

MISSISSIPPI DIVISION OF
MEDICAID

August 29, 2017

George H. Ritter
o/b/o Mississippi True
Wise Carter Child & Caraway, P.A.
P.O. Box 651
Jackson, Mississippi 39205

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

Dear Mr. Ritter:

The Mississippi Division of Medicaid (DOM) has completed its review of the protest submitted by Mississippi True, 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 or Executive Administrator Tara Clark at tara.clark@medicaid.ms.gov.

Sincerely,

David J. Dzielak, Ph.D.
Executive Director

cc: Governor Phil Bryant
Chairman Kelly Hardwick

MEMO



MISSISSIPPI DIVISION OF
MEDICAID

To: David J. Dzielak, Ph.D.

From: Office of Procurement

Date: August 29, 2017

Re: Response to Mississippi True's supplemental and amended protest of RFP 20170203 for the MississippiCAN Program

Background

On February 3, 2017, the Mississippi Division of Medicaid ("Division") released Request for Proposal 20170203 (RFP) 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. Mississippi True 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 Mississippi True to amend and supplement its protest letter after receipt of requested public records. Mississippi True submitted its amended protest letter 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 Mississippi True, including its subcontractor Evolent, and applied evaluation criteria as set out in the RFP 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

Section III.¹

Mississippi True contends that the Personal Service Contract Review Board (PSCRB) has purview over the MississippiCAN contracts.

¹ The section headings correspond to those in Mississippi True's amended protest letter.

In Mississippi True's supplemental and amended protest letter, it asserts that the PSCRB has purview over the MississippiCAN contracts pursuant to Miss. Code Ann. § 25-9-120, Miss. Admin. Code 27-1:2-103, and Section 3.1 of the RFP. This issue is moot, as the Division has already submitted the contracts to the PSCRB. Nevertheless, the Division will address Mississippi True's contention, and provide historical background for the Division's position.

In 2010, the Division awarded the first MississippiCAN contracts and submitted them to the PSCRB for review and approval. After discussion between the Division and PSCRB staff, the PSCRB determined that it did not have purview over the managed care services because the contractors were not providing personal or professional services to the Division and because of the way the contractors were paid.² Thus, the PSCRB never considered the contracts.

When the Division re-procured the contracts in 2013, it again reached out to the PSCRB regarding whether the contracts should be submitted. The PSCRB again relayed that it did not have purview, since the nature of the contracts and method of payment had not changed since the program's inception. Accordingly, the Division relied on said determinations and did not submit the contracts to the PSCRB in this 2017 re-procurement. As noted above, however, the Division has subsequently submitted the contracts to the PSCRB, pursuant to the Governor's request.

The Division, however, still agrees with the PSCRB's original determination that the PSCRB does not have purview over the MississippiCAN contracts. This interpretation is consistent with the governing statutes and regulations. As the Division previously explained to Mississippi True, the contracts involve payment of medical claims. The contracts are not for personal or professional services to the Division, which is a factual determination for the agency to render. Therefore, the provisions of Miss. Code Ann. § 25-9-120(3) are not triggered and these contracts do not fall under the purview of the PSCRB. *See* Jackson, Miss. Att'y Gen. Op. No. 2017-00040 (Feb. 17, 2017). Should these contracts fall under the purview of the PSCRB, so would every other provider agreement between the Division and its 15,000 plus individual hospital and medical providers.

This interpretation is also consistent with the RFP. The Division was clear in its communications with potential offerors that it did not intend to submit the contracts to the PSCRB. The RFP expressly provided that the process would be guided by the PSCRB's rules and regulations for procurement as the "best practices," but the publicly available schedule in the RFP did not provide for PSCRB approval of the contracts. All the potential offerors, including Mississippi True, agreed to the process set forth in the RFP. Specifically, Mississippi True submitted a proposal wherein it expressly stated that it had read, understood, and agreed to all provisions of the RFP without reservation and without expectation of negotiation. Further, per Section 3.1 of the RFP, submission of a proposal in response to the RFP constituted acceptance of the conditions governing

² The managed care contractors are paid like Medicaid providers. The Division assigns each managed care contractor a provider number for purposes of distribution of payment. The Division authorizes its fiscal agent to process payments to the managed care contractors monthly in accordance with the contract between the Division and the managed care contractors. Because these contractors are paid based on a per member per month (PMPM) capitation rate, the contracts do not specify a fixed firm price. SPAHRS (now MAGIC) requires that a contract amount be entered in order to accept the submission, making it impossible to enter these contracts into SPAHRS (now MAGIC) to this point. This explains why the Division did not request spending authority in its 2010 PSCRB submission, and why it does not request it currently in its 2017 PSCRB submission. *See* Exhibit A – 2010 letter to PSCRB.

the procurement process. Of significant importance is not only the fact that this was discussed with Mississippi True prior to the procurement but also that Mississippi True had an opportunity to request clarification on this issue during the Question and Answer phase of the procurement but did not do so.³

In sum, Mississippi True's contention is without merit and moot. The Division agrees with the PSCRB's original determination that the contracts are not within its purview, but has submitted the contracts to the PSCRB out of abundance of caution and at the request of the Governor.

Section IV.

A. Mississippi True contends that Dr. Dzielak has a conflict of interest that required him to disqualify himself and report the matter to the state Ethics Commission.

Mississippi True contends that Dr. David Dzielak, the executive director, has "an actual or potential conflict of interest" that he did not disclose and that should have disqualified him from any role in the ongoing procurement process for the MississippiCAN contracts. As the basis for its contention, Mississippi True refers to two email exchanges in January, 2015, and August, 2016. Mississippi True has stated as fact that those two email exchanges evidence job offers that were made by Molina to Dr. Dzielak, and takes the position that Dr. Dzielak should have, as a result, reported the communications and removed himself from the procurement process. Mississippi True acknowledges, however, that the emails do not contain an actual offer, but instead, at most, "create(s) a reasonable inference" or could be "reasonably interpreted" as such.

Division staff have carefully reviewed the referenced emails, and have thoroughly questioned Dr. Dzielak regarding the actual subject matter of the emails. In summary, neither email was discussing any job offer to Dr. Dzielak from Molina. Molina never offered Dr. Dzielak a job of any sort in any location, and never even 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 the points raised by Mississippi True.⁴

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 Mississippi True. The August 2016 email does not create a conflict of interest here.

³ See Exhibit B – full email correspondence between the Division and George Ritter indicating that the Division was simply following previous guidance from the PSCRB.

⁴ See Exhibit C – Molina response to Mississippi True's amended protest letter and affidavits.

Mississippi True also comments on the role Dr. Dzielak has played in the MississippiCAN procurement process. Specifically, Mississippi True states that Dr. Dzielak “appointed the evaluation committee.” This statement is incorrect. The Office of Procurement recommended a list of evaluators based on each evaluator’s knowledge and expertise related to the operation and oversight of the MississippiCAN program. The Office of Procurement submitted this list to Dr. Dzielak for his approval. Dr. Dzielak approved the list as submitted. This approval occurred prior to the start of the procurement. Dr. Dzielak never took an active role in the selection of the evaluation committee. In fact, Dr. Dzielak had no involvement in the active procurement process. His next involvement did not occur until the procurement process concluded and the Office of Procurement made its recommendation of award, which Dr. Dzielak approved as submitted.

Additionally, Mississippi True states that Dr. Dzielak “directed the execution of the contracts” in an effort to circumvent the protest process. This contention is also incorrect, as the contracts were executed pursuant to the schedule in the RFP, as well as, the Division’s reliance on previous PSCRB determinations regarding purview.

To conclude, the PSCRB rules require that upon the discovery of an actual or potential conflict of interest, an employee shall disqualify himself from the involved process. *See* PSCRB Rule 6-203. After a reasonable investigation, the Division did not find any evidence of an actual or potential conflict for Dr. Dzielak. It is clear that no job offers from Molina were made to him or even discussed. Dr. Dzielak had no obligation to report anything to the Ethics Commission and he had no obligation to disqualify himself from his limited involvement in this process. Contrary to the allegation contained in Mississippi True’s protest, PSCRB Rule 6-203 is not triggered or relevant here. Accordingly, this issue is without merit.

B. Mississippi True contends that the Division has violated PSCRB regulations and that the contracts must be re-procured.

Mississippi True contends that the Division has violated PSCRB regulations in the following three ways: (1) by initially indicating it would not submit the contracts to the PSCRB; (2) by failing to certify that Mississippi True had adequate time to submit its protest; and (3) by executing the contracts before submitting them to the PSCRB. These contentions are without merit.

First, the Division has already submitted the contracts to the PSCRB. The contracts are scheduled to be considered by the PSCRB at its September 19, 2017, meeting. Additionally, please refer to the above paragraphs related to the purview issue.

Second, Mississippi True did, in fact, receive the statutorily-required seven days to submit its amended protest in accordance with the Scheduling Order entered in the case styled *In Re: UnitedHealthcare of Mississippi, Inc., D/B/A UnitedHealthcare Community Plan of Mississippi Protective Order*. It has not alleged that this time period was inadequate.

Third, the contracts were signed pursuant to the schedule in the RFP, and as required for review by CMS, but they are not valid and enforceable until approved by CMS. The Division has repeatedly stated that it will not send the contracts to CMS until (1) it has carefully considered the merits of the protests and issued a final agency decision, and (2) the PSCRB considers the contracts.

Finally, Mississippi True did not prove any harm caused by these alleged violations of the PSCRB regulations. Mississippi True asserts instead that, because of these alleged violations of the

regulations, the contracts were awarded in violation of law under Miss. Admin. Code 27-1:5-203 and must be terminated and re-procured. This argument is misguided. The above-referenced code section specifically applies to violations of federal or state law, and even if the PSCRB determined that certain regulations were violated, the remedy here is not re-procurement.

Section V.

A. Mississippi True contends that the Mississippi Legislature intended for a Provider-Sponsored Health Plan (PSHP) to be awarded a MississippiCAN contract.

Mississippi True asserts that, through enacting Miss. Code Ann. § 83-5-601, *et seq.*, the Legislature intended that the Division award one of the contracts to a PSHP. Leaving aside the issue of whether the Legislature can require the Division to contract with certain offerors, it did not do so in the subject statutes. The statutes do not bestow favored status on a PSHP.

In Miss. Code Ann. § 83-5-601, the Legislature authorized the creation of PSHPs, and authorized PSHPs to contract with the Division in Section 83-5-603. But the Legislature did not attempt to mandate either.⁵ In fact, Section 83-5-607(c) provides that the Division retains the authority to determine whether a bidding PHSP should be awarded one of the MississippiCAN contracts pursuant to the Division's policies. Thus, Mississippi True's argument on this issue is without merit.

B. Mississippi True contends that the Scoring was the product of bias and discrimination against Mississippi True as a Provider Sponsored Health Plan.

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 this procedural bar, we will address the merits of this ground.

As noted on slide ten of the MississippiCAN Orientation Manual⁶ and as required by PSCRB Rule 3-203.01⁷, the evaluation committee scored each offeror on only the information contained in the four corners of the submitted 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. Each offeror's cumulative consensus score remained hidden from the evaluation committee throughout the entire procurement. The Division maintains that no bias exists on behalf of any of the evaluators, nor has

⁵ One member of the Legislature recently lamented the fact that the statutes did not require the Division to award one of the MississippiCAN contracts to a PSHP. *See*, <http://msbusiness.com/2017/08/medicaid-managed-care-contracts-pending-review-state-board/>

⁶ *See* Exhibit D – MississippiCAN Orientation Manual.

⁷ PSCRB Rule 3-203.01 (g) provides that when an award is made to a responsible offeror "no other factors or criteria shall be used in the evaluation" but those factors set forth in the Request for Proposals.

Mississippi True even shown evidence of such bias. A difference in scores between the winning offerors and Mississippi True does not equate to bias on behalf of the Division. For the reasons stated above and below, this issue is without merit.

1. *Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 2, Question 1 (RFP Section 5.4.1).*

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee considered Mississippi True's response to Section 2, Question 1, and determined that the response related to conflict of interest processes was less than adequate. The committee assigned Mississippi True a score of 2 in accordance with said committee's professional judgement and broad discretion. Accordingly, this issue is without merit.

2. *Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 2, Question 2 (RFP Section 6.2.2).*

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee considered Mississippi True's response to Section 2, Question 2, and determined, in its professional judgement, that the response was adequate. The committee assigned Mississippi True a score of 3 in accordance with said committee's broad discretion. This issue is without merit.

3. *Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 2, Question 3 (RFP Section 6.2.2).*

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee considered Mississippi True's response to Section 2, Question 3, and determined, in its professional judgement, that the response related to Mississippi True's corporate experience and experience providing similar services was adequate. In making said determination, the committee considered any experience provided, including Evolent's experience. Accordingly, the committee assigned Mississippi True a score of 3 in accordance with said committee's broad discretion. This issue is without merit.

4. *Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 2, Question 4 (RFP Section 6.2.2).*

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee considered Mississippi True's response to Section 2, Question 4, and determined, in its professional judgement, that the response related to the amount and level of resources proposed for the project was adequate. The committee assigned Mississippi True a score of 3 in accordance with said committee's broad discretion. This issue is without merit.

5. *Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 2, Question 5 (RFP Section 6.2.2).*

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee considered Mississippi True's response to Section 2, Question 5, and determined, in its professional judgement, that the response related to the ability to provide the requested services was adequate. The committee assigned Mississippi True a score of 3 in accordance with said committee's broad discretion. This issue is without merit.

6. *Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 2, Question 6 (RFP Section 6.2.2).*

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee considered Mississippi True's response to Section 2, Question 6, and determined, in its professional judgement, that the response related to Mississippi True's financial position and solvency was adequate. The committee assigned Mississippi True a score of 3 in accordance with said committee's broad discretion. This issue is without merit.

7. *Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 2, Question 7 (RFP Section 6.2.2).*

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee considered Mississippi True's response to Section 2, Question 7, and determined, in its professional judgement, that the response related to Mississippi True's organizational qualification for the performance of the contract was adequate. The committee assigned Mississippi True a score of 3 in accordance with said committee's broad discretion. This issue is without merit.

8. *Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 2, Question 8 (RFP Section 6.2.2).*

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received 1 or 3 score, broken down as follows: 1=NO, 3=Yes. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee considered

Mississippi True's response to Section 2, Question 8, and determined, in its professional judgement, that the response related contract terminations or non-renewals in the past ten years was adequate. The committee assigned Mississippi True a score of 3 in accordance with said committee's broad discretion. This issue is without merit.

9. *Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 2, Questions 9, 10 and 11 (RFP Section 5.4.3).*

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

Mississippi True claims that the Division imposed an impossible requirement on it by requiring three client references in the RFP, because it was not possible for the newly formed PSHP to have clients of its own.

The Scoring Matrix for these questions was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. The RFP required offerors to submit three client references that could expound upon the offeror's corporate experience. Mississippi True provided three references, responsive to Section 2, Questions 9, 10 and 11. For Question 11, Mississippi True submitted a client of Evolent from another state. The evaluation committee determined, in its professional judgement, that the response to Question 11 was adequate and assigned Mississippi True a score of 3 in accordance with the committee's broad discretion. However, two of Mississippi True's three submitted references (responses to Section 2, Questions 9 and 10) were not clients of Mississippi True or Evolent, but, rather, business partners of Evolent. Thus, the evaluation committee determined that the responses to Section 2, Questions 9 and 10 were inadequate for evaluation purposes and assigned Mississippi True a score of 1 for said questions in accordance with the committee's broad discretion.

While Mississippi True claims that it could not meet the above-stated requirement related to client references, it did, in fact, partially meet the requirement by providing one client reference of Evolent. The evaluation committee considered Mississippi True's submission as presented. The Division does not know why Mississippi True failed to submit additional Evolent client references for consideration by the evaluation committee. Accordingly, this issue is without merit.

10. *Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 3, Question 1 (RFP Section 5.5).*

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. Without waiving The Division's determination that this ground of protest is disallowed, the Division will address this issue.

Mississippi True contends that the evaluation committee erred in its scoring of Mississippi True's response to this question, which requires the offeror to describe the experience and qualifications of each staff person proposed to work on this program.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee determined that the response to Section 3, Question 1 was less than adequate and assigned Mississippi True a score of 2 for this question in accordance with said committee's broad discretion. Comments provided by the evaluation committee described the committee's professional judgment of Mississippi True's response to this question, and explain the committee's determination that the offeror's response was less than adequate due to the absence of proposed key administrative personnel to perform work on the MississippiCAN program. Therefore, this issue is without merit.

11. Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 3, Question 4 (RFP Section 5.5).

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

Mississippi True contends that the evaluation committee incorrectly reduced the offeror's score for failing to provide a comprehensive list of subcontractors proposed to perform the services requested in this RFP. The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee determined that the response to Section 3, Question 4 was less than adequate and assigned Mississippi True a score of 2 for this question in accordance with said committee's broad discretion. Specifically, the evaluation committee determined in its review of the proposal that the offeror failed to disclose all subcontractors expected to perform the services requested in the RFP. Thus, this issue is without merit.

12. Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 3, Question 5 (RFP Section 5.5).

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

Mississippi True contends that the evaluation committee incorrectly reduced the offeror's score as a result of the offeror's significant reliance on Evolent, a subcontractor

of Mississippi True, to perform general management and operational functions for Mississippi True. The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee determined, in its professional judgement, that the response to Section 3, Question 5, related to Mississippi True's process for oversight of its subcontractors, including Evolent, to be less than adequate and assigned Mississippi True a score of 2 in accordance with said committee's broad discretion.. Therefore, this issue is without merit.

13. Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 3, Question 11 (RFP Section 5.5.2).

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

Mississippi True contends that the evaluation committee incorrectly reduced the offeror's score for a question requiring that, if an offeror expects a change in management during the contract term, the offeror includes resumes for all personnel concerned. Mississippi True contends that the qualifying statement of "if" within this question excuses Mississippi True from the need to disclose whether any such transition will take place.

The Scoring Matrix for this question was such that offerors received a 1 or 3 score, broken down as follows: 1=NO, 3=Yes. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee determined, in its professional judgment, that the response to Section 3, Question 11 did not meet the requirement of the RFP and assigned Mississippi True a score of 1 in accordance with said committee's broad discretion. The evaluation committee found that the qualifying statement "if" did not excuse offerors from disclosing any intention to transition, or not to transition, the management team for Mississippi True during the course of contract operations. Therefore, this issue is without merit.

14. Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 4, Question 1 (RFP Section 5.6).

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical

proposal and oral presentation, the evaluation committee determined, in its professional judgement, that the response to Section 4, Question 1, related to Mississippi True's intent to establish an office space within 15 miles of Jackson, Mississippi, was adequate. The committee assigned Mississippi True a score of 3 for this question in accordance with said committee's broad discretion. This issue is without merit.

15. *Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 4, Question 3 (RFP Section 5.6).*

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee determined, in its professional judgement, that the response to Section 4, Question 3, related to Mississippi True's use of subcontractors to provide required services in the RFP to be less than adequate. The committee further found that Mississippi True did not list all subcontractors that would perform required services in the RFP. The committee assigned Mississippi True a score of 2 in accordance with said committee's broad discretion. This issue is without merit.

16. *Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 4, Question 8 (RFP Section 5.6).*

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee determined, in its professional judgement, that the response to Section 4, Question 8, related to Mississippi True's description of processes to receive accreditation status from the NCQA was adequate. The committee assigned Mississippi True a score of 3 in accordance with said committee's broad discretion. This issue is without merit.

17. *Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 4, Question 27 (RFP Section 5.6).*

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee determined, in its professional judgement, that the response to Section 4, Question 27, related to Mississippi True's description of proposed services for MississippiCAN member services call center operations was adequate. The committee assigned Mississippi True a score of 3 in accordance with said committee's broad discretion. This issue is without merit.

18. Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 4, Question 79 (RFP Section 5.6).

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee determined, in its professional judgement, that the response to Section 4, Question 79, related to Mississippi True's description of its Medicaid Management Information System (MMIS) services was adequate. The committee assigned Mississippi True a score of 3 in accordance with said committee's broad discretion. This issue is without merit.

19. Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 4, Question 80 (RFP Section 5.6).

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee determined, in its professional judgement, that the response to Section 4, Question 80, related to Mississippi True's description of MMIS modifications or updates necessary to meet the

requirements of the MississippiCAN program and plans for completion of the modifications or updates was adequate. The committee assigned Mississippi True a score of 3 in accordance with said committee's broad discretion. This issue is without merit.

20. Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 4, Question 86 (RFP Section 5.6).

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

Mississippi True contends that the evaluation committee incorrectly reduced the offeror's score for Mississippi True's response to Question 86 addressing the offeror's fraud, waste, and abuse program.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee determined, in its professional judgement, that the response to Section 4, Question 86, related to Mississippi True's plan, or lack thereof, to report significant provider fraud violations was less than adequate. The evaluation committee found that the page limit imposed for this question was sufficient for offerors to provide an adequate response. The evaluation committee considered and reviewed Mississippi True's entire response, and assigned Mississippi True a score of 2 for this question in accordance with said committee's broad discretion. Therefore, this issue is without merit.

21. Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 4, Question 87 (RFP Section 5.6).

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee determined, in its professional judgement, that the response to Section 4, Question 87, related to Mississippi True's plan to oversee its subcontractors, including Evolent, was less than adequate. The committee assigned Mississippi True a score of 2 for this question in accordance with said committee's broad discretion. Therefore, this issue is without merit.

22. Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 5, Question 5 (RFP Section 6.2.2.5).

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee determined, in its professional judgement, that the response to Section 5, Question 5, related to Mississippi True's understanding of the importance of interacting with the Division's management staff was less than adequate. The committee assigned Mississippi True a score of 2 for this question in accordance with said committee's broad discretion. Therefore, this issue is without merit.

23. Mississippi True contends that this claim is demonstrated through the Division's scoring within Section 5, Question 10 (RFP Section 5.7).

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. Without waiving the Division's determination that this ground of protest is disallowed, the Division will address this issue.

The Scoring Matrix for this question was such that offerors received a 1 – 5 score, broken down as follows: 1=inadequate, 2=less than adequate, 3=adequate, 4=more than adequate, 5= exceptional. After a thorough review of Mississippi True's technical proposal and oral presentation, the evaluation committee determined, in its professional judgement, that the response to Section 5, Question 10, related to Mississippi True's internal quality control monitoring was less than adequate. The committee assigned Mississippi True a score of 2 for this question in accordance with said committee's broad discretion. Therefore, this issue is without merit.

C. Mississippi True contends that other evidence shows that Mississippi True's score was the product of bias and discrimination in favor of for-profit managed care plans.⁸

- 1. Mississippi True contends that this claim is demonstrated through a perceived willingness from the Division to overlook federal and state sanctions against successful Offerors.*

First, the Division addressed this specific issue in the RFP Question and Answer Document posted on the Division's website on March 17, 2017. Below is the Division's response to question 38.

⁸ This bullet point corresponds to bullet point D in Mississippi True's amended protest letter.

It was not the Division's intention to exclude an entity that has been sanctioned from submitting a proposal. Neither the federal regulations nor the Division's Contracts equate sanctions with LDs.

Transmittal Letter #2 has been amended as follows: The Division requests what all, if any, sanctions Offeror's have received during their operational years in managed care. The Division further requests a statement from all Offeror's that they abide by the prohibited affiliation with individuals debarred, suspended, or otherwise excluded from participation as a director, officer, partner, or person with ownership of more than 5%.

As stated in RFP Section 4.9, "[A]fter the contract, and all exhibits thereto, the order of priority is: Bidder Questions and Answers; the Proposal; and the RFP and amendments thereto." Therefore, the above listed responses in the RFP Question and Answer Document govern over the original RFP language.

Second, the evaluation committee considered exactly what offerors provided in the submitted proposals for each requirement, along with responses to written clarifications and information presented in oral presentations. The committee did not conduct independent investigations related to any submission by any offeror. The committee did not consider an offeror's prior or current performance issues. This practice falls in line with the RFP and the Division's normal procurement practices.⁹ This process ensures that each offeror's proposed solution will be evaluated using the same, uniform criteria. This practice is in line with PSCRB rules. Specifically, PSCRB Rule 3-203.01(g) which does not allow evaluators to consider criteria or factors that are outside of the RFP requirements. Thus, this issue is without merit.

For more information related to this contention please see responses from Molina¹⁰ and Magnolia.¹¹

2. *Mississippi True contends that this claim is demonstrated through the prior statements of Division Officials.*

The Division's Office of Procurement has no knowledge of the alleged statements of Division Officials. Although the Division denies these allegations, it will address this issue.

As noted on slide ten (10) 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 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. The Division maintains that no bias

⁹ See Exhibit D – MississippiCAN Orientation Manual.

¹⁰ Exhibit C.

¹¹ Exhibit E.

exists on behalf of any of the evaluators, nor has Mississippi True even shown any examples of such bias.

Further, the named Division Official, Dr. Dzielak, was not an evaluation committee member or a subject matter expert. As state previously, Dr. Dzielak did not participate in the evaluation process of the procurement in any capacity. As such, any alleged statements made by Dr. Dzielak would have no effect on the evaluation or scoring of any proposals submitted in response to RFP 20170203.

Additionally, Mississippi True claims that the Division would rather contract with a "California based corporation" that is headquartered in a state that prohibits government travel to Mississippi, rather than contract with a Mississippi PSHP. This assertion is not grounded in fact or logic for the following reasons.

First, the Division doesn't just "decide" to contract with a company. The Division follows a stringent, competitive procurement process that promotes fairness and integrity, and that process complies with all applicable state laws and PSCRB rules. Any company that receives a contract as a result of a procurement by the Division does so based on what that company proposed to do in response to the Division's requirements in an RFP.

Second, the political climate of a state in which a company maintains its headquarters is irrelevant to the evaluation of an offeror's proposed solution to meet the requirements of an RFP. Here, the evaluation committee did not and could not consider information outside of the RFP. And absent some state law that prohibited the Division from contracting with private entities with parent companies headquartered in the state of California, there was no way to account for such in the evaluation process.

Third, Molina is incorporated in Mississippi, and, therefore, a Mississippi corporation. So Molina is as much of a Mississippi corporation as Mississippi True. And, like other offerors, Mississippi True proposed to subcontract most performance requirements in the RFP to an entity not headquartered in the state of Mississippi.¹² Thus, the assertion by Mississippi True that a Mississippi corporation should have been favored over a non-Mississippi corporation is misguided because, (1) that argument doesn't apply here, and (2) any such special treatment would have created disparate scoring standards. Accordingly, this issue is without merit.

3. *Mississippi True alleges that a preexisting relationship with Molina is circumstantial evidence of bias.*

Mississippi True claims that emails between Dr. Dzielak and two Molina employees from 2015 and 2016 show circumstantial evidence of bias. This point is moot since Dr. Dzielak did not participate in the evaluation of proposals in any capacity. As previously stated, the evaluation committee scored each offeror exclusively on the information contained within the four corners of the proposal. The RFP's Scope of Work stated

¹² Evolent is based in Virginia and maintains locations throughout the United States, including California. While this fact may be interesting to some, it was not a consideration in the evaluation of Mississippi True's proposal.

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. Thus, the Division maintains that no bias exists on behalf of any of the evaluators, nor has Mississippi True even shown any evidence of such bias. This issue is without merit.

4. *Mississippi True alleges that the current managed care contractors have failed to satisfy significant performance measures of the current MississippiCAN contract.*

This assertion is irrelevant to the evaluation of proposals for the future MississippiCAN program. As stated previously, past and current performance issues (unless specifically stated as requirements in the RFP) are not considered in the evaluation of proposals. An offeror will be held to whatever solution it proposed in response to an RFP, as well as, the requirements of the RFP and contract. Should an offeror win and not perform in accordance with said terms, the Division would impose appropriate remedies to align performance with contractual requirements. In sum, a procurement is not the appropriate vehicle to address current contractual compliance issues. This issue is without merit.

5. *Mississippi True requests that these additional matters stated below be investigated.*
 - A. *Mississippi True requests further investigation into the allegations that former Molina executive has information relevant to its protest.*

On August 14, 2017, Molina's former CEO in Mississippi emailed counsel for Mississippi True stating that he had information that might be helpful to Mississippi True's protest. Counsel for Mississippi True notified the Division and the other offerors on August 17, 2017. Counsel for Mississippi True stated that he did not communicate with the executive out of concern that the other parties would object to the use of any information he obtained. He asked for counsel for Molina to consent to speaking with the executive directly.

On Monday, August 21, 2017, the Division emailed and called the executive to determine if he had any information that could affect the Division's protest decisions. The executive said he would not discuss the matter substantively until his counsel had advised him whether doing so would violate a confidentiality agreement he held with Molina. He stated, however, that his information was "hearsay" and he was not sure whether it was true. The Division has attempted to contact the executive multiple times, and at least daily since then and has received only one response, on Thursday, August 24, indicating that the executive would be available on Friday, August 25 to discuss the matter. The Division received no contact on August 25 despite attempted phone calls and emails. Emails from the Division to the executive since August 25 have not been responded to.

In light of the executive's own statements, the Division finds that the executive does not have information likely to affect its decisions and does not believe any further agency investigation is warranted.

B. Mississippi True requests further investigation into the allegations that Dr. Dzielak and other Division staff met with lobbyists of a successful bidder during the "dead period" of the procurement process.

Pursuant to a public records request, Dr. Dzielak produced a list of outside meetings dating back to January of 2015 with representatives¹³ of any offeror that submitted a proposal to the MississippiCAN RFP. The Division has questioned Dr. Dzielak and other Division staff as to the nature of these meetings for the said time period. All parties stated that any meeting attended after the release of the RFP (February 3, 2017) did not include discussions related to the MississippiCAN procurement, but rather matters related to the representatives' other clients that have contracts with the Division. Further, and more importantly, Dr. Dzielak and Division staff that attended any meeting after February 3, 2017, with outside representatives were not involved in the evaluation of proposals. The Division finds that no further agency investigation related to this issue is warranted.

In the background section of its amended protest letter, Mississippi True notes that one of the evaluation committee members did not attend its oral presentation, and claims that the evaluator unfairly deducted points from Mississippi True in post-oral consensus scoring. This assertion is a misrepresentation of fact. While it is true that two evaluation committee members did not attend Mississippi True's oral presentation, both evaluators were represented by designated subject matter experts. Additionally, both evaluators received all materials presented by Mississippi True during its oral presentation, as well as, Mississippi True's responses to the Division's post-oral presentation written clarifications. Both evaluators consulted with said subject matter experts and reviewed Mississippi True's materials and clarifications prior to participating in post-oral presentation consensus scoring.

To be clear, consensus scoring does not allow one evaluator to adjust a score down or up. Adjustments to scores must be made by the evaluation committee as a whole, based on an offeror's proposal, the RFP requirements, and the committee's professional judgement and expertise. Here, any adjustment of Mississippi True's post-oral presentation scores was within the broad discretion of the evaluation committee and based on its knowledge and expertise related to the operation and oversight of the MississippiCAN program. Thus, Mississippi True's assertion is misplaced and without merit.

¹³ It should be noted that many of the lobbyists that represent the MississippiCAN offerors have multiple clients that have contracts with the Division. There is no prohibition that prevented discussion between the Division and these representatives on matters unrelated to the MississippiCAN procurement.

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. The Division carefully considered all responsive information, 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.



STATE OF MISSISSIPPI
OFFICE OF THE GOVERNOR
DIVISION OF MEDICAID
DR. ROBERT L. ROBINSON
EXECUTIVE DIRECTOR

MEMORANDUM

September 23, 2010

Ms. Lynn Fitch
Chair
Personal Service Contract Review Board
301 North Lamar Street
Jackson, MS 39201

Re: Contract between the Division of Medicaid and AmeriChoice
Contract between the Division of Medicaid and Magnolia Health Plan

Dear Chairman Fitch:

We would like to submit to the PSCRB meeting scheduled for October 14, 2010, two contracts. One is between the Division of Medicaid and AmeriChoice; one is between the Division of Medicaid and Magnolia Health Plan. These contracts do not involve private business use of public property and therefore bond review is not necessary.

On January 27, 2009, DOM released RFP # 20090127, to solicit competitive written proposals from qualified contractors to provide services to implement the Mississippi Coordinated Access Network, a coordinated care program for Mississippi Medicaid beneficiaries.

DOM will contract with two Contractors for a three year period beginning November 1, 2010 and ending December 31, 2013, with the option to renew for up to two additional one year periods.

In response to the RFP the Division of Medicaid received proposals from the following contractors:

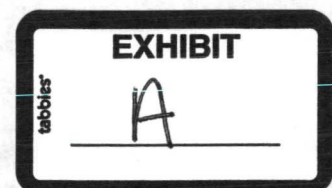
1. AmeriChoice, a division of UnitedHealth Group
2. AmeriGroup Corporation
3. Magnolia Health Plan, a subsidiary of Centene Corporation
4. Molina Healthcare, Inc.
5. Select Health of South Carolina

DOM staff evaluated the proposals in accordance with a standard evaluation tool as defined in Section 6.0 of the RFP. The following information is a summary of the evaluation results:

1. The following individuals served on the Evaluation Committee:

Phyllis Williams – Deputy Administrator
Richard Roberson – Staff Attorney

Suite 1000, Walter Sillers Building, 550 High Street, Jackson, MS 39201, (601) 359-6050



Lynda Dutton – Deputy Administrator
Betty Williams – Deputy Administrator
Janet Mann – Deputy Administrator
JJ Dunn – Chief Systems Information Officer
Shelia Meadows – Bureau Director

Proposal Evaluation: Each proposal was evaluated and rated according to specific rating criteria allowing a possible total score of 1100 points. All of the submitted proposals were found to be responsive.

The results of the proposal evaluations are as follows:

<u>Offeror</u>	<u>Score</u>
Magnolia Health Plan	954.0993
AmeriChoice	929.5942
AmeriGroup	859.8775
Select Health	842.1417
Molina Healthcare	753.8864

Based on the evaluation results the Division of Medicaid intends to award contracts to Magnolia Health Plan and AmeriChoice. These two Care Coordination Organizations offered the best range of services and received the highest scores in the evaluation.

These contractors are Care Coordination Organizations and will be paid through the Medicaid claims payment process for health services provided to Medicaid beneficiaries. Therefore, no spending authority is being requested. Amounts paid to the contractors will be determined by the success of their enrollment activities. Intent to award was announced ten (10) months ago. No protests have been received concerning this procurement. Upon approval by the Personal Services Contract Review Board the contracts will be fully executed. If you have questions or require additional information, please contact the Procurement Officer, Melanie Wakeland, at 601-359-6286.

Sincerely,



Robert L. Robinson
Executive Director

Enclosures

Paige H. Biglane

From: Tara S. Clark
Sent: Saturday, July 08, 2017 11:59 AM
To: George Ritter
Cc: Paige H. Biglane
Subject: Re: RFP #20170203

Lucien Smith, Mark Rishell and Saranne Smith from DOM. Also, Christie Spencer was on the phone.

Sent from my iPad

On Jul 8, 2017, at 9:02 AM, George Ritter <ghr@wisecarter.com> wrote:

Thanks for your response. Who was present?

From: Tara S. Clark [<mailto:Tara.Clark@medicaid.ms.gov>]
Sent: Saturday, July 08, 2017 7:47 AM
To: George Ritter
Cc: Paige H. Biglane
Subject: RE: RFP #20170203

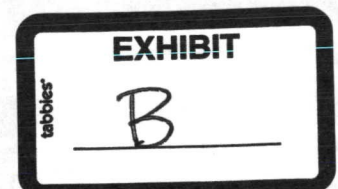
George:

In one of the meetings I had with Mississippi True prior to the procurement, my staff and I specifically discussed the fact that this contract did not fall under PSCRB's purview, but that DOM would follow all applicable PSCRB rules and guidelines. Mississippi True did not seem confused about this issue prior to the procurement.

Section 3.5 of the RFP states that we must receive approval from CMS, but nothing about approval from PSCRB (like it does in other procurements under PSCRB purview). The MSCAN procurement schedule did not note a PSCRB meeting/approval date like it does in other procurements under PSCRB's purview. And Mississippi True had an opportunity to clarify any confusion during the Question and Answer process, but did not ask a question related to this issue. Instead, Mississippi True submitted a proposal wherein they explicitly stated that they read, understood and agreed to all provisions of this RFP without reservation and without expectation of negotiation. Further, per Section 3.1 of the RFP, submission of a proposal in response to the MSCAN RFP constitutes acceptance of the conditions governing the procurement process.

Thanks,
Tara

Tara Smith Clark, JD, CHP
Executive Administrator
Office of the Governor, Division of Medicaid
550 High Street, Suite 1000
Jackson, Mississippi 39201
T: (601) 359-9276



F: (601) 359-9153
tara.clark@medicaid.ms.gov

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From: George Ritter [ghr@wisecarter.com]
Sent: Friday, July 07, 2017 11:55 AM
To: Paige H. Biglane
Cc: Tara S. Clark
Subject: RE: RFP #20170203

Mississippi True strongly disagrees with DOM's position and objects to execution of the contracts until it has been provided a full and fair opportunity to pursue its Protest through completion of the administrative and judicial appeal process. Mississippi True reserves all legal rights and remedies.

George H. Ritter

Shareholder
Post Office Box 651
Jackson, MS 39205-0651
600 Heritage Building
401 East Capitol St.
Jackson, MS 39201
P: 601-968-5526
F: 601-944-7738
E: ghr@wisecarter.com

<image001.png>

From: Paige H. Biglane [<mailto:Paige.Biglane@medicaid.ms.gov>]
Sent: Friday, July 07, 2017 11:47 AM
To: George Ritter
Cc: Tara S. Clark
Subject: RE: RFP #20170203

George:

Sorry I missed your call. This contract is for insurance rather than personal or professional services and, as such, does not fall under the purview of the PSCRB. The authority is Miss. Code Ann. § 25-9-120, which details the types of services governed by the PSCRB. Further, unlike professional and personal service contracts, this contract isn't entered into or paid via the state payment system, MAGIC. As far as we know, this is how DOM has handled this contract since MSCAN's inception in 2011 (2010 procurement). PSCRB has never attempted to exercise purview over this contract. I've spoken with Kelly Hardwick, MSPB Director, and they do not plan on responding to the copy of the protest they received.

In regards to your second question, DOM will move forward with contract execution unless ordered to do otherwise by a court. This is how we handled a previous contract award that was challenged all the

way to Chancery Court in 2013. Tara confirmed that the executed contracts are not valid until CMS approves them.

Thanks.

Paige H. Biglane
Special Assistant Attorney General
Division of Medicaid, Legal Department
550 High Street, Suite 1000
Jackson, Mississippi 39201
Phone (Jackson Office): 601-359-6042
Phone (Picayune Office): 601-076-3085
Fax: 601-359-9620
Paige.Biglane@medicaid.ms.gov

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From: George Ritter [<mailto:ghr@wisecarter.com>]
Sent: Friday, July 07, 2017 11:14 AM
To: Paige H. Biglane
Subject: RFP #20170203

Paige,

I am trying to determine whether the contracts awarded pursuant to the above RFP will be sent to the PSCRB for approval. I was told that DOM believes that PSCRB approval is not required. Is this correct? If so, please provide the authority DOM relies on for this position. Also, please confirm that contracts will not be executed until the protest and appeal process has been concluded. Thank you for your cooperation.

George H. Ritter
Shareholder
Post Office Box 651
Jackson, MS 39205-0651
600 Heritage Building
401 East Capitol St.
Jackson, MS 39201
P: 601-968-5526
F: 601-944-7738
E: ghr@wisecarter.com

<image001.png>



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phil.buffington@arlaw.com

August 23, 2017

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 Supplemental
and Amended Protest by Mississippi True

Dear Dr. Dzielak:

This firm represents Molina Healthcare of Mississippi, Inc. ("Molina") and submits this response to the supplemental and amended protest filed by Mississippi True on August 18, 2017 (the "Protest"). This response fully incorporates by reference Molina's response to Mississippi True original protest, dated 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

C

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 others, Mississippi True embarked on a campaign to pressure the Division into unwinding the entire procurement process. In doing so, Mississippi True has maligned Molina, the Division, and the Executive Director of Medicaid ("Director") in multiple venues, including in public court filings and hearings, wrongly alleging that the Division and the Director are guilty of bias, discrimination, and unethical conflicts of interest.¹ Mississippi True has continued these tactics in its Protest here.

In its Protest, Mississippi True argues that the Division is required to revoke the awards to Molina and others because: (1) the Director has an actual or potential conflict of interest because Molina offered the Director a job; (2) Mississippi True was, and is, statutorily entitled to a contract; (3) the Division failed to comply with the Rules and Regulations of the Personal Service Contract Review Board (the "PSCRB"); and (4) the Division and the Director were biased and discriminated against Mississippi True and committed objective errors in calculating scores.

Each of these arguments is meritless.

First, as demonstrated below and in the attached affidavits, Molina *never* offered the Director a job. This allegation is a blatant falsehood. The Director has no conflict of interest requiring his recusal or requiring the Division to unwind the procurement.

Second, the Mississippi Legislature did not mandate or require the Division to award Mississippi True a contract. By enacting Miss. Code Ann. § 83-5-601 to -607, the Mississippi Legislature authorized health-care providers to form Provider Sponsored Health Plans ("PSHPs") to attempt to win a contract with the Division,

¹ Unfortunately for the Division, the Director and Molina—but conveniently for Mississippi True—these false accusations quickly found their way from the courtroom podium to the media. *E.g.* <http://on.thec-l.com/2wnh0sO>

but the Legislature did not require the Division to award PSHPs a contract nor provide them with the favored status in procurement that Mississippi True seeks. Instead, the Division alone is vested with the authority to carry out its managed-care program, and the Division alone is vested with the discretion to award contracts to plan providers. Miss. Code Ann. §§ 43-14-47 and -117(H).

Third, while Molina believes that the Rules and Regulations requiring PSCRB approval of personal and professional services contracts do not apply here, even if they did, any argument that the Division failed to follow those rules is moot because the Division has agreed to submit the awards to the PSCRB for review.

Last, Mississippi True has utterly failed to demonstrate that the Division and the Director are guilty of bias and discrimination. The only evidence Mississippi True offers in support are the low scores that the Division awarded to Mississippi True in comparison to the winning offerors. This has nothing to do with bias or discrimination. Instead, Mississippi True is impermissibly attacking the Division's subjective scoring based on the Division's professional judgment and assessment of its own needs, which is an impermissible ground for protest under § 3.8.1 of the RFP.

Given that the current MississippiCAN contracts have expired, and given that the population of Medicaid beneficiaries is continually expanding, 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.² 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 contracts as awarded, is necessary to ensure the uninterrupted and continued success of the program to protect the interests of the State and its citizens. See RFP § 3.8.3.

Discussion

A. The Director has no actual or potential conflict of interest.

Mississippi True falsely asserts that the Director has an actual or potential conflict of interest, which renders the contracts that were awarded void. (Protest at p. 1 and 8.) According to Mississippi True, Molina offered the Director a job. But this is a blatant falsehood, and a serious charge irresponsibly levied against the Director and Molina without support or an attempt to undercover the truth.

² See Driven by Results: Coordinated Care to Reach New Milestone (available at <https://goo.gl/4yLTe8>).

Instead, Mississippi True rests this conspiracy theory on a mischaracterization of 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.

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.

Mississippi True mischaracterizes these emails in a strained attempt to create a false controversy in the public sphere. They took place in January 2015 and had nothing to do with the RFP or MississippiCAN. *Id.* at ¶ 9. These emails also had nothing to do with offering the Director employment at Molina. *Id.* 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. *Id.* at ¶ 9-10.

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 Boim 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 Mississippi True cites 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 that 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

Call Jesse at 804-928-1111. Both me and my wife loved the job they do at a fair price.³

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

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 also benign.

Mississippi True claims that these emails can "reasonably [be] interpreted as job opportunities for Dr. Dzielak with Molina Molina's [sic] affiliate." But Mississippi True's interpretation is a complete fiction and no reasonable person would come to the conclusion that Molina offered a job to Dr. Dzielak. These emails show nothing other than the extent Mississippi True is willing to go to unwind the RFP process, even at the expense of the Division and the Director, professionally and personally.

³ This part of the email discusses the details of a moving company that Boim recommend to the Director, which was provided for the Director's 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.

For example, the fact that these emails do not evidence any job offer from Molina to the Director did not stop Mississippi True's attorney from explicitly stating that they did, in open court, with the media present, at the August 7 hearing before the Hinds County Chancery Court. What is more, Mississippi True's attorney began reading from these emails, in open court, with the media present, *immediately after* the court sealed the emails. The only purpose for providing this information would be to entice the media to publish the story, which is exactly what happened moments later:



But as the uncontroverted testimony in the attached affidavits makes clear—as well as the plain text of the emails themselves—Molina never offered a job to the Director and there was, and is, no conflict of interest warranting revocation of the award or the Director's recusal. The communications between Molina and the Director were (a) personal exchanges between professional colleagues and friends, and (b) innocuous communications of the type plan providers routinely have with Medicaid professionals regarding potential opportunities to provide services. It should be noted that Mississippi True made no attempt to ascertain the intent of

these e-mails prior to publicly accusing the Division, the Executive Director and Molina of unethical and illegal conduct.

B. The Mississippi Legislature did not mandate that the Division award a MississippiCAN contract to Mississippi True.

Mississippi True contends that the Legislature mandated and required the Division to award a contract to Mississippi True. This is not so. Nowhere in the statute authorizing health-care providers to form PSHPs did the Legislature require the Division to award a contract to PSHPs, nor provide PSHPs with the favored status in procurements that Mississippi True seeks.

In enacting Miss. Code Ann. § 83-5-601(1), the Legislature simply “authorize[d] and encourage[d] the creation of provider-sponsored health plans,” but did not mandate their creation. And in § 83-5-603, the Legislature authorized PSHPs to “contract with the Division of Medicaid,” but did not mandate the Division to award contracts to PSHPs. The statute could have required the Division to award contracts to every PSHP formed under its authority, or to a specified number, regardless of their ability to meet the Division’s needs. But § 83-5-603 does not do that.

Nor does § 83-5-601 *et seq.* establish special procurement scoring rules for PSHPs, or require that the Division assess them in any manner that differs from that which the Division employed here. Mississippi True argues that the statutory provisions authorizing its creation also grants it favored status in procurements and limits the Division’s discretion to assess its own needs and score proposals. It simply does not do that, Mississippi True’s vague assertions of legislative intent aside.

While Mississippi True can pluck language from the statute to support the public policy behind authorizing PSHPs—which public policy is up for debate⁴—Mississippi True cannot, and has not, cited any language to support their position that the Division is *required* to contract with Mississippi True or assess them any differently than other bidders.

⁴ Allan Baumgarten, Analysis of Integrated Delivery Systems and New Provider-Sponsored Health Plans (June 2017) (analyzing the challenges facing PSHPs and concluding that “it is likely that more of this new cohort of provider-sponsored health plans will reconsider their commitment to adding the capital, energy, and focus needed to sustain a health plan long enough to achieve success [and] [f]or those reasons, and others, the prospects for success by these new health plans are not strong.”) (available at <http://rwjf.ws/2tUi7y7>).

C. The Rules and Regulations requiring PSCRB approval of personal and professional service contracts do not apply; regardless, the Division intends to submit the MississippiCAN contracts to the PSCRB.

Mississippi True argues that the Division violated the Rules and Regulations of the PSCRB because the Division—initially—intended to award the contracts without submitting the awards to the PSCRB for review. Mississippi True also complains that the Division did not provide Mississippi True adequate time to file protests, and that the Director impermissibly signed the contracts before they were approved by the PSCRB. So, Mississippi True argues, the entire procurement was conducted in violation of law.

This argument is incorrect and, perhaps more to the point, moot. The Division is submitting the awards to the PSCRB, the Division produced the very documents Mississippi True demanded, and the Division granted Mississippi True all the time Mississippi True requested (7 days) and more to prepare its Protest. In fact, these issues were clearly spelled out in orders issued by the Hinds County Chancery Court. What is more, the RFP itself acknowledges that the award and contracts would not be final—regardless of the Director's signature—until after approval by the Centers for Medicare and Medicare Services ("CMS") (which has yet to occur) and further provided that there would be no "final" agency decision until after the any protests were resolved (which has also yet to occur). See RFP §§ 3.5 and 3.8.3. Thus, Mississippi True's entire argument on this point is merely grandstanding, because the Division has agreed to the very procedures Mississippi True is demanding that the Division follow.

Regardless, Mississippi True's argument is wrong. The Rules and Regulations of the PSCRB do not apply to this RFP. 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 PSCRB approval of personal and professional services contracts 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 Mississippi True,

contracts for insurance are not subject to PSCRB review. See Jackson, Miss. Att’y Gen. Op. No. 2017-00040 (Feb. 17, 2017).

D. Mississippi True has failed to demonstrate bias and discrimination.

Mississippi True’s bias and discrimination argument is twofold. First, Mississippi True accuses the Division and the Director of discriminating against Mississippi True based on its status as a PSHP. Second, Mississippi True alleges that this bias and discrimination negatively affected Mississippi True’s scores. Mississippi True then continues on to impermissibly attack the subject scoring of the Division on a litany of criteria. According to Mississippi True, the Division’s award of the contracts was therefore “arbitrary and capricious” and not supported by “substantial evidence.”

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, Mississippi True 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).

Mississippi True has failed to put forth any valid evidence establishing bad faith, bias, or discrimination here, 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, Mississippi True’s entire effort to attack the subjective scoring of the Division is prohibited. Section of 3.8.1 of the RFP expressly prohibits a protestor from challenging the Division’s subjective scoring based on the Division’s professional judgment and assessment of its own needs regarding the solicitation.

Accordingly, Mississippi True’s entire argument as to bias, discrimination, and scoring is wholly without merit.

1. Mississippi True has utterly failed to demonstrate bias and discrimination.

To support its accusations of bias and discrimination, Mississippi True relies on its tired argument that Mississippi True is *entitled* to a MississippiCAN contract or special treatment during procurement based on its PSHP status. According to Mississippi True, the fact that the Division did not award Mississippi True a contract must be because the Division and the Director were biased against Mississippi True’s in favor of out-of-state for-profit companies.

Initially, it is absurd to argue that a *Mississippi* agency discriminated against a *Mississippi* non-profit in favor of out-of-state companies. There is also no authority—in the law or otherwise—to support the proposition that a state agency’s decision to contract with a certain form of business entity over another (i.e., corporation versus non-profit versus limited-liability company, and so on) constitutes bad faith “discrimination” or “bias” in the procurement process. Mississippi True has invented this theory.

Regardless, as noted above, Mississippi True is not automatically entitled to a MississippiCAN contract. Instead, the Legislature simply authorized health-care providers to form PSHPs to *attempt* to win contracts with the Division. But the Division alone is vested with the authority and discretion to carry out its managed-care program, and the Division alone is vested with the authority and discretion to determine which plans will win contracts to participate in that program. Miss. Code Ann. § 43-13-117(H) (emphasis added). The Division’s decision to award the contracts here to three well established and successful managed-care plans as opposed to an entity with little relevant experience does not evidence bad faith, discrimination, or bias. It only evidences that, after evaluating the proposals and oral presentations of the offerors, the Division ultimately decided that Mississippi True’s proposal was not sufficient for the needs of the MississippiCAN program. That is not discrimination or bias. It is a sound professional judgment that is wholly

within the Division's discretion to make. Mississippi True cannot second guess that judgment.

2. Mississippi True's attack on the Division's subjective scoring is prohibited by the RFP.

After levying its accusations of bias and discrimination against the Division and the Director, Mississippi True continues on to attack the Division's subjective scoring decisions. But this attack is expressly prohibited by the terms of the RFP.

The RFP sets forth the procedure for protesting an award. And under its terms, there are only three acceptable grounds to 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 (emphasis added). An unsuccessful offeror may *not* protest the award on the basis of:

- 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. (emphasis added).

So, under the RFP, a protestor may only challenge the *computing* of scores and not the Division's *subjective* scoring decisions, which are based on the Division's professional judgment and assessment of its own needs. For example, Mississippi True could very well protest the award if the Division incorrectly *calculated* its scores (i.e., the Division erroneously awarded Mississippi True a total of 40 points when, in fact, Mississippi True's actual points totaled 45 if added correctly). But Mississippi True cannot second guess the Division's substantive scoring decisions (i.e., whether to ultimately award 3 out of 5 versus 4 or of 5 based on a review of the proposal and oral presentation). But as set forth below, that is exactly what Mississippi True attempts to do. The entire protest is directed toward second guessing the Division's professional judgment and assessment of its own needs, which is entirely improper.

a. Corporate-background and experience.

First, Mississippi True alleges that the Division did not award Mississippi True enough points in the category of “corporate-background and experience.” According to Mississippi True, this error evidences bias against its status as a newly formed PSHP.

Specifically, Mississippi True lost points on Section 2, Question 1 (RFP Section 5.4.1) for the failure to have three-years’ experience. To be sure, Mississippi True has no substantive experience in providing risk-bearing managed-care plans. But the Division’s scoring of Mississippi True’s proposal on that basis does not demonstrate bad faith, bias, or discrimination. Instead, the Division’s subjective decision to score Mississippi True lower than others based on experience reflects the Division’s ultimate professional judgment and assessment of its own needs, which is an impermissible ground for objection under § 3.8.1 of the RFP. Moreover, scoring and evaluation errors, even when present, are not sufficient to demonstrate bias. *Jacobs Tech. Inc. v. U.S.*, 131 Fed. Cl. 430, 455 (2017) (“errors in an evaluation process do not alone suffice to demonstrate bad faith or permit discovery.”)

Related to its meritless discrimination argument, Mississippi True further argues that because no newly formed PSHP could have three-years’ experience, it is “impossible” for a newly formed PSHP to meet this requirement and secure a contract. But this criterion is only one of many that the Division considered. Perhaps a newly formed PSHP will (rightly) score poorly for experience, but that entity may shine in other areas and still win. A single category for experience does not make it “impossible” for a newly formed entity to win a contract.

Moreover, experience is certainly a relevant inquiry for the Division to consider. Indeed, the wellbeing of Mississippi’s Medicaid beneficiaries—including children, the elderly, and the disabled—is at stake. It is therefore absurd to argue that judging a business entity based on its experience amounts to improper bias and discrimination. To the contrary, it would be negligent or irresponsible for the Division to ignore Mississippi True’s lack of experience as a managed care plan.

Mississippi True then directs its attack to Molina, arguing that Molina Healthcare of Mississippi, Inc. is a newly formed entity without three years of experience, yet that entity was awarded 4 out of 5 points. But as Mississippi True is well aware, Molina will be working in tandem with its parent company Molina Healthcare Inc.—an entity formed in 1980 whose health plans serve roughly 4.6 million people in the United States.

Mississippi True also attempts to argue that there was no specific scoring

category for items such as “three-years’ experience,” so the Division’s decision to consider “three-years’ experience” violated the RFP. This argument is meritless. State agencies must evaluate offerors based on criteria listed in a request for proposal. But the Division *did* evaluate the offerors based on criteria listed in the RFP. The RFP specifically identified “Corporate Background and Experience” as a scoring criterion, and specifically noted that the category included “background experience” for the “most recent three (3) years,” among many other things. RFP § 5.4.1. So whether or not an entity *has* three-years’ experience falls squarely within the RFP. At bottom, Mississippi True’s entire argument on this point is an attempt to reargue the merits of its proposal and is not directed toward any of the permissible grounds for a protest under § 3.8.1 of the RFP.

b. Ability to provide services.

Second, Mississippi True argues that the Division erroneously scored Mississippi True 3 out of 5 (i.e., “adequate”) for its “ability to provide services.” According to Mississippi True, it is deserved an extra point. This entire argument in an impermissible attack on the Division’s subjective scoring and is a wholly improper protest under § 3.8.1 of the RFP.

c. Corporate experience and financial information for parent companies and affiliates.

Third, Mississippi True argues that Molina and others were impermissibly scored a single point higher than Mississippi True based on the experience and financial information of the winning offerors’ parent companies. But the identity, experience, and financial condition of an offeror’s parent or affiliate falls squarely within the broad category of “corporate experience,” and is therefore an appropriate consideration of the RFP. Moreover, nothing in the RFP prohibited offerors from volunteering the financial statements of their parent and affiliate companies. Indeed, it is common for entities to use the experience and financial condition of parent and affiliate companies to meet the experience requirement in a request for proposals, such as was the case here. In fact, the Question and Answer document provided by the Division during the RFP process specifically allowed for the use of the financial resources and history of an offeror’s parent company. Also, the Division requested clarification from Molina regarding the sanctions and terminations of its parent company and affiliates—which Molina provided—clearly indicating that consideration of parent and affiliate experience and history was appropriate in evaluating proposals.

Mississippi True’s complaint here is simply another impermissible attack on subjective scoring decisions (i.e., whether to award a single extra point to an offeror

based on the varied experience and financial condition of the offerors' affiliates, subcontractors, and so on).

d. Resumes.

Fourth, Mississippi True argues that Molina was improperly awarded 3 out of 5 points in Section 3, Question 11 of RFP § 5.5.2, which scoring was based on the resumes provided for offerors' managers. Mississippi True argues that Molina failed to provide a resume for the individual who would replace former CEO Robert Church, and therefore Molina's score should have been reduced. But as Mississippi True acknowledges, Robert Church left *after* the contracts were awarded. In addition, at the time it submitted its proposal, Molina intended that Mr. Church would occupy the CEO position permanently. Thus, Molina could not have provided a resume for his replacement during the RFP.

e. Remaining scoring allegations.

Fifth, while not specifically directed at Molina, Mississippi True attempts to pick apart the Division's scoring on a litany of remaining criteria, including proposed resources under RFP § 6.2.2; qualifications under RFP § 6.2.2; organizational qualifications under RFP § 6.2.2; and more. But even a cursory review of these arguments reveals that Mississippi True is simply attacking the Division's subjective scoring decisions based on the Division's professional judgment and evaluation of its own needs. Mississippi True has not demonstrated a single objective error in the Division's *calculation* of the scores, as is permitted by the RFP. Instead, Mississippi True quibbles with the Division's *subjective* scoring decisions, arguing that—in Mississippi True's opinion—it should have been awarded an extra point here and an extra point there. This relitigation of the merits of the proposals is prohibited, untimely, and wholly improper.

Importantly, even if Mississippi True *were* awarded all the points it believes it deserved, Molina *still* would have ranked in the top 3 of offerors and *still* would have won an award.

3. Mississippi True's final arguments are without merit.

Before concluding its Protest, Mississippi True levies a few additional, random accusations against Molina, the Division, the Director, and the other offerors. But consistent with Mississippi True's strategy, these parting shots are nothing more than a final effort to malign or defame every participant in the RFP process, except Mississippi True itself.

Mississippi True begins by alleging that a California subsidiary of Molina's parent was subject to sanctions November 2015 and June 2016, and that Molina did not disclose these to the Division. As the Division is aware, Molina submitted a clarification letter dated April 13, 2017 that detailed sanctions received by Molina Healthcare, Inc. and its health plan subsidiaries. Molina's letter states that the issues included with it were limited to a monetary value exceeding \$25,000 or certain other significant regulatory interventions. The letters Mississippi True provides in its Protest state that the penalty arose from failure by a Molina affiliate to assign at least 75% of default members to primary care providers within the county public health system in San Bernardino County until an enrollment target for the public health system is met. In each instance, the Department of Health Care Services reduced the number of default beneficiary assignments placed into Molina's managed-care plan by 25% for a six-month period. There was no monetary penalty, and Molina did not identify the default member assignment reduction as significant for purposes of the April 13, 2017 clarification letter.

Mississippi True also alleges that Molina affiliates and other offerors are under current investigation. But an *ongoing* investigation or lawsuit means nothing. Mississippi True is asking the Division—and ultimately the PSCRB—to assume guilt before the final resolution of a regulatory investigation or legal action. Highlighting these investigations serves no legitimate or legal purpose.

Mississippi True next claims that Molina "announced a potential major HIPAA violation causing it to shut down its online portal due to a potential data breach" This is nothing more than another irresponsible allegation by Mississippi True. It is correct that Molina was subject to a data breach, but a final investigation of that breach revealed that a total of nine Molina Marketplace members were involved. ***While Molina takes vulnerabilities of any size very, very seriously,*** Mississippi True's hyperbolic accusations and inferences misrepresent the truth and serve no legitimate or legal purpose.

Mississippi True also identifies as a "Matter Under Investigation" a statement that Molina's now departed CEO, Robert Church, claims to have information "that affected [Mississippi True] in the bid process."

The Division should not delay matters on the basis of this vague assertion. Mr. Church was terminated by Molina following oral presentations to the Division, and the company is concerned that his outreach to Mississippi True's attorney may have been made in bad faith to retaliate for his dismissal. Moreover, given Mr. Church's limited involvement in preparing Molina's response to the RFP, Molina's belief is that he has no information that is relevant to this proceeding. Molina's understanding as of the writing of this response is that the Division has attempted

to contact Mr. Church to schedule a meeting to discuss whatever information he has, and that Mr. Church has been unresponsive. In the face of that fact, and without more of a proffer by Mississippi True as to what it hopes to learn by further investigation of Mr. Church's clandestine statements, Molina respectfully states that the implementation of the MississippiCAN contracts should not be delayed to accommodate it. Molina would reserve the right to respond to any accusations levied against it by Mr. Church or Mississippi True after it files its response.

Mississippi True's professed concern with knowing what information Mr. Church has to impart is belied by their counsel's delay in pursuing it. The emails attached as Exhibit 20 to Mississippi True's Protest indicate that Mr. Church first contacted counsel for Mississippi True on August 14, 2017. Seven days elapsed between this contact and the filing of the Protest, and three days between the contact and the date of counsel's correspondence advising of the communication and requesting further investigation. In the context of this proceeding, in which Mississippi True was provided seven (7) business days from receipt of additional documents from the Division to file the amended Protest, and in which Molina was provided three (3) business days to respond to the amended Protest, Mississippi's True's efforts to investigate this matter are less than diligent and prejudicial to Molina and others.

Should the Division determine that it is necessary to investigate what Mr. Church has to say, Molina asserts that it has the right and needs to be present during such communications. Mr. Church is subject to provisions of a Workforce Confidentiality Agreement, as are all Molina employees, under which he agreed not to disclose Molina proprietary and confidential information after his separation. Molina has the right and needs to participate in any discussion with Mr. Church with respect to this matter so that it may have the opportunity to protect its confidential information for legitimate business purposes.

Mississippi True claims that "[o]fficials within the Division publicly and within the Division stated their opposition to a PSHP being allowed a MississippiCAN contract" But Mississippi True fails to cite or quote any statement that comes close to demonstrating bad faith. Instead, Mississippi True simply alleges, without any hint of context, that the Executive Director—at one time—stated that the Division was "loyal to [its] vendors," which is a completely innocuous comment. Mississippi True also alleges that the Executive Director, when appearing at a legislative hearing, opined that there were no Mississippi companies that could sufficiently do the work necessary under the MississippiCAN project, which is, again, a completely benign statement and otherwise within the professional judgment of the Director. Neither of these two cherry-picked statements evidence bad faith. These comments are more appropriately categorized

as the Division's assessment of its own needs regarding the RFP, which is not a permissible ground to protest.

Last, Mississippi True randomly notes that the State of California has imposed a travel ban against state employees traveling to Mississippi. Mississippi True fails to explain how this fact is relevant or significant. It is not. Molina itself is a Mississippi corporation. California does not prohibit publicly-traded companies like Molina's parent company or its employees from traveling and doing business in Mississippi. Molina's parent company is a non-governmental entity that is not subject to or responsible for what the State of California happens to do or the restrictions it imposes on state employees.

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.

Mississippi True's protest—along with its unsuccessful litigation before the chancery court—have only delayed the implantation of the contracts and have 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.

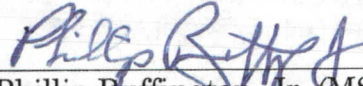
What is more, Mississippi True's entire Protest is wholly meritless and based on three fundamentally flawed arguments. Contrary to its assertions, Mississippi True is not entitled to a contract or special treatment as PSHP; Molina never offered the Director a job and the Director has no conflicts of interest; there is no evidence of bias or discrimination, and any attack on the Division's subjective scoring is prohibited by the RFP. 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.

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

Molina Healthcare of Mississippi, Inc.

By: _____



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July 18, 2017

Phillip Buffington, Jr.

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phil.buffington@arlaw.com

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 Mississippi True

Dear Dr. Dzielak:

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

Introduction

After the Division awarded the MississippiCAN contract to other vendors, Mississippi True filed a protest alleging objective scoring errors and, as its primary complaint, accusing the Division of bias and discrimination. But as set forth below, these 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.

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, MT alleges that scores awarded to MT were the product of bias and discrimination, and complains of additional errors in computing its score. Upon these allegations, MT alleges that the Division's decision to award the contract to Molina and others was therefore "arbitrary and capricious" and not supported by "substantial evidence." 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. The award was certainly supported by substantial evidence through both the proposals submitted by the offerors and the oral presentations given to the Division. 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. MT failed to identify any significant objective scoring errors by the Division.

MT argues that the Division committed "objective" scoring errors that resulted in MT being denied a contract. However, MT actually devotes the majority of its discussion on scoring to arguing that the Division's bias and discrimination against MT resulted in the Division's scoring errors and MT's low scores. As discussed below, however, MT fails to allege the required element of bad faith in support of any of its bias and discrimination claims. When examined closely, MT's complaints that its scores were low as a result of bias and discrimination are

actually attempts to protest the subjective scoring decisions of the Division, which is not a proper basis for protest under § 3.8.1 of the RFP.

MT specifies six questions in which it asserts objective errors occurred without overtly alleging bias and discrimination on the part of the Division. As a preliminary note, even assuming that the Division entertains the notion that these few *potential* objective scoring errors identified by MT could result in MT receiving a higher score, the changes would not affect Molina's award of a contract.

More importantly, even where not expressly founded on an allegation of bias and discrimination, some of MT's purported "objective" scoring errors are actually directed at subjective decisions and the ultimate professional judgment of the evaluation committee, which is an impermissible objection under § 3.8.1 of the RFP. For example, MT claims scoring for its answer to § 3, Question 5 contained an objective error, but the "objective" error alleged is a flaw in the evaluators' assessment that MT's response was inadequate given the large number and significant role of MT's subcontractors. This is not an allegation of objective error, but rather a complaint against the judgment of the evaluators. Moreover, MT characterizes the "objective" error as discrimination against MT because of its status as a recently formed provider sponsored health plan ("PSHP"). (Protest, § 2.c p. 8.) Again, this is not an allegation of objective error.

Ultimately, MT only alleges objective computational errors, unadulterated with attacks on the evaluators' judgment, as to four answers. And even assuming MT's protests as to these scores is accepted by the Division, MT would only be entitled to an additional 5 points and would still have scored lower than Molina.

B. MT has utterly failed to demonstrate bias and discrimination.

The majority of MT's protest alleges that the Division is biased against MT and discriminated against it on the basis of MT's status as a recently formed PSHP. MT appears to argue that, because of this alleged bias and discrimination, the Division failed to follow Legislative intent with respect to statutory provisions authorizing PSHPs. Instead, according to MT, the Division was biased in favor of out-of-state for-profit corporations, like Molina.

To establish bias and discrimination in the context of public procurement, the 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*, 61 Fed. Cl. at 226; *DataMill, Inc.*, 91 Fed. Cl. at 730-31. And a presumption exists that Government employees have acted in good faith in the procurement process. *Night Vision Corp. v. U.S.*, 68

Fed. Cl. 368, 394 (2005).

In support of its claims of the Division's bias and prejudice, MT made three general categories of assertions. However, MT makes no showing, nor even claim, that any of its assertions demonstrate bad faith.

First, MT details alleged scoring errors that MT claims evidence bias against MT's status as a PSHP. For example, MT notes that it lost points with respect to its response to Section 2, Question 1 (RFP Section 5.4.1) for the failure to have been a legal entity with three years' experience. This, however, does not demonstrate bad faith and does not rebut the presumption that the Division acted in good faith. At best, the Division's decision to score MT lower than other vendors based on its level of experience goes toward the Division's ultimate professional judgment, which is an impermissible objection under § 3.8.1 of the RFP. Moreover, scoring and evaluation errors are not sufficient to demonstrate bias. *Jacobs Tech. Inc. v. U.S.*, 131 Fed. Cl. 430, 455 (2017) ("errors in an evaluation process do not alone suffice to demonstrate bad faith or permit discovery.")

Second, MT claims that the Division's bias is further demonstrated by the Division awarding contracts to bidders with affiliates that have been sanctioned by federal and state authorities. But this assertion does not speak to the Division's evaluation of MT's fitness for an award under the RFP, with respect to sanctions or otherwise, nor even attempt to demonstrate bad faith by the Division or any particular official within the Division as to scoring or award decisions.

Last, MT claims that "[o]fficials within the Division publicly and within the Division stated their opposition to a PSHP being allowed a MississippiCAN contract" (Protest, § 3.b pp. 11-12.) But MT does not cite or quote any statement that comes close to demonstrating bad faith. Instead, MT simply alleges, without any hint of context, that the Executive Director—at one time—stated that the Division was "loyal to [its] vendors," which is a completely innocuous comment. And MT alleges that the Executive Director when appearing at a legislative hearing opined that there were no Mississippi companies that could sufficiently do the work necessary under the MississippiCAN project. This is, again, a completely benign statement. Neither of these two, cherry-picked statements evidence bad faith. Molina asserts that they are 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.

Accordingly, MT's claims as to bias and discrimination are wholly without merit.

C. MT's remaining arguments are meritless.

Throughout its protest, MT also takes the opportunity to attack Molina, Molina's proposal, and the Division's award to Molina. But these attacks are meritless.

In its objection to the scoring of Section 2, Question 1 (RFP Section 5.4.1), MT argues that, like MT, Molina also does not have three years' experience unless it is given credit for its parent company and other out-of-state affiliates. But it is common business practice for newly formed entities to use the experience of its direct parent company and affiliates to meet the experience requirements in requests for proposals such as the Division's here. Indeed, within the Question and Answer document provided by the Division, the Division specifically allowed for the financial resources and history of the offeror's parent company to be used. Also, the Division requested clarification from Molina regarding the sanctions and terminations of its parent company and affiliates, clearly indicating that consideration of parent and affiliate experience and history was appropriate in evaluating proposals.

MT also argues at various points that Molina—a newly formed entity like MT—was not held to the same standards as MT. And the fact that Molina was awarded the contract instead of MT demonstrates, according to MT, the Division's bias and discrimination. This is fallacious reasoning, and MT provides no evidence that the award to Molina was the result of bad faith, and MT is—once again—merely attacking the subjective judgment of the evaluators in scoring the offerors, which is, of course, not permitted.

MT notes, rather incongruously, that the State of California has imposed a travel ban against state employees traveling to Mississippi. MT makes no attempt to explain how this fact is relevant or significant. It is not. Molina itself is a Mississippi corporation. California does not prohibit publicly-traded companies such as Molina's parent organization, or related employees from traveling and doing business in Mississippi. Molina's parent company is a non-governmental entity that is not subject to or responsible for what the State of California happens to do or the restrictions it imposes on state employees.

Conclusion

MT has not demonstrated that the Division was biased or discriminated against MT, or that any objective computational errors meaningfully affected scoring. Instead, MT attacks the Division without any evidence of bad faith, and attacks Molina on wholly meritless grounds. Accordingly, Molina requests that the

David J. Dzielak, Ph.D.
July 18, 2017
Page 7

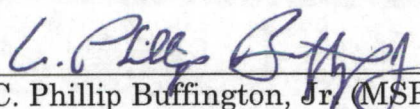
Division promptly reject the protest to ensure the uninterrupted and continued success of the MississippiCAN program and to otherwise protect the interests of the State and its citizens. *See* RFP § 3.8.3.

Reservation of Rights

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

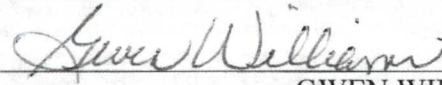
8. I responded by email the next day on January 15, 2015, noting that I understood, and that if I became aware of similar opportunities, I would let him know:

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.

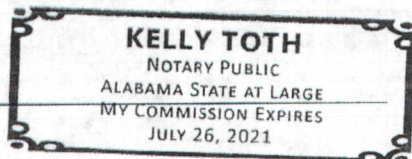
This the 21st day of August, 2017.


GWEN WILLIAMS

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


Notary Public

My Commission Expires:



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

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

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

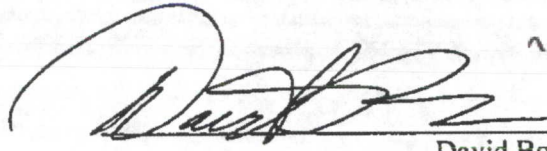
12. That email was not—and was never intended to be—a job offer to Dr. Dzielak, and Molina never suggested that Dr. Dzielak consider being a candidate. Indeed, I have never had hiring authority at Molina, and none of my communications (at any time) with Dr. Dzielak were—or were intended to be—job offers 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.

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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.

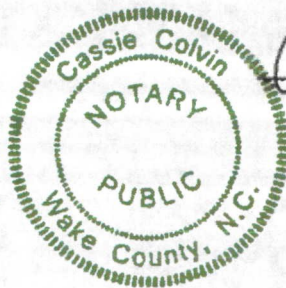
This the 23th day of August, 2017.

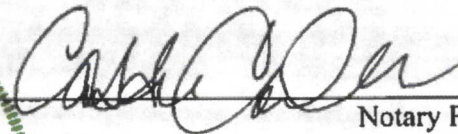

David Boim

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

My Commission Expires:

11/21/2021




Notary Public

Office of the Governor | Mississippi Division of Medicaid

Evaluation Orientation Manual

Request for Proposal (RFP) #20170203



EXHIBIT

D

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
601-359-6189

Brittney Thompson
Office of Procurement
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
TOTAL	100


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

 MISSISSIPPI DIVISION OF MEDICAID	Likert Scale Scoring Response: 1 = Inadequate; 2 = Less than adequate; 3 = Adequate; 4 = More than adequate;	<i>"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</i>	
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>Note to Evaluator: Include factors in your scoring methodology related to:</p> <ul style="list-style-type: none"> • Date established; • Location of the principal place of business; • Location of the place of performance of the proposed Contract; • Ownership (e.g., public company, partnership, subsidiary); • Total number of employees; • Number of personnel currently engaged in operations; • Computer resources; • Performance history and reputation; • Current products and services; • Professional accreditations pertinent to the services provided by this RFP. 	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		
↑ ↑ ↑ FOR FINANCE REVIEW AND EVALUATION ONLY ↓ ↓ ↓			
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		
↑ ↑ ↑ FOR FINANCE REVIEW AND EVALUATION ONLY ↑ ↑ ↑			

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??????**



Attorneys and Counselors at Law

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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.

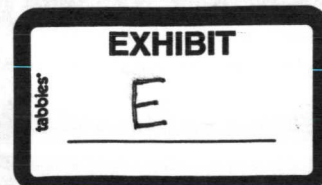
Dear Dr. Dzielak:

Please allow this to serve as Magnolia Health Plan's ("Magnolia") response to Mississippi True's ("MST") 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. MST's protest is without merit and that the contract awards should be upheld.

While most of the assertions made in MST's protest do not relate to Magnolia, we do think it necessary to respond to one of them. Specifically, MST alleges that DOM ignored evidence of prior performance problems by Magnolia's parent, Centene. MST refers to CMS's imposition of a civil monetary penalty against Centene related to its Texas and Wisconsin Medicare offerings in 2013. MST cites to Section 2.1 of the RFP which states that Offerors that have been *sanctioned* by a state or federal government within the last 10 years are ineligible to submit proposals, and to Section 5.2 which requires Offerors disclose all *sanctions* Offerors have received during their operational years in managed care.

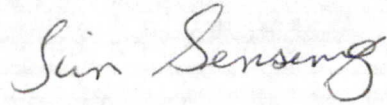
First, Magnolia's responses to these sections of the RFP were fully complete and accurate. Magnolia itself has never been sanctioned by a state or federal government. Therefore, Magnolia was eligible to submit a proposal and accurately responded to Sections 2.1 and 5.2. Further, MST incorrectly refers to the civil monetary penalties imposed on Magnolia's parent company Centene as sanctions. CMS plainly defines and treats civil monetary penalties and sanctions differently. Specifically, CMS maintains a tiered approach to enforcement. It has the authority to impose civil monetary penalties, intermediate sanctions (suspension of marketing, enrollment, and payment), and terminate providers entirely. See <https://www.cms.gov/Medicare/Compliance-and-Audits/Part-C-and-Part-D-Compliance-and-Audits/PartCandPartDENforcementActions-.html>. To conflate the imposition of civil monetary penalties with sanctions is incorrect and misleading.

Magnolia accurately and fully responded to the RFP regarding prior sanctions. Magnolia has never been sanctioned. Further, MST's claim that Centene has been sanctioned by CMS is incorrect and without merit.



In summary, MST's protest is unfounded and that the contract awards should be upheld.

Sincerely,

A handwritten signature in cursive script, reading "Tim Sensing".

Tim Sensing

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