



MISSISSIPPI DIVISION OF  
**MEDICAID**

August 29, 2017

Robert H. Hosay  
Foley & Lardner LLP  
106 East College Avenue, Suite 900  
Tallahassee, Florida 32301

Re: Final Decision and Agency Response to Amerigroup's protest of award for RFP  
20170203 for the MississippiCAN Program

Dear Mr. Hosay:

The Mississippi Division of Medicaid (DOM) has completed its review of the protest submitted by Amerigroup, Mississippi Inc., which disputed the award of three contracts resulting from the MississippiCAN procurement.

I affirm the attached findings and recommendations of the Office of Procurement, and incorporate said findings herein. This letter serves as notice that DOM will proceed with the award of three contracts to Magnolia Health, Molina Healthcare of Mississippi Inc., and UnitedHealthcare of Mississippi, Inc. for services related to the operation of the MississippiCAN program.

This is the final decision in this matter. Any questions regarding this decision should be directed to Special Assistant Attorney General Paige Biglane at [paige.biglane@medicaid.ms.gov](mailto:paige.biglane@medicaid.ms.gov) or Executive Administrator Tara Clark at [tara.clark@medicaid.ms.gov](mailto:tara.clark@medicaid.ms.gov).

Sincerely,

David J. Dzielak, Ph.D.  
Executive Director

cc: Governor Phil Bryant  
Chairman Kelly Hardwick  
Mark N. Halbert

# MEMO

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MISSISSIPPI DIVISION OF  
**MEDICAID**

**To: David J. Dzielak, Ph.D.**

**From: Office of Procurement**

**Date: August 29, 2017**

**Re: Response to Amerigroup's supplemental and amended protest of RFP 20170203 for the MississippiCAN program**

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## **Background**

On February 3, 2017, the Division released Request for Proposal 20170203 (RFP 20170203) for statewide administration of the Mississippi Coordinated Access Network (MississippiCAN). After the release of this RFP, the Division received seven proposals from responding offerors for RFP 20170203. At the conclusion of a fair and impartial procurement where overall scores were concealed until the process concluded, the Division awarded three contracts to Magnolia, Molina and UnitedHealthcare based on evaluation factors and information presented during oral presentations. Amerigroup Mississippi, Inc., ("Amerigroup") timely filed a protest to RFP 20170203 on June 29, 2017, and subsequently filed several public records requests related to this issue. The Division allowed additional time for Amerigroup to amend and supplement its protest letter after receipt of requested public records, which Amerigroup submitted to the Division on August 18, 2017.

After a thorough review of the protest letter and corresponding procurement process, the Office of Procurement finds that there is no merit to the submitted protest or its stated justifications. The Division carefully considered all responsive information from Amerigroup, as set forth in the RFP, and applied evaluation criteria consistently and correctly. Throughout the procurement process, the Division provided substantial evidence for its decisions, and did not arbitrarily award the MississippiCAN contracts. Accordingly, the Office of Procurement recommends that the Division affirm the award of the MississippiCAN contracts to the winning offerors.

## **Grounds of Protest**

- 1. Amerigroup contends that the Division failed to comply with RFP terms in the rejection of, at a minimum, the Molina proposal.<sup>1</sup>**

- A. Amerigroup contends that Molina is not a responsible offeror.**

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<sup>1</sup> The section headings correspond to those in Amerigroup's amended protest letter.

Amerigroup claims that Molina is not a responsible offeror for the following four reasons: (1) Molina submitted an illusory staffing plan, (2) Molina is not financially stable, (3) Molina failed to disclose sanctions, and (4) Molina has engaged in inappropriate outreach to the Division.

Section 3.8.1 of the RFP expressly disallows an offeror to protest the evaluation committee's substantive scoring decisions, which are based on the committee's knowledge and expertise related to the operation and oversight of the MississippiCAN program. Further, it undermines the Division's ability and authority to assess its own needs. Reasons 1-3 noted above are not allowed grounds for protest. Without waiving the Division's determination that these grounds of protest are disallowed, the Division will address the merits of these grounds, as well as reason 4.

*Response to reasons 1-3 noted above.*

As noted on slide ten of the MississippiCAN Orientation Manual and as required by PSCRB Rule 3-203.01, the evaluation committee scored each offeror on only the information contained in the four corners of the proposals. The evaluation committee could not and did not conduct independent investigations related to information proposed in any offeror's proposal. To do such would have violated the terms of the RFP and PSCRB Rule 3-203.01. After a thorough review of Molina's proposal and oral presentation, the evaluation committee assigned Molina its respective score in accordance with said committee's broad discretion. Thus, the evaluation committee's determinations regarding Molina's proposed staffing plan, financial stability, and disclosure of sanctions were made in consideration of how Molina proposed to meet the requirements of the RFP. Because the evaluation committee scored each offeror on only the information contained in the four corners of the proposal as required by the RFP, reasons 1-3 are without merit.

*Response to reason 4 noted above.*

Amerigroup argues that Molina has engaged in inappropriate outreach to the Division, and that such outreach should result in the rejection of Molina's proposal. The Division assumes that Amerigroup bases this claim on two email exchanges that took place between the Division's Executive Director and two Molina employees in 2015 and 2016. After investigation into this matter, the Division did not find any evidence that outreach by Molina to Dr. Dzielak compromised the integrity of the procurement.

Division staff have carefully reviewed the referenced email correspondence, and have thoroughly questioned Dr. Dzielak regarding the actual subject matter of the emails. In summary, neither email discussed any job offer to Dr. Dzielak from Molina. Molina never offered Dr. Dzielak a job of any sort in any location, and never expressed any interest in doing so. Neither did Dr. Dzielak ever apply for or inquire about any job opportunities with

Molina, as evidenced by affidavits from the Molina employees involved in the email correspondence that directly refute this issue.<sup>2</sup>

The January 2015 email exchange was with a Molina representative who formerly served as the Medicaid Director for another state. She was passing along information to Dr. Dzielak about a Director position in Washington, D.C. being open. This type of information is routinely shared between current and former state directors and does not create a conflict of interest here.

The August 2016 email exchange was part of a discussion that Dr. Dzielak had with a Molina representative about what Molina might expect regarding doing business in Mississippi if it were to submit a proposal in response to the RFP. These sorts of discussions are routinely held with entities considering entering the business market in Mississippi. Dr. Dzielak had similar conversations with representatives of other offerors, including representatives for Amerigroup. The August 2016 email does not create a conflict of interest here.

It is clear from the Division's investigation that no job offers from Molina were made to Dr. Dzielak or even discussed. Further, and more importantly, Dr. Dzielak never took an active role in the selection of the evaluation committee. And he had no involvement in the evaluation of proposals or the active procurement process until the process concluded and he approved the Office of Procurement's recommendation of award. Accordingly, this issue is without merit.

**B. Amerigroup contends that Molina's proposal was nonresponsive because it failed to list and provide information related to proposed subcontractors.**

Amerigroup claims that Molina's proposal was nonresponsive and required the Division to reject Molina's proposal. Per the terms of the RFP, it is within the Division's discretion to determine responsiveness. Further, nothing in the RFP requires that nonresponsive proposals be rejected. See MississippiCAN RFP Sections 3.3.4, 3.3.5, 6.2.1 and 6.2.2. So even if Molina's proposal failed to provide information specific to a requirement in the RFP, it was within the Division's discretion and authority to determine whether Molina's proposal was sufficiently responsive. This discretion allows the Division to ensure competition and interest in its procurements, as encouraged by the PSCRB.

Moreover, by Amerigroup's own logic, its proposal should have been deemed nonresponsive and rejected. Amerigroup's proposal omitted information specific to numerous RFP requirements. For example, Amerigroup's proposal did not provide resumes for staff beyond the implementation period, as required in RFP Section 5.5.2. And Amerigroup's proposal did not describe where administrative records and data would be maintained, as required in RFP Section 5.6. Instead of rejecting Amerigroup's proposal, the Division determined that Amerigroup's proposal was sufficiently responsive to the RFP requirements in order to allow it to continue in the procurement process.

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<sup>2</sup> See Exhibit A – Molina response to Amerigroup's amended protest letter and affidavits.

Accordingly, the assertion that Molina's proposal was nonresponsive and should have been rejected is wholly without merit. For additional information related to this point please see Molina's response to Amerigroup's amended protest letter.<sup>3</sup>

**C. Amerigroup contends that the winning offerors failed to properly disclose sanctions.**

As noted on slide ten of the MississippiCAN Orientation Manual and as required by PSCRB Rule 3-203.01, the evaluation committee scored each offeror on only the information contained in the four corners of the proposals. As such, the Division had no knowledge of Magnolia, Molina, or United's alleged failure to properly disclose sanctions. The evaluation committee asked for clarifications or additional information related to unclear or conflicting information in any offeror's proposal. However, the evaluation committee could not and did not conduct independent investigations related to information proposed in any offeror's proposal. To do such would have violated the terms of the RFP and PSCRB Rule 3-203.01. Regardless, this allegation would not have changed the outcome of the evaluation for the reasons stated herein. Accordingly, this issue is without merit. For additional information related to this point, please see responses to Amerigroup's amended protest letter from Magnolia, Molina and United.<sup>4</sup>

**D. Amerigroup contends that Molina Failed to Provide Material Information to the Division.**

As noted on slide ten of the MSCAN Orientation Manual and as required by PSCRB Rule 3-203.01, the evaluation committee scored each offeror on only the information contained in the four corners of the proposals. As such, the Division had no knowledge of Molina's alleged failure to provide material information to the Division. The evaluation committee asked for clarifications or additional information related to unclear or conflicting information in any offeror's proposal. However, the evaluation committee could not and did not conduct independent investigations related to information proposed in any offeror's proposal. To do such would have violated the terms of the RFP and PSCRB Rule 3-203.01. Regardless, this allegation would not have changed the outcome of the evaluation for the reasons stated herein. Accordingly, this issue is without merit. For additional information related to this point, please see Molina's response to Amerigroup's amended protest letter.<sup>5</sup>

**2. Amerigroup contends that the Division failed to follow the process set forth in the RFP when evaluating proposals.**

Amerigroup's asserts that proposals were not scored by individuals that were either evaluation committee members or subject matter experts. This assertion is wholly

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<sup>3</sup> Exhibit A.

<sup>4</sup> Exhibits A, B and C.

<sup>5</sup> Exhibit A.

incorrect. Every individual that scored proposals was either an evaluation committee member or a subject matter expert.

The Office of Procurement recommended seven evaluators based on knowledge and expertise related to the operation and oversight of the MississippiCAN program. Each evaluator represented a specific program area of the Division. Specifically, the evaluators represented the offices of (1) managed care and contract compliance [this area had two evaluators], (2) Finance, (3) iTech [this area had two evaluators], (4) Policy, Program Integrity and Administrative Appeals, and (5) Health Services. Members of the evaluation committee were allowed to "select subject matter experts (SMEs) to assist in assessing proposal materials, as necessary."<sup>6</sup> Each of these individuals, evaluators and SMEs, also attended evaluation training and signed a confidentiality agreement. The number of subject matter experts varied at the discretion of each evaluator, but the number of evaluators remained the same throughout the procurement process.

After proposals were evaluated individually by each evaluation committee member and SME, the seven appointed evaluation committee members met as a whole to consensus score<sup>7</sup> each proposal. During consensus scoring, each evaluation committee member had the option to adopt a SME's score or reject a SME's score and use his or her own. The evaluation committee member would then use that score to contribute to the discussion and assignment of a score for each requirement in the scoring tool for each individual proposal. The cumulative consensus score for each offeror remained hidden from the evaluation committee to promote complete fairness and protect the integrity of the process.

Because the Division followed its own evaluation process in Section 6 of the RFP, the Division strongly rejects this assertion.

### **3. Amerigroup contends that the Division erred in awarding and computing scores.**

#### **A. Amerigroup contends that the Committee rounded scores resulting in a reduced total score for Amerigroup and an inflated score for United.**

Amerigroup contends that the utilization of a rounding methodology was not consistent with the scoring criteria set forth in the RFP and ultimately resulted in the scores of several offerors being greater than such scores would have been had the total final proposal score been the sum of the actual scores earned for each proposal section evaluated by the evaluation committee. Amerigroup's protest on this basis is misguided and not accurate. Any rounding calculating question weights and proposal point awards were rounded solely for formatting purposes; rounded figures were not employed in award calculations.

For example, the citation within the protest of 16.67% (.1667) weight per question within Section 1 is an inaccurate figure. In reality, the values assigned to each question and to all figures derived from these weights were calculated to the highest degree of

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<sup>6</sup> See Exhibits D and E – Evaluation Committee Memo and MississippiCAN Orientation Manual.

<sup>7</sup> The Office of Procurement uses consensus scoring guidelines which require the evaluation committee to agree on each score assigned for each requirement in the scoring tool. Thus, each score assigned to each requirement represents complete agreement among the group on that score.

accuracy allowed by the Division's computational tools. Thus, while the "Question Weight" field may show a calculated question weight of 16.67% (0.1667), the actual question weight used in calculations was 0.166666666666667.

All question weights, individual question point awards, individual section total scores and ultimately final proposal scores were calculated to this same degree of accuracy. Final figures were formatted to display rounded numbers due to the Division's ability to clearly determine question weights and to rank offeror proposals with a limited number of visible decimal points. Amerigroup's assertions that the RFP employed a rounding methodology and that this supposed methodology resulted in an adverse outcome in final scoring are without merit.

**B. Amerigroup contends that the evaluation committee failed to apply consistent scoring guidelines to all offerors**

It should be noted that this ground of protest questions the professional judgement of the evaluation committee. Section 3.8.1 of the RFP expressly disallows an offeror to protest the evaluation committee's substantive scoring decisions, which are based on the committee's knowledge and expertise related to the operation and oversight of the MississippiCAN program. Further, it undermines the Division's ability and authority to assess its own needs. Not waiving the Division's determination that this ground is disallowed, the Division will address this point.

1. *Amerigroup argues that Molina's Section 1 score should be reduced by 0.66 points and Amerigroup's score should be 0.33 points higher.*
  - Section 1, Question 3. Amerigroup contends that the offeror should have received a score of at least a three for this question and that page 59 of the response, as well as the oral presentations, addresses the specifics of question 3. This ground of protest questions the professional judgment of the evaluation committee, which the RFP Section 3.8.1 specifically disallows as a ground for protest. Additionally, after a thorough review of Amerigroup's technical proposal and oral presentation, the evaluation committee considered Amerigroup's response to Section 1, Question 3, and determined that the response was less than adequate. The committee assigned Amerigroup a score of two in accordance with said committee's broad discretion. The evaluation committee found that Amerigroup failed to provide adequate information within the Executive Summary section of the proposal related to the differentiation of roles between local and regional staff, as well as organizational structure or titles. Accordingly, this issue is without merit.

- *Section 1, Question 4.* Amerigroup contends that the offeror should have received a score of at least a three for this question and that page 59 of the response, as well as the oral presentations, addresses the specifics of question 4. This ground of protest questions the professional judgment of the evaluation committee, which the RFP Section 3.8.1 specifically disallows as a ground for protest. Additionally, after a thorough review of Amerigroup's technical proposal and oral presentation, the evaluation committee considered Amerigroup's response to Section 1, Question 4, and determined that the response was less than adequate. The committee assigned Amerigroup a score of two in accordance with said committee's broad discretion. The evaluation committee found that Amerigroup failed to provide adequate information within the Executive Summary section of the proposal related to the differentiation of roles between local and regional staff, as well as differentiation of key staff as transitional versus permanent. Accordingly, this issue is without merit.

2. *Amerigroup argues that Molina's Section 2 score should be reduced by 2.79 points and Magnolia's section 2 score should be reduced by 0.61 points.*

- *Section 2, Questions 2,3,4,5 & 7.* Amerigroup contends that an offeror should have been awarded a lesser score for submitting inadequate false and misleading responses. The evaluation committee scored each offeror on only the information contained in the four corners of the proposal. This ground of protest questions the professional judgment of the evaluation committee, which the RFP Section 3.8.1 specifically disallows as a ground for protest.
- *Section 2, Question 6.* Amerigroup contends that an offeror should have been awarded a lesser score based upon the offeror's financial state. The evaluation committee scored each offeror on only the information contained in the four corners of the proposal. This ground of protest questions the professional judgment of the evaluation committee, which the RFP Section 3.8.1 specifically disallows as a ground for protest.

- *Section 2, Question 8.* Amerigroup contends that offerors should have been awarded a lesser score based on failure to describe contract terminations. The evaluation committee scored each offeror on only the information contained in the four corners of the proposal. This ground of protest questions the professional judgment of the evaluation committee, which the RFP Section 3.8.1 specifically disallows as a ground for protest.
3. *Amerigroup argues that Molina's Section 3 score should be reduced by 1.33 points, United and Magnolia's Section 3 scores should each be reduced by 0.44 Points and Amerigroup's scores should be 0.15 points higher.*
- *Section 3, Question 1.* Amerigroup contends that an offeror should have been awarded a lesser score based on false and misleading responses in their proposal. The evaluation committee scored each offeror on only the information contained in the four corners of the proposal. This issue is without merit.
  - *Section 3, Questions 4 & 5.* Amerigroup contends that the evaluation committee failed to incorporate knowledge of undisclosed subcontractors on behalf of peer offerors into the evaluation of the proposal. Amerigroup further contends that this failure to disclose certain affiliated subcontractors constitutes grounds for disqualification. The Division procurement officers for this RFP were Matthew Nassar and Brittney Thompson. As stated in Section 6.2.1 of the RFP, the Office of Procurement reviews each proposal to determine if it is responsive. Mr. Nassar and Ms. Thompson completed Phase One of the procurement process and deemed all proposals responsive to the MississippiCAN RFP requirements. Therefore, this issue is without merit.
  - *Section 3, Question 6.* Amerigroup contends that the evaluation committee unduly and positively weighed offerors' incumbency in the evaluation of proposals. Amerigroup presents the evaluation committee's positive ranking for this question for two offerors who possess existing contracts with the Division as indication of this purported preference. Amerigroup correctly denotes that incumbency is not a requirement of this RFP, and correctly cites PSCRB Rule 3-203.01 requirements that contracts are awarded based on "evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation." Amerigroup's protest for this matter incorrectly projects that the evaluation committee awarded additional

points to incumbent proposals solely due to an offeror's incumbency. The evaluation committee provided justification for both Magnolia and United's scores in the scoring tool and found that both offerors' responses to this question related to an offeror's description of the organization and staffing during each phase of the project and the status of employees (full-time, part-time, and temporary) were more than adequate. No other factors or criteria, such as incumbency, were used in the evaluation. Therefore, this issue is without merit.

- *Section 3, Question 7.* Amerigroup contends that the evaluation committee applied inconsistent scoring related to proposal responses to RFP Section 5.5.2 which requires offerors to provide résumés of all proposed key staff persons. Amerigroup claims that the evaluation committee incorrectly reduced Amerigroup's score for this question, and that Amerigroup should have received a score indicating that the offeror provided an "Adequate" response to this proposal requirement. The evaluation committee reviewed all offeror responses to RFP Section 5.5.2 and determined that Amerigroup's provision of key staff resumes for only the transition team "[i]n lieu of submitting resumes for these positions" was less than adequate. Amerigroup's final assertion that a peer offeror proposed an identically inadequate response and received a rating of "adequate" is unfounded, and therefore this issue is without merit.
- *Section 3, Questions 11 & 12.* Amerigroup contends that the evaluation committee should have awarded a lesser score to an offeror based on false statements related to anticipated roles of personnel during the Contract. The evaluation committee scored each offeror on only the information contained in the four corners of the proposal. This issue is without.

4. *"Scored Correctly, United and Molina's Section 4 Scores Should Each be Reduced by 0.48 Points, Magnolia's Scores Should be Reduced by 0.72 Points, and Amerigroup's Scores Should be 0.60 Points Higher."*

- *Section 4, Question 1.* Amerigroup contends that the evaluation committee unduly and positively weighed offerors' incumbency in the evaluation of proposals. Amerigroup presents the evaluation committee's positive ranking for this question for two offerors who possess existing contracts with the Division as indication of this purported preference. Amerigroup correctly denotes that incumbency is not a requirement of this RFP. The evaluation committee complied with

procurement rules and did not provide positive scoring to incumbent offerors based solely upon their incumbency. For this particular question, incumbent offerors were not the only offerors to be awarded a score of “more than adequate” for this proposal section, which discredits Amerigroup’s claim that incumbency led to preferential scoring. The evaluation committee reviewed all responsive proposals and awarded contracts to the offerors deemed to be the most advantageous to the State. No other factors or criteria, such as incumbency, were used in the evaluation. Therefore, this issue is without merit.

- *Section 4, Question 8.* Amerigroup continues to assert that the evaluation committee applied preferential scoring for incumbent offerors when evaluating offerors’ processes to obtain managed care accreditation. A higher score for any individual offeror, including incumbent offerors, on any individual question is not an indication that the evaluation committee provided preferential treatment to that offeror. Comments provided by the evaluation committee described the clear distinctions between the levels of adequacy of each offeror’s response in the comments associated with each score, and the evaluation committee’s professional judgment did not deem all offeror responses to be “nearly identical” as Amerigroup asserts in this protest. No other factors or criteria, such as incumbency, were used in the evaluation. Therefore, this issue is without merit.
- *Section 4, Questions 79 & 80.* Amerigroup contends that the evaluation committee applied preferential scoring for incumbent offerors when evaluating offerors’ descriptions of the entity’s Medicaid Management Information System (MMIS). Scores were based solely on the offerors’ response to required questions and the evaluation committee’s professional judgment to determine the level of adequacy with which the offeror addressed the evaluation criteria. A higher score for any individual offeror, including incumbent offerors, on any individual question is not an indication that the evaluation committee provided preferential treatment to that offeror. The evaluation committee provided substantial justification for distinctions between the levels of adequacy of each offeror’s response in the comments of the scoring tool. Specifically, the evaluation committee found that Magnolia and United’s responses to these questions to be more than adequate because both vendors have established MMISs. No other factors or criteria, such as incumbency, were used in the evaluation. Therefore, this issue is without merit.

- *Section 4, Question 12.* Amerigroup contends that the evaluation committee erred in its scoring of Amerigroup's description of staff that would be responsible for the entity's encounter reconciliation policies and process. Amerigroup believes that the evaluation committee failed to consider all staff responsible for encounter reconciliation functions in its scoring of Amerigroup's proposal. The evaluation committee did find that Amerigroup mentioned only one encounter manager, which is not sufficient, and VPs for the remaining roles. The evaluation committee is comprised of experts that provide professional expertise on the offeror's ability to fulfill the requirements outlined within Section 5.6 of the RFP, and included all information provided by Amerigroup in its scoring of Amerigroup's proposal. Therefore, this issue is without merit.
- *Section 4, Questions 22 & 36.* Amerigroup contends that the evaluation committee misinterpreted a clarification surrounding enhanced benefits discussed during Amerigroup's oral presentations. Amerigroup contends that the evaluation committee unfairly adjusted Amerigroup's score downwards as a result of this misinterpretation. The evaluation committee was required to reach consensus regarding any decisions to adjust offeror scores as a result of oral presentations. After oral presentations, it was the evaluation committee's determination that the enhanced benefits, as described in the proposal, were confirmed to only be examples and not necessarily proposed for the potential contract. The evaluation committee's professional judgment deemed that this adjustment was necessary. Therefore, this issue is without merit.
- Amerigroup further contends that a peer offeror's alleged inaccurate representation of covered benefits as enhanced benefits. The evaluation committee is comprised of subject matter experts with awareness of benefit coverage requirements and knowledge of whether proposed benefit packages or services are enhanced benefits. The Division is aware of the enhanced benefits proposed by offerors and used its professional judgment to determine the adequacy of an offeror's proposed enhanced benefits or member incentives. Therefore, this issue is without merit.
- *Section 4, Question 63.* Amerigroup contends that the evaluation committee failed to properly reduce the score of a peer offeror for failure to meet the requirements of the question as outlined in the RFP. The evaluation committee is comprised of experts who provide their professional opinion on each offeror's ability to fulfill the requirements outlined within Section 5.6 of the RFP. The evaluation committee completed a thorough review of each question included within the RFP

and awarded points based in the evaluation committee's professional judgment of the offerors' responses to the required questions. Further, Amerigroup's written response to questions number 5 & 6 stated: "while we do not currently have this type of service model ready to deploy in MS, we are evaluating the application of programs like COACHES in markets where children in foster care are served by multiple MCOs." This further justifies the evaluation committee's consensus score for Amerigroup. Therefore, this issue is without merit.

- *Section 4, Question 83.* Amerigroup contends that the evaluation committee improperly scored a peer offeror's proposal due to the peer offeror's inclusion of sanctioned providers within the Network Directory listing. The evaluation committee is comprised of experts who provide their professional opinion on each offeror's ability to fulfill the requirements outlined within Section 5.6 of the RFP. The evaluation committee completed a thorough review of each question and response included within offeror proposals and awarded points based in the evaluation committee's professional judgment of the offerors' responses to the required questions. Therefore, this issue is without merit.
- *Section 4, Question 82.* Amerigroup contends that the evaluation committee improperly scored a peer offeror's proposal due to the peer offeror's commitment to provide encounter data "at least monthly" whereas the Model Contract requires submittal of encounter data at least weekly. Submittal of data "at least monthly" as stated by the peer offeror does not preclude that offeror from submitting data at least weekly as required by the Model Contract, nor does this statement constitute a declaration of intent not to comply with the Division's required encounter data submittal timeframes. Therefore, this issue is without merit.

5. *Amerigroup argues that its score for Section 5 should have been 0.15 points higher.*

- *Section 5, Question 3.* Amerigroup contends that the evaluation committee failed to award points to Amerigroup for providing an adequate response to RFP Section 6.2.2.5 related to estimated and documented personnel hours spent by staff on program activities to be sure they are sound and fair. The evaluation committee completed a thorough review of each question and response included within offeror proposals and awarded points based in the evaluation committee's professional judgment of the offerors' responses to the

required questions. The evaluation committee determined that Amerigroup provided no indication of ongoing staffing levels and only discussed key personnel, transition team and hiring staff. Therefore, this issue is without merit.

6. *Amerigroup argues that the Section 6 Score for United Should be Reduced by 0.25 Points and Magnolia's Score should be Reduced by 0.50 Points.*

- *Section 6, Questions 3 & 6.* Amerigroup contends that the evaluation committee failed to deduct points from the scores for peer offerors. Amerigroup alleges that peer offerors failed to provide all required information including the person-weeks of effort for each task or subtask in performance of the Contract. Amerigroup also claims that a peer offeror failed to provide a Gantt chart as required by the RFP. The evaluation committee completed a thorough review of each question and response included within offeror proposals and awarded points based on the evaluation committee's professional judgment of the offerors' responses to the required questions. Additionally, the Division procurement officers for this RFP were Matthew Nassar and Brittney Thompson. As stated in Section 6.2.1 of the RFP, the Office of Procurement reviews each proposal to determine if it is responsive. Each proposal was evaluated to determine if it was complete and whether it complied with the instructions to offerors in the RFP. Mr. Nassar and Ms. Thompson completed Phase One of the procurement process and deemed all proposals responsive to the MississippiCAN RFP requirements. Therefore, this issue is without merit.

4. **Amerigroup contends that the Evaluation process was tainted by bias, discrimination, and/or a conflict of interest on the part of an evaluator(s).**

Amerigroup claims that the evaluation process was tainted by bias, discrimination, and/or a conflict of interest on the part of an evaluator. Specifically, Amerigroup claims that incumbent offerors received higher scores solely on the basis of their incumbency. But Amerigroup fails to show how the incumbents' receipt of higher scores than Amerigroup for certain requirements evidences discrimination or conflict of interest on behalf of any evaluator. Further, Amerigroup's argument that some higher scores for the incumbents prove evaluator bias fails for the reasons set forth below.

The evaluation committee scored each offeror on only the information contained in the four corners of the proposal. The RFP's Scope of Work stated clearly the work to be provided, and the evaluation criteria reflected the requirements. After a thorough review of the technical proposals and oral presentations, the evaluation committee assigned each offeror its respective score in accordance with said committee's broad discretion and

professional judgment. The Division maintains that no bias exists on behalf of any of the evaluators. A difference in scores between the winning offerors and Amerigroup does not equate to bias on behalf of the Division.

Additionally, in this point, Amerigroup claims that "United's score was changed from 3 to 4, with the only explanation offered for the inflated score being "incumbent." After a thorough review of the final consensus scoring document for United, the Division cannot find any evidence that shows a score change for United from 3 to 4 where the justification was "incumbency." The Division assumes that Amerigroup mistakenly used an individual evaluator's scoring document for United to make this assertion. But, as explained previously, the individual scoring documents are only relevant to the group discussion for purposes of consensus scoring. The evaluation committee, as a whole, discusses and assigns scores and justifications for said scores. As repeatedly stated herein, incumbency was not a factor in any determination. Accordingly, this issue is without merit.

### **Summary and Conclusion**

The Division represented in RFP 20170203 that it would "ensure the fair and equitable treatment of all persons and Offerors in regard to the procurement process." See Section 3.1 of the RFP. A review of this process shows that the Division has displayed complete fairness and impartiality through the manner in which the Division conducted this procurement and evaluation process. The Division carefully considered all responsive information from Amerigroup, as set forth in the RFP, and applied evaluation criteria consistently and correctly. The Division provided substantial evidence for its decisions, and did not arbitrarily award the MississippiCAN contracts. Accordingly, the Office of Procurement recommends that the Division proceed with the awards to the winning offerors.



**Attorneys at Law**

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August 23, 2017

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**Via E-mail**

David J. Dzielak, Ph.D., Executive Director  
MISSISSIPPI DIVISION OF MEDICAID  
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Jackson, Mississippi 39201

Re: Request for Proposals #20170203

Subject: Molina Healthcare of Mississippi, Inc.'s Response to Amended  
Protest of Award by Amerigroup Mississippi, Inc.

Dear Dr. Dzielak:

This firm represents Molina Healthcare of Mississippi, Inc. ("Molina") and submits this response to the amended protest ("Protest") filed by Amerigroup Mississippi, Inc. ("Amerigroup"). This response fully incorporates by reference Molina's response to Amerigroup's original protest, dated June 29, 2017, and that response is attached.

**Introduction**

Dr. David Molina founded Molina Healthcare Inc. in 1980 with the mission to provide quality health services to financially vulnerable families and individuals covered by government programs and to ensure that no individual—regardless of financial means—goes without quality healthcare. Dr. Molina started the company in a single clinic in Long Beach, California, and since its founding, Molina has grown into a Fortune 500 company with 13 health plans, serving 4.6 million Americans.

Molina and the Mississippi Division of Medicaid (the "Division") share the same goal: to improve access to medical services; to improve quality of care, satisfaction, and outcome; and to improve efficiencies and cost effectiveness in providing care. So when the Division sought out managed-care plan providers for the Division's MississippiCAN program, Molina believed that it would be the perfect fit and submitted a proposal for the Division's consideration.

**EXHIBIT**

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Molina worked tirelessly to develop a managed-care plan carefully tailored to Mississippi's unique needs, and Molina presented that plan to the Division in its proposal and oral presentation. Molina's proposal and presentation fully and completely complied with all applicable rules and regulations, including the terms and conditions of the Request for Proposals itself (the "RFP"), and Molina fully responded to any requests for clarification from the Division. At the end of the long, arduous procurement process, Molina scored the second highest out of seven vendors and was awarded a contract to serve as a managed-care plan provider in the MississippiCAN program.

But after the Division awarded the MississippiCAN contract to Molina and other vendors, Amerigroup filed its amended protest accusing the Division of bias and discrimination and also accusing the Division, Molina, and others of failing to comply with the RFP. Amerigroup went further, levying serious charges of intentionally misleading the Division against Molina. Amerigroup appears to have grievances against every party to the RFP—including the Division—and against almost every aspect of how the RFP was conducted.

But as set forth below, these brazen accusations are meritless. The Division properly evaluated the proposals and awarded the contract under the RFP and did so within the sound discretion of the Division. And despite Amerigroup's lengthy allegations against Molina, Molina's proposal also complied with the RFP, and Molina in no way intentionally misled the Division.

Given that the current MississippiCAN contracts have expired, and given that the population of beneficiaries enrolled in the program has continued—and will continue—to expand, it is imperative that the Division promptly deny this meritless protest. The Division implemented MississippiCAN to improve access to medical services, improve quality of care, and improve cost predictability.<sup>1</sup> Since its inception, the program has succeeded in each of those goals. *Id.* The prompt denial of the protest, along with the quick implementation of the contract as awarded, is necessary to ensure the uninterrupted and continued success of the program and to protect the interests of the State and its citizens. *See* RFP § 3.8.3.

### Discussion

Amerigroup bases its protest on four grounds: (1) Molina is a non-responsible vendor that submitted a non-responsive proposal; (2) the Division failed to follow the terms of the RFP; (3) the Division erred in awarding and computing scores; and

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<sup>1</sup> See Driven by Results: Coordinated Care to Reach New Milestone (available at <https://goo.gl/4yLT8>).

(4) the Division and Executive Director (“Director”) are guilty of bias discrimination, and/or a conflict of interest. So, according to Amerigroup, the Division’s award of the contracts was “arbitrary and capricious.”

Importantly, the arbitrary and capricious standard is an arduous test to meet. According to the Mississippi Supreme Court,

“Arbitrary” means fixed or done capriciously or at pleasure. An act is arbitrary when it is done without adequately determining principle; not done according to reason or judgment, but depending upon the will alone,—absolute in power, tyrannical, despotic, non-rational,—implying either a lack of understanding of or a disregard for the fundamental nature of things.

“Capricious” means freakish, fickle, or arbitrary. An act is capricious when it is done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles . . . .

*Hill Bros. Constr. & Eng’g Co. v. Miss. Transp. Comm’n*, 909 So. 2d 58, 70 (Miss. 2005) (internal citations omitted).

Establishing bias and discrimination is equally difficult. Indeed, a presumption exists that the Division and Director acted in good faith in the procurement. *Night Vision Corp. v. U.S.*, 68 Fed. Cl. 368, 394 (2005). To overcome that presumption, Amerigroup must “make a threshold showing of either a motivation for the [Division to have] acted in bad faith or conduct that is hard to explain absent bad faith . . . .” *Beta Analytics Int’l, Inc. v. U.S.*, 61 Fed. Cl. 223, 226 (2004); *DataMill, Inc. v. U.S.*, 91 Fed. Cl. 722, 730-31 (2010).

Here, Amerigroup has failed to put forth any valid evidence establishing bad faith, bias, or discrimination, and the Division’s actions in the procurement hardly constitute the type of “tyrannical, despotic, non-rational [and] freakish” conduct necessary to meet the arbitrary and capricious standard. What is more, Amerigroup’s entire effort to attack the subjective scoring of the Division is impermissible, as § 3.8.1 of the RFP expressly prohibits a protestor from challenging the Division’s subjective scoring. Most important, all of Amerigroup’s allegations that Molina submitted a false and misleading proposal—and otherwise attempted to mislead the Division—are without any basis in fact.

**A. The Division properly complied with the RFP's terms.**

Amerigroup first argues that the Division failed to comply with the RFP's terms and that this failure warrants revocation of the award and reissuance of the award to Amerigroup. In support, Amerigroup makes two arguments.

First, Amerigroup argues that § 3.3.5 of the RFP required the Division to reject any proposal that was not fully responsive. And, according to Amerigroup, Molina submitted a nonresponsive proposal. So, Amerigroup argues that the Division's failure to reject Molina's proposal warrants—and, indeed, mandates—revocation of the award.

Second, Amerigroup argues that the Division failed to follow the RFP's evaluation procedure and that such failure also categorically warrants revocation of the award.

Neither argument has merit.

**1. Molina's proposal was responsive to, and complied with, the RFP.**

Molina's proposal was fully responsive to the RFP, and the Division did not err in accepting it. And Amerigroup's argument that Molina misled the Division, cannot perform the contract, and is otherwise a "non-responsible" vendor is entirely without merit.

Initially, Amerigroup's entire argument that the Division is required to reject a non-responsive proposal is false. Section 3.3.5 of the RFP clearly provides that "[a] proposal *may* be rejected for failure to conform to the rules or the requirements contained in this RFP." As made clear by the use of the discretionary term "may," the Division is not *required* to reject nonresponsive proposals; instead, the Division may accept or reject nonresponsive proposals in its discretion. *See Hill Bros. Constr. & Eng'g Co. v. Miss. Transp. Comm'n*, 909 So. 2d 58, 66 (Miss. 2005) (holding that "since the [agency's] regulation use[d] the permissive language 'may' as opposed to the mandatory language 'shall,' whether to reject the bid is clearly within the discretion of the MTC"). So even if Molina's proposal was nonresponsive, which it was not, the Division was not mandated to reject it, did not err in accepting it, and need not revoke the award.

Amerigroup responds to this argument by merely reiterating that the RFP states that "Proposals **must be responsive** . . ." (Protest at 9) (emphasis in original). That the RFP requires offerors to submit fully responsive proposals does

not negate the Division's discretion to otherwise accept nonresponsive proposals. The Division's discretion on this point is not merely an argument—it is the law. PSCRB Rule § 3-202.12.4.1 and RFP § 3.3.4 both expressly allow the Division to waive minor informalities and insignificant mistakes in proposals. *See also Hill Bros.*, 909 So. 2d at 58 (Miss. 2005) (agency did not err in denying protest where proposal contained errors that constituted a minor informality or insignificant mistake).

Thus, the entire basis for Amerigroup's first argument—that the Division was required to reject an allegedly nonresponsive proposal—is without any basis. And that is true even *if* Molina's proposal was nonresponsive, which, as set forth below, it was not.

**a. Molina is a responsible bidder.**

Amerigroup contends that Molina (whose parent company was formed in 1980 and currently manages health care for 4.6 million Americans) is not financially or operationally stable. This is not true. Amerigroup also contends that Molina "hid" this alleged but false fact from the Division, thereby rendering it an "irresponsible bidder."

In support of its assertion that Molina is unstable, Amerigroup cites a planned restructuring of Molina's parent company, Molina Healthcare, Inc. ("MHI") and then simply concludes that, because of the restructuring, "it is doubtful that Molina will have the capability to meet all of the managed care contract requirements."

Amerigroup is flat wrong. MHI is in compliance with all net worth and contractual requirements of its various health plan contracts. The restructuring initiatives announced in August will facilitate more efficient and effective delivery of quality health care through streamlined operations and procedures, best practices and documented quality outcomes. Molina is taking every precaution to make sure that neither patient care nor contractual compliance are adversely impacted by any of its actions. Rather, the outcome of the restructuring initiatives will further the goal of both Molina and the Mississippi Division of Medicaid to maximize effectiveness of the state's Medicaid program.

And Amerigroup fails to cite any support for its blanket assertion that Molina "hid" its financial condition from the Division. In fact, Molina submitted substantial financial and operational information for itself and its parent company to the Division, and Molina met all of the financial requirements set forth in the RFP. The Division, after reviewing and scoring the proposal including this information

determined that Molina was the second-highest bidder and awarded Molina a contract.

In reality, this entire argument is Amerigroup's attempt to relitigate the merits of the Division's subjective decision to choose one respondent over another. Like Amerigroup, Molina could point its finger at Amerigroup's finances and history. For example, in June, Amerigroup's operations in Iowa posted losses for a fourth consecutive quarter.<sup>2</sup> The point is, that these quibbles are not a proper ground for protest under § 3.8.1, which prohibits offerors from protesting an award on the basis of the Division's subjective scoring, professional judgment, and assessment of its own needs.

**b. Molina submitted an accurate staffing plan.**

Amerigroup next argues that Molina submitted an "illusory" staffing plan: specifically, Amerigroup argues that Molina's list of proposed leadership included individuals for four positions that Molina never intended to retain in those positions. This argument is fiction.

To begin with, Amerigroup completely ignores the clear distinction made in Molina's proposal between the Implementation team and the Operations team. For example, the opening page of § 5 of the proposal states "[w]hile some of the Implementation Team will stay on as we head into Operations, locally-based full time staff will fulfill each key role from that point forward." And § 5.1 states "[T]he Implementation Team is responsible for finding locally-based leadership to staff the MississippiCAN Program for its subsequent phases[.] To further convey Molina's staged approach to staffing, Exhibit 5.3 of the proposal, "Operations Phase Organization Chart," depicts Molina's organizational structure with position boxes largely blank. Amerigroup's argument that Molina provided illusory staffing information misses or ignores the import of the detailed information Molina submitted in its proposal.

With respect to Mr. Church and Dr. Grant particularly, Molina intended that both would remain with Molina permanently.

But as to Mr. Church, Molina became concerned with his abilities during preparation for the oral presentation and also during the presentation itself. And events subsequent to the presentation later confirmed that Mr. Church was not a good fit for the duties and responsibilities Molina expected of the Chief Executive

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<sup>2</sup> [http://wcfcourier.com/news/local/govt-and-politics/iowa-medicaid-insurers-see-losses-for-fourth-consecutive-quarter/article\\_d75d9c38-5241-5775-bc9e-3b6c511043ce.html](http://wcfcourier.com/news/local/govt-and-politics/iowa-medicaid-insurers-see-losses-for-fourth-consecutive-quarter/article_d75d9c38-5241-5775-bc9e-3b6c511043ce.html)

Officer. Molina terminated his employment shortly after coming to that conclusion, and advised the Division of that event shortly thereafter.

Molina anticipated that Dr. Grant, a resident of another state and, at the time, the Chief Medical Officer of another MHI subsidiary, would relocate to Mississippi and assume the position of permanent Chief Medical Officer in Mississippi. However, after the MississippiCAN contracts awards were announced, and as part of the MHI restructuring effort referred to elsewhere in this response, MHI determined that Dr. Grant's position outside of Mississippi would be consolidated. For personal reasons, Dr. Grant elected to accept the severance benefits that became available to her as a result of the restructuring, rather than assume the position of Molina Chief Medical Officer in Mississippi permanently.

Upon the departures of Mr. Church and Dr. Grant, Molina began recruiting and advertising for qualified individuals to fill their respective positions, as of course they would.

Simply put, Amerigroup's assertion that Molina provided an "illusory" staffing plan in an effort to deceive the Division misrepresents Molina's proposal and is factually incorrect.

**c. Molina properly disclosed sanctions.**

Amerigroup next argues that Molina failed to disclose sanctions against its parent and sister corporations. But Molina provided this information to the Division on April 13, 2017 in response to a request for clarification, as provided for in numerous provisions of the RFP, including § 3.2. On one hand, Amerigroup accuses Molina of failing to disclose sanctions, but then concedes Molina did—in fact—disclose this very information in an April 13, 2017 clarification letter. (Protest at 14.)

Regardless of the fact that Molina disclosed this information, Amerigroup continues that—in the face of these disclosures—the Division should not have awarded Molina a contract. Once again, Amerigroup is attempting to attack the subjective decision making and professional judgment of the Division and the Division's own assessment of its needs. This is not a proper ground for protest under § 3.8.1 of the RFP. Like Amerigroup, Molina also can point to troubling issues and accusations that have plagued Amerigroup's operations, including a \$225 million settlement Amerigroup paid to the Department of Justice amid claims that Amerigroup had defrauded the Illinois Medicaid program.<sup>3</sup> But all of this was put to

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<sup>3</sup> For example, the Department of Justice accused Amerigroup of defrauding the Illinois

the Division for decision, and the Division—in its ultimate discretion in light of the proposals as a whole—rendered its awards.

**d. Amerigroup's allegation of inappropriate outreach to the Division is false.**

Like Mississippi True, Amerigroup insinuates that Molina improperly reached out to the Director and offered the Director a job. Like Mississippi True's, this allegation is irresponsible and false.<sup>4</sup> This is a serious charge levied against the Director and Molina without support or an attempt to undercover the truth.

Both Mississippi True and Amerigroup rest this conspiracy theory on two email exchanges between the Director and Molina representatives.

The first email exchange was between the Director and Gwen Williams in January of 2015—almost three years ago. As set forth in the attached Affidavit of Gwen Williams, Williams has worked in the Medicaid industry for over 30 years, including as a Commissioner of the Alabama Medicaid Agency, a cabinet-level position equivalent to that of the Director here in Mississippi. Williams Affidavit at ¶ 2. In the course of William's career in Medicaid, she has become acquainted with the Director, as both a friend and colleague. *Id.* at 3. Williams would often reach out to the Director while travelling from Alabama to Baton Rouge, simply see if the Director was available for lunch or dinner. *Id.*

In January of 2015, Williams learned of the possibility that the state Medicaid director position might become available in Washington, D.C., and Williams passed this information to Dr. Dzielak, believing that he may be interested in such an opportunity, which would put the Director closer to his elderly mother who lives in Virginia. *Id.* at 5. So, Williams emailed Dr. Dzielak to let him know:

| Hi, David. Long time no see.

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Medicaid program, which Amerigroup settled for \$225 million. *See* <https://www.justice.gov/archive/opa/pr/2008/August/08-civ-723.html>

<sup>4</sup> Notably, Amerigroup was never “denied” discovery, but was—instead—provided with documents that it sought from Molina and others by order of the Chancery Court of Hinds County, Mississippi. In Case No. G-2017-973 S/2, the Chancery Court entered an order compelling the winning vendors to produce to Amerigroup and Mississippi True portions of the proposals that the Court determined were not confidential or proprietary. Also in connection with that proceeding, the Division produced pages and pages of emails, calendar invitations, and related materials to Amerigroup and Mississippi True in response to a motion to compel production of those documents. .

I'd really appreciate a quick chat when you have a few minutes. I have something to share that may be of interest to you.

*Id.* at ¶ 6. This was followed by a phone call in which the Director and Williams exchanged thoughts and follow-up issues. *Id.* at ¶ 7. The Director was not interested, and he emailed Williams on January 14, 2015 to let her know:

Gwen:

I decided not to send in my information. The compensation is going to be an issue. As such, if I really don't want the job then the fact I applied may get out and that would create an issue for me in my current position. Thanks for the heads up though, I really appreciate it and your support.

David

*Id.* Williams responded:

I fully understand and think that's a wise decision. I'll keep my eyes and ears open. You never know what will turn up in the future.

*Id.* at 8.

These emails do not support Amerigroup's spurious and irresponsible allegation. They took place in January 2015 and had nothing to do with the RFP or MississippiCAN. These emails also had nothing to do with offering the Director employment at Molina. As Williams states in her attached affidavit, Williams and the Director have never discussed job opportunities at Molina or any of its related companies at any time, and the communications in January 2015 amount to nothing more than friends and colleagues—both former directors (current and former) of state-Medicaid programs—sharing information about a job opening as a director for another state.

The second email exchange took place between the Director and David Boim. As set forth in his attached Affidavit, Boim is responsible for assessing potential opportunities for Molina to contract with new states when those State's Medicaid divisions intend to procure services from managed-care plans like Molina. Boim Affidavit at ¶ 3.

In that role, Boim often reaches out to public healthcare officials in various states as to what Molina might expect when doing business in those states, as is common practice throughout the Medicaid and healthcare industry. *Id.* at ¶ 4.

Boim was first introduced to the Director in 2015. *Id.* at 5. At the time, the Director was considering the possibility of an initiative for Mississippi individuals dually-eligible for Medicare and Medicaid, and was gathering information from various sources as part of his research. *Id.* In that regard, Boim arranged a power-point presentation with Molina's senior leaders in its managed long term services and support division to present to the Director by video conference. *Id.* Molina is the nation's largest provider of Medicare-Medicaid Dual Eligibility Demonstration health plans. *Id.* The presentation identified success and challenges of Molina's dual-eligibility programs. *Id.* The Director's elderly mother lives in the Richmond, Virginia area, so the Director arranged to see the presentation when he would already be in town to visit his mother.

The Division decided not to pursue a dual-eligibility program for Mississippi, and Biom has not had substantive discussions regarding the topic since the presentation in Richmond. *Id.* Dual-eligibility programs are not a part of the MississippiCAN program, so this presentation had nothing to do with MississippiCAN. It is common for state Medicaid agencies to seek, and for health plans such as Molina to provide, information that will assist the agencies in evaluating and planning new programs, especially for vulnerable and/or complex populations. *Id.* All the meetings and communications during this time frame related to the dual-eligibility presentation and not the RFP.

As for the MississippiCAN program itself, Mississippi implemented that program in 2011. *Id.* at 6. At that time, and until the conclusion of this procurement, only UnitedHealthcare of Mississippi, Inc. and Magnolia Health were serving as vendors. *Id.*

Later, in the Spring of 2012, the Mississippi Legislature authorized the Mississippi Division of Medicaid to expand the MississippiCAN program to enroll up to 45% of Medicaid beneficiaries. *Id.* at ¶ 7. And in 2014 and 2015, the Legislature further authorized the Division to expand the program to cover all Medicaid services. *Id.*

The contracts for United and Magnolia were set to expire in June of 2017. *Id.* at ¶ 8. So it was no surprise—and a matter of public record—that the Division would reissue a request for proposals for potential managed-care plans. *Id.* And given the vast expansion of the MississippiCAN program by the Legislature, it was

also no surprise—and a matter of common knowledge—that the Division would seek to procure contracts with more than two managed-care plans. *Id.*

With the obvious, looming opening of a possibility to provide services to Mississippi in its MississippiCAN program, Boim reached out to the Director to share information as to how Molina could best serve Mississippi if awarded a contract, which is standard practice for managed-care plans seeking to expand into new states. *Id.* at ¶ 9. Indeed, it is our belief other plans that submitted proposals were in contact with the Director, as well.

If Molina were to win a contract, Molina would need to find competent candidates for leadership positions in Molina's Mississippi operations. *Id.* at ¶ 11. So Boim asked Dr. Dzielak for the names of potential candidates in the Mississippi community, in the event Molina were to win a contract. *Id.* It was expected that the Division would require approval of all senior positions for managed-care plans in the MississippiCAN program, so Molina obviously wanted to identify candidates that the Division would eventually approve of, assuming Molina were to win a contract. *Id.* Boim and the Director met for lunch at the Manship restaurant in Jackson to discuss potential candidates, and Boim later emailed the Director on August 4, 2016 with information for those leadership positions:

Hello Dr. Dzielak,

So Great to see you today[.] I Really appreciate catching up with you.

Couple of follow ups:

1) The Richmond moving company is called Moxie Movers. They tend to book up fast. [www.moxiemovers.com](http://www.moxiemovers.com)

Call Jesse at 804-928-1111. Both me and my wife loved the job they do at a fair price.<sup>5</sup>

2) The Plan President Position salary range is \$186K to \$345K (salary only) depending on qualification factors. Short and long term benefits would be in addition. We would also be looking for a COO which would be the President's operations leader.

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<sup>5</sup> This part of the email discusses the details of a moving company that Boim recommend to the Director, which was provided for the purpose of moving the Director's elderly mother from her house to an apartment in Virginia. This had nothing to do with any kind of job offer for Dr. Dzielak.

I will follow up on the Value Based discussion tomorrow.

Warm Regards,

Dave

*Id.*

That email was not—and was never intended to be—a job offer to the Director, and Boim and Molina never suggested that the Director consider being a candidate. *Id.* at ¶ 12. Indeed, none of Boim’s communications (at any time) with the Director were intended to be job offers for any current or future position with Molina or any of Molina’s related companies. *Id.* Instead, as is common in the industry, Boim was simply asking Dr. Dzielak for the names of possible candidates should Molina win a contract. *Id.* This second email exchange is simply not what Amerigroup purports it to be and is benign.

**e. Molina disclosed the required information regarding its subcontractors.**

Amerigroup contends that Molina failed to disclose subcontractors. Amerigroup notes that Molina disclosed that it would “work together” with its corporate parent in carrying out the contract. Amerigroup argues that Molina’s parent is clearly a “subcontractor,” and because a representative of Molina’s corporate parent did not execute a subcontractor disclosure or a Drug Free Workplace Certificate, Molina failed to properly “disclose” its parent as a subcontractor under the terms of the RFP.

This hair-splitting argument is also without merit.

Throughout its proposal, Molina clearly disclosed and detailed the working relationship and shared services of Molina and its parent. For example, within § 4.9 of Molina’s proposal, Molina explained that an Administrative Services Agreement and Tax Sharing Agreement would be executed and held by Molina and its parent to support operations under Molina’s contract with the Division. Within the Model Contract, the Division defines Administrative Service as:

Administrative Service means the performance of services or functions, other than the direct delivery of Covered Services, necessary for the management of, the delivery of, and payment for Covered Services, including but not limited to network utilization, clinical or quality management, service authorization, claims processing, management

information systems operation, reporting, and infrastructure development for, preparation of, and delivery of, all required Deliverables under the Contract.

Thus, it is clear that Molina's parent will be supporting Molina in the provision of covered services and deliverables under Molina's contract with the Division.

Further, Molina details the relationship and shared services between Molina and its parent company throughout the proposal. For example:

- Organization charts provided in § 5.1 of the proposal very clearly depict corporate services that will be provided to Molina.
- The Molina 2018 Quality Improvement Program Description and Work Plan submitted with the RFP are replete with references to the parent corporation's role in Molina's quality improvement activities.
- In § 5.3 of the proposal, which describes the anticipated roles of Molina's key leaders, there are multiple references to the interactions of those leaders with the supporting departments within Molina's parent company, and key leader résumés provided in § 5.2 of the proposal identify parent company positions held by some of those individuals.
- § 3.1 of the proposal, which provides corporate background, clearly delineates background on both Molina's parent and Molina itself.

Even Molina's Letter of Intent was signed by Terry Bayer, the Chief Operations Officer of Molina's parent.

In short, as Amerigroup's raising of the point makes clear, the supporting role to be provided by Molina's parent company was patently obvious in Molina's proposal. The assertion that the proposal did not give the Division a full understanding of the contractual relationship it was entering into or how the work would be performed is baseless and without any merit.

The existence and role of Molina's parent company was fully and thoroughly disclosed and detailed to the Division, and Amerigroup's argument that Molina did not "disclose" its parent by virtue of not providing an executed disclosure statement or drug-free-workplace certificate<sup>6</sup> is without merit.

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<sup>6</sup> The drug-free-workplace certificate attached to Molina's proposal as part of Exhibit 1 was executed by Molina Healthcare of Mississippi. The drug-free-workplace policy under which Molina Healthcare of Mississippi executed this certificate is, in fact, a

What is more, RFP § 3.3.4 expressly allows the Division to waive minor variances and irregularities, including the failure of Molina's parent to execute the disclosure and drug-free-workplace certificate (assuming its parent company was even required to do so). *See Hill Bros.*, 909 So. 2d at 66 (holding that contractors failure to sign an acknowledgment that contractor agreed to execute contract and included necessary information, while required by agency regulations, was a mere minor irregularity that may be waived). According to the RFP, a "minor irregularity" is defined as a variation of the RFP which does not give one party an advantage or benefit not enjoyed by other parties, or adversely impacts the interest of the Division."<sup>7</sup> The lack of a disclosure or drug-free-workplace certificate for Molina's parent did not give Molina an advantage or adversely impact the interest of the Division because the identity of Molina's parent, its relationship with Molina, and the role it would play in assisting Molina with the contract were nevertheless exhaustively disclosed in Molina's proposal.

Amerigroup further notes that Molina did not submit a signed subcontractor statement or drug-free-workplace certificate for two non-Molina-affiliated subcontractors—Recovery Group FRG and Health Management Systems. Molina did—however—fully disclose the involvement that these two subcontractors would have in Molina's Mississippi operations. *See* Molina Proposal at 6-27, 6-28, and 6-287. Indeed, Amerigroup notes that these two subcontractors and their involvement were disclosed. (Protest at p. 17.) As with Molina's parent, the lack of a signed statement and drug-free-workplace certificate did not give Molina an advantage or adversely impact the interest of the Division because the identity of subcontractors, their relationship with Molina, and the role they would play in assisting Molina were nevertheless disclosed. Regardless, Molina was penalized in the scoring process for not including a signed statement or drug-free-workplace certificate. This argument is a nonfactor.

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corporate policy of its parent company, Molina Healthcare, Inc. and applies to all Molina entities relevant to this proposal. This is a clear demonstration that both Molina Healthcare of Mississippi and Molina Healthcare, Inc. adhere to this policy, and are in full compliance with the RFP requirements.

<sup>7</sup> *See also* PSCRB Rule and Regulation § 3-202.12.4.1. Hedglin, Miss. AG Opinion No. 2008-00418, 2008 Miss. AG LEXIS 432, 1988 WL 249928 (noting that the Mississippi Attorney General's Office has "consistently opined that an irregularity in bidding may be waived in the discretion of a governing body, provided that (1) mandatory statutory provisions are not violated; (2) the irregularity does not in any way destroy the competitive character of the bid; (3) the irregularity has no effect as to the amount of the bid; and (4) the irregularity does not give one bidder an advantage or benefit over the other bidders") (internal citations omitted).

**f. Molina did not fail to identify outside firms responsible for writing its proposal.**

In footnote 2, Amerigroup accuses Molina of failing to identify outside firms that helped Molina prepare its proposal. Without any evidence, Amerigroup claims that it “strains the imagination” that Molina prepared its proposal in-house. Amerigroup is flat wrong. As has been discussed elsewhere in this response to Amerigroup’s Protest, Mr. Church was hired to serve as the CEO of Molina in Mississippi, not to assist in preparing the proposal, and he did not make material contributions to it. Molina prepared the proposal in house, and Amerigroup’s accusation is, frankly, frivolous.

**g. Molina did not withhold “material information.”**

Amerigroup next argues that Molina improperly withheld “material” information from the Division. Specifically, Amerigroup contends that Molina failed to disclose a data breach and failed to disclose changes in Molina’s corporate leadership.

As to the data breach, Amerigroup contends that Molina suffered a “major” data breach that exposed “all Molina patient claims records, unsecured, to the entire internet—without requiring any authentication . . .” Amerigroup also contends that Molina was aware of the data breach prior to its oral presentation, as well as prior to the submission of Molina’s written proposal.

But contrary to Amerigroup’s hyperbole, Molina was not notified of this security vulnerability by its security vendor until mid-April. The preliminary information available to Molina when notified of the possible breach indicated that there was no potential exposure for Molina Medicaid members.

The investigation of the possible breach was finalized in May, and a public notification of the results was released on or about May 25, 2017. The final investigation revealed that a total of *nine* Molina Marketplace—and not Medicaid—members were involved in the breach. And while Molina takes vulnerabilities of any size very, very seriously, the internet reports Amerigroup cites are simply not accurate. Each of the nine individuals involved was notified and given a year of free credit monitoring.

As the issue did not arise during the development of the proposal, and did not include Medicaid members, there was no need for Molina to disclose this information, and Molina did not intentionally, or unintentionally, mislead the Division.

Amerigroup is also incorrect that Molina underwent “significant changes in its corporate leadership.” True, Molina’s parent company replaced its CEO and CFO (Dr. J. Mario Molina and John C. Molina, respectively) with Joseph White. But Dr. Molina, John Molina, and Joseph White are not employed by Molina itself. Thus, these individuals are not “key” employees of Molina’s *Mississippi operations*.

Regardless, this change was announced on May 2, 2017, after the submission of Molina’s written proposal, which was due April 7, 2017. And Joseph White was present at the oral presentation, explained his role with Molina’s parent company, any potential involvement that he may have with Molina and its Mississippi operations, and his dedication to the Division. Joseph White was ready, willing, and able to answer any questions of the Division regarding the change in leadership of Molina’s parent. Dr. Martha Bernadett, the daughter of Molina’s founder and sibling to the Molina brothers, who still remains an employee of Molina’s parent, was also present at the oral presentation and further explained the changed leadership structure of Molina’s parent company.

Amerigroup further contends that these changes in leadership (i.e., White moving from CAO at Molina to CEO of Molina’s parent) meant that Molina “had effectively *no* local leadership in place for the Mississippi health plan” at the time of oral presentations. This is false. For example, Pam Sanborn was listed as CFO in the proposal, is currently in that position, and attended the oral presentation. Molina’s CFO and COO that were listed in the proposal at the time of the oral presentation are also still employed to this day. And as noted above, Mr. Church and Dr. Grant were serving as CEO and Medical director at the time of the oral presentation, and Molina fully intended that Mr. Church and Dr. Grant would stay in those positions, although it was becoming apparent that Mr. Church might not have been well matched to his position.

Moreover, Amerigroup’s assertion completely ignores the distinction described in Molina’s proposal between the Implementation team and the Operations team. Many of those present at Molina’s oral presentation were members of the Implementation team and not necessarily locally based, which was appropriate and consistent with the timing of staffing phases described in Molina’s proposal.

Accordingly, Molina did not withhold any material information from the Division regarding any change in corporate leadership. The only change in leadership at that time was with Molina’s parent company and was fully disclosed and explained to the Division. This is another example of Amerigroup making assertions without a fair recitation of the facts.

## **2. The Division followed the RFP's evaluation procedure.**

Amerigroup argues that the Division failed to follow the RFP's evaluation procedure and, therefore, revocation of the award is mandated. According to Amerigroup, § 6 of the RFP provided that an evaluation committee comprised of the Division staff would be established to evaluate the merits of each proposal. But Amerigroup alleges that the proposals were not actually scored exclusively by the evaluation committee and, instead, were "scored by various differing groups composed of different individuals and different numbers of individuals, some of whom were members of the Evaluation Committee" and some who were not. Moreover, according to Amerigroup, the proposals were scored by different combinations of evaluators. So, Amerigroup contends, the actual evaluation process "bore no resemblance" to the process detailed in § 6 of the RFP, and the different combinations of evaluators failed to provide for a fair evaluation, considering the differing possible subjective perspectives of the evaluators.

In its protest, Amerigroup cites certain authorities standing for the proposition that variances in the evaluation procedure set forth in an RFP *may* warrant revocation of a proposal. For example, Amerigroup cites *Caddell Constr. Co. v. U.S.*, in which the United States Court of Federal Claims enjoined a competitive bidding procedure conducted by the United States Department of State due to the Department's "arbitrary and capricious" evaluation procedure. 111 Fed. Cl. 49, 53 (Ct. Cl. 2013). Amerigroup's reliance on these cases is misplaced. These cases (which are not interpreting or applying Mississippi law) are inapposite here because no case cited holds that *every* variance from the evaluation process set forth in an RFP *requires* revocation of an award.

What is more, the very cases Amerigroup cites hold that a protesting party must still demonstrate "competitive injury or . . . prejudice" by the error alleged. *Id.* at 72 (internal citations omitted). Absent such injury and prejudice, a protesting party lacks standing to attack an award. *Id.* And, in order to establish standing, the protesting party "must show that there was a 'substantial chance' it would have received the contract award, but for the alleged procurement error." *Id.* (internal citations omitted). Here, under Amerigroup's own cases, Amerigroup failed to establish or even allege such standing in its protest on this point. Indeed, Amerigroup does not even allege that, had the evaluations been undertaken entirely by the evaluation committee, Amerigroup would have had a substantially better chance at receiving the contract award. Instead, Amerigroup simply argues that the alleged variance from the RFP *alone* constitutes grounds to revoke the award. This is like bringing a lawsuit for damages without even alleging—much less proving—any injury caused by the defendant's conduct. Amerigroup's argument about the Division's conduct here is an empty recitation of words.

Even if Amerigroup had alleged actual injury, there is no indication that the Division varied from the evaluation procedure set forth in the RFP. Amerigroup hurled these accusations without benefit of any evidence that the individuals scoring the proposals were not members of the evaluation committee. Indeed, Amerigroup cites to no evidence as to how the scoring departed from the RFP—Amerigroup just assumes that is the case. Moreover, contrary to Amerigroup's assertion, the RFP does not provide that the evaluation committee—*alone*—will evaluate and score the proposals. Instead, § 6 of the RFP provides for various levels of evaluation by the Division, including review by the designee for the Office of Procurement, by the Office of Procurement itself, and by the Oversight Committee, all of which may account for the various individuals scoring the proposals that Amerigroup complains of. Moreover, the RFP did not require or mandate that every proposal be scored by the same exact individuals. Thus, even assuming the proposals were scored by various combinations of individuals, this procedure does not contradict the RFP.

**B. The Division computed scores correctly.**

Amerigroup next alleges that the Division erred in computing scores. Specifically, Amerigroup contends that the Division erroneously used a rounding methodology that contradicted the RFP and resulted in scores being greater than those scores would have been had the total final proposal score been the sum of the actual scores earned for each proposal section.

Not only is the RFP silent as to whether a rounding methodology is permissible (and therefore the use of such a procedure is within the Division's discretion and does not contradict the RFP), but Molina would still have been awarded the contract based on Amerigroup's "correct" methodology. So, in an apparent attempt to avoid this result, Amerigroup continues its argument by attacking the Division's judgment in the *awarding* of scores. While Amerigroup is correct that the *computation* of scores is a valid ground for protesting an award, the RFP prohibits vendors from attacking the subjective *awarding* of scores, which goes directly to the professional judgment of the evaluation committee and which judgment vendors are specifically barred from protesting under § 3.8.1 of the RFP ("Disallowed grounds include: . . . The professional judgment of the Evaluation Committee").

Amerigroup responds that, because the scores were computed based on what it calls Molina's untruthful and nonresponsive proposal, the resulting scores were in fact the result of computational errors. This is nothing more than an attempt to impermissibly attack the judgment of the evaluators by recasting it as a "computational error." Moreover, as set forth throughout this response,

Amerigroup's allegations are meritless. As with Mississippi True, Amerigroup has concocted various "misrepresentations" without fairly and fully referring to the actual facts. Amerigroup's attempt to side-step the prohibition against attacking subjective scoring is wholly improper.

**C. There is no evidence of bias, discrimination, and/or conflict of interest of the evaluators.**

Last, Amerigroup argues that the Division discriminated against Amerigroup and was biased toward "incumbent" vendors. While Molina is not an incumbent vendor, this final argument is still meritless.

Initially, Amerigroup fails to even articulate how favoring the experience of incumbent vendors constituted discrimination or a conflict of interest on behalf of the evaluators. And, as to bias, a protesting party is required to "make a threshold showing of either a motivation for the Government employee in question to have acted in bad faith or conduct that is hard to explain absent bad faith . . . ." *Beta Analytics, Int'l, Inc. v. U.S.*, 61 Fed. Cl. 223, 226 (2004); *DataMill, Inc. v. U.S.*, 91 Fed. Cl. 722, 730-31 (2010). But here, Amerigroup failed to even allege bad faith against the Division. Instead, Amerigroup attacks the alleged preference of certain evaluators to the experience of the incumbent vendors. This, however, constitutes an attack on the professional judgment of the evaluation committee, which judgment vendors are barred from protesting. RFP § 3.8.1. Moreover, federal authority (upon which Amerigroup principally relies) provides that government officials may favorably consider an incumbent's past experience and performance and that such consideration does not constitute bias. *Galen Med. Assocs. v. U.S.*, 369 F.3d 1324, 1336 (Fed. Cir. 2004).

**Conclusion**

Molina—an industry leader with a record of success—worked tirelessly to craft a plan that would best serve Mississippi's unique needs and presented that plan to the Division in accordance with the RFP. In doing so, Molina did comply, and fully intended to comply, with all applicable rules and law, including the terms of the RFP. After the completing the long, thorough procurement process, Molina and the other successful vendors were awarded contract based on the merits and substance of their proposals and not based on any alleged conflicts of interest. It is time to allow the Division and the successful vendors to consummate those contracts and begin implementing their managed-care plans.

Amerigroup's protest—along with its unsuccessful litigation before the chancery court—has only delayed the implantation of the contracts and has created

uncertainty as to the continued, uninterrupted success of MississippiCAN. While this delay has certainly prejudiced the winning vendors and the Division, it is the Mississippi citizens enrolled in Medicaid—families, individuals, and children—that will suffer most.

Amerigroup has not demonstrated that the Division was biased or discriminated against Amerigroup, and Amerigroup has also failed to otherwise demonstrate that the Division, Molina, or any other successful offeror failed to comply with the RFP. Instead, Amerigroup attacks the Division without any evidence of bad faith and attacks Molina on wholly meritless grounds. Accordingly, Molina requests that the Division promptly reject the protest to ensure the uninterrupted and continued success of the MississippiCAN program and to otherwise protect the interests of the State and its citizens. *See* RFP § 3.8.3.

#### **Purview of the PSCRB.**

While Molina understands that the Division will submit the award to the PSCRB for review, Molina nevertheless contends that this procurement is not subject to the Rules and Regulations of the PSCRB. While the RFP does provide that it “shall be guided by the applicable provisions of the Personal Service Contract Review Board Rules and Regulations,” those rules and regulations that require review of personal service and professional contracts by the PSCRB are not applicable to the MississippiCAN contracts. *See* RFP § 4.1 (emphasis added). In enacting Miss. Code Ann. § 25-9-120, the Legislature created the PSCRB and authorized it to promulgate rules and regulations governing the solicitation and selection “of contractual services personnel including personal and professional service contracts . . . .” The PSCRB therefore has authority to review contracts for personal and professional services rendered to a state agency under the purview of the PSCRB. But here, the winning offerors are not contracting to render personal or professional services to the Division. Instead, the winning offerors are contracting to render managed care plan services (i.e., a form of health insurance) to Medicaid beneficiaries themselves. And, as the Division correctly advised Amerigroup, contracts for insurance are not subject to PSCRB review. *See* Jackson, Miss. Att’y Gen. Op. No. 2017-00040 (Feb. 17, 2017).

David J. Dzielak, Ph.D.  
August 23, 2017  
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Respectfully submitted.

**Molina Healthcare of Mississippi, Inc.**

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**Via E-mail**

David J. Dzielak, Ph.D., Executive Director  
MISSISSIPPI DIVISION OF MEDICAID  
550 High Street, Suite 1000  
Jackson, Mississippi 39201

Re: Request for Proposals #20170203

Subject: Molina Healthcare of Mississippi, Inc.'s Response to Protest of Award  
by Amerigroup Mississippi, Inc.

Dear Dr. Dzielak:

This firm represents Molina Healthcare of Mississippi, Inc. ("Molina") and submits this response to the protest filed by Amerigroup Mississippi, Inc. ("Amerigroup"), as follows:

**Introduction**

After the Division awarded the MississippiCAN contract to other vendors, Amerigroup filed a protest accusing the Division of bias and discrimination and also accusing the Division, Molina, and the other successful vendors of failing to comply with the RFP. Amerigroup went further, levying serious charges against Molina of intentionally misleading the Division. Amerigroup appears to have grievances against every party to the RFP—including the Division—and against almost every aspect of how the RFP was conducted.

But as set forth below, these brazen accusations are meritless. The Division properly evaluated the proposals and awarded the contract under the RFP and the Rules and Regulations of the Personal Service Contract Review Board and did so within the sound discretion of the Division. And despite Amerigroup's lengthy allegations against Molina, Molina's proposal also complied with the RFP, and Molina in no way intentionally misled the Division.

Given that the current MississippiCAN contracts have expired, and given

that the population of beneficiaries enrolled in the program has continued—and will continue—to expand, it is imperative that the Division promptly deny this meritless protest. The Division implemented MississippiCAN to improve access to medical services, improve quality of care, and improve cost predictability. *See* Driven by Results: Coordinated Care to Reach New Milestone (available at <https://goo.gl/4yLT8>). And since its inception, the program has succeeded in each of those goals. Just for example, the number of preterm deliveries among beneficiaries dropped from 20 percent in 2014 to 13.96 percent in 2016, the number of emergency room visits per beneficiary per month with sickle-cell disease has fallen, and the program has saved an estimated \$210 million in spending between 2011 and 2016. *Id.* The prompt denial of the protest, along with the quick implementation of the contracts as awarded, is necessary to ensure the uninterrupted and continued success of the program and to protect the interests of the State and its citizens. *See* RFP § 3.8.3.

### Discussion

The Division “is but one of many state administrative agencies required to procure personal and professional services [under] the State of Mississippi Personal Service Contract Procurement Regulations,” which provide that the contracting for such services may be accomplished by, among other things, the solicitation of sealed proposals. *Elec. Data Sys. Corp. v. Miss. Div. of Medicaid*, 853 So. 2d 1192, 1195 (Miss. 2003). Those rules further provide that any request for proposals include and set forth the intended procurement procedure. *See* PSCRB Rules and Regulations 3-101.01(u).

Here, the Division’s RFP sets forth the procurement procedure, including the procedure for protesting any eventual award. And under its terms, there are only three acceptable grounds for filing a protest:

- the failure to follow: (1) the Division procedures established in the RFP, or (2) the Division rules of procurement;
- errors in computing scores which contributed to the selection of an Offeror other than the best proposal; or
- bias, discrimination, or conflict of interest on the part of an evaluator.

RFP § 3.8.1. An unsuccessful offeror may not, however, protest the award on any of the following grounds:

- the evaluators' qualifications to serve on the Evaluation Committee;
- the professional judgment of the Evaluation Committee; and
- the Division's assessment of its own needs regarding the solicitation.

*Id.*

In its protest here, Amerigroup alleges that each of the three grounds for protesting an award are present, and that the Division's decision to award the contract to Molina and others was therefore "arbitrary and capricious." Notably, the arbitrary and capricious standard of review—when applied to an agency's decision—is a difficult showing to make. According to the Mississippi Supreme Court,

"Arbitrary" means fixed or done capriciously or at pleasure. An act is arbitrary when it is done without adequately determining principle; not done according to reason or judgment, but depending upon the will alone,—absolute in power, tyrannical, despotic, non-rational,—implying either a lack of understanding of or a disregard for the fundamental nature of things.

"Capricious" means freakish, fickle, or arbitrary. An act is capricious when it is done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles . . . .

*Hill Bros. Constr. & Eng'g Co. v. Miss. Transp. Comm'n*, 909 So. 2d 58, 70 (Miss. 2005) (internal citations omitted).

But as set forth below, the Division properly evaluated the proposals and awarded the contract under the terms and conditions of the RFP and the PSCRB Rules and Regulations. And, as the Division is well aware, there is absolutely no evidence of bad faith, bias, or discrimination on the Division's part, and the Division's actions hardly constitute the type of "tyrannical, despotic, non-rational [and] freakish" conduct necessary to meet the arbitrary and capricious standard.

**A. The Division properly complied with the RFP's terms.**

Amerigroup first argues that the Division failed to comply with the RFP's terms and that this failure warrants revocation of the award and reissuance of the

award to Amerigroup. In support, Amerigroup makes two arguments.

First, Amerigroup argues that § 3.3.5 of the RFP required the Division to reject any proposal that was not fully responsive to the RFP. And, according to Amerigroup, Molina submitted a nonresponsive proposal. So, Amerigroup argues that the Division's failure to reject Molina's proposal warrants—and, indeed, mandates—revocation of the award.

Second, Amerigroup argues that the Division failed to follow the RFP's evaluation procedure and that such failure also categorically warrants revocation of the award.

Neither argument has merit.

**1. Molina's proposal was responsive to, and complied with, the RFP.**

Molina's proposal was fully responsive to the RFP, and the Division did not err in accepting Molina's proposal and awarding the contract to Molina, among others.

Amerigroup erroneously argues that the Division failed to comply with the RFP and that any such failure *mandates* revocation of an award in every instance. Amerigroup's contention is false. Not only was the RFP followed by the Division, but in addition, Amerigroup did not, and cannot, cite to any rule or regulation that would make revocation of an award mandatory in every instance. Indeed, no such rule or regulation exists under Mississippi law.

In fact, Amerigroup must concede that § 3.3.5 of the RFP clearly provides that "[a] proposal *may* be rejected for failure to conform to the rules or the requirements contained in this RFP." Thus, as made clear by the use of the discretionary term "may" in the RFP, the Division is not *required* to reject nonresponsive proposals; instead, the Division may accept or reject nonresponsive proposals in its discretion. See *Hill Bros. Constr. & Eng'g Co. v. Miss. Transp. Comm'n*, 909 So. 2d 58, 66 (Miss. 2005) (holding that "since the [agency's] regulation use[d] the permissive language 'may' as opposed to the mandatory language 'shall,' whether to reject the bid is clearly within the discretion of the MTC"). So even if Molina's proposal was nonresponsive, which it was not, the Division was not mandated to reject it, did not err in accepting it, and need not revoke the award.

The Division's discretion on this point is not merely an argument—it is the

law. PSCRB Rule § 3-202.12.4.1 and RFP § 3.3.4 both expressly allow the Division to waive minor informalities and insignificant mistakes in proposals. *See also Hill Bros.*, 909 So. 2d at 58 (Miss. 2005) (agency did not err in denying protest where proposal contained errors that constituted a minor informality or insignificant mistake).

Thus, the entire basis for Amerigroup's first argument—that the Division violated § 3.3.5 in failing to reject allegedly nonresponsive proposals—is without any basis. And that is true even *if* Molina's proposal was nonresponsive, which, as set forth below, it was not.

**a. Molina did not fail to identify outside firms responsible for writing its proposal.**

Amerigroup accuses Molina of failing to identify outside firms that helped Molina prepare its proposal. Without any evidence, Amerigroup claims that it “strains the imagination” that Molina prepared its proposal in-house. Instead, Molina claims Robert Church (Molina's CEO at the time of proposal) had his consulting practice prepare the proposal.

Amerigroup is flat wrong. Molina prepared the proposal in house, and Amerigroup's accusation is, frankly, frivolous.

**b. Molina complied with the RFP's page limitations.**

Amerigroup next accuses Molina of failing to comply with the RFP's page limitations. Specifically, Amerigroup claims that Molina's responses to questions 27, 33, 34, 51, 54, 75, 84, and 88 exceed the specified page limits.

Again, Amerigroup is wrong.

RFP § 5.6 provides that, in answering questions, the offeror should repeat each statement/question and then follow with the response. In its March 17, 2017 Question and Answer Document (available at <https://goo.gl/8oTJyr>), in response to question 36, the Division made clear that the repetition of the statement/question in an offeror's answer does not count toward the page limit. RFP § 5.6 also provides that “[r]equired documentation for specific answers will not be included as part of page limits and should be included in the body of the response, not as an attachment.”

So, when the repetition of each statement/question and other required documentation is not taken into account, Molina's answers to questions 27, 33, 34,

51, 75, 84, and 88 are within the RFP's page limitations, and answer 54 is within the page limitation even without removal of this information.

**c. Molina did not issue a press release without Division consent.**

Amerigroup next argues that Molina issued a press release without Division consent. But as the Division is aware, the Division consented to Molina's press release before publication.

**d. Molina disclosed sanctions.**

Amerigroup next argues that Molina failed to disclose sanctions against its parent and sister corporations. But Molina provided this information to the Division on April 13, 2017 in response to a request for clarification, as provided for in numerous provisions of the RFP, including § 3.2.

**e. Molina disclosed the required information regarding its subcontractors.**

Amerigroup contends that Molina failed to disclose subcontractors. Amerigroup notes that Molina disclosed that it would "work together" with its corporate parent in carrying out the contract. Amerigroup argues that Molina's parent is clearly a "subcontractor," and because a representative of Molina's corporate parent did not execute a subcontractor disclosure or a Drug Free Workplace Certificate, Molina failed to properly "disclose" its parent as a subcontract under the terms of the RFP.

This hair-splitting argument is also without merit.

Throughout its proposal, Molina clearly disclosed and detailed the working relationship and shared services of Molina and its parent. For example, within § 4.9 of Molina's proposal, Molina explained that an Administrative Services Agreement and Tax Sharing Agreement would be executed and held by Molina and its parent to support operations under Molina's contract with the Division. Within the Model Contract, the Division defines Administrative Service as:

Administrative Service means the performance of services or functions, other than the direct delivery of Covered Services, necessary for the management of, the delivery of, and payment for Covered Services, including but not limited to network utilization, clinical or quality management, service authorization, claims processing, management

information systems operation, reporting, and infrastructure development for, preparation of, and delivery of, all required Deliverables under the Contract.

Thus, it was clear in the proposal that Molina's parent will be supporting Molina in the provision of covered services and deliverables under Molina's contract with the Division.

Further, Molina details the relationship and shared services between Molina and its parent company throughout the proposal. For example:

- Organization charts provided in § 5.1 of the proposal very clearly depict corporate services that will be provided to Molina.
- The Molina 2018 Quality Improvement Program Description and Work Plan submitted with the proposal are replete with references to the parent corporation's role in Molina's quality improvement activities.
- In § 5.3 of the proposal, which describes the anticipated roles of Molina's key leaders, there are multiple references to the interactions of those leaders with the supporting departments within Molina's parent company, and key leader résumés provided in § 5.2 of the proposal identify parent company positions held by some of those individuals.
- § 3.1 of the proposal, which provides corporate background, clearly delineates background on both Molina's parent and Molina itself.

Even Molina's Letter of Intent was signed by Terry Bayer, the Chief Operations Officer of Molina's parent.

In short, as Amerigroup's raising of the point makes clear, the supporting role to be provided by Molina's parent company was patently obvious in Molina's proposal. The assertion that the proposal did not give the Division a full understanding of the contractual relationship it was entering into or how the work would be performed is absurd.

The existence and role of Molina's parent company was fully and thoroughly disclosed and detailed to the Division, and Amerigroup's argument that Molina did not "disclose" its parent by virtue of not providing an executed disclosure statement

or Drug Free Workplace Certificate<sup>1</sup> is without merit. Furthermore, RFP § 3.3.4 expressly allows the Division to waive minor variances and irregularities, including the failure of Molina's parent to execute the disclosure and Drug Free Workplace Certificate (assuming its parent company was even required to do so). *See Hill Bros.*, 909 So. 2d at 66 (holding that contractors failure to sign an acknowledgment that contractor agreed to execute contract and included necessary information, while required by agency regulations, was a mere minor irregularity that may be waived). According to the RFP, a "minor irregularity" is defined as a variation of the RFP which does not give one party an advantage or benefit not enjoyed by other parties, or adversely impacts the interest of the Division."<sup>2</sup> The lack of a disclosure or Drug Free Workplace Certificate for Molina's parent did not give Molina an advantage or adversely impact the interest of the Division because the identity of Molina's parent, its relationship with Molina, and the role it would play in assisting Molina with the contract were nevertheless exhaustively disclosed in Molina's proposal.

**f. Molina did not withhold "material information."**

Amerigroup next argues that Molina improperly withheld "material" information from the Division. Specifically, Amerigroup contends that Molina failed to disclose a data breach and failed to disclose changes in Molina's corporate leadership.

As to the data breach, Amerigroup contends that Molina suffered a "major" data breach that exposed "all Molina patient claims records, unsecured, to the entire internet—without requiring any authentication . . . ." Amerigroup also contends that Molina was aware of the data breach prior to its oral presentation, as

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<sup>1</sup> The Drug Free Workplace Certificate attached to Molina's proposal as part of Exhibit 1 was executed by Molina Healthcare of Mississippi. The drug-free-workplace policy under which Molina Healthcare of Mississippi executed this certificate is, in fact, a corporate policy of its parent company, Molina Healthcare, Inc. and applies to all Molina entities relevant to this proposal. This is a clear demonstration that both Molina Healthcare of Mississippi and Molina Healthcare, Inc. adhere to this policy, and are in full compliance with the RFP requirements.

<sup>2</sup> *See also* PS CRB Rule and Regulation § 3-202.12.4.1. Hedglin, Miss. AG Opinion No. 2008-00418, 2008 Miss. AG LEXIS 432, 1988 WL 249928 (noting that the Mississippi Attorney General's Office has "consistently opined that an irregularity in bidding may be waived in the discretion of a governing body, provided that (1) mandatory statutory provisions are not violated; (2) the irregularity does not in any way destroy the competitive character of the bid; (3) the irregularity has no effect as to the amount of the bid; and (4) the irregularity does not give one bidder an advantage or benefit over the other bidders") (internal citations omitted).

well as prior to the submission of Molina's written proposal.

But contrary to Amerigroup's hyperbole, Molina was not notified of this security vulnerability by its security vendor until mid-April—*after* the submission of its proposal on April 7, 2017. The preliminary information available when notified of the possible breach indicated that there was no potential exposure for Molina Medicaid members.

The investigation of the possible breach was finalized in May, and a public notification of the results was released on or about May 25, 2017. The final investigation revealed that a total of *nine* Molina Marketplace—and not Medicaid—members were involved in the breach. And while Molina takes vulnerabilities of any size very, very seriously, the internet reports Amerigroup cites are simply not accurate. Each of the nine individuals involved was notified and given a year of free credit monitoring.

As the issue did not arise during the development of the proposal, and did not include Medicaid members, there was no need for Molina to disclose this information, and Molina did not intentionally, or unintentionally, mislead the Division.

Amerigroup is incorrect that Molina underwent "significant changes in its corporate leadership." True, Molina's parent company replaced its CEO and CFO (Dr. J. Mario Molina and John C. Molina, respectively) with Joseph White. But Dr. Molina, John Molina, and Joseph White are not employed by Molina itself. Thus, these individuals are not "key" employees of Molina's *Mississippi operations*.

Regardless, this change was announced on May 2, 2017, after the submission of Molina's written proposal, which was due April 7, 2017. And Joseph White was present at the oral presentation, explained his role with Molina's parent company, any potential involvement he may have with Molina and its Mississippi operations, and his dedication to the Division. Joseph White was ready, willing, and able to answer any questions of the Division regarding the change in leadership of Molina's parent. Dr. Martha Bernadett, the daughter of Molina's founder and sibling to the Molina brothers, who still remains an employee of Molina's parent, was also present at the oral presentation and further explained the changed leadership structure of Molina's parent company.

Accordingly, Molina did not withhold any material information from the Division regarding a change in corporate leadership. The change in leadership was with Molina's parent company and was fully disclosed and explained to the Division.

**2. The Division did not fail to follow the RFP's evaluation procedure.**

Amerigroup next argues that the Division failed to follow the RFP's evaluation procedure and, therefore, revocation of the award is also mandated. According to Amerigroup, § 6 of the RFP provided that an evaluation committee comprised of the Division staff would be established to evaluate the merits of each proposal. But Amerigroup alleges that the proposals were not actually scored exclusively by the evaluation committee and, instead, were "scored by various differing groups composed of different individuals and different numbers of individuals, some of whom were members of the Evaluation Committee" and some who were not. Moreover, according to Amerigroup, the proposals were scored by different combinations of evaluators. So, Amerigroup contends, the actual evaluation process "bore no resemblance" to the process detailed in § 6 of the RFP, and the different combinations of evaluators failed to provide for a fair evaluation, considering the differing possible subjective perspectives of the evaluators.

In its protest, Amerigroup cites certain authorities standing for the proposition that variances in the evaluation procedure set forth in an RFP *may* warrant revocation of a proposal. For example, Amerigroup cites *Caddell Constr. Co. v. U.S.*, in which the United States Court of Federal Claims enjoined a competitive bidding procedure conducted by the United States Department of State due to the Department's "arbitrary and capricious" evaluation procedure. 111 Fed. Cl. 49, 53 (Ct. Cl. 2013). Amerigroup's reliance on these cases is misplaced. These cases (which are not interpreting or applying Mississippi law) are inapposite here because no case cited holds that *every* variance from the evaluation process set forth in an RFP *requires* revocation of an award. Again, as noted above, there is no rule or regulation specifically mandating revocation of a proposal due to the Division's variance from the RFP.

What is more, the very cases Amerigroup cites hold that a protesting party must still demonstrate "competitive injury or . . . prejudice" by the error alleged. *Id.* at 72 (internal citations omitted). Absent such injury and prejudice, a protesting party lacks standing to attack an award. *Id.* And, in order to establish standing, the protesting party "must show that there was a 'substantial chance' it would have received the contract award, but for the alleged procurement error." *Id.* (internal citations omitted). Here, under Amerigroup's own cases, Amerigroup failed to establish or even allege such standing in its protest on this point. Indeed, Amerigroup does not even allege that, had the evaluations been undertaken entirely by the evaluation committee, Amerigroup would have had a substantially better

chance at receiving the contract award. Instead, Amerigroup simply argues that the alleged variance from the RFP *alone* constitutes grounds to revoke the award. This is like bringing a lawsuit for damages without even alleging—much less proving—any injury caused by the defendant's conduct. Amerigroup's argument about the Division's conduct here is an empty recitation of words.

Even if Amerigroup had alleged actual injury, there is no indication that the Division varied from the evaluation procedure set forth in the RFP. Amerigroup hurled these accusations without benefit of any evidence that the individuals scoring the proposals were not members of the evaluation committee. Moreover, contrary to Amerigroup's assertion, the RFP does not provide that the evaluation committee—*alone*—will evaluate and score the proposals. Instead, § 6 of the RFP provides for various levels of evaluation by the Division, including review by the designee for the Office of Procurement, by the Office of Procurement itself, and by the Oversight Committee, all of which may account for the various individuals scoring the proposals that Amerigroup complains of. Moreover, the RFP did not require or mandate that every proposal be scored by the same exact individuals. Thus, even assuming the proposals were scored by various combinations of individuals, this procedure does not contradict the RFP.

**B. The Division did not err in computing scores.**

Amerigroup next alleges that the Division erred in computing scores. Specifically, Amerigroup contends that the Division erroneously used a rounding methodology that contradicted the RFP and resulted in scores being greater than those scores would have been had the total final proposal score been the sum of the actual scores earned for each proposal section.

Not only is the RFP silent as to whether a rounding methodology is permissible (and therefore the use of such a procedure does not contradict the RFP), but Molina would still have been awarded the contract based on Amerigroup's "correct" methodology. So, in an apparent attempt to avoid this result, Amerigroup continues its argument by attacking the Division's judgment in the *awarding* of scores. While Amerigroup is correct that the *computation* of scores is a valid ground for protesting an award, the RFP prohibits vendors from attacking the subjective *awarding* of scores, which goes directly to the professional judgment of the evaluation committee and which judgment vendors are specifically barred from protesting under § 3.8.1 of the RFP ("Disallowed grounds include: . . . The professional judgment of the Evaluation Committee").

**C. There is no evidence of bias, discrimination, and/or conflict of interest of the evaluators.**

Last, Amerigroup argues that the Division discriminated against Amerigroup and was biased toward “incumbent” vendors. While Molina is not an incumbent vendor, this final argument is still meritless. Initially, Amerigroup fails to even articulate how favoring the experience of incumbent vendors constituted discrimination or a conflict of interest on behalf of the evaluators. Molina asserts that this allegation by Amerigroup is more appropriately categorized as the Division’s assessment of its own needs regarding the RFP, which is not a permissible ground upon which to base a protest.

And, as to bias, a protesting party is required to “make a threshold showing of either a motivation for the Government employee in question to have acted in bad faith or conduct that is hard to explain absent bad faith . . . .” *Beta Analytics, Int’l, Inc. v. U.S.*, 61 Fed. Cl. 223, 226 (2004); *DataMill, Inc. v. U.S.*, 91 Fed. Cl. 722, 730-31 (2010). But here, Amerigroup failed to even allege bad faith against the Division. Instead, Amerigroup attacks the alleged preference of certain evaluators to the experience of the incumbent vendors. This, however, constitutes an attack on the professional judgment of the evaluation committee, which judgment vendors are barred from protesting. RFP § 3.8.1. Moreover, federal authority (upon which Amerigroup principally relies) provides that government officials may favorably consider an incumbent’s past experience and performance and that such consideration does not constitute bias. *Galen Med. Assocs. v. U.S.*, 369 F.3d 1324, 1336 (Fed. Cir. 2004).

**Conclusion**

Amerigroup has not demonstrated that the Division was biased or discriminated against Amerigroup, and Amerigroup has also failed to otherwise demonstrate that the Division, Molina, or any other successful offeror failed to comply with the RFP. Instead, Amerigroup attacks the Division without any evidence of bad faith and attacks Molina on wholly meritless grounds. Accordingly, Molina requests that the Division promptly reject the protest to ensure the uninterrupted and continued success of the MississippiCAN program and to otherwise protect the interests of the State and its citizens. See RFP § 3.8.3.

**Reservation of Rights**

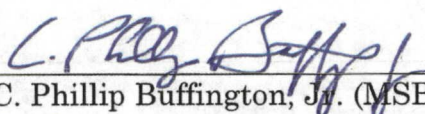
Molina reserves the right to supplement or amend this response if other bases for responding to Amerigroup’s protest become apparent through further review of the administrative record, if Amerigroup supplements or amends its

David J. Dzielak, Ph.D.  
July 18, 2017  
Page 13

protest, or otherwise.

Respectfully submitted.

**Molina Healthcare of Mississippi, Inc.**

By:   
C. Phillip Buffington, Jr. (MSB No. 7035)  
Gordon U. Sanford, III (MSB No. 99233)  
Timothy J. Anzenberger (MSB No. 103854)  
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**AFFIDAVIT OF GWEN WILLIAMS**

---

State of: Alabama

County of: Chilton

Personally came and appeared before me, the undersigned authority in and for the aforesaid jurisdiction, the within named Gwen Williams, who after being duly sworn by me stated on oath the following:

1. My name is Gwen Williams, and I am Vice-President of Business Development at Molina Medicaid Solutions ("MMS") and based in Canton, Alabama. MMS is a subsidiary of Molina Healthcare, Inc. and provides Medicaid management information systems services to state Medicaid agencies. MMS is not a managed care plan, and is in a separate line of business from Molina's managed care organization subsidiaries such as Molina Healthcare of Mississippi, Inc.

2. I have worked in the Medicaid and healthcare industry for over 30 years, including as Commissioner of the Alabama Medicaid Agency, a cabinet-level position equivalent to that of David J. Dzielak, Ph.D., Executive Director of the Mississippi Division of Medicaid.

3. In the course of my long career in Medicaid, including as a director of a state-Medicaid program, I have become acquainted with Dr. Dzielak and consider him a close friend and colleague. I routinely reach out to Dr. Dzielak when traveling from Alabama to Baton Rouge, simply to see if he's available for lunch or dinner. We also meet to catch up at the National Association of Medicaid Directors each November.

4. For example, we planned to meet for dinner at the Des Moines Medicaid Enterprise Systems Conference in 2015, but ultimately were not able to do so. We did, however, meet briefly in the hallway at the convention center, along with several of

Dr. Dzielak's staff. Molina did send invitations to Dr. Dzielak to attend our conference social event and conference sessions (presented by or including Molina), but these were broadcast emails sent to all state attendees registered for the conference—they were not targeted to Dr. Dzielak.

5. In January of 2015, I learned of the possibility that a Medicaid Director position might become available in Washington, D.C. As I knew Dr. Dzielak's newly-widowed mother resided in Richmond, Virginia, I passed this information along to Dr. Dzielak, believing that he might be interested in the position.

6. Specifically, I emailed Dr. Dzielak on January 14, 2015, letting him know that I had some information that might interest him and asked him for a phone call:

Hi, David. Long time no see.

I'd really appreciate a quick chat when you have a few minutes. I have something to share that may be of interest to you.

7. Dr. Dzielak responded by calling me, but he ultimately was not interested in that potential opportunity. At no time did we discuss any employment with Molina. Dr. Dzielak emailed me on January 14, 2015 to advise that he was not going to pursue the Washington D.C., matter:

Gwen:

I decided not to send in my information. The compensation is going to be an issue. As such, if I really don't want the job then the fact I applied may get out and that would create an issue for me in my current position. Thanks for the heads up though, I really appreciate it and your support.

David

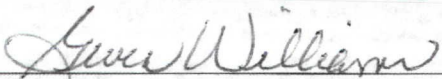
8. I responded by email the next day on January 15, 2015, noting that I understood, and that if I became aware of similar opportunities, I would let him know:

I fully understand and think that's a wise decision. I'll keep my eyes and ears open. You never know what will turn up in the future.

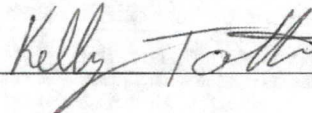
9. This communication took place in January of 2015 and obviously had nothing to do with the Request for Proposals related to the Mississippi Coordinate Access Network that was released in February of 2017. In that regard, other than introducing Dr. Dzielak to David Boim, who is a main point of contact for Molina's managed care business development, and seeking Dr. Dzielak's feedback on prospective lobbyists in Mississippi, I have had no involvement in any of the pre-sale activities with Mississippi's managedcare procurement.

10. Moreover, Dr. Dzielak and I have never discussed job opportunities at Molina Healthcare, Inc. or any of its related companies at any time, and the communications in January 2015 amount to nothing more than friends and colleagues both directors (current and former) of state Medicaid programs—sharing information about a possible job opening as a director for another state.

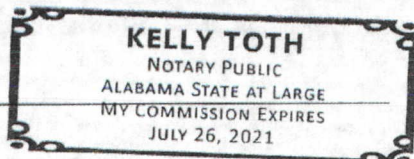
This the 21<sup>st</sup> day of August, 2017.

  
GWEN WILLIAMS

SWORN TO AND SUBSCRIBED before me on this the 21<sup>st</sup> day of August, 2017.

  
Notary Public

My Commission Expires:



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**AFFIDAVIT OF DAVID BOIM**

---

State of: North Carolina  
County of: Wake

Personally came and appeared before me, the undersigned authority in and for the aforesaid jurisdiction, the within named David Boim, who after being duly sworn by me stated on oath the following:

1. My name is David Boim, and I am Associate Vice President of Business Development at Molina Healthcare, Inc. ("Molina") and based in Midlothian, Virginia.
2. Molina and its related companies contract with state governments to operate managed-care plans for state-Medicaid programs.
3. In my role at Molina, I am responsible for assessing potential opportunities for Molina to contract with new states when those State's Medicaid divisions intend to procure services from managed-care plans, like Molina.
4. In my role at Molina, I often reach out to—or am otherwise in touch with—public healthcare officials in various states as to what Molina might expect when doing business in those particular states, as is common practice throughout the Medicaid and healthcare industry.
5. I first became acquainted with David J. Dzielak, Ph.D., Executive Director of the Mississippi Division of Medicaid, in 2015. At the time, Dr. Dzielak was considering the possibility of an initiative for Mississippi individuals dually-eligible for Medicare and Medicaid, and was gathering information from various sources as part of his research. In that regard, I arranged a power-point presentation with our senior leaders in our managed long term services and support division to present to Dr. Dzielak by video conference. Molina is the nation's largest provider of Medicare-Medicaid Dual Eligibility Demonstration health plans. The presentation

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identified successes and challenges of our dual-eligibility programs. Dr. Dzielak's elderly mother lives in the Richmond, Virginia area, so he arranged to see this presentation when he would already be in town to visit his mother. The Division of Medicaid decided not to pursue a dual-eligibility program for Mississippi, and we have not had substantive discussion regarding the topic since the presentation in Richmond, Virginia. Dual-eligibility programs are not a part of the Mississippi Coordinated Access Network ("MississippiCAN"), so this presentation had nothing to do with MississippiCAN. In my experience, it is common for state Medicaid agencies to seek, and for health plans such as Molina to provide, information that will assist the agencies in evaluating and planning new programs, especially for vulnerable and/or complex populations.

6. As for the MississippiCAN program itself, Mississippi implemented that program in 2011. At that time, and until June of 2017, only two vendors were serving as managed-care providers in Mississippi—UnitedHealthcare of Mississippi, Inc. ("UnitedHealthcare") and Magnolia Health.

7. Later, in the spring of 2012, the Mississippi Legislature authorized the Mississippi Division of Medicaid to expand the MississippiCAN program to enroll up to 45% of Medicaid beneficiaries. And in 2014 and 2015, the Legislature further authorized the Division to expand the program to cover all Medicaid services. In December of 2015, the program was again expanded to cover residents of psychiatric-residential-treatment facilities.

8. The contracts for UnitedHealthcare and Magnolia Health were set to expire in June of 2017. So it was no surprise—and a matter of public record—that the Division would reissue a request for proposals for potential managed-care providers. And given the vast expansion of the MississippiCAN program by the Legislature, it was also no surprise—and a

matter of common knowledge—that the Division would seek to procure contracts with more than two managed-care providers.

9. With the obvious, looming possibility to provide services to Mississippi in its MississippiCAN program, I reached out to Dr. Dzielak to share information as to how Molina could best serve Mississippi if awarded a contract, which is standard practice for managed-care providers seeking to expand into new states.

10. In doing so, I shared quality and performance information from Molina's Ohio program, which was published publicly by the State of Ohio. I also sent Dr. Dzielak a nationally published report on a study of how hospital-owned health plans typically perform.

11. Relatedly, if Molina were to win a contract, Molina would need to find competent candidates for leadership positions in Molina's Mississippi operations. So, I also asked whether Dr. Dzielak would be able to provide the names of potential candidates in the Mississippi community, in the event Molina were to win a contract. It was expected that the Division would require approval of all senior positions for managed-care plans in the MississippiCAN program, so Molina obviously wanted to identify candidates that the Division would eventually approve of, assuming Molina were to win a contract. I emailed Dr. Dzielak on August 4, 2016 with the salary, job title, and related information for such leadership positions, so that Dr. Dzielak could recommend candidates:

Hello Dr. Dzielak,

So Great to see you today[.] I Really appreciated catching up with you.

Couple of follow ups:

- 1) The Richmond moving company is called Moxie Movers. They tend to book up fast. [www.moxiemovers.com](http://www.moxiemovers.com)

Call Jesse at 804-928-1111. Both me and my wife loved the job they do at a fair price.

- 2) The Plan President Position salary range is \$186K to \$345K (salary only) depending on qualification factors. Short and long term benefits would be in addition. We would also be looking for a COO which would be the President's operations leader.

I will follow up on the Value Based discussion tomorrow.

Warm Regards,

Dave

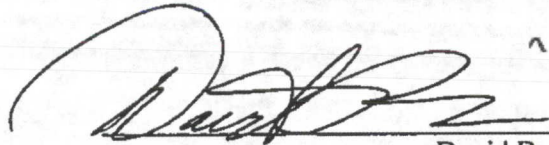
12. That email was not—and was never intended to be—a job offer to Dr. Dzielak, and Molina never suggested that Dr. Dzielak consider being a candidate. Indeed, I have never had hiring authority at Molina, and none of my communications (at any time) with Dr. Dzielak were—or were intended to be—job offers to Dr. Dzielak for any current or future position with Molina, any of Molina's related companies, or any of Molina or its related companies' Mississippi operations. Instead, as is common in the industry, I was simply asking Dr. Dzielak for the names of possible candidates should Molina eventually secure a contract.

13. Additionally, the email above discusses the details of a moving company that I recommend to Dr. Dzielak: I provided this information to him for his elderly mother, who was moving from her house to an apartment in Virginia. This had nothing to do with any kind of job offer for Dr. Dzielak.

*- Remainder of page intentionally left blank -*

14. Again, Molina never offered any type of employment to Dr. Dzielak at any time, and any assertion to the contrary is a blatant falsehood.

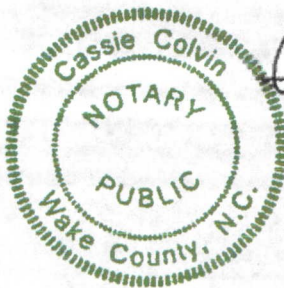
This the 23th day of August, 2017.


  
David Boim

SWORN TO AND SUBSCRIBED before me on this the 23rd day of August, 2017.

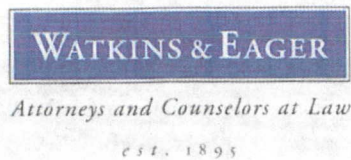
My Commission Expires:

11/21/2021



  
Notary Public

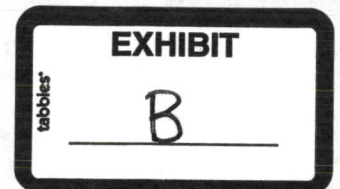
Mailing Address:  
P.O. Box 650  
Jackson, Mississippi 39205  
Telephone: (601) 965-1900  
Facsimile: (601) 965-1901



TIMOTHY L. SENSING  
DIRECT DIAL: (601) 965-1813  
E-MAIL: tsensing@watkinseager.com

July 18, 2017

David J. Dzielak, Ph.D  
Executive Director  
Division of Medicaid, Office of the Governor  
550 High Street, Suite 1000  
Jackson, Mississippi 39201.



Dear Dr. Dzielak:

Please allow this to serve as Magnolia Health Plan's ("Magnolia") response to Amerigroup Mississippi, Inc.'s ("Amerigroup") protest of the Division of Medicaid's ("DOM") award of the Mississippi Coordinated Access Network contract to Magnolia, Molina Healthcare of Mississippi, Inc., and United Healthcare of Mississippi, Inc. For the reasons set forth below, Amerigroup's protest, generally, and specifically as related to Magnolia, is without merit and that the contract awards should be upheld.

While we do not attempt to address every assertion or allegation made in Amerigroup's protest, we do think it necessary to respond to many of them to demonstrate how Amerigroup's protest is supported by false statements and speculation.

**1. Allegation: Magnolia has included sanctioned, excluded providers in its network provider list despite representing that it properly excludes such providers**

As a general matter, Amerigroup states that "the RFP identified a number of flaws that *would* result in the rejection of a proposal . . ." (emphasis added) However, section 3.3.5 of the RFP plainly states that DOM maintains discretion in determining whether proposals should be rejected and whether proposals are responsive. Specifically, section 3.3.5 states that a proposal "may be" rejected for failure to conform to the rules or requirements of the RFP. The same section further states that a proposal is not responsive if it fails to conform in all "material" respects to the RFP. Section 3.3.5 gives DOM discretion in determining whether proposals materially conform to RFP requirements and, therefore, should be accepted. Amerigroup's insistence that section 3.3.5 is compulsory is incorrect.

Amerigroup's particular assertion that Magnolia currently contracts with 9 providers that have been excluded from the state Medicaid program is also incorrect. **Magnolia does not have contracts with or process claims from providers that have been excluded from the state Medicaid program.** Amerigroup is correct that Magnolia included a list of contracted providers in its proposal. The list is captured in a 428 page spreadsheet that includes more than 30,000

lines/entries<sup>1</sup>. The list does include 8 providers that have been excluded as they were inadvertently included in Magnolia's list due to a query error when the provider list was generated. However, contrary to Amerigroup's speculative assertion, all 8 of the excluded providers had been terminated from Magnolia's network (and all payments had stopped) when Magnolia's proposal was submitted. The ninth provider is not set to be sanctioned until July 20, 2017. If the provider is sanctioned or excluded, he will immediately be terminated from Magnolia's network.

Magnolia's inadvertent inclusion of 8 excluded providers among 30,000 line items is a harmless clerical error and nothing more. It certainly does not indicate that Magnolia has been processing claims from and making payments to excluded providers. Magnolia's clerical error also does not call into question its ability to verify the status of providers. Again, all excluded providers have been terminated from Magnolia's network and Magnolia is not processing claims or rendering payment to them. Further, Magnolia's clerical error has no bearing on its responsibility as a contractor or the responsiveness of its proposal. Nothing in Section 3-401 of the *Personal Service Contract Review Board Rules and Regulations* suggests that a minor clerical error among thousands of pages of a proposal should render a bidding vendor non-responsible. Similarly, a clerical error also does not cause Magnolia's proposal to materially deviate from RFP requirements.

## **2. Allegation: Magnolia failed to properly disclose terminations**

Amerigroup next claims that Magnolia intentionally misled DOM by failing to disclose information related to other Centene subsidiaries. Yet a cursory review of the applicable RFP question demonstrates that Magnolia fully and accurately responded. Section 5.2.9 delineated several pieces of information that the Transmittal Letter should include. Among those was "[a] statement identifying any prior project where the Offeror was terminated prior to the end of the Contract period." Magnolia responded that it had not been terminated from any prior contract prior to the end of the contract period. Additionally, although not required to do so, Magnolia volunteered that Centene also had not been terminated from a prior contract before the end of the contract period. Magnolia's statement is fully responsive to the question asked and is entirely truthful. The question did not request information regarding *other Centene subsidiaries*. Rather, it clearly related to the Offeror only. Moreover, if DOM required additional information in this regard, it certainly could have requested it. Amerigroup's argument is misplaced.

## **3. Allegation: Magnolia failed to properly disclose sanctions**

Section 2.1.1 of the RFP states that Offerors that have been sanctioned by a state or federal government within the last 10 years are ineligible to submit proposals. Magnolia responded that it had not been sanctioned by a state or federal government. Again, although not required to do so, Magnolia also stated that its affiliate health plans have been sanctioned. Amerigroup's complaint is that Magnolia did not provide sufficient information regarding the sanctions imposed on other affiliate plans. But the requirement in 2.1.1 clearly references the actual Offeror submitting the proposal. In fact, if "Offeror" were to be interpreted as Amerigroup suggests, then Amerigroup would have been ineligible to submit a proposal because

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<sup>1</sup> In the list Magnolia provided, the providers are grouped by county. Because many doctors serve multiple counties, they are listed multiple times. Therefore, the list does not contain more than 30,000 individual doctors. However, the point remains that the spreadsheet is voluminous.

its affiliates have apparently been previously sanctioned. Magnolia's response to this inquiry was responsive to the question and fully accurate.

4. *Allegation: Magnolia issued press releases that are prohibited*

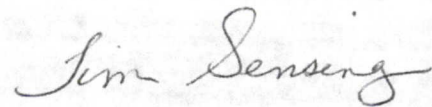
Amerigroup's assumption that Magnolia issued a prohibited press release is wrong. DOM gave Magnolia permission for and approved Magnolia's press release in writing.

5. *Allegation: The Evaluation Committee failed to apply consistent scoring guidelines to all bidders*

While Magnolia disagrees with nearly all of the assertions made by Amerigroup regarding proposal scoring, even if all of Amerigroup's contentions were correct, Magnolia's position as the top scorer would not change. Specifically, Amerigroup contends that Magnolia's score should be reduced by 1.6460 to 65.934. But that score would *still* rank Magnolia as the top-ranked bidder.

In summary, for the reasons set forth above, Amerigroup's protest is unfounded both generally and specifically as it relates to Magnolia. Consequently, Amerigroup's protest should be denied and the contract awards should be upheld.

Sincerely,



Tim Sensing

cc: Aaron Sisk, Plan President & CEO  
Jason Dees, Regional Vice President

Timothy J. Sterling, Esq.  
tsterling@cctb.com

August 23, 2017

**VIA EMAIL AND U.S. MAIL**

Dr. David J. Dzielak, Ph.D.  
Executive Director  
Mississippi Division of Medicaid  
550 High Street, Suite 1000  
Jackson, Mississippi 39201-1399  
David.dzielak@medicaid.ms.gov

Re: Response to Amerigroup Mississippi, Inc.'s August 18, 2017  
Supplemental/Amended Protest of Award; RFP #20170203

Dear Dr. Dzielak:

UnitedHealthcare of Mississippi, Inc., d/b/a UnitedHealthcare Community Plan of Mississippi ("UnitedHealthcare"), submits this brief response to Amerigroup's recent supplemental/amended protest, which was submitted on August 18, 2017.

**A.) Amerigroup Abandoned Its Previous Claim that UnitedHealthcare Violated the Page Limit Requirements.**

On page 9, subsection B. of Amerigroup's original protest, Amerigroup complained that UnitedHealthcare violated the page limitations set by DOM and, therefore, had a competitive advantage over the other offerors.

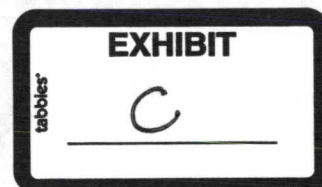
As demonstrated in its supplemental/amended protest, Amerigroup decided to abandon its meritless claim. Amerigroup abandoned its claim because, as explained in UnitedHealthcare's original response, UnitedHealthcare complied with the rules.

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**B.) Amerigroup Abandoned Its Previous Claim that UnitedHealthcare Has Not Been Sanctioned.**

On page 14, subsection E. of Amerigroup's original protest, Amerigroup briefly complained that UnitedHealthcare provided an improper response to DOM's inquiry into offerors' sanctions.

With its supplemental/amended protest, Amerigroup abandoned this meritless claim, too. It abandoned its claim because, unlike Amerigroup, UnitedHealthcare has operated in the State of Mississippi for years, and UnitedHealthcare can proudly and truthfully say that it has not been sanctioned during that time period.

**C.) UnitedHealthcare's Score for Responses Relating to Adequacy of Subcontractors.**

On page 33 of its supplemental/amended protest, Amerigroup claimed, as it did on pages 23 through 24 in its original protest, that UnitedHealthcare should have received a "2" instead of a "3" for its response to the following question:

If the Offeror proposes to use Subcontractors or subsidiaries of the corporate entity to provide any of the services in this RFP, the Offeror's proposal provided what level of adequacy in providing a listing of those Subcontractors with their experience in providing care to Medicaid Members and a brief description of the services they will provide?

Like its original protest, Amerigroup's supplemental/amended protest failed to explain how UnitedHealthcare "clearly" failed to disclose "certain affiliated subcontractors." Instead, Amerigroup presented the weak argument that UnitedHealthcare should have been scored a "2" of 5 because UnitedHealthcare discussed how it would refer to resources available through its parent company but did not list its parent company as a potential subcontractor. Yet, Amerigroup failed to show that, objectively, the Division was required to deduct a point when a bidder did not "list" its parent company as a potential subcontractor. Relatedly, Amerigroup failed to show that the Division deducted any point from any bidder's score for a "failure" to list its parent company as a potential subcontractor. Put differently, there is no indication that the Division evaluated the issue of not characterizing parent companies as subcontractors differently for UnitedHealthcare than it did for any other offeror.

UnitedHealthcare continues to stand by its response. The response deserved no less than a score of "3."

**D.) UnitedHealthcare's Score for Response Relating to Adequacy in Organizational Charts.**

On page 33 of its supplemental/amended protest, Amerigroup continued the claim from page 24 of its original protest that UnitedHealthcare unfairly received a score of "4" for its responses relating to the adequacy of its organizational charts because of UnitedHealthcare's status as an incumbent.

As stated in UnitedHealthcare's original response, while the Division did comment that UnitedHealthcare is an incumbent in the Comments section, the Division's primary comments were that UnitedHealthcare provided "more than adequate details within organizational charts detailing employees, roles, and employment status for each project phase" and "value add that operational staff available at day 1 of implementation." Clearly, the Division did not award points solely because UnitedHealthcare was an incumbent.

Yet, in its supplemental/amended protest, Amerigroup added a new meritless argument. On pages 33 through 34, Amerigroup listed certain persons and positions provided in UnitedHealthcare's proposal and argued that UnitedHealthcare "should not have received points based upon the inclusion of non-dedicated corporate staff." But Amerigroup's argument is purely speculative. More importantly, Amerigroup did not and could not demonstrate that (i) there is a contractual requirement that all persons involved be a health plan employee or even located in Mississippi; (ii) bidders could not include "non-dedicated corporate staff;" and (iii) the Division was required to deduct potential points for the inclusion of any such persons in a bidder's organizational chart.

**E.) UnitedHealthcare's Score for Response Relating to the Administrative Office.**

Despite UnitedHealthcare rebutting Amerigroup's argument regarding the four points awarded to UnitedHealthcare relating to its administrative office, Amerigroup presented the exact same argument in its supplemental/amended protest and failed to refute, or even address, UnitedHealthcare's response. Compare pages 35 – 36 of Amerigroup's supplemental/amended protest and pages 25 - 26 of Amerigroup's original protest.

In both versions of its protests, Amerigroup complained that UnitedHealthcare unfairly received a score of "4" for its response to the following question:

The Offeror's proposal provided what level of adequacy related describing the entity's plans to establish an Administrative Office within fifteen (15) miles of Jackson, Mississippi as required by the RFP?

Note to Evaluator: Include factors in your scoring methodology related to:

- Describe the office within that space that the entity will make available to Division staff.

Amerigroup's sole argument is that UnitedHealthcare unfairly received a higher score than Amerigroup because UnitedHealthcare is an incumbent. Amerigroup is speculating and plain wrong. As UnitedHealthcare previously argued, the fact is: UnitedHealthcare has established an administrative office in Jackson, Mississippi while Amerigroup has not. There is nothing preventing a non-incumbent from establishing such an office. The notion that only an incumbent can score higher on this question is baseless. Certainly, Amerigroup would agree that had UnitedHealthcare responded that it plans to relocate its Administrative Office to another state, DOM would not have given UnitedHealthcare a better score even though its status as an incumbent would not have changed.

**F.) UnitedHealthcare's Score for Its Response Regarding NCQA Accreditation Status.**

Here again Amerigroup has simply copied and pasted its weak argument from its original protest into its supplemental/amended protest, without regard or response to UnitedHealthcare's rebuttal of Amerigroup's argument. *Compare* page 36 of Amerigroup's supplemental/amended protest and pages 25 - 26 of Amerigroup's original protest.

In both versions of its protests, Amerigroup complained that UnitedHealthcare received a higher score related to NCQA accreditation than Amerigroup because UnitedHealthcare is an incumbent. As stated in UnitedHealthcare's original response, Amerigroup is wrong, and its argument is speculative. As provided in the Division's comments, UnitedHealthcare was awarded its score because it has already obtained accreditation from the NCQA, not because it is an incumbent. There is no guarantee of NCQA accreditation. Had UnitedHealthcare failed to obtain accreditation during the expiring contract period but provided a response similar to Amerigroup, one would expect that UnitedHealthcare would have received a lower score than Amerigroup received. It is

not incumbency; it is UnitedHealthcare's virtual guarantee of accreditation that merited the higher score.

**G.) UnitedHealthcare's Score for Its Response Describing its MMIS.**

Yet again, Amerigroup copied and pasted its original argument with no supplemental rebuttal to UnitedHealthcare's response. *Compare* page 36 of Amerigroup's supplemental/amended protest and pages 25 - 26 of Amerigroup's original protest.

Amerigroup's pasted argument was that UnitedHealthcare received a higher score than Amerigroup with respect to its MMIS because UnitedHealthcare is an incumbent. As previously stated, Amerigroup is wrong, and its argument is speculative at best. As provided in the Division's comments, UnitedHealthcare received a "4" because it is guaranteed that the MMIS described by UnitedHealthcare will be operational from day 1 of the program. There is nothing "unfair" about giving UnitedHealthcare an extra point for this added value.

**H.) UnitedHealthcare's Score for Its Response to MMIS Modifications.**

This is just another example of Amerigroup's failure to rebut UnitedHealthcare's argument and instead simply copying and pasting its original protest's argument into the supplemental/amended protest. *Compare* page 36 of Amerigroup's supplemental/amended protest and pages 25 - 26 of Amerigroup's original protest.

For the sake of brevity, UnitedHealthcare simply refers to and incorporates its response to (G.).

**I.) UnitedHealthcare's Score for Its Response Identifying Person-Weeks of Effort for Tasks and Subtasks.**

One more time, Amerigroup simply copied and pasted its original protest argument and ignored UnitedHealthcare's irrefutable response. *Compare* pages 40 - 41 of Amerigroup's supplemental/amended protest and pages 29 - 30 of Amerigroup's original protest.

In both protests, Amerigroup complained that UnitedHealthcare unfairly received a score of "3" for its response to the following question:

The Offeror's proposal demonstrated what level of adequacy related to identifying Person-weeks of effort for each task or subtask, and showed the Offeror's personnel and the Division's personnel efforts separately?

Amerigroup complained that UnitedHealthcare failed to identify "persons-weeks of effort for each task or subtask."

As stated in UnitedHealthcare's original response, Amerigroup is wrong because the responsive information that Amerigroup claimed to be missing is undeniably set forth in UnitedHealthcare's work plan.

**J.) Amerigroup's Criticism of Rounding Is the Epitome of a Complaint Over Subjectivity.**

On pages 26 through 27, Amerigroup claimed that the Division failed to comport with the "methodology" supposedly outlined in the RFP, through its purported decision to round to the nearest tenth, as opposed to the nearest hundredth.

Amerigroup failed to point to any specific requirement that mandated rounding to the nearest hundredth. Moreover, Amerigroup failed to show the Division was somehow precluded from rounding the way it did, and it failed to show that the rounding was applied differently for any bidder. While one can applaud Amerigroup's analysis and desire to find any and all points possible, one cannot deny that the criticism is the epitome of a complaint over subjectivity.

**K.) Amerigroup's Supplemental/Amended Protest Demonstrates the Subjectivity Involved.**

On page 29 of its supplemental/amended protest, Amerigroup admitted that it "understands that challenges to the "subjective" scoring discretion of evaluators is not a proper basis to protest contract awards." Amerigroup, then, spent the remainder of its protest trying to convince the Division that Amerigroup's complaints relate to objective rather than subjective matters. However, through its supplemental/amended protest, Amerigroup demonstrates the subjectivity involved.

As an example, Amerigroup quietly "awarded" itself more points in its supplemental/amended protest.

- In its original protest, Amerigroup would have awarded itself an additional .08960 points on top of the Division's score. See page 30 of Amerigroup's original protest.
- In its supplemental/amended protest, Amerigroup argued that it deserved an additional 1.2280 points. See page 41 of Amerigroup's supplemental/amended protest.
- After its first examination of the scoring, Amerigroup had no complaints with regard to the scoring it received from the Division for Sections I and V.
- After its second examination, Amerigroup argued that the Division unfairly scored multiple questions in Sections I and V, resulting in an unfair .48 point reduction in its total score.

The fact that Amerigroup's opinions relating to its own scores have changed is a clear sign that its complaints are subjective in nature.

For another example, UnitedHealthcare would like to direct the Division to page 34 where Amerigroup discusses question 7 of Section 3. After repeatedly arguing that the Division should reduce Molina's scores for multiple questions, Amerigroup flipped its script. Rather than asking for a reduction for the same kind of "misrepresentations" made by Molina in responding to other questions, Amerigroup accepts the Division's score of "3" of 5 for Molina on question 7. Then, Amerigroup argues that Amerigroup deserved the same "3" of 5 score because its response was as good (or better) than Molina's. This hypocrisy is yet another example of the subjective nature of the scoring with which Amerigroup takes issue.<sup>1</sup>

### **CONCLUSION**

In its original protest, Amerigroup argued that, if DOM were to agree with each and every scoring criticism relating to both UnitedHealthcare and Amerigroup, then Amerigroup would have .15 points more than UnitedHealthcare.

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<sup>1</sup> Recognizing that the Division knows exactly why it awarded the points it did to Amerigroup, UnitedHealthcare's response does not address Amerigroup's individual requests for additional points to be added to its own score. Please know that the absence of a response is not an admission and/or concession by UnitedHealthcare. Indeed, UnitedHealthcare opposes any increase requested by Amerigroup.

Dr. David J. Dzielak, Ph.D.  
August 23, 2017  
Page 8

UnitedHealthcare, in its original response, demonstrated that none of Amerigroup's criticisms of UnitedHealthcare had any merit; therefore, UnitedHealthcare's score should remain as is.

Then, Amerigroup, in its supplemental/amended protest (i) completely abandoned some of its criticisms of UnitedHealthcare; (ii) copied and pasted its other criticisms with no rebuttals; and (iii) miraculously found more scoring errors relating to Amerigroup's own scores. In short, Amerigroup's supplemental/amended protest made it abundantly clear that Amerigroup's protest is baseless and impermissibly attacks the subjective decisions of the Division.

For all of the reasons provided above and all those previously stated in UnitedHealthcare's response to Amerigroup's original protest, DOM should deny Amerigroup's protest and confirm its decision to award the contract to UnitedHealthcare.

Sincerely yours,

UNITEDHEALTHCARE OF  
MISSISSIPPI, INC. D/B/A  
UNITEDHEALTHCARE COMMUNITY  
PLAN OF MISSISSIPPI

BY:

Charles G. Copeland  
Timothy J. Sterling

TJS/cah

Cc: Katie Gilchrist & Everett White (Via email and U. S. Mail)  
Tara Clark (Via email and U. S. Mail)  
Paige Biglane (Via email and U. S. Mail)

Timothy J. Sterling, Esq.  
tsterling@cctb.vom

July 18, 2017

**VIA EMAIL AND U.S. MAIL**

Dr. David J. Dzielak, Ph.D.  
Executive Director  
Mississippi Division of Medicaid  
550 High Street, Suite 1000  
Jackson, Mississippi 39201-1399  
David.dzielak@medicaid.ms.gov

Re: Response to Amerigroup Mississippi, Inc.'s Protest of Award; RFP  
#20170203

Dear. Dr. Dzielak:

UnitedHealthcare of Mississippi, Inc., d/b/a UnitedHealthcare Community Plan of Mississippi ("UnitedHealthcare"), submits this brief response to the alleged violations and/or score inflations purportedly benefiting UnitedHealthcare as listed in the protest lodged by Amerigroup Mississippi, Inc. ("Amerigroup") relating to RFP #20170203.

**A.) UnitedHealthcare Did Not Violate the Page Limit Requirements.**

On page 9, subsection B. of Amerigroup's protest, Amerigroup complained that UnitedHealthcare, on three occasions, violated the page limitations set by DOM and, therefore, had a competitive advantage over the other offerors. Unfortunately for Amerigroup, it has ignored DOM's explanation of the page limitations found in answer to question #36 on page 10 of 48 of RFP Question and Answer Document.

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1076 Highland Colony Parkway  
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The specific question was:

Regarding RFP Section 5.6, does the required repetition of the statements/questions in the Methodology/Work Statement section count against specified page limits for each question/statement? Can the question text precede the response on a separate uncounted page?

DOM's answer was:

The required repetition of the statements/questions in the Methodology/Work Statement section does not count against the specified page limits.

With consideration towards DOM's response, it is clear that UnitedHealthcare did not have any page limitation violations. Specifically, UnitedHealthcare's response to Question 22 was in compliance as it was three pages once the repetition of the two line question is excluded. As for UnitedHealthcare's Response to Question 46, it too was in compliance as it was two pages once the repetition of the four line question is excluded. Finally, as to UnitedHealthcare's Response to Question 88, it too was in compliance as it was two pages once the repetition of the seven line question is excluded.

Accordingly, Amerigroup's complaint that UnitedHealthcare improperly gained a competitive advantage has no merit.

**B.) UnitedHealthcare Has Not Been Sanctioned.**

On page 14, subsection E. of Amerigroup's protest, after lodging more substantial similar complaints relating to the other two awardees, Amerigroup briefly complained that UnitedHealthcare, provided an improper response to DOM's inquiry into offerers' sanctions. In short, Amerigroup's complaint has no merit.

Unlike Amerigroup (as well as MS True, WellCare, Trusted Health Plan and Molina), UnitedHealthcare has operated in the State of Mississippi for years. UnitedHealthcare can proudly and truthfully say that it has not been sanctioned during that time period.

**C.) UnitedHealthcare's Award of Three Points for Responses Relating to Adequacy of Subcontractors.**

On pages 23 through 24, Section III, subsection B. of Amerigroup's protest, Amerigroup complained that UnitedHealthcare should have received a "2" instead of a "3" for its response to the following question:

If the Offeror proposes to use Subcontractors or subsidiaries of the corporate entity to provide any of the services in this RFP, the Offeror's proposal provided what level of adequacy in providing a listing of those Subcontractors with their experience in providing care to Medicaid Members and a brief description of the services they will provide?

Without explaining, Amerigroup contends that UnitedHealthcare "clearly" failed to disclose "certain affiliated subcontractors."

Simply put, UnitedHealthcare stands by its response, and the response deserved no less than a score of "3."

**D.) UnitedHealthcare's Award of Four Points for Response Relating to Adequacy in Organizational Charts.**

On page 24, Section III, subsection B. of Amerigroup's protest, Amerigroup complained that UnitedHealthcare unfairly received a score of "4" for its response to the following question:

The Offeror's proposal provided what level of adequacy in an organization chart(s) that provided a description of the organization and staffing during each phase of the project and full-time, part-time, and temporary status of all employees?

Amerigroup complains that the sole justification for the "extra" point ("4" over a "3") was UnitedHealthcare's status as an incumbent. Amerigroup is wrong, and the comment provided by DOM clearly contradicts Amerigroup's position.

While DOM did comment that UnitedHealthcare is an incumbent in the Comments section, DOM's first comment was that UnitedHealthcare provided "more than adequate" details in its Response. That "more than adequate" response warranted the four. Indeed, DOM's "more than adequate" position, without

reference to UnitedHealthcare's status as incumbent, warranted an extra point to, at least, one other response.

**E.) UnitedHealthcare's Award of Four Points for Response Relating to the Administrative Office.**

On pages 25 - 26, Section III, subsection B. of Amerigroup's protest, Amerigroup complained that UnitedHealthcare unfairly received a score of "4" for its response to the following question:

The Offeror's proposal provided what level of adequacy related describing the entity's plans to establish an Administrative Office within fifteen (15) miles of Jackson, Mississippi as required by the RFP?

Note to Evaluator: Include factors in your scoring methodology related to:

- Describe the office within that space that the entity will make available to Division staff.

Here, Amerigroup again complains that UnitedHealthcare received a higher score than Amerigroup because UnitedHealthcare is an incumbent. Amerigroup is wrong. The simple fact is: UnitedHealthcare has established an administrative office, while Amerigroup has not. There is nothing preventing a non-incumbent from establishing such an office. The notion that only an incumbent can score higher on this question has no merit. Certainly, Amerigroup would agree that had UnitedHealthcare responded that it plans to relocate its Administrative Office to another state, DOM would not have given UnitedHealthcare a better score.

**F.) UnitedHealthcare's Award of Four Points for Its Response Regarding NCQA Accreditation Status.**

On pages 25-26, Section III, subsection B. of Amerigroup's protest, Amerigroup complained that UnitedHealthcare unfairly received a score of "4" for its response to the following question:

"The Offeror's proposal provided what level of adequacy related to describing the entity's process to work towards managed care organization (MCO) accreditation status from the NCQA?

Note to Evaluator: Include factors in your scoring methodology related to:

- Whether the entity has successfully received accreditation for other state Medicaid programs, met required time frames to achieve accreditation, and any unsuccessful attempts."

Here again, Amerigroup complains that UnitedHealthcare received a higher score than Amerigroup because UnitedHealthcare is an incumbent. Again, Amerigroup is wrong. UnitedHealthcare was awarded an extra point because it has already obtained accreditation from the NCQA. There is no guarantee of accreditation. Had UnitedHealthcare failed to obtain accreditation during the expiring contract period but provided a response similar to Amerigroup, one would expect that UnitedHealthcare would have received a lower score than Amerigroup received. It is not incumbency; it is an almost guarantee that merited the higher score.

**G.) UnitedHealthcare's Award of Four Points for Its Response Describing its MMIS.**

On page 26, Section III, subsection B. of Amerigroup's protest, Amerigroup complained that UnitedHealthcare unfairly received a score of "4" for its response to the following question:

"The Offeror's proposal provided what level of adequacy related to describing the entity's Medicaid Management Information System (MMIS)?

Note to Evaluator: Include factors in your scoring methodology related to:

- A systems diagram that The Offeror's proposal provided what level of adequacy related to describing each component of the MMIS and the interfacing or supporting systems used to ensure compliance with Contract requirements; and
- How each component will support major functional areas of the MississippiCAN Program."

Yet again, Amerigroup complains that UnitedHealthcare received a higher score than Amerigroup because UnitedHealthcare is an incumbent. Amerigroup is wrong. There is nothing unfair about DOM awarding an extra point because it is guaranteed that the MMIS described by UnitedHealthcare will be operational from day 1 of the program.

**H.) UnitedHealthcare's Award of Four Points for Its Response to MMIS Modifications.**

Similar to the MMIS complaint described above, on page 26, Section III, subsection B. of Amerigroup's protest, Amerigroup complained that UnitedHealthcare unfairly received a score of "4" for its response to the following question:

The Offeror's proposal provided what level of adequacy related to describing modifications or updates to the entity's MMIS that will be necessary to meet the requirements of this program and the plan for completion?

UnitedHealthcare simply refers to and incorporates its response to (G.).

**I.) UnitedHealthcare's Award of Four Points for Its Response Identifying Person-week of Effort for Tasks and Subtasks.**

On page 29-30, Section III, subsection B. of Amerigroup's protest, Amerigroup complained that UnitedHealthcare unfairly received a score of "3" for its response to the following question:

The Offeror's proposal demonstrated what level of adequacy related to identifying Person-weeks of effort for each task or subtask, and showed the Offeror's personnel and the Division's personnel efforts separately?

Amerigroup complains that UnitedHealthcare failed to identify "persons-weeks of effort for each task or subtask." Amerigroup is wrong. Indeed, such information is set forth in UnitedHealthcare's work plan.

### **RESERVATION OF RIGHTS**

UnitedHealthcare reserves the right to supplement and/or amend its response.

### **CONCLUSION**

According to Amerigroup, if DOM were to agree with each and every scoring criticism relating to both UnitedHealthcare and Amerigroup, then Amerigroup would have .15 points more than UnitedHealthcare. This, of course, means that UnitedHealthcare must still win if DOM simply confirms its scoring for UnitedHealthcare's response to the Person-week of Effort question (see Section (I.) above). Similarly, UnitedHealthcare must still win if DOM simply confirms any other two scores at issue.

For all of the reasons provided above, DOM should confirm the scoring for UnitedHealthcare and confirm its decision to award the contract to UnitedHealthcare.

Sincerely yours,

UNITEDHEALTH CARE OF  
MISSISSIPPI, INC. D/B/A  
UNITEDHEALTHCARE  
COMMUNITY PLAN OF  
MISSISSIPPI

BY: \_\_\_\_\_

Charles G. Copeland  
Timothy J. Sterling

TJS/cah

Cc: Tara Clark (Via email and U. S. Mail)  
Paige Biglane (Via email and U. S. Mail)



## MEMORANDUM

MISSISSIPPI DIVISION OF  
**MEDICAID**

**To:** David J. Dzielak, Ph.D.  
Executive Director

**From:** Matthew Nassar  
Office of Procurement

**Date:** January 31, 2017

**Re:** Evaluation Committee  
Mississippi Coordinated Access Network (MississippiCAN)  
RFP 20170203

The Office of Procurement recommends the following individuals to serve on the evaluation committee for RFP 20170203 based on knowledge and expertise related to the operation and oversight of the MississippiCAN program:

Tara Clark – Executive Administrator  
Fran Ingram – Deputy Administrator, Administrative Appeals, Policy and Program Integrity  
Sharon Jones – Office Director, Office of Coordinated Care  
Margaret King - Deputy Administrator, Office of Reimbursement and Finance  
Peter Montgomery - Systems Manager III, Office of Information Technology  
Rita Rutland - Deputy Administrator, Office of Information Technology  
Dorthy Young - Deputy Administrator, Office of Health Services

Each evaluator may select subject matter experts (SMEs) to assist in assessing proposal materials, as necessary. SMEs will serve to inform the evaluation committee in targeted knowledge areas. SMEs may participate in evaluation meetings and oral presentations.

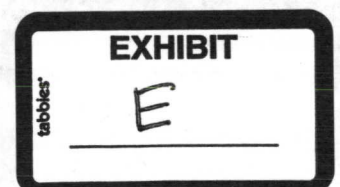
Approved by: David J. Dzielak ☒ Approved as Proposed  
David J. Dzielak, Ph.D. ☐ Approved with Comments  
Executive Director ☐ Denied



Office of the Governor | Mississippi Division of Medicaid

# Evaluation Orientation Manual

Request for Proposal (RFP) #20170203



# Agenda

- **Procurement Introduction**
- **Confidentiality Agreements**
- **Procurement Timeline**
- **Terminology and Acronyms**
- **RFP Review**
- **Proposals**
- **Procurement Scoring Phases**
  - **Individual Scoring**
  - **Consensus Scoring**
  - **Oral Presentations**
- **Contract Award**

# Confidentiality Agreement

- **All evaluation committee members must sign a Confidentiality Agreement prior to receiving proposals.**
- **Communication with vendors:**
  - Communication with the current vendor shall be restricted to the current contract.
  - No meetings or discussions with vendors regarding the RFP or RFP process.
  - All communication regarding the RFP or RFP process must go through the Office of Procurement:

Matthew Nassar  
Office of Procurement  
[Matthew.Nassar@Medicaid.ms.gov](mailto:Matthew.Nassar@Medicaid.ms.gov)  
601-359-6189

Brittney Thompson  
Office of Procurement  
[Brittney.Thompson@Medicaid.ms.gov](mailto:Brittney.Thompson@Medicaid.ms.gov)  
601-359-3688

# Terminology and Acronyms

**DOM-** Division of Medicaid

**LOI-** Letter of Intent

**RFP-** Request for Proposals

**BAFO-** Best and Final Offer

**Evaluation Committee-** Team of experts chosen to evaluate the submitted proposals

**Subject Matter Experts (SMEs)-** Individuals identified by the Evaluation Committee to assist with specific RFP and proposal subject matter

**Offeror-** Potential Vendors

**Proposal-** Offeror's response to the RFP

**Contractor-** Potential Contractor to DOM

**Key Personnel-** Specific Positions required in the RFP

**PSCRB-** Personal Service Contract Review Board, regulatory agency

**Deliverable(s)-** Services or goals stated in the RFP that the Offeror must provide

# Evaluation Activities and Timeline

Date	Process
February 3, 2017	Public Release of RFP
February 24, 2017	Deadline for Letter of Intent and Written Questions
March 17, 2017	Response to Questions Posted
April 7, 2017	Proposal Deadline
April 12 – May 12, 2017	Evaluation of Proposals
June 6-8, 2017	Oral Presentations
June 12, 2017	Executive Review and Award
July 1, 2017	Contract Start Date
July 1, 2018	Contract Operations Start

# Your Starting Point...

- **The RFP**
  - **Where do I get it?**
  - **What do I do with it?**
  - **When should I read it?**
  - **What is my target date to finish it?**
  - **Where can I take it?**
- **Note: The RFP and related materials are public documents, this includes scoring materials.**

# **RFP #20170203 Materials**

- **RFP Document**
- **All RFP Attachments and Appendices**
- **Responses to RFP Questions**
- **Any RFP Amendments**
- **Offerors' Proposals and any Attachments**

# RFP Review

- **Scope of Work**
- **Authority**
- **Procurement Process**
- **Terms and Conditions**
- **Proposal**
- **Proposal Evaluation**
- **Appendix A-Model Contract**
- **Appendix B- FAC Standard File Layouts**
- **Appendix C- MississippiCAN Capitation Rate Development Report**
- **Appendix D- Pro Forma Financial Template**
- **Appendix E- References**
- **Exhibit 1: DHHS Certification: Drug Free Work Place**
- **Exhibit 2: Certification Regarding Debarment, Suspension, other...**

## **Phase 1 Evaluation of Offerors' RFP Responses**

- **Office of Procurement reviews each proposal to determine if it is responsive. Each proposal will be evaluated to determine compliance with the RFP.**
- **Incomplete, non-compliant or non-responsive proposals will be declared non-responsive and may be rejected.**
- **If necessary, the Office of Procurement may request clarifications from the Offeror(s) in order to determine if they may advance to Phase Two.**

# Phase 2: Evaluation of Technical Proposal

- The Phase 2 Technical Score is worth a maximum of 100 points.
- DOM evaluation committee members shall follow the below scoring criteria as stated in Section 6 of the RFP:
- How do I score?
- What criteria do I use?
  - Proposals must be scored only on the content within the four corners of the submitted proposals.
- What do the numbers on the scale represent?
- Do I score the proposals individually or in a group?
- When is the score final?

PROPOSAL SECTION	MAXIMUM SCORE
Transmittal Letter	Pass/Fail
Executive Summary/Understanding of Project	5
Corporate Background and Experience	10
Ownership and Financial Disclosures	Pass/Fail
Organization and Staffing	10
Methodology and Work Statement	55
Management and Control	10
Work Plan and Schedule	10
<b>TOTAL</b>	<b>100</b>


# DOM Procurement Technical Scoring

- **DOM Procurement scoring is evaluated on a Likert Scale:**


*Likert Scale Scoring Response: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional*

- **Scores below or above a 3 shall require written justification to reflect how the evaluation committee member determined the score.**
- **Any questions that are “Yes” (3) or “No” (1) response do not require written justification.**
- **PCG will now explain the scoring tool to be used.**

# Example of Technical Scoring

 <b>MISSISSIPPI DIVISION OF MEDICAID</b>	<b>Likert Scale Scoring Response:</b> 1 = Inadequate; 2 = Less than adequate; 3 = Adequate; 4 = More than adequate;	<b>"Adequate" means the proposal meets the minimum qualifications as stated in the RFP. Categories that do not meet the minimum qualifications of the RFP shall be assigned a "1" or a "2" depending on the information stated in the Offeror's Proposal. Evaluators must provide justification for a score other than 3. Yes/No Scoring Response: Yes=3, No=1 *as noted in matrix</b>	
Executive Summary/Understanding of Project	Max Points	Individual Score	Comments
The Offeror's Technical Proposal provides an Executive Summary that condenses and highlights the contents of the Offeror's proposal in such a way as to provide a broad understanding of the entire proposal?	5.00		
The Offeror's Technical Proposal summarized the proposed audit/work plan in the Executive Summary?	5.00		
The Offeror's Technical Proposal summarizes the staff organizational structure in the Executive Summary?	5.00		
The Offeror's Technical Proposal summarizes key personnel in the Executive Summary?	5.00		
The Offeror's Technical Proposal demonstrates what level of Offeror's understanding of the Mississippi Environment, Coordinated Care and overall requirements?	5.00		
The Offeror's Executive Summary is ten (10) pages or less in length? (Yes=3; No=1)	3.00		

# Example of Technical Scoring



**MISSISSIPPI DIVISION OF  
MEDICAID**

*Likert Scale Scoring Response:*  
**1 = Inadequate;**  
**2 = Less than adequate;**  
**3 = Adequate;**  
**4 = More than adequate;**

*"Adequate" means the proposal meets the minimum qualifications as stated in the RFP. Categories that do not meet the minimum qualifications of the RFP shall be assigned a "1" or a "2" depending on the information stated in the Offeror's Proposal. Evaluators must provide justification for a score other than 3.*  
**Yes/No Scoring Response: Yes=3, No=1 \*as noted in matrix**

Corporate Background and Experience	Max Points	Individual Score	Comments
<p>The Offeror's proposal provided what level of adequacy for the last three (3) years of the entity, background information related to its size and resources?</p> <p><i>Note to Evaluator: Include factors in your scoring methodology related to:</i></p> <ul style="list-style-type: none"> <li>• Date established;</li> <li>• Location of the principal place of business;</li> <li>• Location of the place of performance of the proposed Contract;</li> <li>• Ownership (e.g., public company, partnership, subsidiary);</li> <li>• Total number of employees;</li> <li>• Number of personnel currently engaged in operations;</li> <li>• Computer resources;</li> <li>• Performance history and reputation;</li> <li>• Current products and services;</li> <li>• Professional accreditations pertinent to the services provided by this RFP.</li> </ul>	5.00		
The Offeror's proposal demonstrated what level of adequacy in providing the requested services?	5.00		
The Offeror's proposal demonstrated what level of adequacy in corporate experience providing similar services?	5.00		
The Offeror's proposal demonstrated what level of adequacy in the amount and level of resources proposed by the Offeror?	5.00		
The Offeror's proposal demonstrated what level of adequacy in specific qualifications that evidence the Offeror's ability to provide the services requested?	5.00		
<b>↓ ↓ ↓ FOR FINANCE REVIEW AND EVALUATION ONLY ↓ ↓ ↓</b>			
The Offeror's proposal demonstrated what level of adequacy regarding its current financial position, cash flow, and evidence that the Offeror has a history of financial solvency?	5.00		
<b>↑ ↑ ↑ FOR FINANCE REVIEW AND EVALUATION ONLY ↑ ↑ ↑</b>			

## Consensus Scoring

- **All technical evaluation committee members must participate.**
- **Open discussion.**
- **Think about potential questions to ask during Oral Presentations.**
- **Single consensus score agreed upon.**
- **Procurement Officer or designee records scores.**

## Consensus Scoring Sessions cont...

- **DOM will hold initial Consensus Scoring prior to Oral Presentations.**
- **DOM will hold a final Consensus Scoring Session after Oral Presentations.**
- **The resulting Offeror's score after the Final Consensus Session will be the Offeror's Final Phase 2 score.**

# Oral Presentations

- **All technical evaluation committee members must attend, or designate a SME.**
- **The Office of Procurement provides structured scripts and agendas.**
- **All Offerors are provided the same amount of presentation time.**
- **Offerors may not change or modify what is in their submitted proposal.**
- **All presentations are recorded .**
- **DOM will hold a Q&A session at the end of every presentation.**

## Phase 3 and Phase 4

- **Phase 3: At the conclusion of Phase 2 the Office of Procurement shall create a summary report of the Offerors' final scores.**
- **Phase 4: The Office of Procurement shall present the summary report and the Office of Procurement's recommendation to DOM's Executive Director.**
- **After Executive Director approval, DOM will notify all responding Offerors of the RFP Award and resulting evaluation scores.**

# **Recommendation, Selection, Award**

- **Summary of Results and Ranking:**
  - Phase 1 shall be completed by the Office of Procurement
  - Phase 2 shall be completed by the Evaluation Committee
  - Phases 3 and 4 shall be completed by the Office of Procurement and the Oversight Committee
- **Executive Review and Award: 6/12/2017**
- **Contract Start Date: 7/1/2017**

• **Any Questions??????**