:3,9,12,17,23 122:2,9,16 123:1, 7,11,17,23 126:2, 5 127:12,24 128:4 131:11 133:9 134:24 135:6,12 136:5, 10,14,18,22,25 137:3,7,10,14,17, 19,23 138:1,5,10, 12,18,24 139:4,8, 13 140:11 141:9, 12,20,24 142:3,6 148:23 149:10 151:4 153:4,9,12, 16,18 157:13 168:25 174:22 | 175:14 176:17 180:24 183:4,18, 20,23 185:19,21 186:13 187:6,21 190:6 191:1,7,10, 21,24 192:2,6,11, 15,23,25 city's 4:12 18:16 93:21 97:3 110:16 112:11 148:18 151:17 169:14 clarification 41:6 clarify 26:2 90:1 clarity 24:3 48:4, 10 50:19 88:21 116:8,22 145:5 clarity's 117:12 clear 29:17 47:2, 20,22 77:20 81:1 98:16,23,25 99:19 107:13 108:16 134:9 156:6 165:22 174:21 client 8:22,24 9:13,16,21,24 10:10,20 11:9,19 close 183:7 closer 76:21 145:15 169:13,22 171:5 182:2 closest 124:7 closing 50:8 Co-partners 90:10 co-venture 94:21 code 120:19 148:25 coffee 101:6 coherent 40:22 coin 107:21 colleague 136:19 180:16,20 | combined 39:23 67:2 81:22 180:3 comfortable 141:3 168:15 171:3 commence 2:20 4:23 comment 96:23 156:20 comments 55:3 134:9 163:17,23 164:18 171:16 Commission 16:12 committed 93:18 committee 19:13,14 20:2 29:7 54:13 56:17, 18,23 59:24 60:1, 5,9 61:6 89:8 110:1,7,11,22 111:13 131:2 132:5,21 133:8 136:17 139:17 144:6,7,9,11 145:6,21,24 146:2,5,12,22,23 154:7,8 156:20 157:7,15 158:2,7, 21 159:1,12,13 160:3,13 161:4, 11,14,25 162:10, 18,20 163:15 166:1,2,17,18 167:7,17,22 168:2,9,13,23 169:15,18 170:1, 4,12 committee's 60:20 committees 161:15 committing 93:21 commodities 17:12 common 126:16 162:14 |
|--|--|---|--|---|

| | | | | |
|--|--|--|---|---|
| communicated 79:9 132:21 133:21 163:3 | con 32:20 | consented 12:1, 23 | contract's 73:1 | 34:6 37:23 40:6 42:18,23 47:14 49:21 51:6,9 52:9,10 55:6 56:13 62:4,11,14 65:19 66:7,13,16 70:9 71:16 78:16 79:16,24 80:15 86:16 88:15 94:4 97:14 98:3 101:16 102:19 104:24 105:3 110:8 111:21 112:1 113:15,18 120:15,20 121:15 124:18,24 125:4, 15,20 126:17,25 128:4 129:6,11 132:25 133:10, 15,18 134:6,7,11, 12,15,16,19,20 145:8,25 146:13, 17,23 147:16,21, 22,25 148:6,7 149:11,13,19 150:2 151:23 152:4,21 155:20 161:5 162:22 165:5 170:21 171:17 172:5,6, 11 173:18 177:9 |
| communicating 173:16 | concede 80:11 | considered 48:9 169:19 | contracting 17:2,16,19 85:25 87:2 | correction 59:19 |
| communication s 146:4 | conceivably 25:20 | construction 17:8,9 28:7 | contractor 24:5, 8,16,17 26:7 44:11 65:18 88:18,20 100:17 103:14 104:10 105:6 106:19,22 | corrections 55:17 165:4 |
| community 17:3 | concern 114:11 | consult 156:1 | contractors 15:1 | correctly 178:23 |
| competitive 14:25 86:3 117:17,21 | concerned 10:5 13:2 183:25 184:4 | consultant 129:9 | contracts 17:9, 17 28:11 33:7 | correspondence 112:22 |
| compilation 160:6 | concerns 10:12 83:18 177:21 | consultation 32:25 34:4 | contrary 86:1 87:2 | cost 163:17,24,25 |
| compiled 147:6 154:24 | concluded 119:18 | contact 32:1 35:7,8 146:11,12 | contribute 157:11 | couldn't 170:6 |
| complete 5:12 63:10 144:10 147:10 | conclusion 79:3 101:13 113:25 177:3 182:3 | contacted 34:17 35:15 190:20 | controller's 116:16 117:15 130:20 144:22 | counsel 5:13 6:3, 5 8:3 11:18 45:4 49:19 64:24 88:7 89:3 91:22 100:2 118:10 120:15, 20,25 124:16 147:2 173:11 179:25 180:3,7,8 |
| completed 3:15 44:12,14 46:19 100:12,17 103:15 158:22 | conclusions 57:19 | contemplated 3:24 64:16 123:22 124:13 | convene 159:15 | count 67:17 |
| compliance 19:2,21 44:11 54:12 66:3 100:17 103:14 110:20,22 111:12 163:19 164:3,4,6, 13 | conditions 101:9,10 | contemplating 161:4 186:17 | convenience 184:22 | counted 53:3 |
| compliant 20:16 111:16 | conduct 35:22 159:1 176:4 184:3 | contents 120:12, 16 | conver 166:11 | counting 80:3,17 |
| complicate 31:22 | conducted 19:25 | contest 8:23 | conversation 139:15 154:16 155:24 166:11,14 173:6,7 181:17 182:2,19 | |
| complied 155:18,20 | confer 183:4 | context 111:2 155:16 | conversations 117:9 | |
| complying 20:20 21:5 | conference 69:6 | continue 11:18 32:7 37:16 49:16 72:5 | conveyed 132:15 | |
| component 31:13,25 159:2 | confirm 92:4 112:21 | contract 3:15,23 18:11 20:13 24:24 26:10 27:14,22 28:2,5, 10 31:11,12 32:17 33:3,7,15 34:2,3 35:7,11,18 36:1 38:12 39:20, 25 40:2,19 47:8 52:25 58:24 65:8 71:8 72:13,19,20 73:17,25 74:13, 18 75:6,13 79:10 83:7 86:1,5 104:8 107:7 115:18 173:10,11,12 179:6,8,19,23,24 180:3,7,8,10,16 181:11,14,20 182:4,11,15 | coordinator 16:17 | |
| composition 87:4 | confirming 166:4 | | copies 5:13,15 45:9,13 54:21,22 | |
| comptroller's 117:10 181:15 | confused 76:1 82:8 | | copy 5:12,14 23:7 43:12 53:7, 14 55:1 63:9 65:7 121:5 122:11 | |
| computer 130:2 | confusing 114:12 | | corporation 100:2 | |
| computers 113:20 | confusion 84:21 115:6 178:11 | | correct 20:14 25:14,18 26:8,10 27:9,10,11 32:22 | |
| | connected 189:19 | | | |
| | connection 59:3 89:3 90:18 113:2 148:2 | | | |
| | consensus 19:17 | | | |
| | consent 10:18 | | | |

| | | | | |
|--|---|---|---|--|
| couple 54:22 117:11 119:16 123:15 | 135:4 | demonstrate 119:22 | deserved 70:8 | dictating 86:24 |
| court 75:18 | day 88:17 160:19 184:10 185:23 186:17 190:25 | demonstrated 70:17 | designate 177:7, 8 | didn't 126:24 |
| cover 55:17 89:14 120:13 | days 116:12 | demonstration 160:19,23 162:18 | designated 19:9 124:17,24 | differ 105:21 |
| covered 40:19 | dead 177:19 | demonstrations 160:18 161:16 | designation 71:15,19 77:22 | difference 14:22 168:10 |
| creating 178:11 | deadline 88:8 | Dennis 61:25 136:7,11,12 137:12,14 139:5 | designed 106:7 | differently 27:5 |
| criminal 184:3 | deal 120:23,24 121:4 | deny 80:21 173:18 | desire 148:19 | differing 62:3,14 |
| criteria 19:3 21:21 23:16 24:14 26:4 40:14 42:13 67:4,8 70:20 77:12,22 99:3 175:25 176:6,9,23 | dealing 27:13 122:4 | department 3:3, 12 16:13,14 17:6, 9 18:19,20,21,22 27:17 28:11 36:19 44:20 78:6 79:3 96:17 99:13 104:3 110:18 117:4 118:1 143:5,12 144:8, 22 145:9 146:3, 21 147:6,12,15, 19 148:14 149:11 150:10,14 165:8 168:18 | desks 113:21 | digital 54:18 |
| critical 157:5 | deals 23:8 | denial 80:21 173:18 | detail 67:16 | diligence 81:16 |
| current 179:6,8, 19 180:7,16 181:14 | decide 35:2 48:14 75:11 96:2 136:6 170:4 | department's 94:7 98:17 169:14 | determination 4:9,12 19:17 27:21 38:19 47:21 66:23 67:7, 19 69:23 70:15, 18,25 80:2,12 82:11 105:15 167:23 169:15 173:18 | dinosaur 190:2 |
| cut 18:17 88:17 | decided 36:20 96:19 166:19 | departments 16:23,24 17:15 28:6 32:10 74:20 117:14,24 143:24 151:17 | determine 3:1,24 4:12 12:6,9 19:11 60:6 72:2 81:16 96:5 148:15 155:17 168:23 169:24 176:22 | direct 85:16 94:15 |
| Cutler 126:25 | decision 3:11 68:4,5,6,9 77:5 79:13 80:21 94:7 98:17 109:24,25 110:2,8,12,18 134:15 144:10,12 148:5 149:23 157:8 162:2,17 165:7,9,11,23 169:16 171:5 177:22 180:20 | depend 160:16 | determined 12:10 60:1 147:8 157:2 | direction 48:12 182:14 |
| D | decisions 74:20 | depending 31:11,15 32:16 33:1 57:12 131:22 | determining 77:4 87:8 | directly 91:24 117:9 143:19 |
| Daily 18:14 | declared 71:16 | deposition 190:24 | developed 147:4 | director 15:15 16:18 20:10 144:2,10,12 145:3 147:9 153:2 155:24 156:1 159:9 165:10 166:5 173:7 179:5 180:15 181:10,19 182:14 |
| damages 3:23 4:18 | declined 182:10 | deprived 170:20 | developing 40:22 41:23,25 133:2 | dis 89:3 |
| Dash 52:16 | deduct 56:5,6 182:20 | describe 18:7 94:18 | Development 16:10,15 27:20, 23 29:1 33:1 34:5 35:9,15,20 37:22 38:9 44:11 99:20 100:16 103:10,14 148:13 149:22 155:5 | disagree 3:10 |
| data 163:11 | deemed 20:9 | description 94:10 115:17 121:13 | dictate 39:10 | disagrees 12:25 |
| date 50:8 112:23 147:7 152:21 181:11 185:3,4 188:14,18 192:7, 16 | defects 112:6 | | dictated 147:24 | disclosed 95:9 |
| dated 152:15 | define 3:20 | | dictates 76:5 | disclosure 5:13 49:19 88:7 89:3 91:22 118:10 120:15,20,25 147:2 173:10 179:25 180:2,8 |
| David 61:21 128:7,8,10,11,14, 20,23 129:4,7,11, 14,17,21,25 130:6,9,14,17,21, 25 131:3,7,12,15, 18,23 132:2,6,13, 16,19,25 133:3, 11,15,18,24 134:4,7,12,16,20 | defines 52:8,10 | | | discount 101:25 |
| | definition 52:12 106:15 | | | discovered 176:15 |
| | definitive 175:16,21,23 | | | discovery 36:14 |
| | defy 126:16 | | | discretion 158:3 160:14 186:3 |
| | demolition 17:17 | | | discuss 42:4 44:5 58:23 89:22 |

| | | | | |
|---|---|---|--|--|
| 130:12 131:13 132:13 166:7 discussed 5:4 42:12,21 43:1 65:16 168:1 discussing 98:14 103:15 178:21 discussion 131:16 132:1,7,8, 23 159:8 161:19 162:12 167:10,20 168:6,12,13,14 172:21 173:2,5, 17,21 175:10 178:5 179:5,16 181:10 182:23 183:2 184:14 discussions 116:14,15 117:6 130:19 132:4 149:21 dismissed 6:22 dispose 12:22 disqual 44:15 disqualification 44:15 disqualified 127:1,3 158:21, 24 disqualify 10:9 126:24 127:4 156:9 distinction 86:13 divided 90:2,13, 18 134:18 dividing 104:12 105:7 division 89:17, 20,24 99:20,21 148:11 151:19 157:2 DNS 17:17 doable 39:11 doc 150:18 172:3 | document 13:11 18:13 36:17 37:4 40:22 71:15 72:19 147:4 148:10 150:1,4, 19,20 151:12,16, 21 152:3,7,15 153:2,3 157:5 172:1 173:9 documentation 78:20 154:10 documents 36:15 110:16 173:24 doesn't 66:19 dollar 52:25 54:17 72:10,12, 20 117:17 118:1 dollars 75:9 78:9 105:2 don't 125:6 drafted 20:8 106:7 draw 60:19 drawing 101:13 Drilling 67:15 drink 28:14 drives 85:10 86:25 driving 73:9 dry 18:17 Duane 55:24 56:7,9 60:20 61:3,15,17 165:16 due 81:16 116:12 154:10 duplicative 40:21 <hr/> E <hr/> e- 5:5 e-book 45:17 46:1 64:5 | e-notify 18:16 e-s 142:21 earlier 43:5 65:16 82:10 86:11 116:11 119:17 Early 116:20 earn 19:4 24:7 25:5 28:17 31:18 33:20 39:6,16,17, 20 44:23 56:3 67:9 127:6 earnable 40:9,12 earned 19:8 60:7 84:5 90:18 ease 5:6 easier 142:4 economics 89:17,20,23 134:18 effect 91:11 effective 181:11, 13 effectively 17:5 effort 94:22 176:22 Eighteenth 191:14 eighth 187:9 188:8 electronic 54:18 electronically 45:10 elegantly 12:16 elements 147:13,14 eleven 88:14 eligible 44:22 47:22 107:7,11 176:13 eliminate 50:22 92:8 Elmer 2:8 14:7 45:18 54:3,5 63:7 | 93:11 128:16 137:21 138:7,21 139:1,7,10 142:13 187:22 188:1,17,19,21 189:1,3 190:20, 22 191:23 192:5, 16,19,22 else's 57:1 email 112:22 145:1 166:2 emailed 188:21 emails 146:15 154:20 Emery 2:11 7:11, 13,15 8:7,9,12,20 10:21,25 11:4,10, 16,21 12:3,12,14, 17 13:9,11,15 22:6,10,13 23:1 34:7,16 36:7,10, 13 37:8,12,14 41:5,10 45:7,9, 12,15 50:20 56:20 58:4 63:12, 16,23 64:1,15 67:21 68:1,9,12, 15 73:3 75:15,22, 25 76:9,12,20,25 77:3,11,20 78:1, 4,8,12,16,18,25 79:2,11,18,22,24 80:1,5,7,9,17,20 81:9,12 84:8,10 85:5,8,14,18,21 86:10,15,23 87:7, 18,20 88:25 89:5, 11,16,21,25 90:4, 8,12,16,21 92:12, 14 93:1,24 94:6, 14,23 95:4,6,22 96:1,4,10,13,15 97:11 98:3,11,14, 23 99:8,11,16 100:1,8,14 101:7, 16,22 102:3,13, 16,18 103:1,3,5, 8,13,20 104:1,7, 9,22 105:1,5,10, 17,20,24 106:2,5, 11,17,20,23 107:12,24 108:10,13,16 | 109:6,10,14,17, 23 110:4,6,10,15, 25 111:11,15,19, 22 112:4,10,14, 18,20,25 113:4,8, 14,19 114:10,22 115:2,4,7,13,21 116:3,13,19,24 117:3,5,11,21 118:3,5,8 119:12 123:15,21,25 124:5,12,16,21, 23 125:1,10,17, 22,25 126:3,7,10, 14,16,20,23 127:7,15,21 128:7,9,12 129:1, 5,8,12,15,18,24 130:4,7,12,16,18, 22 131:1,5,9,13, 16,20,24 132:3, 12,14,18,20 133:1,7,12,16,19 134:2,5,8,13,17, 21 135:2,10,14, 20 136:7,13,16, 20,24 137:2,5,8, 12,16,18 138:4 140:14,22,25 141:2,6,16,19,23 142:6,24 143:4,9, 11,14,18,21 144:3,5,14,17,21, 24 145:4,10,19, 23 146:6,14,18, 20 147:1,11,17, 23 148:1,8,17,22 149:1,3,9,14,20, 25 150:3,8,13,17, 22,24 151:1,6,11, 15,20 152:1,6,9, 13,17,19,23 153:6,23 154:2,5, 22 155:8,11,14 156:4,6,14,24 157:13,19,21 158:1,10,14,19, 25 159:5,11,21 160:11 161:2,13, 18 162:8,13,15, 25 163:9,14 164:2,8,11,23 165:2,13,15,18, 21 166:15 167:3, 14,16,21 168:8, |
|---|---|---|--|--|

| | | | | |
|---|--|--|--|---|
| 17 169:7,9,20,23 170:1,8,17,19,23 171:2,7,13,16,19, 22 172:2,7,14,18, 21,24 173:1,14, 23 174:1,5,8,13, 16,20 175:7,9,17, 24 176:11,14,20, 25 177:3,6,14,17, 19 178:8,19 179:3,12,15,25 180:4,9,13,18,23 181:1,4,6,18,20, 23 182:25 183:3 185:12,14 186:2, 16,20,23 187:2,5 188:22,25 189:2, 9,15 190:11,15, 21,24 191:14,16 192:14 | entire 44:10 165:25 182:13 entirety 6:23 entities 52:23 entitled 11:8 77:23 79:14,15 80:13 99:4 100:10 150:6,21 172:10 174:18 entity 76:3 87:13 equal 16:11,12 53:1 equally 90:14,19 104:12 105:7 equivalent 16:13 error 80:23 81:12 120:6 179:9 180:17 181:2,7 182:11 ERS 136:15 essentially 79:3 144:15 145:6 156:8 175:1 established 101:17,20 estate 176:4 estimate 73:1 etcetera 29:11 54:17 95:12 ethical 48:2 evaluate 29:8 42:18 54:19 60:6 70:24 87:4 163:25 evaluated 70:21 evaluates 21:20 evaluating 42:13 evaluation 19:13 37:3,4 54:13 77:18 89:7 110:1, 6,11 111:13 129:13 131:2 132:21 133:8 144:6,11 145:6 146:22 154:21 | 156:2,20 157:7, 15 158:2 159:1, 12,13 161:14 162:17 163:18 166:16 evaluator 19:14 55:19 59:24 62:25 evaluator's 55:3 155:7 evaluators 62:24 154:14,18,19,24 155:2 156:2 157:3 165:20 evenly 93:22 everybody's 11:14 everyone's 184:6 evidence 126:19 174:21 exact 11:13 95:22 examination 100:2 exceed 75:4 86:6 exceeded 81:23 Excellent 75:25 exception 18:25 35:20 148:12 150:6,9,10,15 exceptions 48:4 exchanged 36:13 exchanging 11:6 excuse 37:22 63:13 70:16 82:3 excused 127:14, 16 135:1,19 exhibit 5:11 43:10,12,14,15 53:5 55:1 59:8 63:25 64:9 65:23 66:2 79:5,12 84:19 85:15,18 87:23 94:15,23 | 100:15 102:18, 20,23 103:1 112:21 120:11 121:5,8,10 126:19 153:17 157:4,22 163:10 171:8 exhibits 5:5 27:4 45:13 53:6 64:3 151:1 existed 170:3 existing 179:22 exists 95:15 123:2 expect 123:7 expectation 146:25 expedite 91:25 expeditiously 141:7 experience 19:9 21:12 104:9,23 119:20 explain 22:23 23:12 24:2 54:7 56:16 81:14 84:23 102:2 explained 94:20 explaining 57:23 explanations 119:20 explicitly 43:9 expressed 101:7 expresses 162:10 expressly 90:17 extended 179:9, 19,20 180:17,19 181:14,21 182:15 extending 182:11 extension 181:8, 16 extensive 104:23 | extensively 86:12 extent 11:22 68:4 155:16 <hr/> F <hr/> facilitate 161:11 facilitated 161:24 fact 5:24 13:25 48:11 49:18 85:9 86:13 87:10 98:24 105:1 112:5 124:23 125:2,3 126:20, 23 157:15 158:25 167:1 168:22 170:19 176:8 179:22 factors 19:1,10 74:8 facts 57:3 173:8 fail 112:10,11 failed 56:12 156:9 failure 44:14 111:24 126:24 fair 17:4 20:7 26:21 27:5 28:21 34:10 36:16 41:23 42:8 45:24 46:2 48:2 50:14 58:3,22 68:7,13 75:20 78:10 80:21 84:25 85:3 96:6,9,11 106:9 119:6 147:11 fairness 29:18, 23 fall 47:19 falls 82:12 false 171:19 familiar 16:15 151:11 fashion 4:18 50:10 |
|---|--|--|--|---|

| | | | | |
|---|---|---|---|--|
| fast 39:10,13 75:18 | finger's 93:12 | 84:12 177:8,13, 18 | forward 178:6 182:4 | 170:14 |
| February 152:7, 15 | finish 15:6 98:22 108:17 184:17 | forgot 123:16,18, 24 | forwarding 155:6 | gave 56:18 75:12 130:10,11 135:19,20 177:21 178:9 |
| federal 86:1 87:2 | finished 18:4 127:25 191:5 | form 16:25 24:15 28:19 29:5,12,15 35:21 43:5 44:5, 8,11,22 46:12,18 47:10,17 49:10, 12 50:22 51:5,8 53:7,11 56:3,12 57:25 58:6 60:5, 22 66:5 67:1 81:5,18 82:1,4 93:25 94:3,6,8,13 95:2,3,7,9,13,21, 24 96:20 97:4 99:12,16,23,25 100:12,17 101:9, 20 102:1,15 103:14,22 105:15 107:20 108:8 111:25 112:6,15 113:1 114:17,23 115:8,10,14,16, 19,25 116:5 117:1 119:19,20 121:5,7,15 122:10,12 125:12,18,19 126:4,25 127:2,4, 8 132:10 133:25 148:12 150:7,12 152:3 154:17 155:25 156:19 158:16,22 166:22,23 168:4 172:23 174:15,17 175:16,21 177:10,12,21 178:23 | found 7:11 166:7 | geared 26:16 |
| feel 141:3 160:20 161:8,16 170:12 | firm 10:20 24:6,9, 10 27:25 28:22, 25 29:6,9 46:6,25 48:10 57:19 58:7 60:5,21 65:10 87:13 88:12 94:11 100:4,10 101:18 103:21 107:15 117:2 118:10 122:7 124:24 125:4 126:24 133:16 158:15,21,23 169:11 | formalized 130:2 | foundation 34:8 56:21 68:6 | general 41:6 94:12,17 124:4 144:17 151:18 154:12 175:5 |
| feeling 140:7 | firms 28:3,12 33:10 56:18 89:13 90:14 93:19,22,23 96:16 124:8 125:13 131:14,22 133:23 134:11 156:9 170:5 | formed 144:7 | fourteen 59:8,9 | generally 14:21, 22 18:8 27:13,14 46:6 121:6 161:20 175:2 |
| fees 93:10,21,22 | firsthand 56:24 | formal 18:14 86:2 87:5,16 | framework 34:13 | generate 54:15 |
| feet 69:3,4 | fix 182:11 | forms 19:24 44:15 111:17 116:10,22 155:1, 3,5,16,21 156:11 168:6 | frankly 10:22 12:25 184:4 | generated 148:11 |
| fellow 132:5 | flexibility 28:9 39:5 | forty-one 153:13 | fraud 78:25 79:4 119:18,21 | generously 184:8 |
| felt 161:11 162:5 171:3 | flipping 53:6 | | free 114:21 141:15 190:7 | gentleman's 132:15 136:8 |
| FEMALE 60:12 150:23,25 151:3 192:8 | floor 127:25 | | Fritsche 2:5,6, 22,25 3:7,16,19 4:2 31:8,10,11, 21,24 32:4 49:4, 6,7,14 82:24 83:3,5 84:7,11, 12,16,18,25 85:2 102:24 103:12 142:8 145:14,17 182:1 185:1,8,24 187:8,12 188:9 191:19 | gist 46:23 178:4 |
| figure 164:12 167:22 | folks 78:19 111:12 149:21 | | front 9:5 19:18 43:13 72:23 73:16 74:1 85:15 87:23 91:15 110:21 120:11 151:2 | give 14:9 15:9 39:2 45:13 72:7 91:7 128:18 142:15 151:17 160:25 168:5 175:20 |
| file 122:20 150:5 | follow 47:24 112:11 118:14 146:8 156:10 | | fronts 122:4 | giving 178:14 |
| filed 6:14 7:19,24 8:19 9:4 13:11 46:11,12,18 59:4 89:1 96:8 112:16 | follow-up 40:4 69:11 115:22 116:3 123:13 | | full 5:14 63:9 107:5 140:24 141:1 | glancing 157:10 |
| fill 115:10,13 126:3 | follow-ups 123:16 | | function 22:18 108:1 154:1 | goal 28:7 |
| filled 158:16 | food 140:10 | | functioning 47:7 | goals 28:6 32:11, 14,25 |
| final 3:11 125:17 133:19 144:10 162:1 167:23 169:16 170:5 | footage 24:20 67:2 69:1,15 79:9 81:6,17,23 82:2 | | gain 162:11 | good 2:6,10,11 15:1 75:22,24 140:21 142:24,25 143:2 187:20,25 192:23 |
| finally 125:10 | | | gained 162:5 | goods 87:6 |
| Finance 191:2 | | | gap 169:13 | government 117:15 |
| financial 129:9 133:9 | | | | great 5:3 |
| find 11:17 60:24 63:12 84:19 91:14 92:22 93:3 155:24 157:14,18 | | | | group 8:20 19:16 82:9 88:9 93:20 163:18 166:18 |
| finding 83:18 | | | | |
| findings 83:19 | | | | |
| fine 4:19 58:2 65:2 142:2,5 143:2 187:5 192:3 | | | | |

| | | | | |
|---|---|---|--|---|
| guess 5:18 13:24 18:7 40:20 43:7 47:16 53:14 55:2 57:17 60:14 63:11,19 66:4 68:1,3 90:12 91:2 95:6 101:23 106:14 109:18 114:9 121:4 138:15 139:16 157:4 161:20 169:3 181:7 185:5 | 6:15 7:11,12,13, 15 8:7,9,12,20 10:9,18,21,25 11:4,10,16,21 12:3,12,14,17 13:5,9,11,15 22:6,10,13 23:1 34:7,16 35:5 36:7,10,13 37:8, 12,14 41:5,10 45:7,9,12,15 50:20 56:20 57:13 58:4 63:12, 16,23 64:1,15 67:21 68:1,9,12, 15 69:3 73:3 75:12,15,22,25 76:7,9,12,20,25 77:3,11,20 78:1, 4,8,12,16,18,25 79:2,11,18,22,24 80:1,5,7,9,17,20 81:9,12 84:8,10 85:5,8,14,18,21 86:10,15,23 87:7, 18,20 88:23,25 89:5,11,16,21,25 90:4,8,12,16,21 91:23 92:12,14 93:1,24 94:6,14, 23 95:4,6,20,22 96:1,4,10,13,15 97:11 98:3,11,14, 23 99:8,11,16 100:1,8,14 101:7, 16,22 102:3,13, 16,18 103:1,3,5, 8,13,20 104:1,7, 9,22 105:1,5,10, 13,17,20,24 106:2,5,11,17,20, 23 107:4,12,19, 24 108:10,13,16 109:6,10,14,17, 23 110:4,6,10,15, 25 111:11,15,19, 22 112:4,10,14, 18,20,25 113:4,8, 14,19 114:10,22 115:2,4,7,13,21 116:3,13,19,24 117:3,5,11,21 118:3,5,8 119:12 123:14,15,21,25 124:5,12,16,21, | 23 125:1,10,17, 22,25 126:3,7,10, 14,16,20,23 127:7,15,21 128:5,7,9,12,25 129:1,5,8,12,15, 18,24 130:4,7,12, 16,18,22 131:1,5, 9,13,16,20,24 132:3,12,14,18, 20 133:1,7,12,16, 19 134:2,5,8,13, 17,21 135:2,8,10, 14,20 136:7,13, 16,20,24 137:2,5, 8,12,16,18 138:4 140:14,22,25 141:2,6,16,19,23 142:22,24 143:4, 9,11,14,18,21 144:3,5,14,17,21, 24 145:4,10,19, 23 146:6,14,18, 20 147:1,11,17, 23 148:1,8,17,22 149:1,3,9,14,20, 25 150:3,8,13,17, 22,24 151:1,6,11, 15,20 152:1,6,9, 13,17,19,23 153:6,23 154:2,5, 22 155:8,11,14 156:4,6,14,24 157:13,19,21 158:1,10,14,19, 25 159:5,11,21 160:11 161:2,13, 18 162:8,13,15, 25 163:9,14 164:2,8,11,23 165:2,13,15,18, 21 166:15 167:3, 14,16,21 168:8, 17 169:7,9,20,23 170:1,8,17,19,23 171:2,7,13,16,19, 22 172:2,7,14,18, 21,24 173:1,14, 23 174:1,5,8,13, 16,20 175:7,9,17, 24 176:11,14,20, 25 177:3,6,14,17, 19 178:8,19 179:3,12,15,25 180:4,9,13,18,23 | 181:1,4,6,18,20, 23 182:25 183:3 184:7 185:12,14 186:2,16,20,23 187:2,5 188:22, 25 189:2,9,15 190:11,15,21,24 191:14,16 192:12,14 Harlan's 128:1 harmonize 101:23 he'll 139:2 head 16:9 38:1 181:3 hear 2:18 60:11 76:7 162:4 heard 4:16,20 82:9 125:6 131:24,25 hearing 8:13 11:14,24 12:5,8 140:24 147:3 hearing's 143:16 hearings 96:18 hedge 4:4 held 15:18,20 16:2 helps 24:1 Hey 48:6 49:11 50:12 highest 19:11,17 53:18 159:17 160:7 161:9 162:2 166:4,6 168:15 170:13 171:4 Hmm 83:3 hmm-hmm 20:5, 11 21:18,23 22:4 23:4,10 26:19 32:21,23 40:24 41:4 46:13 61:23 66:25 78:3,15 89:15 97:2 100:20 113:3,7 156:5 161:17 | 164:1,10 165:14 171:15 Hoe 7:1 Hoeschen 2:4 3:8,10,18,20 4:8, 11 5:22,24 6:2,8, 24 7:1,2,7,10,12, 14,18,25 8:3,8, 11,16,19 9:1,7, 10,16,21,24 10:2, 5,8,13,16,17,18 11:8,15,17 12:2, 4,13,16,24 15:3, 8,11,18,22 16:1, 5,7,20 17:4,20 23:17,19,20 25:10,16,19,22, 25 30:5,7,22,24 31:1,3 50:25 51:2,7,10 54:2 58:20 59:12,14, 15,18,22 60:8 61:15 62:18,21, 24 63:2 64:12,23 68:17,18,19 69:20,21,22 70:5, 10 71:12,13,14, 18,22,25 72:4 73:6,23 74:10,12, 16 75:12,16 76:7, 15,17,21,24 77:1 82:5,6,7,21 83:1, 4,6,8,10,12,17,24 84:2 85:6,7,19,23 87:15,19,21,22 88:3,5,14,18,22 89:12 92:13 93:2, 6 95:10,17,20,24 96:2 97:15,21,24 98:8 101:2 102:21,23,25 103:4,7,11,18 105:11,12,13,19, 25 107:2,3,4,12, 18,24 108:6,11 109:15 118:23 119:1,4 125:6,8 135:22,25 139:14,18,21 140:1,3,7,12 142:2,5,10 153:11,14,17 172:12,16,19 182:7,8,9,17,19 |
| guesswork 92:8 guidelines 29:17 78:13 112:12 guy 137:1 guys 103:10 | | | | |
| H | | | | |
| halfway 61:1 hall 131:11 hand 14:6 49:7 128:15 142:12 handed 45:3 handholding 84:21 handle 17:10,17 153:3 handled 12:13 111:2 happen 23:6 48:23 111:18,20 146:22 181:15 happened 37:5 62:21 133:5 154:7 167:16 happy 13:5 Har 105:11 hard 39:10,13 45:22 54:21,22 91:14 harder 91:18 Harlan 2:11 4:25 5:14,16,20,24 | | | | |

| | | | | |
|---|---|---|--|--|
| 183:8,11,14 185:16,18 186:7, 9,18 187:3,13,18, 20,24 188:4,7,11, 15,18,20,24 189:14,18,22,25 190:3,9,13 191:5, 9,12 192:1,3 Hoeschen's 85:8 184:16 hold 7:12 16:4 34:22 67:24 98:21 104:14 114:5 145:14 157:3 163:1 184:22 holders 49:8 home 136:1 honest 118:19 honestly 39:4 41:21 81:4 hook 138:6 139:6 hope 190:6,7 horse 177:20 hours 185:15 house 69:9,14, 15,16 How's 191:13 hundred 31:19 hundreds 78:9 Hurtado 121:7 hybrid 147:12 <hr/> I <hr/> idea 74:17 155:6 187:25 ideally 94:20 identification 63:21 identified 49:11 72:20 73:11 identify 28:21,22 180:20 | identifying 29:6 49:9 ignore 108:8 imagine 130:23 implications 183:25 implied 183:24 important 79:7 121:18,24 146:9 151:21 impressed 163:2 improperly 181:21 in-person 131:6, 8 inaccurate 167:9 inaudible 51:1 60:15 64:25 86:1 88:7,22 92:16,20, 21,23 93:9,11,14 95:24 109:15,16 118:17 126:21 132:13 135:2,18 136:3,6,7,8 137:1,4,9,11 139:7,14,15 140:6 141:8,23 150:23,25 151:3 170:15 184:16 187:16 189:3,15 190:19,23,25 191:20 incentive 24:4 include 19:20 27:21 28:1,4,15 33:13,14 36:3 38:12 39:12 41:1 54:14 included 18:12 35:23 42:8,22 53:10,11 155:22 179:21 including 38:20 increase 178:4 independent 17:16,18 | independently 160:3 Indiana 69:7 indicating 36:20 individual 48:17 60:17 88:12 individuals 145:20 inform 27:23 31:17 information 2:17 11:7 29:2 69:18 78:22 81:5 86:9 94:8,12,17 95:7 113:9 114:16 116:23 120:3,20, 25 121:25 133:25 134:14 144:9 147:19 150:14 154:13 163:10,21 164:22 166:5 168:9,22 169:11, 13 170:3,9,24 176:15,19 177:21 informed 50:16 69:5,8,10 initial 5:3 12:19, 21 35:22 70:18 146:4 160:9 162:12 initially 70:6 injustice 96:7 input 158:3 inputted 163:15, 16,21 164:14 171:17 inputting 164:21 inside 175:14 insight 151:18 162:6 insights 162:12 instance 21:11 111:16 114:13 118:6 120:7 145:20 147:18 158:20 162:17,20 | 168:23 174:10 instructed 182:20,21 instructions 47:23 integrity 29:18, 23 intend 44:13 100:18 103:16 intended 26:7,16 65:18 131:21 148:4 intent 114:3 115:16 151:25 interactions 10:25 interest 6:19 interested 73:16 interesting 6:8 interpose 22:6 interpret 44:20 57:9 106:25 interpreted 44:21 interrupt 15:6 96:22 108:21 interview 123:22 124:3,9 131:17, 21 161:8,16 163:1,4 168:24 169:16 170:13 interviews 161:4,22 170:5 171:1 introduce 45:12 invitation 122:13 involved 19:13 37:1 68:6 94:21 117:6 119:19 121:22 125:14 143:22 152:11,12 involvement 126:12 Iowa 69:4 | irrespective 158:15 issue 4:21 5:18 8:13,14 11:12,21, 23 12:1,19,23 13:22 16:25 35:7 51:4 98:15 133:21 157:8 165:24 171:8 178:14 182:5 186:2 190:4 issued 89:1 issues 109:18 140:16,21 186:24 item 149:18 items 161:7 <hr/> J <hr/> J-E-F-F-R-I- 142:20 Jeffries 79:19,22 132:17,18 133:21 135:11 138:11 142:10,17,20,25 143:2,7,10,13,17, 20 144:1,4,8,15, 20,23 145:1,8,11, 16,22 146:1,13, 17,19,24 147:5, 16,22,25 148:7, 10,21,25 149:2,7, 12,19,24 150:2,5, 11,16,18 151:8, 13,16,24 152:5,8, 10,14,18,22 153:1,22 154:4,8, 23 155:9,13,21 156:5,12,21,25 157:10,17,20,24 158:5,11,17,23 159:3,8,15,25 160:16 161:6,15, 23 162:9,14,23 163:7,13,22 164:5,10,15,20, 24 165:9,14,16, 19,25 166:21 167:6,15,18,25 168:11 169:4,17, 21,25 170:6,10, |
|---|---|---|--|--|

| | | | | |
|---|--|---|---|--|
| 22,25 171:3,12, 15,18,20,25 172:6,20,23,25 173:5,21,24 174:4,7,12,14,19, 25 175:8,15,19 176:3,12,18,24 177:2,5,10,15,18, 24 178:13,21 179:4,14,16 180:2,5,12,14,21, 25 181:3,5,9,19, 22,24 182:9,12, 18,21 183:2 | 23 145:1,8,11,16, 22 146:1,13,17, 19,24 147:5,16, 22,25 148:7,10, 21,25 149:2,7,12, 19,24 150:2,5,11, 16,18 151:13,16, 24 152:5,8,10,14, 18,22 153:1,22 154:4,8,23 155:9, 13,21 156:5,12, 21,25 157:10,17, 20,24 158:5,11, 17,23 159:3,8,15, 25 160:16 161:6, 15,23 162:9,14, 23 163:7,13,22 164:5,10,15,20, 24 165:9,14,16, 19,25 166:21 167:6,15,18,25 168:11 169:4,17, 21,25 170:6,10, 22,25 171:3,12, 15,18,20,25 172:6,20,23,25 173:5,21,24 174:4,7,12,14,19, 25 175:8,15,19 176:3,12,18,24 177:2,5,10,15,18, 24 178:13,21 179:4,14,16 180:2,5,12,14,21, 25 181:3,5,9,19, 22,24 182:12,18, 21 183:2 | 19 35:3,6,12,17, 25 36:5,8,25 37:10,18,25 38:3, 5,8,11,14,18,21, 23 39:7 40:3,8, 11,15,17,25 41:8, 12,16,20 42:3,6, 11,16,20,25 43:4, 16,19,22,24 44:3, 7,17,19,24 45:5, 16,21,24 46:2,9, 14,17,22 49:18, 23 51:11,15,18, 21,23,25 52:3,6, 8,11,15,19 53:4, 9,13,16,19,21,23 54:4,6,25 55:5,8, 14,20,23 56:8,11, 14 57:4,8,11,15, 21 58:1,9,13,22 59:2,6,10,13,17 60:13,16,18,25 61:4,9,12,17,20, 24 62:2,6,9,13, 16,20,23 63:1,4, 8,14,18 64:4,8, 18,21,25 65:3,6, 12,15,21,25 66:9, 12,15,18,25 67:15 68:7,13 70:13,23 71:4,6, 10 72:7,22,25 73:4 74:2,4,7,11, 14,17,24 75:2,8, 17 88:4 91:21 92:1,18,24 93:5, 8,15 97:17,19 98:6,19 99:5 101:12 108:20 109:1,9,12 111:5, 9 113:24 114:2, 20 119:15,25 120:5,9,18,22 121:3,9,12,17,23 122:2,9,16 123:1, 7,11,17,23 126:2, 5 127:12,24 128:4 134:24 135:6,12 136:5, 10,14,18,22,25 137:3,7,10,14,17, 19,23 138:1,5,10, 12,18,24 139:4,8, 13 140:11 141:9, 12,20,24 142:3,6 | 148:23 151:4 153:4,9,12,16,18 168:25 183:18, 20,23 185:19,21 186:13 187:6,21 190:6 191:1,7,10, 21,24 192:2,6,11, 15,23,25 Katten 133:14 163:16 179:9 Kelsey 14:5,11, 14,17,24 15:4,12, 15,20,24 16:3,6, 8,22 17:7,21,22 18:9 20:5,11,14, 16,18,20,22,25 21:5,15,18,23 22:2,4 23:4,10, 14,18,20,22,25 24:23 25:2,4,7,9, 11,14,18,21,24 26:1,3,8,11,13, 19,22 27:1,6,9, 11,16 30:2,9,12, 16,20,23,25 31:2, 5,7,16,22 32:3,6, 12,15,18,21,23 33:5,9,13,17,19, 22,25 34:21,23, 25 35:10,16,19 36:3 37:7,24 38:2,4,7,10,13, 16,19,22,24 39:9, 22 40:1,7,10,13, 16,24 41:4 42:2, 5,10,15,19,24 43:3,15,18,21,23 44:2,6,9,18,21 46:8,13,16,21 47:1,11,14,16 48:20,23 49:2,13, 15,22 50:1,23 51:6,9,14,16,20, 22,24 52:2,5,7, 10,16,21 53:8,12, 15,18,20 54:1,8 55:4,7,13,16,22, 24 56:10,13,17 57:2,6,10 59:1,5, 9,18,21,23 60:15, 17,24 61:3,8,11, 14,19,23 62:1,5, 8,12,15 65:9,11, 14,20,24 66:8,11, | 14,17,23 67:1,11, 17,19,23,25 68:23,24,25 69:2, 17,22 70:3,9,12, 22 71:1,5,9,14, 17,21,24 72:3,12, 15,18,23 73:14, 19,21,25 74:3,25 75:22,24 77:10, 14,25 78:3,7,11, 15,17,24 79:1,7, 17,20,23,25 80:4, 6,8,16,19,24 81:11,14 82:7,14, 25 83:7,9,11,14, 23 84:1,4,15,17, 24 85:1,3,5,13, 17,24 86:14,17 87:1,10,16,24 88:2,11,15,19,25 89:4,10,15,19,23 90:3,6,10,15,20, 22 91:1,3,5,7,11, 16,20,23 92:3,6, 9,15,21 93:4,7,9, 14,17 94:5,10,16 95:1,5,11,19 97:1,2,6,11,25 99:7,9,14,18 100:6,13,20,23, 25 101:5,21,24 102:5,7,9,12,17, 20,22 103:2,19, 24 104:5,8,10,13, 17,20,25 105:4,9 106:3,15,19,21, 25 107:13,25 108:15 109:8,17, 22 110:2,5,9,14, 19 111:10,14,17, 21 112:2,9,13,17, 19,24 113:3,7,10, 12,17,23 114:1,3, 6,8 115:11,16 116:1,7,18,20,25 117:4,8,19,23 118:4,7,13,18,22 119:5,8,11,24 120:3,8,17,21 121:2,8,11,16,19 122:1,3,15,24 123:3,10 124:3, 10,14,19,22,25 125:5,7,9,16,21, 23 126:8,11,15 |
| Jeremy 61:21 Jerry 61:21 136:10,11 137:18,19 138:6 Jerry's 136:14 job 4:11 15:10 78:14 153:25 Johnson 186:6 joint 51:13 52:9, 22,24 53:2 87:17 90:6,9 jointly 5:9 judgement 96:17 judgment 118:11 July 181:12,13 June 185:13 187:3,7 191:14 192:5,16,17 jurisdiction 12:6,9,10 justifications 98:24 K K-E-L-S-E-Y 14:17 Karen 79:22 132:18 138:12 141:13,25 142:17,20 143:2, 7,10,13,17,20 144:1,4,8,15,20, | Karen's 138:2 KATHY 4:6,14,24 5:23,25 6:4,11 7:5,8,16,23 8:1,5, 18,25 9:3,8,15, 19,23 13:4,20,23 14:4,20 15:13 17:24 18:2,6 20:3,6,12,15,17, 19,21,24 21:2,7, 16,19,24 22:3,5, 8,16,20 23:2,5, 11,23 26:5,9,12, 14,20,23 27:2,7, 10,12 32:9,13,16, 19,22,24 33:6,12, 18,23 34:1,10,15, | | | |

| | | | | |
|---|---|--|--|---|
| <p>127:3,17 131:25 135:15 137:9 143:19,23 144:2 145:20 156:15 165:24 166:19 172:8,17 173:7, 17 174:2 175:10 181:10</p> <p>Kelsey's 14:2 34:17 168:18 172:13</p> <p>kind 4:3 5:2,3 26:15 34:2 40:18 70:14 73:9 122:11 124:4 138:19 147:3,12, 14 151:21 157:5</p> <p>knowledge 56:24 68:2 104:22 115:25 149:4 153:21 181:4</p> <hr/> <p>L</p> <hr/> <p>L.A. 136:19</p> <p>labeled 153:14</p> <p>lack 125:24 140:10,12</p> <p>laid 34:8</p> <p>language 44:20 86:18 93:3 107:22</p> <p>larger 166:11 168:14 173:6 178:14 182:23 183:2</p> <p>largest 24:19 84:23</p> <p>laughter 15:13 23:23 34:20 35:3 45:6 51:18,23 63:1 65:7 75:14, 16,19 88:4 91:19 101:13 111:9 118:21 119:1 127:18 129:3 135:3,17,21 136:4 139:3</p> | <p>185:19 187:21 189:6 190:5,7</p> <p>law 8:20 82:8 86:2 87:3 88:9 93:20 125:13</p> <p>lawyer 8:22 13:17</p> <p>lay 6:12</p> <p>lays 157:5</p> <p>LB 70:11 173:3</p> <p>LBE 19:6 23:15, 20 24:11 25:7 26:6 27:7 29:14 30:22 39:23 40:10,12 58:23 59:3 65:16 66:22 69:23 71:19 72:2 76:1,5 77:5,8,12, 17,22 79:6,15 80:10 82:3,9,12 86:25 93:10,19, 22 98:12,15 99:3 113:1 119:17 132:1,7 155:16 156:18,22 157:9, 12,16,18 158:3,8, 12 163:25 166:12 167:24 168:4,5,7, 19 171:8 172:10, 23 173:4,19 174:11,15,17 175:1,11 176:1, 23 177:22 178:18 179:1,7,17,18 182:10,20</p> <p>lead 120:14,24 124:17,24</p> <p>leader 146:2</p> <p>leads 153:24</p> <p>leaning 142:7</p> <p>lease 24:12</p> <p>leased 24:18 67:5 176:16 177:9</p> <p>leases 24:17 113:9,21 114:15</p> <p>leave 14:1 108:23 186:3</p> | <p>leaving 116:14</p> <p>led 17:9 28:11</p> <p>Lee 61:21 116:17 130:7,10,13,20 133:10 141:8,11 144:25 145:2,6 147:24</p> <p>left 2:7,9 95:9 136:1,16</p> <p>legal 11:22 17:13 27:18 91:21 101:13 113:25</p> <p>legitimate 29:9 122:6</p> <p>lend 84:21</p> <p>lens 99:23</p> <p>lets 73:1</p> <p>letterhead 7:24</p> <p>letting 33:4 154:20</p> <p>level 17:16,18 67:16 119:21</p> <p>Liaison 151:13</p> <p>library 17:18</p> <p>limit 31:19 72:16, 17 73:12 74:23 75:10</p> <p>Linda 2:8 14:7 45:18 54:3,5 63:7 93:6,11 128:16 137:21 138:7,21 139:1,7,10 142:13 187:19,22 188:1,16,17,19, 21 189:1,3 190:20,22 191:23 192:5,16,19,22</p> <p>lines 94:18</p> <p>list 9:2,4 114:17</p> <p>listed 65:9,13 66:10,24 113:5 176:6,10 178:22, 24</p> <p>listing 84:20</p> | <p>lists 9:4 88:8</p> <p>literally 26:17 78:9 114:17</p> <p>live 34:13</p> <p>living 15:12 19:23 29:14</p> <p>LLP 8:20,21</p> <p>loaded 147:7</p> <p>local 23:6,8,12,25 26:6 42:22 65:16 66:2 70:16,19 86:1,4 87:3 147:20 154:25 155:3 177:11</p> <p>located 24:18 81:21 82:3 114:14</p> <p>location 26:16, 17 66:7 69:5,6 81:24 114:17 177:9</p> <p>locations 67:3 113:15</p> <p>lodge 116:5</p> <p>lodged 115:24</p> <p>long 15:18,22 20:8 77:11 98:17 99:4 100:11 140:1 143:11 172:8</p> <p>looked 72:1 156:17</p> <p>lose 181:1</p> <p>loss 55:25</p> <p>lost 37:19 81:8</p> <p>lot 28:12 40:20 47:4 120:14 131:24 132:1 133:4</p> <p>low 18:11</p> <p>lowest 20:13,20 21:5 86:6 163:17</p> <p>lunch 138:16 139:21,22,23,25 140:5,9</p> | <hr/> <p>M</p> <hr/> <p>made 4:8 13:16 36:14 38:19 47:21 58:11,16 66:23 67:7,20 68:4,5,9 69:23 71:22 77:15 80:2 81:12,20,22 82:22 105:14 109:24,25 110:1, 8 145:1,5,21 149:23 150:15 162:17 165:7,9, 11 167:23 173:18 180:20 192:20</p> <p>mainstream 52:23</p> <p>maintain 12:22 29:18 112:15</p> <p>major 48:1</p> <p>majority 17:7 67:5,6</p> <p>make 13:25 19:17 24:2 27:20 28:20 39:18 48:11,14 63:19 70:15,17 74:20 80:12 110:12,18 114:21 120:6 122:5 132:23 134:14 141:1 144:12 147:9 162:1,21 177:22 184:5,21 191:17,19 192:4</p> <p>makes 18:20 39:1,18 96:17 126:9 148:4 187:2</p> <p>making 3:11 11:19 48:1 78:20 95:7 114:13 157:8 165:22 169:15,16 170:5</p> <p>MALE 9:6 10:24 53:22 60:11 120:2 139:19 185:13</p> <p>man 189:10</p> |
|---|---|--|--|---|

| | | | | |
|--|--|--|--|---|
| manner 11:11 | member 2:4 61:6 146:22 | missed 152:2 | 80:21 81:20 82:8, 12,16,17 83:6,19, 21 89:13 90:1 93:20 94:1 107:11 111:23 112:5 113:1,2 114:11 115:9,24 118:9 119:18 121:1 125:3 168:21 171:10 173:19 175:11,12 176:17,21 178:10 | 176:7 |
| Manual 151:14 | members 54:13 60:1,8 132:5 158:2 186:4 | missing 112:7 134:14 178:11 | | notation 59:19 |
| marked 79:4 | mention 29:25 120:14 | mistake 168:19 | | notations 58:16 |
| Marty 117:9 139:5 | mentioned 43:5 122:23 130:23 132:16 162:15 184:19 | Mister 84:9 85:6 96:14 186:5 | | note 45:3 55:21 61:5 63:19 97:9 126:19 152:7 156:18 |
| material 36:16, 22 | met 70:20 77:12, 22 101:10 154:12 166:19 167:17,19 175:25 176:22 | misunderstand 120:6 | MWH's 7:24 | notebooks 113:21 |
| Matson 116:17 133:10 137:5 145:24 147:24 | metal 189:12 | misunderstood 100:9 | <hr/> N <hr/> | noted 61:6 64:22 152:2 |
| matter 3:13,14 4:16 5:3,21 8:8 11:24 12:18 13:13 36:14 66:19 100:9 108:18 154:15 166:8,12 174:22 179:18 184:22 | methodology 19:8 | moment 96:23 | | notes 43:13 54:14 55:3 159:19 164:13 |
| max 31:18 | MHW 88:9 | Monday 191:22 | Nah 8:16 | notice 11:13 |
| maximum 19:4 25:17 39:17 | mic 11:2 76:10 | money 73:10 90:17 104:12 105:8 | named 171:25 172:3 | noticed 63:20 |
| mayor 16:16 149:10 | microphone 142:9 145:15 | month 190:18 | names 160:5 | notwithstanding 132:22 |
| Mckenzie 61:22 | middle 171:13 | morning 2:6,10, 11 75:23 136:1 142:25 143:2 | narrowed 124:8 | number 19:10 27:3 28:17 31:15 53:5 54:17 59:21, 25 63:21 67:18 73:15,23 74:8,12 80:3,17 88:6 143:15 151:6,9 157:4 162:21 163:2,4,5,11,18 171:8 181:21 |
| meaningful 93:18 | million 75:9 | Morris 55:24 56:7,9 61:3,15,18 165:17 | nature 13:16 14:21 38:25 39:3 | |
| means 13:17 103:20,25 106:12 122:17 125:25 164:12,15 165:5 | millions 78:9 105:2 | Morris' 60:21 | naïve 105:19 | |
| meant 134:3 | Milwaukee 15:16,23,25 24:12,18 66:13, 19 67:12,13 69:3 80:14 81:3,22,24 84:23 176:5,17 | motion 184:20, 21,24 192:20 | necessarily 80:24 107:15 | |
| measure 159:7 | Milwaukee's 88:6 | move 14:1 58:23 59:15 76:22 108:13 109:14 115:4 141:6 154:14,18 156:16 157:1 166:13 178:5 182:4 | needed 112:16 161:12 162:1 | |
| measuring 29:3 | mind 91:23 139:22 141:25 | moved 16:9 65:1 | Negligence 120:2 | numbers 31:12 |
| mechanism 50:9 | mine 43:13 | Muchin 133:14 163:16 179:9 | negotiation 73:14 | numerous 5:1 |
| meet 23:16 26:3 28:6 32:25 40:14 67:3,8 80:14 99:2 159:14 160:2 | minimum 93:9, 21 | multi-year 74:18 | negotiations 21:25 | <hr/> O <hr/> |
| meeting 2:2 19:16 131:2,6,8 139:20 159:15, 22,25 160:9 162:3 166:1 178:25 186:9,12 187:16 | minus 55:18 59:19 165:4 | municipalities 129:9 | network 189:20, 24 | oath 9:19 13:6 |
| | minute 127:20 | mutual 64:17 | Nikki 37:21,23 | object 6:2 34:7 56:20 67:21 |
| | minutes 91:7 109:11 119:17 183:4,17 | MWH 6:3,14,15, 16,18 7:15 8:2,3, 20 46:6,10,19 59:2 65:12 66:4 71:5 77:12,18,22, 23 78:19 79:3,14 | non-sbe 134:11 174:18 | objection 5:7 22:7,12,23 36:11, 12 37:15,17 57:18 63:23 64:19 65:4 67:25 68:1 97:16,18 101:12 114:2,7 116:5 168:25 185:2 |
| | | | noncompliance 119:22 | objections 64:5 115:23 140:2 |
| | | | noon 108:23 | |
| | | | normal 116:25 124:7 | |
| | | | notarized 24:16 | |

| | | | | |
|--|---|---|---|--|
| observed 96:18 129:19 | open 36:15 71:2 185:5 | 157:14,23 | 178:11 181:9,17 182:23,24 | 138:19 145:5,6 146:8 |
| obtain 50:18 116:8 | operate 106:8 115:18 | ordinances 65:1 80:10 148:25 | participants 99:2 | percent 28:7,9, 10 54:1 86:6 93:10,16,21 176:3,5,16 178:24,25 179:2 |
| occasion 129:16 | operated 69:8, 13,16 | organization 180:15 | participate 154:2 | percentage 21:21 33:8 53:1, 24 150:20 |
| occur 81:18 110:20 116:22 180:4 | operating 41:7 101:18 111:1 155:14 156:7,8 160:12 | originally 145:23 | participating 6:3 56:24 | percentages 42:14 |
| occurred 81:25 | Operations 99:21 | OSBD 35:21 55:18 99:23,25 126:13 166:22 | participation 6:5 19:6,7,22 23:15 24:4 28:1,2,5,8 32:14 33:14 35:21 44:1,16,18 46:5,20 52:21 53:1 56:5 60:3 61:1 62:3 67:10 69:23 97:13 103:6 125:20,24 126:1 148:6,20 149:6,17 152:4 | perform 29:11 |
| October 69:10 79:10 | operative 106:6 | outcomes 29:3 | parties 9:5 13:13 77:6 104:11 105:7 120:14 121:20,21 125:14 172:8 174:22,23 | performed 94:19 |
| offer 5:8 57:13 86:8 157:11 | opinion 11:5 56:25 184:14 | outrageous 10:22 | partner 53:2 86:7,22 93:20 177:25 178:16 | period 48:2 116:8 122:23 |
| offered 5:8 19:5 94:11 184:8 | Opportunities 16:11 | overlapping 182:4 | overrule 22:22 | perj 14:8 128:17 142:14 |
| offhand 73:22 | opportunity 2:16 4:16 48:10 110:11 150:19 159:18 160:2,4, 21,24 161:1,6 162:3,7 170:20 | overseen 78:9 105:2 | owned 67:5 | permissible 163:6 |
| office 16:9,10,14, 21 27:20,23 29:1 32:1,25 34:5,17 35:8,14,16,19 37:22 38:5,7 44:10 67:2,7 69:3,4,6,7,16 84:23 99:20 100:3,16 101:17, 20 102:19 103:9, 13 105:3 106:7, 17 108:4 110:1,5, 8 116:16 117:10, 15 130:10,20 133:17 137:6 144:22 148:3,12 149:21 155:5 181:16 | opposed 21:9 24:9 38:22 39:4, 13 120:13 | owns 24:17 | person 58:7 76:3 79:13,19 96:17 104:3 107:14 120:5 122:17 132:20,23 162:21 163:24 174:9 176:1 | person's 10:21 |
| office's 83:19 | opposing 45:4 | pages 43:10 | partners 87:14 | personal 68:2 |
| office-by-office 177:8 | option 48:7 118:15 124:10 161:10 | paid 93:10,21 | partnership 93:19 122:7 | personally 117:5 |
| officer 132:9 | optional 97:14 98:4 149:18 | pains 14:8 128:17 142:14 | parts 117:14 | Personnel 191:2 |
| offices 80:3,18 81:20 84:20 175:13 | options 123:5 | panel 42:17 129:13 130:5,13, 19 | party 6:19,21 98:17 174:14,17 175:2,6 177:7 | perspective 29:21,22 47:23 129:22 140:15 |
| officials 114:12 | order 10:9 20:25 28:1 40:22 46:25 51:4 77:13 100:3 107:16 112:16 162:1 175:25 182:10 184:15,20 | panels 129:20,25 | pass 122:5 | pertinent 12:19 |
| omitted 112:6,7 | ordered 185:3 | paper 17:11 189:4 | passed 156:19 | PFM 129:5 |
| online 130:24 131:8 | ordinance 24:15 26:4 42:23 46:6 51:12 82:15 84:13,15,16 85:9, 15,17 86:24 99:3 110:17 114:4 119:23 120:7 | paperwork 7:24 147:6 | past 178:2 | phone 135:24 189:19 |
| op 161:24 | | paragraph 107:5 152:24 153:7 | patient 92:10 | pick 76:19 |
| | | part 16:12 17:10 18:17 30:1 43:11 56:22 61:15 64:17 70:4 84:13 116:6,14 124:5,7 130:2 133:8,12 143:15 157:7 166:14 167:19 168:5 176:22 | pause 178:9 | piece 7:23 24:19 95:7,12 |
| | | | payments 53:24 | place 13:3 19:16 28:10 150:19 152:20 173:12 179:7,24 180:5 |
| | | | penalties 14:8 128:17 142:14 | |
| | | | pending 11:24 | |
| | | | people 57:16 76:16 119:10 | |

| | | | | |
|--|--|---|---|--|
| places 189:17 | 109:20 110:3,7,8, 12 112:1,16 115:12 124:8 127:6 132:24 133:22 155:23,25 156:9 157:9,16 158:4 159:2,7 163:25 164:9 165:6,8,11,23 166:9,10,17,19, 21,24 167:2,8,9, 11,13,24 168:3,5, 19,20 169:12,21 172:11 173:4,19, 25 174:3,11,18, 24 175:1,5,11,21 176:2,23 177:22 178:3,4,12,14,17, 20 179:7,18 182:10,20,22 183:7,12 | 184:8 | priority 149:5 | 173:3 176:21 180:11 |
| plan 33:24 44:11 55:18 58:14 100:17 103:14 165:12 166:9 | | potentials 161:3 | pro 46:11 | processes 48:16 78:13 130:1 147:15 151:18 |
| platform 54:9,11 | | pre 83:17 | problem 6:12 10:3,4,7 95:25 111:24 183:6 | procure 87:6 108:4 |
| played 144:19 | | preceded 37:2 | problematic 6:10 | procured 148:4 |
| plug 73:12 | | preclude 118:12 | problems 109:2 190:16 | procurement 14:25 16:23,24 17:10 18:10 27:19 29:21 35:24 36:17,21 41:11,23 46:12 94:2 98:16,25 99:1 101:8,18 103:23 104:4,23 107:14 108:5,19 109:20 111:1 116:16,17 117:25 130:10 132:9 133:13 143:10,22 147:18 149:4,6, 17 151:22 152:10,11,21 153:2 154:3 156:10 161:21 162:19 170:20 176:21 182:13 |
| point 4:15,20 6:17 7:9 19:12 25:13,16 38:12 56:15 60:10 70:24 71:1 73:8 77:15 79:8 89:1 95:6 99:19 114:13 115:23 116:19 130:23 132:10 140:10 159:13 165:6 166:18 168:10 171:9 173:2,16 174:1 176:20 184:5 | | prefaced 164:24 | procedure 3:2, 13 41:7,25 111:1 118:14 155:15 156:7,8 160:12 | |
| pointing 91:24 | | prefer 41:15 141:21 | procedures 29:17 48:17 118:16 169:11 | |
| points 19:4,5,7,9 23:15 24:3,7,25 25:5,10,11,20 28:18 30:1,3,12, 13,15,16,17,18, 19 31:4,13,18 33:13,19,25 35:23 36:3,4,20 38:20 39:4,6,12, 17,20 40:5,9 42:21 43:3,5,7 44:16,23 46:15, 20 47:12,22 51:5 55:10,18,25 56:3, 5,6,7,15,19 57:24 58:6,7,18 59:20, 23,24 60:1,7,9 61:2,6 62:3,14 66:22 67:9 69:25 70:5 77:5,9,13,24 79:15 80:22 82:16 83:22 84:6 85:11 86:25 87:9 91:17 94:2,8 97:13 98:4,13,15 99:4 100:4,11 101:10 107:8,9, 16,23 108:1 | pol 84:14 police 18:21 policies 118:16 policy 2:12 16:17 65:2 74:20 118:14,15 148:19 portal 147:7 154:11 portion 43:25 51:12 52:25 107:8 150:18 portions 43:19 posed 175:22 position 12:20, 25 15:19,20 167:22 181:1 positions 16:1,3 possibly 122:4 162:16 post 79:10 posted 50:4 147:8,10 154:9 potential 39:20 49:24 54:19 131:17 potentially 47:17 | present 2:15 122:23 161:7 166:4 186:4 presented 50:2 166:25 168:2 presenting 31:25 pretty 18:11 68:3 72:18 114:25 140:21 166:2 previous 8:13 previously 42:12 prices 73:7 pricing 19:2 primarily 77:21 121:1 Primary 163:18 prime 24:5,8,16 26:7 47:7 65:18 67:6 76:4 77:17 82:19 83:15,19 85:10 86:21,23 87:9,11,12 95:14 104:8 106:19,21 printed 152:18 printing 164:22 prior 35:13 42:21 71:7 97:10 130:19 131:2 132:22 133:7 156:11 165:22 173:10,11 175:3 priorities 48:1 | proceed 13:22 96:12 184:4,12 proceeding 12:19,21 proceedings 13:3 184:9 process 14:25 16:23 17:1,11 18:8,9,10,17,25 19:1,13 20:7 21:8 22:14,15 24:6 27:17 28:19,20 29:19,23 47:4,5 48:1 49:21 50:11, 17 54:24 56:22, 24 73:15 82:16 85:9 86:11 89:3,7 94:3 96:5,6 109:21 110:17, 19,21 111:12 116:4,6,8,11 117:17,22 122:20,24 123:22 124:6,7,9 129:18 130:2 131:17,21 144:6,16,18,19 147:12 148:2,8 149:5,6 151:22 152:25 153:8 154:6,21 156:2, 10,13,16 157:6 159:23 160:12,19 161:11 163:1,4,6 168:24 169:10,16 | |
| | | | proper 3:25 4:13 6:19,21 70:25 133:25 | |

| | | | | |
|---|--|--|---|--|
| <p>properly 3:12,14 44:14 46:12,18 114:16 176:7</p> <p>properties 66:10,24 67:12, 18 69:1 79:9 81:17</p> <p>property 24:12, 17,18,20 66:6 67:12 69:13 113:6,15,16,20, 21 114:14,18 177:10,12 178:23</p> <p>proposal 5:12 6:13 19:20,25 21:10 22:3 29:15 40:1 41:2,3,19,24 42:1,4,8,18 43:8, 11,20 44:13 45:4 46:11,18,23 47:4, 20 48:5 49:8 50:6,13 55:11 59:4 63:10 66:21 70:20 76:4 77:6, 16,23 79:15,23 80:22 82:10 83:16,20 88:6 89:7,12,16,22 90:1,5,13,17,18 91:12 94:2,9 95:8,9,16 98:18 99:2 100:18 103:16 106:6 110:21 111:23, 24,25 112:6,8,11 116:6,9,23 120:10 122:14, 18,19,21,22 123:22 124:20 125:2,12 127:1 133:2 160:22 163:17 165:6 168:21 171:10, 22,24 172:4,9,10 173:4,19,25 174:3,15,17,23 175:2,6,12 177:25 178:16</p> <p>proposals 17:3 19:15 20:1 21:20 54:10,12,14,16, 19,20 56:18 87:4, 5,11,13,17 89:2,9</p> | <p>111:13 116:12 123:8 127:3 130:24 134:6 148:3 154:9,14, 16,18,20 156:17, 19 157:16 158:7, 20 159:12,23 162:5</p> <p>proposed 5:5 92:9 120:19 145:8</p> <p>proposer 19:4, 11,18 21:25 23:14 24:7 28:17, 19 29:20 33:19 48:5 50:11,17 51:7 53:14,17 56:2,9 65:18 86:21 87:11 88:10,12 94:24 159:17 160:8 161:9 162:2,18, 21 163:2,3,4,5 166:4,6 168:15 171:4 176:8</p> <p>proposer's 19:8 65:10 67:7</p> <p>proposers 19:6 26:10,17 29:4 31:17 39:5,16 47:24 48:3,14,17 49:20,24,25 50:5, 9,16 54:9,20 78:19 82:1 86:21 97:5 107:6 115:19 127:1,4 146:11 155:18 160:18 161:10 170:13</p> <p>proposes 144:8</p> <p>protected 184:6</p> <p>proven 3:25</p> <p>provide 15:1 28:13 115:17 159:4</p> <p>provided 20:18 23:15 26:3 36:16 40:13 69:17 86:5 90:4,13 121:13, 21 147:19 152:24 158:12 159:4</p> | <p>167:7</p> <p>providing 47:8 73:10 78:22 147:13</p> <p>provision 105:14</p> <p>public 17:9 37:1</p> <p>publish 166:23</p> <p>published 148:16 167:8 173:12 175:4 177:15 181:11 188:16</p> <p>pull 11:2 73:12 76:21 142:8</p> <p>purchase 18:21 143:5</p> <p>purchased 17:5</p> <p>purchaser 125:15</p> <p>purchases 105:3</p> <p>purchasing 15:15 16:18,20 18:19 20:1,10 27:18,24 29:8 34:8 47:21 54:12 56:19 78:6,10 79:20 98:16 99:13,15 110:17 114:12 117:14 118:1 143:5,7,12 146:8,23 147:15, 19 148:11 149:11 151:13,19 157:2</p> <p>purpose 12:5,8 159:22,25 160:8, 10</p> <p>purposes 29:2 77:4,17,21 98:16 100:10 108:8 151:21</p> <p>purses 108:7</p> <p>Purvis 37:23</p> <p>put 9:1 34:13,23 37:6 39:9 102:11 104:3 154:7,8 190:17</p> | <p>putting 5:4 13:5 35:13 42:7 92:16 114:16</p> <hr/> <p>Q</p> <hr/> <p>Q&b 82:17</p> <p>qual 90:23</p> <p>qualified 90:24 93:19</p> <p>qualifies 82:9</p> <p>qualify 40:14 96:18 115:11 176:9</p> <p>Quarles 5:12 6:5, 14,15,17,20 7:3, 15 8:4,6,21,23 9:2,11 10:19 12:18 13:6 46:10, 19 55:11,17 56:6 59:19 60:2 62:19 63:9 65:11 66:21 69:24 72:1 77:8, 15,23 79:15 80:22 82:10,12, 22 83:1,2,15,20, 21,24 88:9 89:13 90:2 93:7,18 94:1 105:14 107:10 111:23 112:5,23 113:2 115:24 118:9 120:10 121:1,2 124:17 125:2,3 165:4 168:21 171:10, 20,23,25 172:4 173:19 174:10 175:12</p> <p>question 2:23 5:19 9:14 11:20 12:14 13:25 15:7 17:1 18:1 31:9, 20,24 34:20,23 40:4 41:6,22 46:23 48:25 49:5 50:12,18,24 51:3 68:23 70:14 72:10 73:1 81:8 85:8 88:24 89:6 96:12,23 97:1 98:22 102:7,9</p> | <p>104:20 105:5 106:9 111:8,10 112:2 113:4 114:16 115:22 116:4,7 117:19 118:19 119:7 122:19,22 123:20 125:18 126:13 133:20 153:21 169:10,17 172:17 173:2,15,16 174:25 175:20,22 177:25 178:13, 14,18 179:5,6 180:14 183:7</p> <p>Questionable 120:3</p> <p>questioning 108:17 109:5 134:2 151:10</p> <p>questions 4:25 5:19 37:3 48:3,10 49:20,25 50:2,3 102:10 116:10 117:12 119:13 121:4 123:13 127:9,10 134:22 146:15 175:3</p> <p>quick 64:7 72:10 129:2 140:17</p> <p>quickly 171:9</p> <p>quote 97:4</p> <hr/> <p>R</p> <hr/> <p>raise 11:22,25 12:21 14:6 36:10 128:14 142:12</p> <p>raised 8:13 11:23 113:5 114:11 161:14</p> <p>ranked 19:11,18 21:25 53:17 159:17 160:7,8, 18 161:9 162:2, 21 163:2 166:4,6 168:15 170:13 171:4</p> <p>ranking 163:8 165:25 168:12,</p> |
|---|--|--|---|--|

| | | | | |
|---|---|---|--|--|
| 14,16 re-direct 123:18 reach 79:3 reached 141:19 read 44:9 52:20 101:23 103:8 105:14 107:4,22 134:5 160:22 reading 102:21 reads 100:16 ready 141:10 154:20 167:19 181:10 real 51:4 64:7 176:4 realize 22:25 118:24 reanalysis 82:24 reason 4:3 38:15, 16 47:22 62:25 70:2,7 93:25 100:25 111:3 122:11 148:17 157:3 160:25 163:18 rebuttal 128:3 191:11 recall 117:8 130:14 131:18 133:3,5 149:25 161:18,21,23 178:23 receipt 18:18 receive 15:1 19:15 23:15 46:25 48:10 54:21,22 71:19, 23 87:11,12 166:2,24 received 37:20, 21 60:2 71:2 83:20 154:10,11, 17,19 159:9 167:1 172:3 174:3 175:4 receives 71:15 | receiving 44:16 109:19 recently 5:15 109:22 reception 189:1 recollection 43:10 44:4 52:20 133:20 149:15 165:24 recommendatio n 18:20,23,24 record 2:20 14:13 64:1,17 92:4 97:9 99:24 107:13 108:1,16 127:22 128:22 130:24 142:19 172:12 174:21 183:19 recorded 76:18 131:10 159:19 163:19 164:3,4, 17,20,25 records 36:15 37:1,9 71:2 redact 63:22 refer 23:9 51:13 52:3 157:4,6 reference 52:7 157:12 179:22 referenced 82:3 113:18 124:20 152:5 157:18 references 21:14 referred 116:11 referring 86:7,20 180:10 refresh 43:10 44:4 52:20 regard 4:17 35:6, 18 36:1 37:19,20 43:6 115:3 120:10 149:23 regulation 86:2 87:3 | rejected 29:16 relate 6:5 related 36:17 37:3,4 58:24 179:6 relates 82:17 168:19 relating 37:9 109:18 relations 11:6 relationship 9:22,25 28:24 90:7 104:11 105:7 122:6,8 125:13,15 134:10 relative 19:8 38:20 79:8 114:6 131:22 152:24 release 158:6 released 158:9 relevant 52:12 56:25 remedy 3:21,22 4:1,18 75:13 118:8,25 remember 132:3,7,14 190:18 removing 167:11 repeated 164:19 rephrase 41:22 replace 180:7 report 143:18 Reporter 18:14 reports 146:22 represent 10:15 11:9 67:6 representation 13:6,17 representations 78:20 representative 112:22 145:12 | represented 6:22 7:6,17 representing 10:9 12:18 represents 7:3 8:2,22 24:25 req 122:18 request 19:20 27:19 35:20 36:15 37:2 41:2, 3,24,25 42:4,7 43:11,20 45:3 47:3 50:18 70:20 71:2 73:6 87:16 88:6 116:21 117:25 122:13, 19,21,22 123:8 145:2 148:11 150:6 requested 5:14 54:10 179:20 requests 16:24 17:3 54:23 73:7 87:5 require 9:9 24:5 29:13 95:24 160:18 required 19:24 24:10 28:6 42:23 48:3 50:5 55:19 94:17 101:9 103:22 115:10,19 117:22,23,24 124:23 166:22,23 requirement 19:22 27:22 28:2, 10 30:3 33:14 34:6 35:23 38:22 39:5,13,18 43:2 50:15,22 53:3 97:4 99:1 101:19 124:11 148:5,15 149:16 150:10,15 179:1 requirements 19:19,21,23 29:13 33:7 110:20,23 119:22 120:6 148:18 151:19 154:12 | 155:19 requires 114:17 requiring 39:15 152:3 requisition 16:25 27:18 116:21 117:25 rescind 110:2 reserve 4:20 resides 86:9 resolve 186:24 resolved 192:10 respect 96:20 111:22 112:12 125:11 140:18 155:16 respond 50:3 98:2 response 36:23 46:11 63:9 80:25 85:6 87:5 88:5,16 97:12 122:19 145:2 responses 15:1 18:15,19 39:14 50:3 175:3 responsible 16:22 20:9 86:4 114:12 156:22 responsive 20:9 86:3 rest 184:10 restate 18:1 104:20 111:10 112:2 117:19 result 36:1 44:15 83:22 162:23,24 result's 4:5 resume 151:10 retained 6:16,20 8:6 13:6,10 retention 13:16 return 44:14 |
|---|---|---|--|--|

| | | | | |
|--|---|---|---|--|
| review 2:1 3:4 18:18,23 35:22 42:17 54:12 55:19 89:2,9 110:20,22 155:7, 9 174:15 | 14,17,21,24 15:4, 15,20,24 16:3,6, 8,22 17:7,22 18:9 20:5,11,14,16,18, 20,22,25 21:5,15, 18,23 22:2,4 23:4,10,14,18,22, 25 24:23 25:2,4, 7,9,11,14,18,21, 24 26:1,3,8,11, 13,19,22 27:1,6, 9,11,16 30:2,9, 12,16,20,23,25 31:2,5,7,16,22 32:3,6,12,15,18, 21,23 33:5,9,13, 17,19,22,25 34:21,25 35:10, 16,19 36:3 37:7, 24 38:2,4,7,10, 13,16,19,22,24 39:9,22 40:1,7, 10,13,16,24 41:4 42:2,5,10,15,19, 24 43:3,15,18,21, 23 44:2,6,9,18,21 46:8,13,16,21 47:1,11,14,16 48:20,23 49:2,13, 15,22 50:1,23 51:6,9,14,16,20, 22,24 52:2,5,7, 10,16,21 53:8,12, 15,18,20 54:1,8 55:4,7,13,16,22, 24 56:10,13,17 57:2,6,10 59:1,5, 9,21,23 60:15,17, 24 61:3,8,11,14, 19,23 62:1,5,8, 12,15 65:11,14, 20,24 66:8,11,14, 17,23 67:1,11,17, 19,23 68:24 69:2, 17 70:3,9,12,22 71:1,5,9,17,21,24 72:3,12,15,18,23 73:14,19,21,25 74:3,25 75:24 77:10,14,25 78:3, 7,11,15,17,24 79:1,7,17,20,23, 25 80:4,6,8,16, 19,24 81:11,14 82:14,25 83:7,9, | 11,14,23 84:1,4, 15,17,24 85:1,3, 13,17,24 86:14, 17 87:1,10,16,24 88:2,11,15,19 89:4,10,15,19,23 90:3,6,10,15,20, 22 91:1,3,5,7,11, 16,20,23 92:3,6, 9,15,21 93:4,7,9, 14,17 94:5,10,16 95:1,5,11,19 97:2,6,25 99:7,9, 14,18 100:6,13, 20,23,25 101:5, 21,24 102:5,7,9, 12,17,20,22 103:2,19,24 104:5,8,13,17,20, 25 105:4,9 106:15,19,21,25 108:15 109:22 110:2,5,9,14,19 111:10,14,17,21 112:2,9,13,17,19, 24 113:3,7,10,12, 17,23 114:1,3,6,8 115:11,16 116:1, 7,18,20,25 117:4, 8,19,23 118:4,7, 13,18,22 119:5,8, 11,24 120:3,8,17, 21 121:2,8,11,16, 19 122:1,3,15,24 123:3,10 124:3, 10,14,19,22,25 125:5,7,9,16,21, 23 126:8,11,15 127:3,17 137:9 191:2 | rule 77:8 174:9 rules 47:24 78:13 98:25 101:8,17, 19 112:11 117:14 146:7,9,21 151:22 162:19 163:6 169:10,14 170:3 run 75:18 155:15 <hr/> S <hr/> safe 28:14 sake 44:25 46:10 117:12 satisfaction 11:19 satisfy 13:19 SBE 19:6,21 24:4, 6,9 26:25 27:22, 25 28:2,4,8,12, 18,21,22,25 29:6, 9 30:24,25 31:13, 18,25 32:1 33:14 39:23 40:6 43:25 44:13,16,18,25 46:5,6,20,25 47:6 49:9 51:4,12 55:17,18,25 56:4, 6,7 59:20 60:2 61:1 62:3 67:9 70:1,6 71:15,16 93:19,22 94:11 96:16 97:13 98:3, 12 100:4,11,18 101:10,11,18 103:5,17,21 107:6,9,16 110:7 112:1,16 115:12, 15,17 121:14,24 122:7 125:20,23 126:1,12 132:1,8, 22 134:10 148:6, 15,18,20 149:5, 17 150:10,15 152:4 156:18,23 157:9,16,18 158:4,7,13,14 159:2,6 165:3 166:12,24 167:24 168:3,7 174:17 | 179:8 scales 87:4 scenario 29:7 77:19 scenarios 143:15 schedule 185:3, 4 189:8,12 191:9 school 189:9 scope 147:5,9 148:15 score 54:13 60:23 157:16 158:8,9,12,18 scored 56:18 57:19 159:12,23 160:2 166:7 scores 130:24 131:10,22 154:24 155:10 156:3 159:4,9,16,18 160:5,6,21,24 162:3,6,10 163:8 165:11,20 167:7 171:4 scoring 130:1 132:22 134:8,14 155:12 156:11, 22,23,25 158:14 159:24 160:14,15 162:16 screen 160:6 seconds 108:21 section 52:5,18 85:24 86:18 87:1 94:12,17,18,19 95:2 157:20 sections 52:17 120:23,25 seek 176:1 seeking 112:1 115:11 176:1 selected 21:25 send 50:5 146:15 sending 150:13 |
|--|---|---|---|--|

| | | | | |
|---|--|---|---|---|
| sense 36:14 39:1,18 126:9,17 132:23 147:12 187:2 | 142:14,16 | slightly 21:9 | SPEAKER 9:6 10:24 53:22 60:11,12 120:2 139:19 150:23,25 151:3 185:13 192:8 | staffer 38:2 |
| sentence 100:15 103:8 107:5 | side 107:21 | sloppy 112:8 | | stand 23:21 128:14 |
| separate 158:5 | sidetracked 51:3 | small 16:10,14 26:24 27:20,23 29:1 33:1,2 34:5, 17 35:9,14,19 36:19 37:22 38:6 43:1,6 44:10 52:22 53:1 55:9 99:17,20 100:16 103:10,13 133:22 147:20 148:3,13 149:21,22 155:5 | speaking 87:10 165:10 | standard 41:7,25 56:1 80:15 86:2 87:3 111:1 155:14 156:7,8, 12,15 160:12 |
| serve 16:16,18 115:18 | sign 18:23 35:20 36:2 37:21 50:5 125:4 150:20 | | speaks 43:25 86:19 | standpoint 6:10 148:19 |
| served 129:20 | signature 77:16 88:13,20 125:4 | software 54:8, 11,15 57:12 58:15 129:22 130:2 147:7 154:15,19 158:6 159:20 160:3 | specialist 143:8, 10 182:13 | stands 168:1 |
| service 15:2 17:5,14 38:25 47:8 118:1 121:21 | signatures 65:8 154:13 | solemnly 14:7 128:16 142:13 | specific 21:9 30:7 35:7 81:19 165:23 182:5 | start 29:22 77:4 |
| services 5:13 17:12,13 27:19 28:8 73:10 87:6 88:8 94:11 121:13 147:5 173:11 180:1,3,8 | signed 6:13 24:15 36:20 76:3 77:16 83:16 125:2 | | specifically 34:2,4 43:8 55:12 58:24 65:22 66:2 82:1 86:19 121:6 130:14 161:14, 19,23 | started 16:8 132:9 |
| serving 103:21 133:8 | significance 125:11 | solicit 17:2 | specifications 18:12 19:2 20:8 21:8 42:9 122:21 123:5 | state 2:20 14:8, 12 86:1 87:3 128:17 134:23 142:14,18 |
| set 26:4 27:3 33:8 34:6 67:4 72:11 80:10 89:17 90:17 94:9 125:13 157:23 177:4 | significant 148:19 | solicitation 17:2 18:15 30:10 145:13 148:16 149:8 179:23 | specifc 40:19 | stated 81:19 114:24 158:12 173:9 |
| seventh 188:10 | signing 181:7 | solution 3:19 11:18 | speculate 169:3, 5 | statement 179:21 184:1 |
| Shakes 181:3 | signs 88:12,20 | somebody's 183:9 | speculating 56:22 104:19 | states 49:20 85:25 |
| share 73:16,17 79:8 166:5 | similar 28:18 86:18 | someone's 80:13 | speculation 169:1 | stating 166:2 |
| shared 144:9 145:2 170:10 179:10 181:24 | sits 19:14 142:1 | sort 5:8 21:12,17 29:22 42:12 47:5 51:3 55:2 66:5 73:15 122:20 150:1 | spell 14:15 128:21 142:19 | status 76:5 77:7, 12 78:21,22 79:6 85:10 100:5,9 172:10 176:1 |
| she'd 58:18 | situation 21:11 23:13 39:2,14 96:16 122:4 148:9 156:17 182:13 | sound 18:24 | spent 75:10 | stay 137:5 139:12,22 141:15 |
| She'll 58:5 | sixteen 63:17,19, 25 64:12,13,14 88:1 | sounds 121:7 153:25 | split 93:22 | step 169:16 |
| short 45:3 | sixty-five 85:23 | space 24:19 67:2,5,7 69:7 81:23 113:17,18 176:16 | squad 18:22 28:13 | Steve 2:5,6,22,25 3:7,16,19 4:2 31:8,11,21,24 32:4 49:4,7,14 82:24 83:3,5 84:7,12,16,18,25 85:2 102:24 103:12 142:8 145:14,17 182:1 185:1,8,24 187:8, 12 188:8,9 191:19 |
| shouldn't 180:19 | size 69:15 | speak 14:21 86:17 87:14 121:6 150:11 153:1 | square 24:20 67:2 69:1,3,4,14 79:8 81:6,17,23 82:2 84:12 177:8, 13,18 | stipulate 22:13 73:24 |
| show 160:6 | skim 120:12 | | staff 27:24 117:7 188:21 | |
| shuffle 45:22 187:16 | skimming 120:23 | | staff's 79:13 | |
| sic 14:7,8 88:9 128:17,18 | | | | |

| | | | | |
|---|---|--|---|--|
| stipulated 29:4, 14 | 96:3 102:1,15 105:15 107:19 111:25 115:25 116:21 117:25 126:12,24 127:2, 5 165:12 174:15 | summer 133:5 | talks 46:4 51:12 152:3 | testify 10:20 57:18,20 107:16 |
| stopped 132:8 | | supervisors 184:5 | tamper 29:22 | testifying 5:7,10 68:5 131:25 |
| streamlined 54:24 | | supplies 147:15 | taxpayer 63:20, 21 | testimony 5:2 14:2,9 34:17 57:16 58:20 76:2 85:11 108:3,4 111:3 115:9 140:17 142:15 165:22 168:18 171:23 172:8,13 |
| street 117:1 146:10 | submits 20:9 49:8 84:18 | supply 2:17 | team 21:20 101:11 111:25 | |
| stretch 105:23 | submitted 5:12 21:20 44:12 47:10,17,19 49:10 50:12 54:16 55:18 58:14 60:6 66:4 77:19 78:4 81:2 82:10 84:5 86:20 87:5 89:2,13 90:1 94:4 97:5 100:18 103:16 106:7 113:1 119:18,21 120:10 122:13 125:19 134:1 148:12 155:3,4, 22 168:7 171:23, 24 172:4,9 173:9, 24 174:11 175:13 176:7 178:10,17 | support 157:14 | Tech 82:14 | that'd 5:2 192:3 |
| strictly 177:4 | | supported 166:22 | technical 83:15 190:16 | there'd 131:21 160:25 |
| strike 46:24 68:12 124:6 | | supposed 126:3 145:24 146:2,5, 11 157:6 177:23 | technically 82:14,18,19 88:11 154:18 | thereof 125:24 |
| structure 39:12, 16 | | surprise 11:13 156:14 | television 76:15 | thing 62:21 63:6 76:1,20 112:14 166:25 168:10 |
| struggling 159:21 | | surrounding 173:8 178:7 | telling 95:2 105:13,18 108:8 | things 17:11 28:14 64:2 74:19 111:18 112:7 130:1 133:4 152:1 162:16 |
| stuff 184:18 188:13 189:13,17 | | sustain 34:12 57:17 68:11 97:22 98:9 101:14 169:8 | ten 30:20,22 31:16 39:21 43:15 62:7 63:3 70:2,8 102:20,23 | thinking 99:22 188:2,12 |
| subcontract 115:14 | | sworn 2:18 | term 16:17 76:4 90:9 104:1,3 106:18 179:2 | thirteenth 190:10,14 191:3 |
| subcontracting 28:24 107:8 | | system 54:18 164:19,21 | terminate 75:6, 13 | thought 37:19 51:22 70:7 82:18 163:3 |
| subcontractor 32:1 44:14 46:25 49:10,12 53:25 86:8 100:5,19 101:19 103:17, 18,22 104:2,6,10 105:6,16 106:3, 11,16 107:10,20, 23 108:2,7,18 116:6 121:14 | submitting 88:16 122:18 127:4,5 156:10 | T | terminology 20:22 21:4 | thoughts 131:14 162:4 |
| subcontractor's 104:5 | subpoena 37:2 | tab 65:7 92:10,14, 15,19,22,25 93:1 120:16,19 | terms 11:6 24:19, 20 41:7 56:23 86:24 105:3 113:5 114:18 115:15 124:8 134:3 141:3 144:11 147:1 149:22 156:10 157:15 158:3 159:6 175:3 178:1,10 | throughs 122:5 |
| subcontractors 87:14 | subpoenaed 36:15 | tabbed 27:3 | | time 2:16 4:20 11:14 16:13 71:23 72:1 78:8 82:18 89:7 91:9 108:24 109:4 112:23 128:2 129:13,22 133:4 140:18 143:14 166:18 170:3 173:13,17 174:2 185:5,10,18 186:24 |
| subject 147:2 | subs 87:17 | table 120:12,16 | test 107:16 128:18 | times 97:20 |
| sublevel 24:10 | substance 95:21 | tabs 92:10 120:12,14 | testation 176:7 | |
| submission 19:24 119:19 | substantive 147:13 | tactic 10:9 | testified 36:18 86:11,12 107:14, 25 108:5,6 121:15 168:20 184:1 | |
| submit 16:24 24:11 27:17 28:19 29:5,15 44:22 51:5,8 54:20 56:3,12 59:3 60:5,22 66:6 73:7 78:20 84:2 | sufficiently 3:25 | takes 19:16 | | |
| | suggest 112:8 | talk 26:24 27:14 34:1,3 116:17 121:1 135:13 159:16,18 | | |
| | suggested 38:12 145:7,21 | talked 26:15 34:9 98:24 175:15 | | |
| | suggesting 8:22 182:10 | talking 17:14 22:15,21 73:9 82:8 99:12 165:24 184:5 189:9 | | |
| | summarize 32:10 | | | |
| | summary 55:3 60:23 167:8 | | | |

| | | | | |
|---|---|--|--|--|
| timing 138:13 167:4 | turning 43:9 65:22 100:14 | unethical 184:2 | verbalize 100:24 101:3 | 98:1,9,12,21 99:10 100:21,24 101:1,3,14 102:6, 8,10,14 104:14, 18 105:12,22 106:4,10,13 107:3 108:24 109:4,7,16 111:7 113:11,13 114:5, 7,9,24 115:3,5,22 116:2 118:17,24 119:2,6,9,13 123:13,19 124:1, 4 126:18,21 127:10,13,16,19, 22 128:2,5,13,21, 24 134:22,25 135:8,18,23 136:2 137:24 138:8,11,15,22, 25 139:11,16 140:2,4,20 141:5, 14,17,22 142:11, 18,22 151:8 153:20,24 169:2, 6,8 170:15,18 182:6,8 183:5,9, 13,16,19,22 184:13,24 185:2, 10,17,20,22 186:1,5,8,11,14, 21 187:1,4,7,10, 15,19 188:2,6,12 189:4,7,11,16,21, 23 190:1,14,17, 23 191:4,13,15, 20 192:4,9,12,18 |
| title 150:12 154:1 | TV 137:21 141:23 | unimpressed 135:25 | verbally 158:11 | virtue 79:4 |
| today 3:11 17:14 80:11 176:15 184:9 | twenty 39:23 | universe 22:24 | verify 32:1 91:5,6 | voice 76:19 |
| told 69:2,4 158:2 174:5 | Twenty- 19:8 | UNKNOWN 9:6 10:24 53:22 60:11,12 120:2 139:19 150:23,25 151:3 185:13 192:8 | verifying 24:11 | vote 159:6 |
| tom 16:16 | twins 186:6 | unpack 179:15 | verses 67:13,16 98:25 163:15 | voted 166:17 |
| tomorrow 75:6, 13 | type 33:3 54:17 165:1 | unprofessional 11:5 | version 177:13 | |
| ton 97:20 | typed 164:16 | unscramble 108:3 | view 4:12 | W |
| top 25:9 122:10 125:18 160:18 161:9 | types 17:12 29:13 | unusual 2:14 101:25 | Vincent 2:1,3,7, 12,24 3:5,8 4:3, 10,22 5:18 6:7,9 7:1,21 10:1,3,7, 11,14,17 11:2 12:24 13:8,10,14, 19,21 14:3,5,12, 15,18 15:5,9,17 17:23,25 18:3 21:1,3,6 22:11, 19,22 23:19 24:22,24 25:3,6, 8,12,15 26:2 29:25 30:4,6,11, 14,18,21 31:6,10 32:5,7 33:15,21 34:12,22 35:1,5 36:12,23 37:13, 16 39:19,24 41:14,18 45:2,8, 11,14,20,22 46:1 47:10,12,15 48:19,21,25 49:3, 6,16 50:21,24 51:1 52:14 57:14, 17,23 58:3,5,12, 17 59:14 63:24 64:6,9,13,20,22 65:2,5 67:24 68:11,18,21 69:12,21 71:13 72:5,9,14,16 73:8,18,20 74:6, 22 75:1,7,20 76:6,10,13,16,18, 22 81:7 82:6 83:13 84:9,11 85:22 87:25 88:23 90:23 91:2, 4,6,9,13 92:5,7, 16,20 93:12 95:17 96:9,11,22, 25 97:8,18,22 | wage 19:23 29:14 |
| topic 34:3 | typical 46:23 129:19 | updated 152:15 | | wait 18:3 34:23 |
| topics 132:4 | typically 9:4 19:4,5 24:10 27:16 28:16 31:16 32:6 47:6 95:13 101:24 116:11 124:8 | updates 152:14 | | waived 8:15 12:7,23 |
| total 24:25 31:3 52:25 59:25 62:7 72:10 98:13 178:4 | U | upload 54:9 | | walk 147:3 154:5 |
| town 185:6 | Uh-huh 101:2 103:7 | upset 139:1 | | wanted 15:6 18:3 |
| towns 129:10 | ultimately 156:19 | user 18:20 27:17 117:4,23 | | |
| track 29:2 | understand 50:7 58:15 75:1 76:2 78:12,18 83:10, 12,18 89:5,17 91:13 105:25 106:9 111:2,7 114:25 118:18 146:6 159:22 163:15 167:4 178:9 | Utilization 40:6 | | |
| train 37:19 | understanding 2:14 7:22 37:2 79:12 80:2,4 94:1 104:2 115:8 117:13 134:10 140:15,21 146:4, 21 148:2 149:10 161:2 162:19 163:5 174:9 175:5,25 | utilize 44:13 103:16 107:6 | | |
| transparent 48:18,20 50:10 | understood 82:13 134:17 | V | | |
| treat 56:1 | | vaguely 190:7 | | |
| trial 191:17 | | valid 160:25 174:17 175:8 | | |
| trouble 78:21 188:22 | | vehicle 50:9,17 | | |
| true 82:15 90:12 133:11 138:19 160:25 162:11 163:1 174:12 | | vehicles 17:11 | | |
| trust 8:21 | | vendor 107:6,9 166:11 167:1 176:8 182:15 | | |
| truth 14:9,10 128:18,19 142:15,16 | | venture 52:9,24 53:2 90:6,9 | | |
| truthfully 78:22 | | ventures 51:13 52:22 | | |
| turn 23:3 43:7 49:19 90:11 | | ver 91:5 | | |
| | | verbal 154:16 | | |

| | | | |
|--|--|-----------------------------------|--|
| 118:8 161:24 166:23 167:23 171:1 | wondering 5:22 | | |
| wastes 11:14 | word 8:21 86:23 | <hr/> Y <hr/> | |
| watch 75:18 105:2 | words 72:14 73:11 106:6 108:18 | Yaccarino 61:25 | |
| water 17:11 28:13,14 | work 12:17 19:25 21:12,17 29:3,9, 11 42:10,12 89:17 90:2,13 92:17 94:19 104:12 105:8 107:8 134:18 139:24 140:4 143:25 145:12 157:6 189:17 191:18,19 | year 24:13 105:2 173:20 | |
| ways 107:19 | | years 51:17 54:20,22 | |
| website 18:16 151:17 167:8 176:21 | | yesterday 173:20 | |
| week 185:6,13, 21,25 186:1,19, 25 188:5 191:17 | | You're 172:16 | |
| weight 21:22 | | <hr/> Z <hr/> | |
| weights 42:15,16 | worked 15:22,24 129:9 133:13 154:6 | zealously 11:9 | |
| white 47:23 97:25 | working 79:21 93:13 106:24 133:9 139:22 140:9 180:6 | | |
| Why's 122:2 | | | |
| winner 183:15 | works 17:10 18:8 23:13 27:5,15 82:20 85:10 89:20,23 98:18 100:23 101:25 160:13,20 | | |
| winning 53:14 94:24 133:13 | worried 138:13, 15 | | |
| Wisconsin 14:9 66:20 128:17 142:14 | worth 127:9 | | |
| wisdom 118:10 161:21 | wouldn't 31:17 176:18 | | |
| withdraw 37:14, 17 94:8 110:8 165:23 173:1,15 | wrap 177:20 | | |
| withdrawal 159:6 | write 60:15 | | |
| withdrawing 37:17 | writing 157:25 | | |
| withdrawn 94:3 109:20 166:20 | wrong 122:11 | | |
| withhold 156:9 | wrote 163:20 | | |
| witnesses 2:17, 18 5:6,9,16 127:25 128:3 138:9 140:16 142:7 | <hr/> X <hr/> | | |
| woman 132:14 | XYZ 21:10 | | |