

January 26, 2024

Via Email

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RE: AHCCCS Request for Proposal No. YH-24-0001

Dear Ms. LaPorte:

As you know, this firm, together with Henze Cook Murphy PLLC, represents Mercy Care in connection with its December 20, 2023 protest of the award in the above-referenced solicitation. By this letter, we respond briefly to the January 12, 2024 response submitted by Arizona Physicians IPA d/b/a UnitedHealthcare Community Plan (“APIPA”). We never received a copy of APIPA’s submission and became aware of it only after it was posted on the AHCCCS website earlier this week. We appreciate this opportunity to reply.

APIPA insists on deference to the existing contract award. But again, deference is required (if at all) only in *judicial* review of agency decisions. As AHCCCS’s chief procurement officer, you must decide in the first instance which course is in the best interests of the state and avoids disruption to ALTCS members. And for all the reasons set forth in Mercy Care’s protest, including Mercy Care’s longstanding relationship with the State of Arizona and its exemplary performance with ALTCS’s membership, there can be no question that including Mercy Care as a contract awardee is in the state’s best interest.

Our position, at its core, is that Mercy Care deserved to be evaluated based on a qualitative assessment of the individual merits of its proposal consistent with the RFP’s stated evaluation criteria. But AHCCCS’s scoring methodology made such an assessment impossible. The methodology generated scores based entirely on one-through-five ranks, with nearly a third of all points assigned to offerors’ ranking in a

pair of 30-minute, on-the-spot oral presentations delivered in response to surprise prompts and to which AHCCCS asked no follow-up questions. Without the overweighed oral presentations, Mercy Care would have ranked first among all offerors. But even against these obstacles, Mercy Care *still* ranked third overall and should therefore be awarded a third contract, consistent with what AHCCCS has said it would do all along.

APIPA's response does not move the needle on any of these points. Indeed, it makes many of the same arguments that Health Net did in its January 8, 2023 letter to which we previously replied. We will not repeat ourselves here and instead address only the following key points.

As to the timing of the development of the scoring methodology, the Executive Summary says what it says: the Scope Team met "through November 15, 2023, to determine the scoring methodology." Executive Summary at 2. APIPA does not try to explain this statement away on its terms. Like Health Net, APIPA points to the minutes of the September 21, 2023 Scope Team meeting. But those minutes establish at most that the Scope Team had developed blank Excel templates by then, not the actual scoring methodology or the points each submission category would receive.

APIPA argues that the evaluators received training on October 3, 2023 "based on the finalized scoring plan." Resp. at 4; *see also* Executive Summary at 2 ("Scoring Training was held on October 2, 2023."). But the "scoring" to which that training referred was merely one-through-five ranking. *See, e.g.*, AHCCCS000030 (noting that the consensus ranking process is "also referred to as scoring"). The training instructed evaluators to enter their notes into the individual scoring tool (that is, the blank Excel template developed by the Scope Team) and to rank offerors first through fifth while trying to avoid ties. *See* AHCCCS000060. There is no indication that evaluators were told—then or ever—that the actual scores would turn entirely on the final one-through-five ranks without regard to evaluators' written observations about each proposal, or how many points would be assigned to each submission category. That decision would come much later, as the Executive Summary makes clear.

Next, APIPA's waiver arguments are no more convincing than Health Net's. Our protest is based on the flaws in the scoring methodology itself, not the RFP's failure to disclose it. Our point in noting that AHCCCS did not disclose the scoring methodology until December 1, 2023 is to show why we could not have possibly challenged it any sooner than we did. And the problem with the methodology is not *just* that the oral presentations were scored, but that they were scored and made to account for so much—an error only further exacerbated by the ranked scoring system.

APIPA suggests that Mercy Care could not have been prejudiced by the scoring methodology because it affected all offerors equally. That misses the point: the

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problem with the scoring methodology was that it generated scores that do not reflect the individual merits of each proposal. Some offerors received high scores despite their obvious weaknesses while others received low scores despite their obvious strengths. Recall that Health Net ranked first in response to OP 2 and Mercy Care tied for fifth—resulting in a point disparity of 101.5 points, or 70% of the 145 points available for that category—despite Health Net answering an entirely different question than the one posed. That is hardly fair or equal treatment between offerors. Regardless, Mercy Care has shown clearly—and no one has disputed—that it would have ranked first overall had the oral presentations not been weighted as heavily as they were.

The discrepancies between the individual evaluations and the final consensus ranks are a further illustration of the same problem: whatever care or nuance might have gone into the individual evaluations of each proposal was lost once the consensus ranks alone were converted to numerical scores. And there is no indication that the award was based on anything more than the final overall ranks: despite a conclusory and unsupported statement that the award was “the most advantageous to AHCCCS and the State of Arizona,” Executive Summary at 3, the Scope Team recommended awards to Health Net and APIPA precisely because of how they ranked “based on total score.” Executive Summary at 1. AHCCCS said it would be “guided, but not bound” by the final scores. Instructions to Offerors at 5. That does not appear to have been the case.

We appreciate your consideration of this reply and again urge you to sustain the protest.

Sincerely,

A handwritten signature in blue ink, appearing to read 'RH', with a stylized flourish extending to the right.

Roy Herrera