

February 7, 2024

Via Email

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RE: Appeal of Procurement Officer Decision, dated February 2, 2024
AHCCCS Request for Proposal No. YH-24-0001 (ALTCS E/PD)

Dear Ms. Heredia and Ms. Laporte:

This firm, together with Henze Cook Murphy PLLC, represents Mercy Care, an Arizona nonprofit corporation, in connection with its protest of the award in the above-referenced solicitation. By this letter, Mercy Care appeals from the February 2, 2024 Procurement Officer Decision (the “Decision”) rejecting Mercy Care’s December 20, 2023 protest of the award and requests a hearing. *See* A.A.C. R9-22-604(B), (I). The Decision is attached here as Exhibit A.

Introduction

The Arizona Long Term Care System for individuals who are elderly or have a physical disability (“ALTCS E/PP”) delivers long-term, acute, behavioral health, and case management services to eligible members who are elderly or have physical disabilities. AHCCCS expends over \$1.7 billion annually on the program, which

serves nearly 26,000 Arizonans. It is unquestionably one of AHCCCS's most important programs and one of the state's largest contracts.

Contract awards of this size and importance should turn on the things that matter: an offeror's ability to satisfy the requirements of the RFP and deliver services consistent with the stated evaluation criteria. It is only on this basis that AHCCCS can rationally determine which proposal is the "most advantageous to the state." A.R.S. § 36-2906(C)(2); A.A.C. R9-22-603. But here, the awards turned largely on offerors' oral presentation skills: AHCCCS assigned nearly *one third* of all available points to offeror's performance in a pair of 30-minute oral presentations delivered in response to prompts disclosed just one hour prior. Yet no part of the ALTCS E/PD contract requires the delivery of impromptu presentations. Offerors' presentation skills have no bearing on their ability to perform the services actually required under the RFP.

The oral presentations were scored as their own programmatic submission category rather than used to inform offerors' abilities in other programmatic criteria AHCCCS said it would score. In other words, offerors were scored specifically on how well they *delivered* the presentation and not, say, how the content of those presentations informed their ability to develop and implement best practices for case management. Scoring the presentations for their own sake, and so heavily, both violated the terms of the RFP and lacked any rational basis. This simply was an untenable means by which to determine which proposal is most advantageous to the state."

AHCCCS also employed a flawed scoring methodology that generated point scores failing to reflect the underlying substantive merits of each proposal. Rather than evaluate each proposal on its own terms and assign points accordingly, AHCCCS assigned points based entirely on offerors' ranking within a given scoring category. The result was that absent a tie, the top-ranked offeror in a given category would receive 100% of the points available while the lowest-ranked offeror would receive only 20%, irrespective of the weaknesses of the higher-ranked submission or the strengths of the lower-ranked one. In other words, a lower-ranked but still strong submission that addressed what AHCCCS said it wanted would nevertheless receive only a fraction of the points available; a higher-ranked but less-than-perfect submission would nevertheless receive a perfect score. This resulted in artificially inflated point disparities between offerors whose performance might have otherwise been roughly comparable even if not precisely equal. And it assigned artificially low scores to Mercy Care's submissions where their content plainly warranted greater points.

AHCCCS said its award decision would be guided but not bound by the scores. But there is no record to indicate that AHCCCS considered anything *but* the final scores in making its award decision. Whatever thoughtfulness went into the

evaluation team's assessment was lost once the ranks were converted to cold scores that ultimately were determinative of the awards. The award decision must be based on a meaningful and documented assessment of which proposal is most advantageous to the state, not simply which one scored highest based on a flawed scoring methodology.

Finally, in resolving the various protests, the procurement officer employed a deferential standard of review to which the original contract decision was never entitled. The question for AHCCCS—even now—is which proposal is the most advantageous to the state. That has been and remains the standard. 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.

For all these reasons and those discussed further below, the decision of the procurement officer should be reversed, and AHCCCS should issue a new RFP or maintain its current ALTCS E/PD contracts. In the alternative, AHCCCS can and should award a third contract to Mercy Care, consistent with its stated intent to issue three awards. Doing so would resolve Mercy Care's protest while promoting member and provider choice, risk mitigation, and overall competition.

Background

I. The ALTCS E/PD program.

Established by law in 1994, the ALTCS E/PD program delivers long-term, acute, behavioral health, and case management services to Arizonans who are among the state's most vulnerable Medicaid members. *See* A.R.S. § 36-2932. Contracted managed care organizations provide comprehensive delivery of services under the program. A.R.S. §§ 36-2932, -2940, -2944. As with other AHCCCS programs, the director must issue an RFP every five years to qualified health care services organizations to administer the program and deliver services to members. *See* A.R.S. § 36-2906(B).

AHCCCS spends over \$1.7 billion annually on the ALTCS E/PD program, which currently serves 25,730 members. *See* Ariz. Health Care Cost Containment Sys. Div. of Bus. & Fin., Contract Year Ending 2024 Capitation Rate Certification Arizona Long Term Care System – Elderly and Physical Disability Program 60 (Aug. 11, 2023), *available at* https://www.azahcccs.gov/PlansProviders/Downloads/CapitationRates/ALTCS/CYE_24_ALTCS-EPD_Capitation_Rate_Certification_SOF.pdf; Ariz. Health Care Cost Containment Sys., ALTCS Enrollment, <https://www.azahcccs.gov/PlansProviders/Downloads/enrlct.pdf> (last visited Feb. 6, 2024).

Mercy Care was first awarded an ALTCS contract in 2000 and has continuously provided services to ALTCS members since, serving more than 10,000 ALTCS members with over 300 staff dedicated to the program. Mercy Care has been a strong collaborator with AHCCCS, supporting AHCCCS's mission and vision and delivering innovative, member-focused, and cost-effective care with excellent health outcomes. Mercy Care consistently receives excellent member and provider surveys and has a well-established, longstanding contract network of providers, including in critical specialty services. In addition, Mercy Care leadership has never received feedback from AHCCCS indicating that the agency has ever been less than satisfied with Mercy Care's performance.

II. AHCCCS issues an RFP for the ALTCS E/PD

AHCCCS published the RFP on August 1, 2023, with proposals due October 2, 2023. In addition to seeking financial and cost bids, the RFP required written responses to a series of "Narrative Submission Requirements" and participation in an oral presentation "pertaining to key areas of the ALTCS E/PD Program." Ariz. Health Care Cost Containment Sys., RFP No. YH24-001 § H: Instructions to Offerors ("Instructions")17–18,

https://www.azahcccs.gov/Resources/Downloads/Solicitations/Open/RFPs/YH24-0001_ALTCS E/PD/H-InstructionstoOfferors.pdf.¹ The RFP indicated that cost bids and Narrative Submission Requirements would be scored unless specifically exempted. The RFP gave no indication that the oral presentations would be scored.

Specifically, the RFP said that proposals would "be evaluated based upon the ability of the offeror to satisfy the requirements of the RFP in a cost-effective manner." Instructions at 5. It indicated that the "scored portions of the evaluation," listed in their relative order of importance, were (1) programmatic submission requirements and (2) financial submission requirements. *Id.* But only those "items which are **designated for scoring**" in the RFP would be "evaluated **and scored**." *Id.* (emphasis added). Nowhere were the oral presentations "designated for scoring."

The RFP said that awards would be made to responsible offerors "whose Proposal is determined in writing to be the most advantageous to the state based upon the evaluation criteria." *Id.* Critically, AHCCCS said that this decision would "be guided, but not bound, by the scores awarded by the evaluators." *Id.*

The Narrative Submission Requirements

The Narrative Submission Requirements asked offerors for written responses to eleven subparts. The first two (B1 and B2) asked for an executive summary and

¹ All RFP documents are available on the AHCCCS website at <https://www.azahcccs.gov/PlansProviders/HealthPlans/YH24-0001.html>

citation to an offeror's exemplar Medicaid contracts for services similar to those required by the ALTCS E/PD program. RFP § I Ex. H: Narrative Submission Requirements. The RFP indicated that B1 and B2 "will not be scored." *Id.* The RFP then asked for narrative responses to six key aspects of the program, asking offerors to address how they would:

- Develop and implement best practices for case management (B4),
- Utilize person-centered service planning (B5);
- Collect, monitor, and analyze data to improve health outcomes and inform program initiatives (B6)
- Employ a network development strategy (B7);
- Employ an overall workforce development strategy and philosophy (B8);
- Provide timely access to services and supports as well as monitor outcomes for vulnerable populations (B9).

Across each of their responses to these narrative prompts, offerors were to describe how they would "address health inequities, health disparities, and/or structural and health-related social needs and promote equitable member care." *Id.* at 1. The RFP also requested metrics related to past performance (B10) and required offerors to submit their most recent AZ Medicaid Plan D-SNP STAR rating (B11).

The RFP made clear that items B4 through B11 would be scored. Instructions at 6 ("With the exception of Narrative Submission Requirements noted as a non-scored item [i.e., B1 and B2] and Narratives that are noted as GSA-specific [none applicable], Narrative Submission Requirements will be scored for each Offeror and the score for that Offeror will be applied to all GSAs bid.").

The oral presentation requirement

The RFP required offerors to participate in a scheduled oral presentation regarding "key areas of the ALTCS E/PD Program." Instructions at 18. It instructed offerors to bring up to six employees with expertise in "medical management," "case management," and "quality management" to the scheduled presentation but did not otherwise specify the topics presenters would be expected to address. Offerors would be prohibited from using any previously prepared presentation materials and could not bring communications devices. AHCCCS said that it would instead "provide a whiteboard or flip charts and markers for Offeror use in preparing for the Oral Presentation." Instructions at 18.

The RFP gave no indication that the oral presentation would be scored, and, indeed, it was not “designated for scoring” according to the RFP’s own terms. The items “designated for scoring” in the RFP were limited to cost bids and the “Narrative Submission Requirements,” except those “Narrative Submission Requirements noted as a non-scored” item. *See* Instructions at 6. The Narrative Submission Requirements, located in Exhibit H to the RFP, included both non-scored items (B1 & B2) and scored items (B4–B11).

The Narrative Submission Requirements did not include B12, Oral Presentation Information, nor did they include the oral presentations themselves. Indeed, ***nowhere on the face of the RFP did AHCCCS disclose to offerors that oral presentations would be scored at all.*** *See* Instructions at 6; *see also* RFP Exhibit H, Narrative Submission Requirements. Although the RFP suggested that oral presentations “may be audio-taped by AHCCCS” for use “in the evaluation process,” it did not inform offerors that the oral presentations would be scored. The scored portions of the RFP were expressly set forth in Exhibit H and plainly did *not* include oral presentations. That there was no indication that the oral presentations would be scored when the RFP was issued suggests that scoring decisions had not yet been finalized and would explain why no individual evaluator notes from the oral presentations have ever been produced.

The RFP’s stated evaluation criteria

The RFP said that the AHCCCS’s award decision would “be guided, but not bound, by the scores awarded by the evaluators.” Instructions at 5. The RFP further said that the scoring methodology would evaluate proposals “in accordance with the AHCCCS mission and goals.” *Instructions at 5.* AHCCCS’s mission is “to reach across Arizona to provide comprehensive quality health care to those in need while shaping tomorrow’s managed health care from today’s experience, quality, and innovation.” RFP § D at 42 (including choice, dignity, independence, individuality, privacy and self-determination). And AHCCCS’s “values, guiding system principles and goals,” which serve as the “foundation for the development” of the resulting contract are:

- (1) Accessibility of Network.
- (2) Collaboration with Stakeholders.
- (3) Consistency of Services.
- (4) Member-Centered Case Management.
- (5) Member-Directed Options.

(6) Most Integrated Setting.

(7) Person-Centered Service Planning.

RFP § D at 45.

Five offerors submitted proposals in response to the RFP: Mercy Care; Banner-University Care Advantage dba Banner-University Family Care (“Banner”); BCBSAZ Health Choice (“BCBSAZ”); Arizona Physicians IPA, Inc. (dba UnitedHealthcare Community Plan) (“APIPA”); and Health Net Access, Inc. dba Arizona Complete Health-Complete Care Plan (“Health Net”).

III. The oral presentations take the form of an impromptu pop quiz.

AHCCCS did not disclose the format or content of the oral presentations until each offeror’s team appeared in person for its scheduled presentation. Only then did AHCCCS reveal that each team would receive a prompt in response to which the team would have an hour to prepare a 30-minute oral presentation. *See* ALTCS E/PD RFP YH24-0001 Oral Presentation General Script (“Exhibit B”). A proctor would remain in the room while the team prepared its presentation, giving 15- and 3-minute warnings before the hour expired. The team would then deliver the presentation to AHCCCS evaluators using nothing more than the provided whiteboard, flip charts, and markers.

After completing the first presentation, AHCCCS would reveal a second prompt and likewise give each team an hour in which to prepare another 30-minute oral presentation.

The first oral presentation (“OP1”) prompt asked each offeror to address its plan for supporting ALTCS members’ family caregivers:

Provide a detailed analysis and summary of the Offeror’s understanding of the needs of family caregivers, particularly as it pertains to ensuring members are served in the least restrictive setting. Describe how the Offeror will engage family caregivers and prioritize addressing the needs of family member caregivers including what tools and resources will be utilized to assess risks and needs while identifying and providing needed supports and services.

Unknown to the presentation teams, AHCCCS would use four criteria to score responses to OP1:

- “Innovative”
- “Implementable”

- “Addresses Person-Centered Service Planning”
- “Improves Outcomes (Quality/Member)”

These criteria were not disclosed in the RFP or during the oral presentations and, other than “Person-Centered Service Planning,” are not included among AHCCCS’ mission, “values, guiding system principles, and goals” (which the RFP informed offerors would form the basis of the scoring methodology).

The second oral presentation (“OP2”) prompt asked offerors to address their plan for preventing abuse, neglect, and exploitation of individual members:

It is the right of every individual to be free from abuse, neglect, and exploitation and it [sic] is critical for the success, health, and well-being of the program’s vulnerable members. The State of Arizona has taken numerous measures to enhance prevention of abuse, neglect, and exploitation of members as well as to inform and improve abuse monitoring to ensure the safety of vulnerable persons residing in long-term care settings and/or receiving long-term care services in their home. Describe how the Offeror will commit to prevent, protect, and ensure the safety and security of its members.

Also unknown to presenters, AHCCCS would assess OP2 using the following four criteria:

- “Training and Communication”
- “Includes Case Management Principles”
- “Proactive Strategies”
- “Reactive Strategies”

Again, these criteria were not disclosed in the RFP or during the oral presentations and, other than potentially “Includes Case Management Principles,” are not included among AHCCCS’ mission, “values, guiding system principles, and goals” (which the RFP informed offerors would form the basis of the scoring methodology).

IV. AHCCCS assigns nearly a third of all points to how well presenters delivered the oral presentations.

AHCCCS did not disclose its scoring rubric until it announced its contract awards on December 1, 2023. Only APIPA and Health Net were awarded contracts.

The finally disclosed rubric revealed that offerors’ performance in the two 30-minute oral presentations together accounted for nearly *one third* of all available points—290 out of 1,000:

Each Offeror can earn points as follows:

STATEWIDE	
SUBMISSION	MAXIMUM POINTS
Narrative Submission Requirements	610
Oral Presentations	290
Capitation Agreement/Administrative and Case Management Cost Components Bid	100
Total	1000

Each of these submission requirements can be awarded a maximum of the following points:

PROGRAMMATIC SUBMISSION REQUIREMENTS	
NARRATIVE SUBMISSION	MAXIMUM
B1	0 (Not Scored)
B2	0 (Not Scored)
B3	0 (Not Scored)
B4	75
B5	145
B6	40
B7	75
B8	145
B9	75
B10	35
B11	20
Total	610

ORAL PRESENTATION	MAXIMUM
Oral Presentation 1	145
Oral Presentation 2	145
Total	290

0001_EPD_Procurement_File/OverviewRFPEvaluationProcessScoringTool-EPDYH24-001.pdf.

The disproportionate weight assigned to the oral presentations resulted in Mercy Care ranking fifth overall among the offerors:

Overall Scoring by Points

Statewide Scores

Measure #	Measure Name	Points Possible	Best and Final Offer				
			ARIZONA PHYSICIANS IPA, INC.	BANNER-UNIVERSITY CARE ADVANTAGE	BCBSAZ HEALTH CHOICE	HEALTH NET ACCESS	MERCY CARE
B1	Executive Summary	Not Scored					
B2	Contract Citations	Not Scored					
B3	Health Equity	Not Scored					
B4	Complex Conditions & Member Transitions	75	45.00	15.00	30.00	60.00	75.00
B5	Person-Centered Service Plan	145	116.00	145.00	29.00	87.00	58.00
B6	Data	40	20.00	20.00	8.00	40.00	32.00
B7	Network Development	75	60.00	15.00	30.00	75.00	45.00
B8	Workforce Development	145	116.00	87.00	29.00	58.00	145.00
B9	Access to Services & Supports (Peer Supports)	75	30.00	60.00	75.00	45.00	15.00
B10	Past Performance - Compliance Review	35	28.00	35.00	7.00	14.00	21.00
B11	Past Performance - Star Rating	20	20.00	14.00	8.00	4.00	14.00
OP 1	Family Caregiver Support	145	116.00	58.00	145.00	87.00	29.00
OP 2	Abuse and Neglect Prevention	145	87.00	43.50	116.00	145.00	43.50
C1-C4	Non-Benefit Cost Bid	100	30.00	30.00	60.00	100.00	80.00
Total Points		1,000	668.00	522.50	537.00	715.00	557.50
Rank Based on Total Score			2	5	4	1	3

But if one were to exclude the oral scores and count only those items AHCCCS said it would score—the narrative submission requirements (B4–B11) and the cost bid (C1–C4), *Mercy Care would rank in first place overall:*

Measure #	Measure Name	Points Possible	APIPA	Banner	BCBSAZ	Health Net	Mercy Care
B4	Complex Conditions & Member Transitions	75	45	15	30	60	75
B5	Person-Centered Service Plan	145	116	145	29	87	58
B6	Data	40	20	20	8	40	32
B7	Network Development	75	60	15	30	75	45
B8	Workforce Development	145	116	87	29	58	145
B9	Access to Services & Supports (Peer Supports)	75	30	60	75	45	15
B10	Past Performance - Compliance Review	35	28	35	7	14	21
B11	Past Performance - Star Rating	20	20	14	8	4	14
C1-C4	Non-Benefit Cost Bid	100	30	30	60	100	80
Total Points		710	465	421	276	483	485
Rank Based on Total Score			3	4	5	2	1

V. The scoring rubric assigns only one of five possible scores (absent a tie) for each category based on offerors’ relative ranks.

The scoring rubric also assigned points based solely on each offeror’s rank relative to other offerors in a given category. Members of the Evaluation Team were instructed to rank offerors first through fifth in each scored category and to try to avoid ties. Ariz. Health Care Cost Containment Sys., ALTCS E/PD RFP YH24-0001

Scoring Training (“Exhibit C”) 32 (Oct. 3, 2023). The Evaluation Team then arrived at consensus ranks with the help of an outside facilitator and provided narrative feedback in each submission category. Evaluation Process Overview at 1–2. Only the consensus ranks, however, and not the evaluators’ narrative feedback, would be translated into scores.

The “Scope Team” determined the point allocation between the scored submission categories. AHCCCS took the consensus ranks from the Evaluation Team and converted the ranks—but not evaluators written feedback—into numerical scores for that category based on the scoring formula. The category-specific scores were then aggregated to rank offerors first to last based on overall points.

The formula called for dividing the total number of points in a given category by the number of offerors, and then multiplying the resulting quotient by the offeror’s inverse rank. With only five offerors, no more than five scores were possible in any given category absent a tie, with the highest-ranked offeror receiving 100% of the available points and each next-ranked offeror receiving 20% fewer points. So, for example, in a category worth 100 points, the highest-ranked offeror would receive 100 points, the second-ranked would receive 80, points, the third-ranked would receive 60 points, the fourth-ranked would receive 40 points, and the fifth-ranked would receive 20 points. The last-ranked offeror would receive a poor score irrespective of its individual performance in the category and even if its performance relative to higher-ranked (or even the highest ranked) offeror were negligible.

VI. Mercy Care, Banner, and BCBSAZ protest the award decision.

Mercy Care, Banner, and BCBSAZ each filed timely protests of the award decision to the chief procurement officer.² Ariz. Health Care Cost Containment Sys., YH24-0001 – ALTCS E/PD PROCUREMENT FILE, https://www.azahcccs.gov/PlansProviders/HealthPlans/ALTCS_EPD_PROCUREMENT_FILE.html (last visited Feb. 7, 2024). On February 2, 2024, the chief procurement officer denied the protests in their entirety. *See* Procurement Officer Decision re: Solicitation No. YH24-0001 (“Decision”). The procurement officer also misunderstood or mischaracterized several of Mercy Care’s protest arguments and, as a result, failed substantively to address them.

Argument

As a threshold issue, the procurement officer erred in applying a deferential standard of review to her assessment of the initial contract award: while *courts* sometimes apply deference in their review of certain agency actions, the procurement

² Mercy Care incorporates, and does not waive, each of the arguments set forth in its December 20, 2023 Protest, as if set forth fully herein

officer does not sit in an appellate capacity, and the contract award is not entitled to deference at the initial stage of the protest. The standard of review was and remains which proposal is most advantageous to the state.

On the merits, AHCCCS has not identified any basis to support its decision to assign any points, let alone nearly a third of all points available, to the oral presentations. Assigning any points at all to the oral presentations themselves (as opposed to using information gleaned from the presentations to inform other, scored aspects of an offeror's proposal) violated the terms of the RFP, which never indicated that the oral presentations would be scored. It was also irrational: the delivery of time-constrained oral presentations forms no part of the services required under the ALTCS E/PD contract, let alone anything approximating a third. Simply put, the award of one of the state's most important contracts should not depend on how well six people can deliver a presentation under time constraints.

Next, the forced ranking system resulted in scores that failed to reflect the individual merits of each proposal. This much was evident from the ranking of the oral presentations themselves, where some offerors were ranked low despite hitting on the things AHCCCS said it cared about while others were ranked high despite giving nonresponsive or at best marginally relevant answers. While evaluators could deem two responses a tie, it was impossible for the scoring system to reflect differences between offerors that were greater than a tie but less than 20%.

I. The procurement officer placed an inappropriate and inapplicable “burden of proof” on the protestors.

Unfortunately, rather than engage in a good faith, substantive analysis on the merits of Mercy Care's protest arguments to determine if there were factual or legal errors in the procurement process, such that the award decision was not in the state's best interest, *see* A.A.C. R9-22-604, the Decision makes a critical and fundamental error of law that colors the entirety of the Decision's analysis and conclusions.

Namely, the Decision improperly grants AHCCCS – in reviewing its own conduct – the highest possible level of deference, essentially shielding its decision-making from meaningful review. Stated differently, the procurement officer, sitting in review of the procurement office over which she presides – has granted to herself and to her appointees a level of deference reserved only for appellate review before the courts in this state. Indeed, not a single authority cited in the Decision supports deference at this stage of the administrative proceedings. And, by requiring Mercy Care to overcome heightened deference at this first level of protest review, the Decision essentially: (a) vitiates any further administrative process granted to Mercy Care in the Arizona Administrative Code; and (b) risks making judicial review futile. Arizona law does not support such a result and the Decision must be reversed in its entirety on that basis alone.

The Decision's articulation of the "burden of proof."

Conflating a judicial standard of review with the protesting party's "burden of proof," the Decision contends that Mercy Care must prove that AHCCCS' actions were contrary to law, arbitrary and capricious, or an abuse of discretion. *See* Decision, at 8, 9, 10, 14, 24, & 42. The Decision also requires Mercy Care to prove prejudice, which the Decision contends is proof that *but for* the agency's error, Mercy Care would have had a "substantial chance" at receiving the contract award. *See* Decision at 10, 19, 20, 21, 30, 31, 41 & 42. In support of that burden, the Decision cites a smattering of Arizona cases – *none of which is applicable here*, because each concerns judicial review of administrative decisions and a court's standard in reviewing those decisions. *See* Decision at 8 (citing cases referring only to "superior court" and "judicial" review of administrative decisions after exhaustion of administrative remedies); at 10 (citing cases referring to "judicial review"). The Decision also relies on a host of federal cases, which it acknowledges are not binding in Arizona, *see* Decision, at 8 (noting its reliance on "persuasive" authority) & at 10 (noting federal authority is inapplicable if there is Arizona law on point). In any event, those cases are also inapposite; each concerns judicial review of an agency's decision following exhaustion of administrative remedies and/or at a minimum a second level of administrative review. Indisputably, Decision was not at the judicial review or administrative appeal stage.

The Decision's articulation of a protesting party's "burden of proof" was expressly and unequivocally rejected by the only Arizona authority arguably on point, *Cigna Healthcare of Arizona, Inc. & Conn. Gen. Life Ins. Co. v. Ariz. State Procurement Off.*, 04-0008-ADM (May 6, 2005).

Arizona authority rejects the Decision's deferential "burden of proof."

The ALJ in *Cigna* considered whether a highly deferential standard of review was appropriate for an ALJ to employ in an administrative appeal of a procurement officer's decision to deny a procurement protest. The State Procurement Office, along with the successful contract awardee, argued that the ALJ should give great deference to the evaluators' scoring decisions and award recommendation, citing federal cases, and arguing that the evaluators' recommendation should be reviewed under an abuse of discretion or arbitrary and capricious standard, requiring the protesting party to prove "but for" prejudice. But the ALJ refused to adopt such a deferential review, even at the administrative hearing stage of the protest: "The Administrative Law Judge rejects SPO's and United's assertion of the arbitrary and capricious/abuse of discretion formulation because it attempts to incorporate, at the hearing level, a highly deferential standard that in Arizona is reserved for review of an agency's final administrative decision." *Id.* at 39 (emphasis added). Other ALJs have followed suit and employed the three *Cigna* elements at the protest appeal/hearing stage. *See Magellan Health Servs. of Ariz., Inc. v. Ariz. Dep't of Health*

Servs., 13F-006-ADM, at 69 n.165 (Dec. 6, 2013).³ Instead, the ALJ (himself sitting in an appellate posture reviewing of the procurement officer’s protest decision), employed a far less deferential standard to analyze the propriety of the evaluators’ award recommendation.

The same reasoning holds true with even more force here, where the procurement officer has been asked to review protest issues *in the first instance*. Consistent with *Cigna*, when AHCCCS reviews its own actions in response to a procurement protest, it must do so without deference, and with the express purpose of reaching the result most advantageous to the state. *See, e.g.*, A.A.C. R9-22-603 (the administration “shall award a contract to the responsible and responsive offeror whose proposal is determined most advantageous to the state under A.R.S. § 36-2906”). Based on AHCCCS’ regulations, the procurement officer must pursue the best interest of the state throughout the procurement process; and, as *Cigna* suggests and requires, it is contrary to the best interest of the state for the procurement officer to erect highly deferential “abuse of discretion” or “arbitrary and capricious” barriers at the earliest stage of administrative review.

The goal of protest resolution – particularly at this early stage – should not be to create unnecessary impediments to meaningful review by taking a defensive, exceedingly deferential posture. Instead, the goal should be to get the award decision right at a stage in the process where the procurement officer is in a position to evaluate arguments *de novo*. As *Cigna* suggests, the administrative protest and appeal process allows the procurement officer to engage in a good faith, genuine examination of the issues raised in the protest, including issues related to whether the evaluators properly evaluated and scored the proposals. That did not happen here. Giving undue deference at this early stage of the protest process subverts that good faith effort and is contrary to Arizona law.

The Decision’s reliance on substantial deference at this very early stage of the protest process tainted the entire decision, was a fundamental error of law, and alone justifies reversal.

II. Assigning nearly a third of all points to the oral presentations was irrational and violated the terms of the RFP.

Courts do require a showing that an agency action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law before it will be set aside. But even applying that standard at *this* stage of the proceedings compels that the award be set aside. “Under this standard, a procurement decision may be set aside if

³ Critically, *Cigna*’s three-pronged burden of proof applies only at the administrative hearing stage of the proceedings. Even that burden does not yet apply to the procurement officer’s first level of review.

it lacked a rational basis or if the agency’s decision-making involved a clear and prejudicial violation of statute, regulation or procedure.” *BayFirst Sols., LLC v. United States*, 102 Fed. Cl. 677, 684 (2012); *see also Bio-Rad Lab’s, Inc.*, B-297553, at *9 (GAO Feb. 15, 2006) (resolution of protest turns on “whether the agency’s judgment was reasonable and in accord with the RFP’s stated evaluation criteria”).

The decision to assign any points to the oral presentations both violated the terms of the RFP and lacked any rational basis. The decision to award *so many* points was even less defensible. AHCCCS has not identified any rational basis for assigning any, let alone 290 out of the 1,000 points available, to the oral presentations. In rejecting the protests, the procurement officer said that “the oral presentation phase was a test of the offerors’ ability, in a real-time setting, to impress AHCCCS with the combination of the offerors’ ability to prepare and to sincerely and cogently delineate a plan matching AHCCCS’s objectives.” Decision at 18–19.

But an offeror’s “ability to prepare” or to sketch out a “plan” in less than 60 minutes can have no meaningful bearing on an offeror’s “ability to provide cost-effective, high quality contract services in a managed care setting in accordance with AHCCCS’s mission and goals.” Instructions at 5. The format for the oral presentations—surprise prompts and 60 minutes to prepare and sketch out a 30-minute presentation—speaks merely to the presenters’ public speaking skill under time constraints and cannot seriously be expected to meaningfully reflect an offeror’s ability to perform consistent with AHCCCS’s mission and goals—none of which involve impromptu presentation skills.⁴ AHCCCS has not and cannot identify when and how a contractor would be expected to deliver rushed oral presentations in performing services to members under an ALTCS E/PD contract. And because Mercy Care would have ranked in first place overall absent the improperly scored oral presentations, it was materially prejudiced by the error and would have been awarded a contract in its absence.

⁴ The evaluation of oral presentations was also limited by the evaluators’ ability to take accurate and complete notes in real time. Mercy Care made a public records request for evaluator notes and individual scoring or analysis, but AHCCCS represented that it has no responsive documents (likely because those notes were destroyed in violation of Arizona’s Public Records Law). And although there were audio recordings, it is not clear whether any evaluator reviewed them (and the evaluation deficiencies below suggest they did not), and even if they had, the audio quality was poor and made it unlikely evaluators could meaningfully assess offerors’ complete answers.

ALTCS E/PD is a \$1.7 billion program servicing tens of thousands of the state's most vulnerable Medicaid members. Contract awards for the program should turn on reasoned consideration of proposals that offerors have had a meaningful opportunity to develop in response to disclosed, well-articulated selection criteria. Allocating 29% (!) of available points to the delivery of two 30-minute presentations that presenters were given only 60 minutes to prepare and sketch out by hand on a whiteboard or flip pad is a patently unreasonable and arbitrary means by which to determine who should be awarded one of the state's largest most important government contracts.

Moreover, the RFP never said that the oral presentations would be scored. By contrast, the RFP indicated clearly when narrative submission requirements would be scored unless specifically exempted. At most, the RFP indicated that the presentations "*may* be audio-taped by AHCCCS for the Agency's use in the evaluation process." Instructions at 18 (emphasis added). But it was never indicated that the oral presentations would *themselves* be evaluated in their own right, rather than used to inform the evaluation of offeror's written submission materials. The RFP said only those items "designated for scoring" would be "evaluated and scored." The oral presentations were never designated for scoring and so could not be scored as their own submission category.

III. The ranked scoring system obscured the individual merits of each proposal.

Absent a tie, the scoring formula makes only five possible scores available in each category: 100%, 80%, 60%, 40%, and 20%. But what if an offeror hit on 90% of what AHCCCS said it was looking for in a given category? If that offeror performed strongly but nevertheless was ranked lower than its competitors, it would receive only a fraction of the points. Such a system elides the individual strengths of the proposal.

The scoring formula divides the maximum points for each submission requirement by the number of offerors and then multiplies the quotient by each offeror's inverse rank. With only five offerors and absent a tie, there are only five possible point scores available for each category, and each score is 20% higher or lower than the next. The lowest-ranked offeror can receive no more than one fifth of the available points in a given category, no matter how strong their individual performance in that category. And the highest-ranked offeror will get a perfect score, even if they missed key evaluation criteria and performed only marginally better than the other bidders.

Consider the following scenario: five students take an exam with 100 questions. Student 1 gets 91% of the answers correct, Student 2 gets 92%, Student 3 gets 93%, Student 4 gets 94%, and Student 5 gets 95%. While Student 5 did slightly better than Student 1, all the students did reasonably well.

But applying the scoring methodology from this RFP results in scores that would suggest some students woefully failed the exam. Suppose 100 points are available. The formula calls for dividing that number by the number of test-takers (here, 5) and multiplying that quotient (here, 20) by each student's inverse rank. The result is:

Rank	Student	Inverse Rank	Distribution of Points
1	Student 5	5	$5 * 20 = 100$
2	Student 4	4	$4 * 20 = 80$
3	Student 3	3	$3 * 20 = 60$
4	Student 2	2	$2 * 20 = 40$
5	Student 1	1	$1 * 20 = 20$

The results are facially absurd, especially for Student 1. Despite answering 91% of the questions on the exam correctly, Student 1 can earn no more than 20 points out of the available 100. And the next-highest-ranked student (Student 2) gets 20% more of the available points despite only having answered *one* more question correctly than Student 1. Student 5 gets a perfect score—and 80% more of the available points than Student 1—despite having answered only 4 more questions correctly than Student 1.

The scoring system results in artificially inflated or deflated numerical scores that are not reflective of the individual merits of each proposal. As the GAO has explained:

[E]valuation ratings are merely guides for intelligent decision-making in the procurement process; the evaluation of proposals and consideration of their relative merit should be based upon a qualitative assessment of proposals consistent with the solicitation's evaluation scheme.

Cyberdata Techs., Inc., B-417084, at *6 (GAO Feb. 6, 2019); *see also Mevacon-Nasco JV*, B-414329, at *21 (May 11, 2017) (“The essence of an agency’s evaluation is reflected in the evaluation record--the underlying merits of particular strengths and the proposal as a whole--rather than a comparison of the adjectival ratings.”). It follows that the points assigned to proposals are not dispositive metric for an agency to express a proposal’s merit. *See Goldschmitt & Assocs., LLC*, B-418459.2; B-418459.3, at *4 (April 15, 2020) (“What is important is not the scores themselves, but the underlying substantive merits of the proposals as embodied in, or reflected by, the scores”).

Here, the Procurement Officer accepted the Scope Team's recommendation to award contracts to the two highest-ranked offerors based entirely on their point scores.⁵ But the scoring system resulted in scores that were not reflective of the merits of any individual proposal. A strong or even excellent proposal would be scored poorly even if the differences between it and a higher-ranked proposal were qualitatively marginal. While relying on the scoring formula was error, that error was compounded by relying on the final scores without any further explanation for why the selections were the most advantageous to the state and the population served by AHCCCS and the ALTCS program. See *Bio-Rad Lab's, Inc.*, B-297553, at *9 ("While adjectival ratings and/or point scores are useful as guides to decision-making, they generally are not controlling, but, rather, must be supported by documentation of the relative differences between proposals, their weaknesses and risks, and the basis for the selection decision.").

In response to the protests, the procurement officer confirmed that "[t]he weighting and points were not communicated as part of the scoring training," indicating that the Evaluation Team was unaware of the scoring impact of its ranking decisions. And recall that members of the Evaluation Team were discouraged from finding ties. Exhibit C at 32. Had members of the Evaluation Team known that only their ranks would carry over into scores, they might have been more likely to find ties between proposals that were "close" in performance. Regardless, forcing either a tie or a 20% difference in points fails to reflect the potentially many situations in between, such as where offers are all strong but not identical.

IV. The arbitrary nature of the scoring evaluations was both arbitrary and illustrates the problem with the ranked scoring system.

It is fundamental that "a contracting agency must treat all offerors equally, evaluating proposals evenhandedly against common requirements and evaluation criteria." *Banknote Corp. of Am. v. United States*, 56 Fed. Cl. 377, 383 (2003), *aff'd*, 365 F.3d 1345 (Fed. Cir. 2004); see also *Freealliance.com, LLC*, B-419201.3, at *6 (GAO Jan. 19, 2021) ("[A]gencies may not generally engage in conduct that amounts to unfair or disparate treatment of competing vendors.").

Yet the evaluators' comments in "Final Ranking and Rationale" documents demonstrate the arbitrary nature of AHCCCS' forced rank scoring methodology and

⁵ The records indicate that the Evaluation Team was not aware of the scoring impact of forced ranking, the significant point differential between ranked proposals, and/or whether that information would have affected the evaluators' ranking decisions (particularly where evaluators believed proposals to have only minimal differences in substance). See Ex. C. Indeed, the Evaluation Team was instructed avoid ties in favor of disparate ranks. *Id.* at 32.

failure accurately to compare each proposal against the scoring criteria. A few examples below are illustrative. Notably, these evaluations—ostensibly the product of consensus scoring—in many instances differ markedly from individual evaluator’s observations and proposed ranks with respect to written submissions. *See Exhibit A to Mercy Care’s Protest Letter (select individual evaluator comments and proposed notes.)*⁶ In several instances, individual evaluators proposed ranking Mercy Care highly in categories it ultimately was ranked last or close to last. The disproportionately low point score associated with the low rank also further highlights the flaws with the ranked scoring formula.

The upshot is that AHCCCS unfairly ranked Mercy Care lower than other offerors who made nonresponsive or plainly deficient submissions, faulted Mercy Care for not providing information it clearly provided, and criticized Mercy Care for certain answers where other offerors provided nearly identical responses but instead received praise and a higher ranking. These concerns warrant sustaining the protest for unequal treatment of offerors. *Freealliance.com, LLC*, B-419201.3, at *7–8 (record did not support conclusion that agency’s evaluation was administered on an even-handed basis when it did not explain why the strengths assigned to one offeror differed from those assigned to another). In addition, they underscore the central flaw in the forced ranking system: as a result of being ranked low in certain categories despite providing strong, responsive answers, Mercy Care was deprived of substantial points it would have received had the submission been scored on the merits rather than relative rank.

Oral Presentation No. 2

One of the most glaring scoring discrepancies among several was the oral presentation evaluators’ ranking of Health Net as the top ranked offeror in response to Oral Presentation No. 2, while Mercy Care was ranked fifth. And because the oral presentations held an outsized weight in the overall evaluation, compounded significantly by the forced rank scoring methodology, this particular scoring error was both material and highly prejudicial to Mercy Care (who finished first after evaluation of the narrative proposals and cost bid, but only third after the oral presentations). The scoring error in Oral Presentation No. 2 explains the arbitrariness of that scoring shift.

Oral Presentation No. 2 (emphasis added) provided that:

⁶ AHCCCS has not produced Individual evaluator comments and proposed ranks as to the oral presentations. To the extent these records were destroyed, their destruction violated applicable public records laws and prejudices Mercy Care’s ability meaningfully to review the evaluation. *See A.R.S. § 39-121 et seq.*

It is the right of every individual to be free from abuse, neglect, and exploitation and it is critical for the success, health, and well-being of the program's vulnerable members. The State of Arizona has taken numerous measures to enhance prevention of abuse, neglect and exploitation of members as well as to inform and improve abuse monitoring to ensure the safety of vulnerable persons residing in long-term care settings and/or receiving long-term care services in their home. Describe how the Offeror will commit to prevent, protect and ensure the safety and security of its members.

The question actually posed to the offerors concerned—quite clearly—abuse, neglect, and exploitation of ALTCS' individual members, and each offeror's description of how it would commit to ensuring vulnerable members' "safety and security" in their care. Four of the five offerors heard the question and addressed "abuse, neglect, and exploitation." Only one of the offerors – inexplicably, the offeror who ranked first – largely ignored the actual question posed, and instead addressed financial "fraud, waste, and abuse." There was nothing in Health Net's answer that described its commitment to "prevent, protect and ensure" the "safety and security" of ALTCS' members.

Indeed, abuse, neglect, and exploitation of ALTCS' *members* differs from fraud, waste, and abuse of ALTCS' financial and operating *system*. Health Net focused on the latter. While the procurement officer has since tried to characterize financial abuse of members as somehow being responsive to the question posed, Health Net's answer was even farther afield. Focusing on how to prevent fraud, waste, and abuse on the system simply failed to respond to a question that asked about preventing abuse of *members*.

Notably, the RFP Instructions advised offerors that they should bring to the oral presentation experts in Medical Management, Case Management, and Quality Management. *See* Instructions at 18. Each of those experts is relevant to, and would have expertise in, abuse, neglect, and exploitation of individual members and their safety in receiving services. None of those experts would be relevant to, or have specific expertise in, financially based concerns with fraud, waste, and abuse. There was no reason, either based on the instructions or in the language of the question itself, to believe AHCCCS was asking or would ask about financial fraud, waste, or abuse. There is no justification, either in the RFP, its instructions, or the language in the question itself, to believe an answer related to fraud, waste, and abuse was either (1) responsive or (2) the most responsive among the five offerors. There is no rational justification for the evaluators' scoring decision.

Health Net's wholly nonresponsive answer earned it first place and 100% of the available points. Mercy Care provided a thorough discussion of how it identifies and combats potential harm to its members, both in facility and in-home settings. *See*

e.g., (16:58) (discussing EVV data, which applies only to in-home care situations). Yet this responsive answer (which was more robust than AHCCCS acknowledged, but certainly more robust than Health Net's non-answer) received a fifth place ranking and only 20% of the available points. This scoring discrepancy alone would have resulted in a substantial change in points scored by both Health Net and Mercy Care. At a minimum, the point differential would have been negligible as between Health Net and Mercy Care, such that AHCCCS could and should have considered including Mercy Care to the ALTCS contract, as set forth in the RFP. Even worse, should this award stand, AHCCCS members have no indication as to how Health Net will ensure the safety and security of ALTCS members.

Further compounding the inconsistencies in scoring, AHCCCS credited all offerors other than Mercy Care for mentioning "the Governor's Abuse and Neglect Prevention Task Force." OP2 Final Rankings & Observations. Mercy Care mentioned the Task Force *at least twice*, even noting that several Mercy Care staffers sat on the task force. (12:18); *see also* (28:05) (concluding the presentation by reminding evaluators that Mercy Care's work is "aligned with Governor Ducey's Abuse, Neglect, and Prevention Task Force.").

Next, AHCCCS credited both Health Net and BCBSAZ Health Choice (the second-ranked offeror) for "discuss[ing] the role of the [Quality Management/Performance Improvement ("QMPI")] in data analysis and Peer Review in responding to incidents." OP2 Final Rankings & Observations. But despite Mercy Care's discussion of how it leverages a QMPI committee to perform peer review of data for quality of care concerns, it received no such credit for its response. (9:10); *see also* 7:41-12:03 (discussing use of QMPI in data analysis to achieve proactive member monitoring).

Finally, in assessing Offerors' "proactive strategies," AHCCCS noted that Mercy Care "mentioned meetings with providers but did not describe clearly other external communication/collaboration," when in fact Mercy Care spoke extensively about external communication and how it is leveraged to improve member support. OP2 Final Rankings & Observations. For example, Mercy Care noted its collaboration with Adult Protective Services. (25:42). But while the offerors ranked first through third were specifically credited for referencing APS, Mercy Care received no such credit. *See* OP2 Final Rankings and Rationale. And while Mercy Care described further external partnerships, such as those with the "AAAs" and the "Associations," including Leading Edge, Arizona Healthcare Association, and Alzheimer's Association, AHCCCS failed to acknowledge this portion of Mercy Care's response. (19:10). This, despite the fact that AHCCCS found these partnerships noteworthy in response to a separate set of criteria within OP2, pertaining to training and communication. *See* OP2 Final Rankings & Observations.

Oral Presentation No. 1

While praising BCBSAZ Health Choice (the first-ranked offeror) for demonstrating “how its strategy for supporting family caregivers and workforce development is informed by data,” AHCCCS negatively remarked on Mercy Care’s supposed failure to do the same. OP1 Final Rankings & Observations. In reality, Mercy Care discussed *several ways* in which its efforts are informed by data—for example, using its Councils and Boards committee structure, Mercy Care collects the input and experiences of members and their family caregivers. (8:31). And through the SocialScape technology platform, Mercy Care identifies health related social needs (“HRSN”) at both the individual and community levels to “drive community reinvestments.” *Id.*; *see also* (28:44) (discussing provider audits and monitoring).

Similarly, AHCCCS credited BCBSAZ for “describ[ing] multiple tools to support family caregivers . . . including . . . Blue Connection (food/nutrition assistance).” OP1 Final Rankings & Observations. And while AHCCCS credited Mercy Care for several tools used to support caregivers (*e.g.*, Pyx, Dispatch Care, SocialScape, etc.), it excluded any mention of Mercy Care’s Fresh Express Bus and food boxes. (24:44).

Next, AHCCCS disparately considered Mercy Care and APIPA (the second-ranked offeror) in the area of health outcomes for family caregivers. Mercy Care discussed this topic in depth yet was docked for failing to “address clearly its approach to improving [health] outcomes” for family caregivers. OP1 Final Rankings & Observations. Meanwhile, APIPA received kudos for addressing health outcomes and citing the specific example of its “HOPE Inc. warm line.” OP1 Final Rankings & Observations. But ironically, Mercy Care provided not just one, but *three* specific ways it supports the health outcomes of family caregivers. First, Mercy Care discussed Trualta, its program that “offers education to the family and caregivers,” including “over 100 courses and tools” that help the caregiver learn to support both their family and themselves. (9:37). Second, Mercy Care discussed using its Interdisciplinary Care Team to support families. (14:41). Third, Mercy Care explained its family phone line, where family members can call for resources and information. (21:56).

Section B5

Section B5 asked how offerors would ensure “person-centered service planning.” After the evaluation, Mercy Care ranked 4th, successful offeror APIPA finished 2nd, and successful offeror Health Net finished 3rd. Even a cursory review of the Evaluation Team’s “Rationale and Major Observations,” reveals that the evaluation was arbitrary, and that forced rank scoring compounded the error, resulting in the selection of proposals that were not most advantageous to the State.

Specifically, Mercy Care's evaluation observations noted only two criticisms of Mercy Care's proposal. **First**, the evaluation summary contends that Mercy Care "did not describe clearly its strategy for recognizing individual strengths and needs." To the contrary, Mercy Care extensively documented members' needs and preferences throughout its proposal, and although Mercy Care may not have used the specific word "strength," the substance of its strategy for recognizing individual strengths and needs is robust. For example, the proposal provides:

- "We proactively use person centered approaches to understand members' health care goals and health related social needs;" Mercy Care Response Narrative Submission Requirement B5 at 22.
- "We assess and address ALL aspects of members quality of life and empower members....to lead the discussion and creation of a service plan that aligns with their needs and wishes;" *id.* at 22.
- Concern with what is "best suited to meet the member's unique, physical, behavioral, cultural and social needs;" *id.* at 22.
- "At the initial PCSP review meeting, the CM asks the member about what matter most to them, what works and what does not and their attitudes toward health care;" *id.* at 22.
- "To understand the members' view of the quality of their life, and where they would like to be, CM use motivational interviewing, the PCSP review tool, and other tools to learn about members' physical, behavioral, functional, and social needs;" *id.* at 23.
- "CM use their training in SafeTALK to assess BH quality of life and to identify members with suicidal thoughts or mental health or SUD needs;" *id.* at 23.
- "Members can review the Life Planning-5 wishes end of life brochure with their CM/HCDM/DR/family to indicate their personal, medical, emotional legal and spiritual wishes." *Id.* at 23

Second, the evaluation summary notes that although Mercy Care discussed provider participation in the planning process, it "did not describe clearly how it encourages and supports their active participation." Every offeror received a similar criticism; thus, it cannot be the basis for differentiating between the proposals.

But the evaluation summaries for APIPA (2nd) and Health Net (3rd) reveal *multiple* instances where APIPA and Health Net failed to describe clearly or otherwise address matters critical to Section B5 (and in each of these areas, Mercy Care *did* include clear descriptions, acknowledged by the evaluators):

- Health Net “**did not describe clearly** its process for outcomes follow-up.”
 - Mercy Care “discussed use of a variety of evidence-based assessments (e.g., InterRAI and SAFE), as well as outcomes monitoring and follow-up. Offeror provided an example of a disparity evaluation in which mammography screening rates were found to be lower than average in two zip codes with significant latino populations.”
- APIPA “**did not describe clearly** its systems to support case managers and to facilitate supervision of case manager activities.”
 - Mercy Care “described its approach to implementing person centered service planning, including its systems to support members and case managers and to facilitate supervision activities.”
- APIPA “**did not describe clearly** new initiative for which there would be an associated implementation timeframe.” And Health Net “**did not describe clearly** other implementation milestone dates.”
 - Mercy Care “discussed its timeframe for implementing systems or processes not currently in place.”
- APIPA and Health Net “**did not describe clearly** [a] support plan for case managers based on varying levels of demonstrated competencies.”
 - Mercy Care “described multiple methods for performing oversight of case managers performance, and its support plan for case managers based on varying levels of demonstrated competencies.”
 - Indeed, Mercy Care’s proposal met everything AHCCCS sought in the RFP; none of the other plans met this important aspect of the ALTCS program. Mercy Care specifically addressed: Mercy Care’s CM Services follow AMPM Chapter 1600 and ACOM 405, Quarterly Inter-Rater Reliability, Supervisors monitor reports related to CES, Advance Directives, Placement; Supervisors observe/conduct joint PCSP review, AMPM 1630, Supervisors meet with CM’s monthly one on one visits. Neither APIPA nor Health Net (both of whom ranked higher than Mercy Care in response to Section B5) met AMPM 1630 or ACOM 405, a significant issue for AHCCCS.
- APIPA “**did not describe clearly** how individual case manager performance is monitored and addressed.” And although APIPA “mentioned chart audits and supervision of case managers [it] **did not describe clearly** its process for either activity.”

- Mercy Care “described its approach to conducting ongoing monitoring, including through use of multiple tracking and trending tools and reports, e.g. PCSP performance monitoring measures and interrater reliability reviews, an annual analysis of case management strategy, and monthly case file audits (sample for established case managers and 100 percent audit of new case managers). Offeror described how supervisory staff perform hands-on oversight of case manager performance.”

Notwithstanding the evaluators’ observations that both APIPA and Health Net failed to address Section B5’s requirements clearly, each scored higher than Mercy Care by a significant margin (APIPA scored 80% of the available points, Health Net Scored 60% of the available points, and Mercy Care scored only 40%—less than half—of the available points). The scoring errors are particularly concerning given the individual evaluator notes, *see* Exhibit B to Mercy Care’s Protest Letter, which reflect that Mercy Care placed second after individual evaluators independently reviewed Mercy Care’s proposal (section B5) (with two evaluators ranking Mercy Care *first*), but then placed fourth as a result of “consensus” scoring. There is nothing in the evaluation summary that supports why, after “consensus” scoring, two evaluators changed their Mercy Care ranks from first to fourth (with a corresponding reduction of 60% of the available points).

Section B7

Section B7 suffered from similar arbitrary evaluation, ranking, and scoring. It asked offerors to describe their “network development strategy.” Health Net (1st) APIPA (2nd) both failed to follow the eight critical and mandatory network development elements set forth in the RFP. *See* RFP § D at 160–61. Mercy Care addressed those critical elements in its methods to build institutional capacity and maximize resources providing detailed action steps with supporting proof points for each of the eight elements, as well as a detailed table of its innovation strategies and outcomes. Health Net failed to reference any proof points and only cited general statistics; yet it was given credit for a “detailed” response that was far inferior in substance and specificity to Mercy Care’s.

Further, Health Net’s response failed to meet the RFP’s required three-year timeline. Specifically, each offeror—except for Health Net—submitted its offer for three years starting on October 1, 2024, the RFP’s proposed implementation date. AHCCCS provided clear guidance in RFP Amendment #2 on this issue in response to Health Net’s very own question about when the timeline begins. AHCCCS stated in response to Question #6: “In reference to B7 submission requirement where it states: ‘Provide action steps and a timeline for the first three years of the Contract, along with measurable outcomes to be achieved,’ the action steps should focus on the contract start (execution) date.” But Health Net submitted its offer for three years

from the contract award date (2023). Thus, the entire first year of Health Net's offer is the transition period. Health Net proposed that it would take until the *end of 2025* to build its network to the level of Mercy Care's network today. In fact, Mercy Care's specialty network is markedly more robust than that of APIPA: Mercy Care has 46 SNFs (skilled nursing facilities), compared to APIPA's 4 to 5. Mercy Care's network also includes critical specialty contracts not available from the contract awardees (e.g., behavioral health, members on ventilators, members with wandering dementia, etc.).

Not only does Health Net's offer fail to meet the RFP's three-year term from the implementation date, but it fails to meet AHCCCS' mission and goals of moving the ALTCS program forward. Reducing the number of managed care organizations servicing the ALTCS program necessarily results in less innovation and a more limited and narrower network. Health Net *anticipates* spending more than a year simply getting back to a network that already exists today, a fact that will result in significant disruption for members and a failure to accomplish AHCCCS' goals of expanding the network and moving the program forward.

The individual scorer notes support Mercy Care's concerns. When the individual scorers independently reviewed Mercy Care's proposal (B7), Mercy Care ranked first; but after "consensus" scoring, Mercy Care ranked third (resulting in a loss of 40% of the available points). Nothing in the evaluation summary supports this significant point reduction or reduced ranking.

Section B9

In B9, worth 75 of the total 1,000 points available, offerors are tasked with addressing social risk factors in the delivery of care. Specifically, offerors had to identify the manner in which it would provide timely access to services and support and monitor care outcomes while commenting on its strategies for addressing barriers to care for those residing in rural and tribal communities as well as those needing community and peer or family support services. The scoring criteria focuses on health equity; strategies supporting access to care; collaboration and engagement; and other notable considerations. AHCCCS awarded Mercy Care the lowest points possible.

AHCCCS laments that Mercy Care "generally discussed" the relevant considerations but fails to specify where it falls short. This "generally discussed" description ignores the fact that Mercy Care's four-page response to the inquiry covers all requisite topics in detail. Starting with strategies to address social risk factors, Mercy Care advised that it uses HRSN Z-codes, SocialScape and Mercy Care's proprietary risk stratification tool to identify members' social risk factors. No other offeror describes the same. Mercy Care addresses social risk factors by utilizing its proprietary community resource guide to connect members to local resources and by using CommunityCares, Arizona's closed loop referral service, to refer members to

CBOs that can address their identified HRSN and then track and close those referrals. Mercy Care highlights the fact that it invested almost \$10 million in community grants designed to enhance member care in managing chronic conditions, supporting mental health, empowering recovery from substance abuse and addressing housing insecurity. As to care barriers, Mercy Care funded the Pima Counsel on Aging with \$130,000 to facilitate Dementia Capable Southern Arizona Memory Cafes as well as to facilitate Visibility Matters, a training curriculum for the unique challenges older LGBTQ individuals face as they age. Moreover, Mercy Care spent almost \$1.5 million on eighteen community reinvestment projects aimed at delivering care to tribal members. These issues are more than generally discussed, they are discussed with specificity.

Mercy Care thoroughly set forth how it will continue to provide timely access to services and supports. And while Mercy Care was not credited for it in the evaluator narratives, it stated that all of its providers participate in its “Advancing Health Equity for MC’s ALTCS Tribal Members” Training. Mercy Care also extensively referenced its telehealth capabilities, despite not receiving credit for such and other offerors receiving positive reviews for their telehealth answers. Concerning members needing community services, Case Managers have access to Mercy Care’s suite of wellness tools and the PCSP process to understand members’ whole-health needs. Again, this is more than a reference...or general discussion.

Mercy Care’s commitment to monitoring outcomes is further illustrated by its continuous use of Z-codes, health information exchange information, electronic visit data and dashboards. Areas of improvement are analyzed and modified. From this, it is clear that Mercy Care’s response was more than just “general.”

Initially, the language used on the Scoring Tool does not match the actual RFP Narrative Submission Requirement for B9 which is so much broader. Nevertheless, AHCCCS applies its unspecified scoring methodology differently to Health Net. Health Net does not reference or explain data collection and analysis to monitor timely access but still somehow receives a perfect score. AHCCCS’ decision to utilize different criteria than set forth in the RFP is arbitrary, without structure or consistency and is irregular.

Again, the individual scorer notes ranked Mercy Care third after an independent review of Mercy Care’s proposal (B9), but after “consensus” scoring, Mercy Care ranked fifth (resulting in a loss of 40% of available points) without meaningful or accurate justification in the evaluation summary. See Exhibit B to Mercy Care’s Protest Letter.

Other Matters

Stay request

Pursuant to A.A.C. R9-22-604(E) and (F), Mercy Care respectfully requests that AHCCCS stay this procurement (to include any and all transition or implementation activities) until Mercy Care's protest has been fully and finally adjudicated.

As set forth in detail above, Mercy Care has established a reasonable probability that its protest must be sustained. *See* A.A.C. R9-22-604(E)(1). Namely, the record before AHCCCS is clear that, at a minimum: (a) oral presentations were improperly scored, contrary to the RFP's terms; (b) the scoring methodology was not developed until after the proposals were publicly opened, contrary to the RFP's terms; (c) oral presentations, which were not tailored to assess the narrative proposals' actual merit, were assigned outsized weight inconsistent with the RFP's stated evaluation criteria; (d) the forced ranking methodology wholly eliminated "negligible" differences between offerors and structurally failed to account for minor differences between proposals (imposing an unreasonable 20% point penalty between each rank, compounding other scoring errors, and artificially depressing Mercy Care's total score); (e) multiple scoring decisions were arbitrary and demonstrated either a failure to accurately compare each proposal against the scoring criteria or to treat each proposal fairly and equally.

Those errors, several of which are indisputable based on the procurement file and available public records, are both material and prejudicial to Mercy Care, whose proposal would have received significantly more points and would have been ranked higher (in the top two), but for those errors in the procurement process.

Further, a stay of the contract award is in the best interest of the state. *See* A.A.C. R9-22-604(E)(2), (F)(3). Given the multiple, significant errors in the procurement process, a stay will simply preserve the status quo during AHCCCS' review, analysis, and determination of Mercy Care's protest. Mercy Care can and will continue to operate under its existing ALTCS E/PD contract for the duration of the stay, ALTCS members will maintain continuity in receipt of care, and members will not face uncertainty and/or disruption pending resolution of the protest only to have further disruption when Mercy Care's protest is affirmed. Importantly, in issuing the RFP, AHCCCS contemplated that a protest may delay its October 1, 2024 implementation date and expressly informed all proposers of that possibility. *See* Instructions at 8. A stay is fully consistent with the RFP's instructions. *Id.*

Outstanding public records requests

At this time, AHCCCS has not yet completed providing responsive documents to the protestors' various public records requests. Mercy Care reserves all rights to supplement this appeal based on records AHCCCS has not yet produced or conclusively said do not exist. For example, while AHCCCS has said that the scoring methodology was "locked down" by the time proposals were evaluated, it has yet to produce any correspondence directly and conclusively showing when the scoring methodology was finalized and circulated.

Protestor information

Pursuant to A.A.C. R9-28-604 and R9-22-604, the protester, along with its pertinent contact information, is as follows:

Mercy Care
Attn: Lorry S. Bottrill
President & Chief Executive Officer
4750 S. 44th Place, Suite 150
Phoenix, AZ 85040
(602) 400-7082
lorry.bottrill@mercycares.org

Authority of the Director

The AHCCCS rule governing procurement protests directs that "[a]n appeal from the decision of the procurement officer shall be made to the Director." A.C.C. R9-22-604(B). Elsewhere the rule directs that the appeal be filed "with both the Director and the procurement officer." A.C.C. R9-22-604(I). Accordingly, we are filing this appeal both with Ms. Heredia and Ms. LaPorte.

We note, however, that there is some question whether Ms. Heredia, who holds the position of "Executive Deputy Director," lawfully may perform the acts entrusted to the Director, as she has neither been appointed by the Governor and confirmed by the Senate nor deputized by someone who has. *See* A.R.S. §§ 36-2902(B), 36-2903.01(D)(3). The statute governing the appointment of the AHCCCS Director requires that the Director be "appointed by the governor and confirmed by the senate," A.R.S. § 36-2902(B), without allowing for a nominee to assume or discharge of the duties of the office pending Senate confirmation.

By comparison, the statutes governing the appointment of many other agency heads expressly provide that the appointment shall be made "pursuant to A.R.S. § 38-211," which is the only statute allowing for nominees temporarily to assume and discharge the duties of the office pending Senate confirmation. *See, e.g.,* A.R.S. §§ 3-

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103(A), 5-604, 8-452, 28-361(A), 36-102(C), 41-1711(D), 41-1952(C), 41-3952(B), 41-4252(B), 42-1002(C), § 45-102(C), 49-102(B).

By filing this appeal before Ms. Heredia as the rule requires, we do not concede that she or her designee may lawfully carry out the acts entrusted to the Director, including the original issuance of this RFP or the award of a new contract.

Conclusion

For the foregoing reasons, the protest should be sustained and the decision of the procurement officer should be reversed. In the alternative, AHCCCS should issue a third contract to Mercy Care. AHCCCS should also stay this procurement pending full and final resolution of Mercy Care's appeal. *See* A.A.C. R9-22-604(E)(2).

Sincerely,

A handwritten signature in blue ink, appearing to read 'RH', is positioned above the typed name.

Roy Herrera
Counsel for Mercy Care

Exhibit A

February 2, 2024

VIA ELECTRONIC MAIL

Mercy Care (Administered by Aetna Medicaid Administrators), an Arizona nonprofit Corporation

c/o Herrera Arellano LLP
Roy Herrera
1001 North Central Avenue, Suite 404
Phoenix, Arizona 85004
roy@ha-firm.com
c/o Henze Cook Murphy, PLLC
Kiersten Murphy
722 E. Osborn Road, Suite 120
Phoenix, Arizona 85014
kiersten@henzecoockmurphy.com

Blue Cross and Blue Shield of Arizona Health Choice

c/o Gallagher & Kennedy, P.A.
Kevin E. O'Malley
Hannah H. Porter
2575 East Camelback Road
Phoenix, Arizona 85016
hannah.porter@gknet.com

Banner-University Care Advantage dba Banner-University Family Care

c/o Osborn Maledon
David B. Rosenbaum
2929 North Central Avenue
Suite 2000
Phoenix, Arizona 85012
drosenbaum@omlaw.com
c/o Perkins Coie LLP
Matthew P. Gordon
12201 Third Avenue, Suite 4900
Seattle, WA 98101
mgordon@perkinscoie.com

Re: Procurement Officer Decision re: Solicitation No. YH24-0001

Dear Counsel:

The Arizona Healthcare Cost Containment System ("AHCCCS") received three procurement protests in response to its December 1, 2023 Notification of Contract Awards for the ALTCS E/PD solicitation, Request for Proposals NO. YH24-0001 (the "RFP"). These include:

1. A procurement protest on behalf of Mercy Care filed with AHCCCS on December 20, 2023;

2. A procurement protest on behalf of Blue Cross Blue Shield of Arizona Health Choice (“BCBSAZ Health Choice” or Health Choice”) filed with AHCCCS on December 21, 2023; and
3. A procurement protest on behalf of Banner University Care Advantage dba Banner-University Family Care (“Banner”) filed with AHCCCS on December 21, 2023.¹

These protests allege a variety of errors made by AHCCCS in connection with the solicitation for offers, the evaluation of offers, and the award of contracts under the RFP. The RFP solicited proposals from offerors to serve AHCCCS as program contractors and provide managed care organization services implementing and operating the Arizona Long Term Care System (“ALTCS”) for individuals who are eligible for ALTCS participation pursuant to A.R.S. § 36-2931, *et seq.* as persons who are Elderly and/or have a Physical Disability (“E/PD”).

Pursuant to Arizona Administrative Code (“A.A.C.”) § R9-22-604(G), this document serves as the Decision of the Procurement Officer in response to the foregoing protests.

As the bases for their respective protests, the Protesters allege numerous general deficiencies with substantial overlap in their arguments. These alleged general deficiencies include:

1. **AHCCCS failed to establish scoring and weighting criteria prior to receiving offeror proposals;**
2. **AHCCCS failed to disclose to the offerors its evaluation criteria and specific evaluation scoring/weighting details;**
3. **AHCCCS failed to inform the offerors that it would score the required oral presentation component of their proposals;**
4. **AHCCCS erred by utilizing a flawed scoring system;**
5. **AHCCCS erred by using a “forced ranking” system that inappropriately distributed available scoring points amongst the proposals;**
6. **AHCCCS erred by failing to properly train its evaluation personnel;**
7. **AHCCCS erred by not awarding three contracts;**
8. **AHCCCS performed an improper cost bid analysis that only valued the lowest-priced proposal; and**
9. **AHCCCS conducted an arbitrary evaluation and its final consensus ranking is not supported by the record.**

Because of the duplication of the foregoing protest grounds across more than one of the protests, this decision addresses each of the foregoing protest grounds first.

¹ The protests by Mercy Care, Health Choice and Banner are referred to here collectively as the “Protests”, and Mercy Care, Health Choice and Banner are referred to here collectively as the “Protesters”.

In addition, various Protesters have individually asserted additional protest arguments, including individualized arguments that AHCCCS erred by either evaluating or scoring their proposal incorrectly or inconsistently with how AHCCCS evaluated other proposals, meaning they deserved higher relative scores, or by failing to acknowledge problems with other offerors or those offerors' proposals that merited relatively lower scores. As these protest grounds are unique to the various Protests, those grounds are addressed last in this Decision.

II. The Arizona Statutes Grant the AHCCCS Administration Considerable Discretion Over the Procurement Process for the ALTCS E/PD Program Contractor Contracts.

A. The Arizona statutes and AHCCCS regulations provide specific authority and terms for procurement of ALTCS E/PD services.

Arizona state law invests the AHCCCS Director with broad authority and discretion to structure and conduct procurements like the one here that select the Contractors who will provide all major administrative functions of a Managed Care Organization ("MCO") for ALTCS-qualified individuals who are Elderly and/or have a Physical Disability (and are not enrolled members in certain excluded State of Arizona Medicaid care programs). See A.R.S. §§ 36-2904(A) ("The administration ... shall execute prepaid capitated health services contracts, pursuant to section 36-2906 ..."); 36-2932(B)(1) (granting AHCCCS "full operational responsibility for the [Arizona Long-Term Care System], which shall include ... 1. Contracting with ... program contractors ..."); 36-2944(A, B).

Specifically, the AHCCCS enabling statutes require the Director to "at least every five years ... prepare and issue a request for proposal and a proposed contract format to qualified [potential contractors] to be a program contractor and provide services pursuant to this article on a capitation rate basis to members who are enrolled with the program contractors by the [ALTCS] system ..." A.R.S. § 36-2944(A). The statutes further state that "[t]he [D]irector may adopt rules regarding the request for proposal process" that provide:

1. for the award of contracts by categories of members or services in order to secure the most financially advantageous proposals for the system;
2. for each qualified proposal shall be entered with separate categories for the distinct groups of members or services to be covered by the proposed contracts, as set forth in the request for proposal;
3. for the procurement of reinsurance for expenses incurred by any program contractor, any member or the system in providing services in excess of amounts specified by the director in any contract year; and
4. 3or second round competitive proposals to request voluntary price reduction of proposals from only those proposals that have been tentatively selected for award, before the final award or rejection of proposals.

A.R.S. § 36-2944(B). Finally, at A.R.S. § 36-2944(C), the statutes provide that "[c]ontracts shall be awarded as otherwise provided by law, except that in no event may a contract be awarded to any program contractor that will cause the system to lose any federal monies to which it is otherwise entitled."

The procurement at issue here is *not* subject to the requirements of the Arizona Procurement Code ("APC"), A.R.S. § 41-2501, *et seq.* or the provisions of the Arizona Administrative Code ("A.A.C.") implementing

the APCA.A.C. § R2-7-101, *et seq.* Instead, the Arizona Legislature provided at A.R.S. § 41-2501(H) that the AHCCCS Administration “is exempt from [the APC statutes] for ... program contractor contracts pursuant to title 36, chapter 29, articles 2 [containing A.R.S. § 36-2944] and 3” *See also*, A.A.C. §§ R9-28-601(D) (“The [AHCCCS] Administration is exempt from the procurement code under A.R.S. § 41-2501.”); R9-22-601(c) (same). AHCCCS has adopted its own set of regulations for this category of procurement, which are found at A.A.C. §R9-28-601, *et seq.* Those regulations, in turn, incorporate the procurement regulations AHCCCS has adopted at A.A.C. § R9-22-602 for the required contents of an RFP, the AHCCCS regulations under A.A.C. § R9-22-603 for contract awards, and the AHCCCS regulations under A.A.C. § R9-22-604 for proposal protests and appeals. *See* A.A.C. §§ R9-28-602; R9-28-603; R9-28-604. Thus, the notation in A.R.S. § 36-2944(C) that the ALTCS E/PD contracts “shall be awarded as otherwise provided by law” does not incorporate the expressly excluded provisions of the APC, but does logically incorporate the AHCCCS procurement regulations at A.A.C. §§ R9-22-601, *et seq.* and R9-28-601, *et seq.*

B. The AHCCCS regulations set minimum requirements for the RFP.

The AHCCCS RFP regulations require that the RFP include:

1. Instructions and information to an offeror concerning the proposal submission including:
 - a. The deadline for submitting a proposal,
 - b. The address of the office at which a proposal is to be received,
 - c. The period during which the RFP remains open, and
 - d. Any special instructions and information;
2. The scope of covered services under Article 2 of this Chapter and A.R.S. §§ 36-2906 and 36-2907, covered populations, geographic coverage, service and performance requirements, and a delivery or performance schedule;
3. The contract terms and conditions, including bonding or other security requirements, if applicable;
4. The factors used to evaluate a proposal;
5. The location and method of obtaining documents that are incorporated by reference in the RFP;
6. A requirement that the offeror acknowledge receipt of all RFP amendments issued by the Administration;
7. The type of contract to be used and a copy of a proposed contract form or provisions;
8. The length of the contract service;
9. A requirement for cost or pricing data;

10. The minimum RFP requirements; and
11. A provision requiring an offeror to certify that a submitted proposal does not involve collusion or other anti-competitive practices.

A.A.C. §§ R9-22-602(A), R9-28-602. The ALTCS E/PD RFP provided everything required by the regulation.

C. The AHCCCS regulations provide limited restrictions on proposal evaluation.

The AHCCCS RFP regulations, in relevant part, further provide that:

1. “The Administration shall evaluate a proposal based on the GSA and the evaluation factors listed in the RFP”;
2. “The Administration may initiate discussions with a responsive and responsible offeror to clarify and assure full understanding of an offeror’s proposal”;
3. “The Administration shall provide an offeror fair treatment with respect to discussion and revision of a proposal”;
4. “The Administration shall allow for the adjustment of covered services by expansion, deletion, segregation, or combination in order to secure the most financially advantageous proposals for the state”; and
5. “The Administration may issue a written request for best and final offers”, stating the date, time, and place for the submission of best and final offers.

A.A.C. §§ R9-22-602(B), R9-28-602.

D. The AHCCCS regulations provide limited restrictions on contract awards for an ALTCS E/PD procurement.

For contract awards, the AHCCCS regulations provide only the following:

The Administration shall award a contract to the responsible and responsive offeror whose proposal is determined most advantageous to the state under A.R.S. § 36-2906. If the Administration determines that multiple contracts are in the best interest of the state, the Administration may award multiple contracts. The contract file shall contain the basis on which the award is made.

A.A.C. §§ R9-22-603, R9-28-603. Beyond the foregoing, the Arizona law imposes no specific restrictions or requirements on the procurement here for ALTCS E/PD program contractor services.

II. AHCCCS Complied with the Regulatory Requirements for Content of the RFP, for Evaluation of Proposals, and for Award.

AHCCCS complied with the foregoing requirements of the AHCCCS regulations by implementing the following solicitation and offer evaluation process.

A. Development of the RFP.

AHCCCS issued RFP NO. YH24-0001 pursuant to A.R.S. § 36-2931 *et seq.*, as an exercise of its express statutory responsibility and authority under A.R.S. § 36-2944(A). AHCCCS structured the RFP to meet the requirements of A.A.C. §§ R9-22-602(A), R9-28-602. Section D of the RFP, at Paragraph 1, provided general notice of the scope of the contract(s) contemplated by the RFP, stating that the awarded Contractors “shall be responsible for the provision of integrated care addressing physical and behavioral health needs and Long Term Services and Supports (LTSS) ...” for specifically identified ALTCS-qualified individuals.

The development of the RFP took place between August 2, 2022, and June 12, 2023. The RFP was written and reviewed by internal subject matter experts from AHCCCS and approved for publishing by AHCCCS Procurement Office on July 12, 2023. The specific RFP content included, among other things, the following information to satisfy the requirements of A.A.C. § R9-22-602(A): (1) Notice of Request for Proposal containing a description of the purpose, due date for questions about the RFP, due date for the intent to bid form, and due date for proposals; (2) Section B, providing information on capitation rates and contractor specific requirements; (3) Section C and D providing, respectively, definitions and detailed descriptions of program requirements; (4) Section E, providing the contract terms and conditions; (5) Section F, attaching various ALTCS system standards and a contractor chart of deliverables; (6) Section H, providing instructions to offerors; and (7) Section I, attaching various forms, agreements and terms for offeror submission.

B. Development of the evaluation and scoring methodology.

The development of the evaluation and scoring methodology for the proposals was accomplished through the coordinated work of a Scope Team and an Evaluation Team. The Scope Team and Evaluation Team met from July 10, 2023 through September 26, 2023, to determine and finalize the scoring methodology used to evaluate the offerors’ proposals when they were received. As indicated in the Evaluation Process Overview for the RFP, published in the AHCCCS procurement file, all narrative submission requirements, oral presentation requirements, evaluation considerations, evaluation weights and point assignments, tools/templates, methodology, and training slide deck were locked down as final on September 28, 2023, prior to the October 2, 2023 proposal due date. AHCCCS did inaccurately state in the RFP’s Executive Summary, also published in the AHCCCS procurement file, that the Scope Team met from October 2, 2023 through November 15, 2023, to determine the scoring methodology that was detailed in the Evaluation Process Overview document. That is not correct, as confirmed by contemporaneous AHCCCS records identified in the discussion at pages 12-17 below. Rather, the scoring methodology and tools were all locked down before the offerors submitted their proposals, and were not modified thereafter.

C. Publication of the RFP, amendment, and receipt of proposals.

AHCCCS published the RFP on the AHCCCS website on August 1, 2023, and notified approximately 326 vendors/potential offerors of the RFP publication through email. Although AHCCCS held no pre-offer conference, AHCCCS invited prospective offerors to submit written questions, via email, to the AHCCCS Procurement Officer, and AHCCCS provided the prospective offerors a template for doing so. Where appropriate, AHCCCS responded to the questions submitted through Solicitation Amendments that AHCCCS posted publicly on the AHCCCS website, along with the RFP. AHCCCS released Solicitation Amendment #1 on August 15, 2023. It consisted of 44 detailed questions and answers and amended the RFP accordingly. AHCCCS released Solicitation Amendment #2

on August 30, 2023. It consisted of 19 detailed questions and answers and amended the RFP accordingly. AHCCCS released Solicitation Amendment #3 on September 8, 2023 and amended provisions of the Section H Instructions to Offerors, Section I, Exhibit A the Offeror’s Checklist, and the Section G Disclosure of Information Instructions and Attestation.

AHCCCS received five (5) proposals by the due date of October 2, 2023. The proposals came from the following offerors: (1) Arizona Physicians IPA, Inc. (DBA UnitedHealthcare Community Plan) (“APIPA”); (2) Banner-University Care Advantage doing business as Banner-University Family Care (“Banner”); (3) BCBSAZ Health Choice (“BCBSAZ”); Health Net Access, Inc. (dba Arizona Complete Health-Complete Plan (“Health Net”)); and Mercy Care (administered by Aetna Medicaid Administrators)(“Mercy Care”). AHCCCS publicly opened the proposals on October 2, 2023, in accordance with the RFP instructions.

D. Evaluation of the proposals.

AHCCCS Evaluation Team members reviewed and evaluated the written submissions and oral presentations for the five proposals between the submission date of October 2, 2023, and November 15, 2023, after AHCCCS had provided the team members training on the scoring methodology and process to apply it during the evaluation on October 3, 2023. The Evaluation Team members consisted of twenty-two (22) qualified subject matter experts from AHCCCS, each of whom was provided the relevant proposal submissions and scoring tools for their evaluation activities. The Evaluation Team members participated in the consensus evaluation process described in the Overview of RFP Evaluation Process, which is described in more detail starting at page 14 below.

As a result of the consensus evaluation process, AHCCCS calculated the final scoring for each of the offerors’ proposals. The final scoring on a scale with a maximum of 1,000 points available was as follows:

Offeror	Total Score	Rank Based on Total Score
Health Net	715.00	1
APIPA	668.00	2
Mercy Care	557.50	3
BCBSAZ	527.00	4
Banner	522.50	5

E. The award decision.

After the AHCCCS evaluation team members gave each of the proposals serious consideration, and evaluated their respective written submissions and oral presentations using the consensus evaluation and scoring protocol set by the AHCCCS Scope Team and Evaluation Team prior to opening of the proposals, the AHCCCS Scope Team recommended that AHCCCS award two statewide contracts: (1) a statewide contract to APIPA, and (2) a statewide contract to Health Net. The undersigned AHCCCS Chief Procurement Officer determined that both of those offerors had submitted a proposal that was responsible and responsive, and that the award of two contracts as recommended by the Scope Team would be most advantageous to AHCCCS and the State of Arizona, and was in the best interest of the State of Arizona in accordance with the terms of the RFP.

On December 1, 2023, AHCCCS provided public notice that it had elected to award two statewide contracts under the RFP, to APIPA and to Health Net, respectively. On December 1, 2023, AHCCCS issued Non-Award Letters to offerors Banner, Health Choice, and Mercy Care, informing each of them that they were not awarded contracts under the RFP. These Protests followed.

F. The filing of the Protests.

On December 20, 2023, Mercy Care filed a formal protest with AHCCCS to protest AHCCCS' decision not to award Mercy Care a contract under the RFP. In the alternative, Mercy Care asserted that it should have been awarded a third contract in the central GSA. On December 21, 2023, Banner filed a formal protest with AHCCCS protesting the contract awards announced on December 1, 2023. On December 21, 2023, Health Choice filed a formal protest with AHCCCS protesting AHCCCS decision to award contracts under the RFP to APIPA and Health Net.

The Protests allege in their protest filings numerous general deficiencies in the procurement process with substantial overlap between many of the separate protest in their allegations. The following addresses overlapping protest arguments collectively, and further addresses other protest arguments raised by a single Protester.

III. The Protesters' Burden of Proof.

To succeed on a protest challenging AHCCCS' exercise of its procurement authority, a Protester must prove that there exist timely challenged agency actions that were (1) contrary to law, (2) arbitrary or capricious, or (3) an abuse of the agency's delegated discretion. *See, e.g., City of Phoenix v. Wittman Contracting Co.*, 20 Ariz. App. 1, 3 (1973); *Brown v. City of Phoenix*, 77 Ariz. 368, 372 (1954) (citing *Peters v. Frye*, 71 Ariz. 30, 36 (1950) (allowing action for writ of mandate "if it clearly appears that the officer has acted arbitrarily and unjustly and in the abuse of discretion ...") (quoting *Collins v. Krucker*, 56 Ariz. 6, 13 (1940)); *see also, Richard E. Lambert, Ltd. v. City of Tucson Dep't of Procurement*, 223 Ariz. 184, 187 (App. 2009) ("When reviewing an administrative decision, the superior court must determine whether the administrative officer's 'determination was arbitrary and capricious or an abuse of discretion.'" (quoting and citing *Robertson v. Superior Court*, 136 Ariz. 440, 442 (App.1983))); *see also, A.R.S. § 12-901(F)* ("In judicial review of administrative agency decision, '[t]he court shall affirm the agency action unless the court concludes that the agency's action is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion.'")

In the case of protests like these involving a "negotiated procurement" or "best value" procurement, in which the contract award decision rests on the determination of which proposal is most advantageous to the government, "the Protester's burden of proving that the award was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law is greater than in other types of bid protests." *Galen Med. Assocs., Inc. v. United States*, 369 F.3d 1324, 1330 (Fed. Cir. 2004) (citing *LaBarge Prods., Inc. v. West*, 46 F.3d 1547, 1555 (Fed.Cir.1995) (citing *Burroughs Corp. v. United States*, 223 Ct.Cl. 53, 617 F.2d 590, 597-98 (1980)); *see also, E.W. Bliss Co. v. United States*, 77 F.3d 445, 449 (Fed.Cir.1996) ("Procurement officials have substantial discretion to determine which proposal represents the best value for the government."). "The higher burden exists because the contracting officer engages in what is 'inherently a judgmental process,'" *Omega World Travel v. United States*, 54 Fed.Cl. 570, 578 (2002) (citing *Burroughs*, 617 F.2d at 598), and "the greater the discretion granted to a contracting officer, the more difficult it will be to prove the decision was arbitrary and capricious." *Burroughs*, 617 F.2d at 597.

The Arizona law and other persuasive precedent confirm that the foregoing burdens of proof operate as follows.

A. Timeliness of the protest grounds.

To be considered at all as a basis for overturning an award or other relief in connection with a state procurement, a challenge to procuring agency conduct must be timely filed. *See, e.g., Arizona's Towing Pros., Inc. v. State*, 196 Ariz. 73, 75 (App. 1999) (holding that protest had to be filed before the bids were opened per the terms of the Invitation for Bids and the agency regulations for bid protests, and it was an abuse of discretion for the procuring agency to find good cause for ignoring the untimely submission of the protest). If the protest challenges alleged improprieties in the solicitation process that were apparent from the face of the RFP, the protest must be filed before the proposals are due and opened. *Id.* at 75. Arizona precedent affirms the sound legal policy behind this rule.

Requiring protests related to errors apparent on the face of the bid to be filed *before* the bid opening protects the integrity of the bid process. Otherwise, a bidder may wait until the bids are submitted and the contract is awarded to another candidate, then protest the bid solicitation, force another round of bidding, and adjust its prices and strategies after it has had the opportunity to view its competitors' bids. Because allowing such belated protests is prejudicial to the initial winning bidder, bidders should object to mistakes or ambiguities in a bid solicitation before they bid. A.A.C. § R2-7-904(A)(1); *see also Newport News Shipbuilding and Dry Dock Co. v. General Dynamics Corp.*, 960 F.2d 386, 395 n. 6 (4th Cir.1992) (“where omissions or inconsistencies in the contract's provisions are patent, the bidder is required to make inquiry regarding them before submitting its bid.”)

Arizona's Towing Pros., Inc., 196 Ariz. at 76 (emphasis in original).

The foregoing precedent confirms that Arizona law parallels the bedrock principle under federal procurement law that a Protester may not challenge the failure of an RFP to adequately announce or describe evaluation criteria, the relative value of the components of the proposal for evaluation purposes, or the procuring agency's proposal scoring system after the proposals have been opened and evaluated. Rather, if any portion of a solicitation is unclear or incomplete, or fails to incorporate or publish details required by law, the Protester is required to raise that objection prior to the evaluation of the offerors' submissions. *See Weston Sols., Inc. v. United States*, 95 Fed.Cl. at 322-23 (Fed. Cl. 2010), *aff'd*, 440 F. App'x 926 (Fed. Cir. 2011) (“By failing to object to [such issues] when [the RFP] was issued and prior to the evaluation process, the objection has been waived.”)

In this procurement, as in *Arizona's Towing Pros., Inc.*, both the RFP and the AHCCCS protest rule commanded that offerors submit any challenges to alleged procurement improprieties that were apparent from the face of the RFP documents “before the due date of receipt of proposals.” Exhibit H – Instructions to Offerors at paragraph 13 stated that “[p]rotests shall comply with the requirements set forth in A.A.C. § R9-28-601 et seq. and in particular A.A.C. § R9-28-604.” The applicable AHCCCS regulations, at A.A.C. § R2-28-604 states: “Contract or proposal protests or appeals shall be under A.A.C. § R9- 22-604 and 9 A.A.C. 34.” The latter chapter involves applicant, member, provider, and existing contractor claims, grievances, appeals, and requests for hearing but the former section, at A.A.C. § R9-22-604(D), states the rules governing time for filing a procurement protest. In pertinent part, it states:

1. A protester filing a protest alleging improprieties in an RFP or an amendment to an RFP shall file the protest at least 14 days before the due date of receipt of proposals.
2. Any protest alleging improprieties in an amendment issued 14 or fewer days before the due date of the proposal shall be filed before the due date for receipt of proposals.

Id. Unlike the regulation at issue in *Arizona's Towing Pros., Inc.*, 196 Ariz. at 76, the AHCCCS regulation does not provide the procurement officer a “good cause” exception that allows consideration of an untimely appeal. In this case, the due date for receipt of proposals was October 2, 2023. Therefore, the applicable law required the Protesters to formally file any challenges to improprieties apparent from the RFP or its amendments well before that due date. If they did not do so, the late challenges are untimely, and the Procurement Officer has no authority or discretion to consider the untimely protest allegations.

B. Alleged failure to provide information in the RFP for the offerors.

Proof that a procurement official has violated specific legal mandates or restrictions imposed by statute or regulation on the procuring agency and its officials may state a valid basis for protest. See *Wittman Contracting Co.*, 20 Ariz. App. at 6, 509 P.2d at 1043; see also, A.R.S. § 12-901(F) (In judicial review of administrative agency decision, “[t]he court shall affirm the agency action unless the court concludes that **the agency's action is contrary to law**, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion.” (emphasis added)). However, the protester may not find those sorts of mandates outside the codified statutes and regulations directly governing the procurement activities of AHCCCS. See *Go Servs., LLC v. City of Avondale*, No. 1 CA-CV 16-0482, 2017 WL 6328004, at *1 (Ariz. App. Dec. 12, 2017) (indicating Arizona courts do not adopt federal procurement law where there is Arizona law on point); *State ex rel. KNC, Inc. v. New Mexico Dep't of Fin. & Admin., Prop. Control Div.*, 103 N.M. 167, 171, 704 P.2d 79, 83 (App. 1985) (focusing only on New Mexico state Procurement Code because “the scope of discretion available to federal procurement officers is not necessarily that which our legislature intended the relevant state officers to have under the Act.”)

The foregoing applies especially in this case to the numerous Protester arguments that AHCCCS failed to publish the specifics of its evaluation and scoring methodology, including the scores assigned to various categories of the proposals and the relative weighting of the various areas evaluated and scored. If the applicable statutes and AHCCCS regulations do not expressly command inclusion of the information a Protester contends was needed, the lack of such information does not create a basis for the Procurement Officer to question the award decision or provide relief.

C. The Protesters must establish actual and sufficient prejudice to their opportunity for award as a result of each alleged impropriety.

In government bid protests, the Protester must also “establish that it has been prejudiced by the agency decision it is challenging.” *Weston Sols., Inc.*, 95 Fed.Cl. at 322. To show such prejudice, a Protester must demonstrate that “but for the error, it would have had a substantial chance of securing the contract.” *Labatt Food Serv., Inc. v. United States*, 577 F.3d 1375, 1378 (Fed.Cir.2009) (quoted in *Weston Sols., Inc.*, 95 Fed. Cl. at 322). As an example, “[w]here the protest claims “that an agency relied on an unstated evaluation criterion, a Protester must show that: (i) ‘the procuring agency used a significantly different basis in evaluating the proposals than was disclosed; and (ii) the protestor was prejudiced as a result-that it had a substantial chance to receive the contract award but for that error.’” *NEQ, LLC v. United States*, 88 Fed.Cl. 38, 48 (2009) (quoting *Banknote Corp. of Am., Inc. v. United States*, 56 Fed.Cl. 377, 387 (2003)), *aff'd*, 365 F.3d 1345 (Fed.Cir.2004) (cited with favor in *Weston Sols., Inc.*, 95 Fed.Cl. at 322).

D. The Procurement Officer may not re-evaluate the proposals or second-guess the evaluator decisions and scoring, but must uphold all decisions supported by substantial evidence.

There are definite limits on review of a procurement protest. For one, when addressing challenges claiming that the evaluation or award decisions were arbitrary or capricious, the Procurement Officer “may not weigh the evidence on which the decision was based.” *Richard E. Lambert, Ltd. v. City of Tucson Dep’t. of Procurement*, 223 Ariz. 184, 187 ¶ 10 (App. 2009) (citing *Ariz. Dep’t of Pub. Safety v. Dowd*, 117 Ariz. 423, 426, 429 (App.1977) (“*Dowd*”); see also, *Barlow v. Arizona Peace Officer Standards & Training Bd.*, No. 1 CA-CV 19-0378, 2020 WL 1274507, at *3 (Ariz. App. Mar. 17, 2020) (“We do not independently weigh conflicting evidence on appeal from an administrative agency decision.”). Nor can the Procurement Officer substitute her judgment for that of the proposal evaluators. See *Culpepper v. State*, 187 Ariz. 431, 436 (App. 1996) (“In reviewing factual determinations by an administrative agency, this court does not reweigh the evidence or substitute its judgment for that of the agency.”); *Blake v. City of Phoenix*, 157 Ariz. 93, 96 (App.1988); see also *Smith v. Ariz. Dep’t of Transp.*, 146 Ariz. 430, 432 (App.1985).

Instead, the Procurement Officer must affirm the agency procurement decisions if they were supported by substantial evidence. See, e.g., *Dowd*, 117 Ariz. at 426, 429 (forbidding Superior Court from weighing the evidence considered by the agency); A.R.S. § 12-901(F); see also *Wassef v. Arizona State Bd. of Dental Examiners through Hugunin*, 242 Ariz. 90, 92, 93 (App. 2017). This standard applies especially to award decisions. See, e.g., *Aero Corp. v. Dep’t of the Navy*, 493 F. Supp. 558, 567 (D.D.C. 1980) (holding record demonstrated Navy decision to award contract to awardee “is supported by substantial evidence”); *Gregory Constr. Servs., Inc. v. Mississippi Dep’t of Fin. & Admin.*, 360 So. 3d 651, 656 (Miss. Ct. App. 2023) (The Mississippi Bureau of Building, Grounds and Real Property Management had substantial evidence to support its decision to award contract.); *Blue Cross of California v. State Dep’t of Health Care Servs.*, 153 Cal. App. 4th 322, 329–30, 62 Cal. Rptr. 3d 772, 778 (2007) (“In reviewing the award of a public contract, our function is the same as the trial court’s—to decide whether the public entity’s decision is supported by substantial evidence” (quoting from *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 903, 53 Cal.Rptr.2d 389)); *State ex rel. KNC, Inc. v. New Mexico Dep’t of Fin. & Admin., Prop. Control Div.*, 103 N.M. 167, 173, 704 P.2d 79, 85 (N.M. App. 1985) (holding that if public agency contract award decision “is supported by substantial evidence, we should sustain it.”).

The Arizona courts describe the “substantial evidence” test as a “deferential standard”. *Coplan v. Arizona State Bd. of Appraisal*, 222 Ariz. 599, 602 (App. 2009). “‘Substantial evidence’ is defined as any ‘relevant evidence from which a reasonable mind might draw a conclusion.’” *Doe v. Arizona Bd. of Regents*, No. 1 CA-CV 18-0784, 2019 WL 7174525, at *3 (Ariz. App. Dec. 24, 2019) (citing *Troutman v. Valley Nat’l Bank of Ariz.*, 170 Ariz. 513, 518 (App. 1992) (quoting *In re Estate of Mustonen*, 130 Ariz. 283, 285 (App. 1981)). A Protester may not establish a lack of substantial evidence by showing that the record before the evaluation personnel supported factual conclusions that are inconsistent with the conclusions reached by the evaluators. “Substantial evidence exists if the evidentiary record supports the decision, even if the record would also support a different conclusion.” *Wales v. Arizona Corp. Comm’n*, 249 Ariz. 263, 268 (App. 2020).

Accordingly, even if the procurement record would support alternative inconsistent conclusions, so long as the record demonstrates that the evaluators have selected at least one of the multiple inconsistent factual conclusions that might be reasonably reached under the procurement record, their decision is sufficiently supported by “substantial evidence”. *Williams v. Tucson Unified Sch. Dist. No. 1 of Pima Cnty.*, 158 Ariz. 32, 35–36 (App. 1987) (citing *Howard v. Nicholls*, 127 Ariz. 383 (App.1980); *Webster v. State Board of Regents*, 123 Ariz. 363, (App.1979)) (“Substantial evidence exists even if two inconsistent factual conclusions are supported by the record when the agency elects either possible conclusion.”); *DeGroot v. Ariz. Racing Comm’n*, 141 Ariz. 331, 336 (App. 1984) (“If two inconsistent factual conclusions could be supported by the record, then there is substantial evidence to support an administrative decision that elects either conclusion.”) The relevant protest review standard does not require any finding that a challenged agency decision was the *only* reasonable conclusion that could have been reached on a point, or even that there be *more* evidence or reasons favoring the conclusion the

agency personnel reached than favoring other decisions or evaluative conclusions they could have reached. It merely requires that there be some evidence in the record that might have led a reasonable agency evaluator to reach the evaluative conclusions the AHCCCS evaluators actually reached.

IV. The Protest Allegations Do Not Require Corrective Action by the Procurement Officer.

The following address the bases submitted for protest by the Protesters, applying the standards of review and burdens of proof outlined above.

Protest Issue #1: AHCCCS failed to establish a weighting and scoring methodology until after proposals were opened and being evaluated.

The Protesters each claim that AHCCCS failed to establish the relative weighting of its solicitation criteria and the scoring system it would use until *after* the proposals had all been opened and evaluations were underway. This claim is factually incorrect.

Instead, on August 1, 2023, AHCCCS publicly issued the RFP. At that time, Section H, Instruction to Offerors, ¶ 8 “Evaluation Factors and Selection Process” (p. 5) stated that “AHCCCS has established a scoring methodology to evaluate an Offeror’s ability to provide cost-effective, high quality contract services in a managed care setting in accordance with the AHCCCS mission and goals.” The Protesters claim that AHCCCS did not finalize the scoring methodology and weighting criteria until November 15, 2023, over a month past the opening of the proposals.

The Protesters claim that they first became aware on December 1, 2023, when AHCCCS disclosed the procurement file, that the scoring methodology was not finalized prior to issuance of the RFP. They point to AHCCCS’ Executive Summary and Final Evaluation Report, which contained an error and inaccurately noted: “The Scope Team met October 2, 2023 through November 15, 2023, to determine the scoring methodology and came to an agreement to apply the scoring methodology detailed in the Evaluation Process Overview document available in the procurement file.” See Procurement File, Executive Summary, ¶ Scoring Methodology (p.2).

The Protesters claim that AHCCCS’ failure to finalize the scoring methodology or weighting criteria prior to the issuance of the RFP actually violated the terms of the RFP. The Protesters further note that AHCCCS declined to provide scoring or weighting details to the Offerors’ pre-submission questions submitted to AHCCCS. See Solicitation Amendment #1 (pgs. 7-8, and 11). And Protesters claim they could not have raised challenges to the scoring or weighting issues until after AHCCCS disclosed the procurement file on December 1, 2023.

AHCCCS’ Response

The Protesters’ assertion that AHCCCS failed to establish a scoring methodology and weighting criteria prior to the opening of proposals rests on a misstatement of facts regrettably overlooked in the final editing for page 2 of the Executive Summary. However, the Protesters should logically have questioned the accuracy of the Executive Summary statement because the time period it references – “October 2, 2023, through November 15, 2023” – was actually the dates over which the evaluations occurred for the narrative submissions and the oral presentations. See ALTCS E/PD RFP No. YH24-0001, Scoring Training, October 3, 2023 (AHCCCS000029-0076); see also Consensus Meetings (AHCCCS000077); see also August 2, 2023, Scope

Team meeting minutes (AHCCCS00041).² Those evaluations could not have happened without use of an established scoring methodology, and the procurement file records reflect the Evaluation Team members received training on the evaluation methodology on October 3, 2023 (see ALTCS E/PD RFP YH24-0001, Scoring Training, October 3, 2023 (AHCCCS000029-0076)). Thus the Protesters were able to determine that the Executive Summary statement was a mistake.

Moreover, the establishment of the scoring methodology and submission requirement weighting before the receipt and opening of proposals is confirmed through both the statement at Section H, paragraph 8 of the RFP and in other contemporaneous records from the procurement file. For example, the procurement records show that AHCCCS developed the RFP between August 2, 2022, and June 12, 2023, which included solidifying the scoring and evaluation methodology. Also of significance, the Protesters had access to records of the meetings of the Scope Team. Those records establish that between July, 10, 2023, and September 21, 2023, the Scope Team held the following meetings to discuss, among other things, finalizing and locking down the scoring methodology and weighting criteria utilized in this RFP:

- **On July 10, 2023**, the Scope Team discussed finalizing the Evaluation Teams and the “Lock Down Date for Scoring Tools is 9/25;”³
- **On July 19, 2023**, the Scope Team discussed: finalizing questions on narratives, broad categories, the “initial Meeting for documenting Criteria & Leads...” for “each Narrative/Cost Bid/Oral Presentation to assist evaluation team with discussing and documenting the categories and criteria,” and “Start discussion on Points/Weighting... Initial Draft Completed;”⁴
- **On July 20, 2023**, the Scope Team records show they discussed: the “Finalized [scoring] Points/Weighting,” and sending the finalized “Scoring (Points-Weighting)” to the RFP Consultants for their review and/or feedback;⁵
- **On July 26, 2023**, the Scope Team discussed: the approved “Review Finalized Points/Weighting Consultant Feedback,” the approved “Scoring (Points-Weighting), “Bring Doc to Exec for approval on 8/2,” and the approved “EPD RFP Broad Categories Tracker-PHPG Consultant input;”⁶
- **On August 2, 2023**, the Scope Team discussed: the approved “Review Finalized Points/Weighting Consultant Feedback,” the “Release of the RFP on 8/1/23,” the “Bids are due by October 2nd,” the “Oral presentations the week of 10/23/23-10/30/23,” the “Scoring from 10/03/-11/15/23,” and the Award on “December 13th;”⁷
- **On September 7, 2023**, the Scope Team discussed that the “Lock down of all documents is scheduled for 9/25/23,” including the “Overall Scoring Tool and Scoring Tool Narrative;”⁸ and

² After the announcement of the award decision under the RFP, the Protesters and the selected awardees have made public records requests to AHCCCS concerning records connected with the ALTCS E/PD procurement. In response, AHCCCS, through its counsel, has produced substantial to the Protesters and selected awardees records that were not included in the publicly posted procurement file. AHCCCS’s counsel has marked each page of those additional records with a sequential “Bates stamp” number, commencing with the prefix “AHCCCS000 _____”. Citations in this Decision to such numbers refer to Bates stamped pages from the records produced by AHCCCS in response to the public records requests.

³ See July 10, 2023, Scope Team meeting minutes AHCCCS000376

⁴ See July 19, 2023, Scope Team meeting minutes AHCCCS0000382

⁵ See July 20, 2023 Scope Team meeting minutes AHCCCS000383

⁶ See July 26, 2023, Scope Team meeting minutes AHCCCS000384

⁷ See August 2, 2023, Scope Team meeting minutes AHCC000411

⁸ See September 7, 2023, Scope Team meeting minutes AHCCCS000389

- **On September 21, 2023**, the Scope Team discussed the approved “Overview of evaluation process” and the approved “Overall Scoring Tool.”⁹

The procurement records further confirm that after establishing the scoring methodology and weighting criteria, the Scope and Evaluation Teams’ original internal deadline to “lock down” the scoring methodology and weighting criteria was September 25, 2023. See July 10, 2023, Scope Team meeting minutes (AHCCCS000376). AHCCCS took three additional days to finalize and lock down the scoring methodology and weighting criteria, but as reflected accurately in the RFP Instructions to Offerors, the AHCCCS Scope Team and Evaluation Team had established final, “locked-down” evaluation processes, along with the final “locked down” scoring tools/templates methodology and scoring training slide decks by September 28, 2023. See Procurement File, Evaluation Process Overview-Overview of RFP Evaluation Process (p. 1). It is AHCCCS’ long-standing practice and a fundamental tenet of its procurement operations to ensure all scoring methodology materials are finalized and locked down prior to proposal due dates. AHCCCS has adhered to this long-standing practice for this RFP.

The above-cited Scope Team meeting minutes show that, contrary to the misstatement in the Executive Summary document, AHCCCS personnel had actively established and locked down the approved points and weighting prior to receiving the Offerors’ proposals on October 2, 2023, and thus were prepared prior to proposal submission to apply a final evaluation and scoring methodology to evaluate an Offeror’s ability to provide cost-effective, high quality contract services in a managed care setting in accordance with the AHCCCS mission and goals, as the RFP indicated. See Procurement File, ALTCS E/PD RFP No. YH24-0001, Section H, Instruction to Offerors, ¶ 8 “Evaluation Factors and Selection Process” (p. 5); see also Procurement File, Evaluation Process Overview, ¶ Overview of RFP Evaluation Process (p. 1).

The Protesters have failed to prove that AHCCCS’ exercise of its procurement authority and actions to lock down the scoring methodology and weighting criteria for the RFP by September 28, 2023, was: (1) contrary to law, (2) arbitrary or capricious, or (3) an abuse of the agency’s delegated discretion. See, e.g., *City of Phoenix v. Wittman Contracting Co.*, 20 Ariz. App. 1, 3 (1973). Therefore, the challenges concerning the date by which AHCCCS procurement personnel had established the scoring methodology or weighting criteria they would use for the ALTCS E/PD procurement provide no basis to question the award decision, and must be denied as insufficient grounds for protest.

Protest Issue #2: AHCCCS failed to disclose evaluation criteria and specific scoring/weighting details.

All Protesters claim that AHCCCS should have provided the offerors additional detail regarding the evaluation criteria and specific scoring/weighting methods that would be used to evaluate and compare their proposals.

AHCCCS’ Response

The assertions that AHCCCS failed to adequately disclose prior to proposal submission required details of its evaluation criteria and scoring/weighting methodology are untimely, and therefore all such protest grounds are waived.

⁹ See September 21, 2023, Scope Team meeting minutes AHCC000390

As noted above, AHCCCS' procurement regulations require that protests related to improprieties that appear in an RFP, or in a subsequent RFP amendment, be submitted prior to the due date for the submission of proposals. See A.A.C. § R9-22-604(D)(1),(2) (incorporated by A.A.C. § R9-28-604). The Protesters' complain that details about the relevant evaluation criteria and scoring methodology were absent from the RFP and its amendments. That absence was obvious to the Protesters from the face of the RFP. A protest of such alleged facial deficiencies in a solicitation must be submitted prior to the due date for proposals, otherwise the protest ground is waived. See A.A.C. § R-22-604(D)(1),(2); *Arizona's Towing Pros., Inc.*, 196 Ariz. at 76.

Here, however, the Protesters were on express notice of the alleged solicitation deficiency from the absence of additional evaluation criteria or scoring methodology details in the RFP and its amendments. Also, some prospective offerors had submitted questions to AHCCCS in response to the initial publication of the RFP, in which they asked if AHCCCS would supply such additional details for them prior to the proposal due date. In response, AHCCCS explicitly informed all prospective offerors in its first of three RFP amendments that AHCCCS would not do so. With its publication of RFP Amendment #1 on August 15, 2023, AHCCCS repeated in four (4) separate responses to prospective offeror questions that "AHCCCS will not be providing scoring or weighting details" to offerors prior to the due date for receipt of proposals. See Procurement File, Solicitation Amendment #1 (pgs. 7-8, and 11).

Given AHCCCS' express rejection of requests for further evaluation scoring or weighting details, all the Protesters were on notice by the issuance of Amendment #1 of the RFP deficiency they now challenge. The law established in A.A.C. § R-22-604(D)(1),(2), and by the authority in *Arizona's Towing Pros., Inc.*, 196 Ariz. at 76, confirms that the Protesters had a duty to lodge any protest of AHCCCS' decision to not provide the additional evaluation scoring or weighting criteria or methods immediately, and certainly sufficiently before the due date for submission of proposals. No offeror, including the three Protesters, filed any protest until *after* the evaluations were completed and award decisions were made and published. The protests are untimely, and the Procurement Officer has no authority to excuse the Protester's waiver of these protest arguments. See also, *Fleetcor Techs. Operating Co., LLC v. State ex rel. Div. of Admin., Off. of State Purchasing*, 30 So. 3d 102, 107-08 (La. App. 1 Cir. 2009) (holding it was not error for Office of State Purchasing to fail to publish evaluation criteria and scoring system for technical proposal submissions where all offerors received the same information, and Protester was "aware that its proposal must be competitive in respect to all of the requirements of the RFP", plus the Protester had an opportunity to ask for further clarification during inquiry period but did not do so).

Even if the assertions that AHCCCS failed to provide sufficient details about the evaluation scoring and selection process were timely, they are factually incorrect and inconsistent with the governing legal standards for this AHCCCS ALTCS E/PD procurement. The Protests suggest that the failure to provide scoring or weighting details violates some legal duty AHCCCS had to the offerors, and therefore AHCCCS's decision to not provide additional scoring details was "contrary to law." But, the Protesters have not identified any controlling law that required AHCCCS to publish the additional details about its evaluation criteria and scoring methods.

As discussed above, the legal requirements for what AHCCCS must include in an RFP are limited, and are found only in A.A.C. §§ R9-22-602(A), R9-28-602. The only mention of evaluation criteria in that regulation requires that the RFP include "the factors used to evaluate a proposal", without any further elaboration requiring disclosure of underlying scoring methods, point values, or relative weighting of the factors. A.A.C. § R9-22-602(A)(4). This broadly worded instruction grants AHCCCS considerable leeway and discretion on how general or detailed to make its disclosure of the factors for evaluation. Moreover, the agency's interpretation of its own regulations is entitled to "great weight". See, e.g., *Sharpe v. Arizona Health Care Cost Containment System*, 220 Ariz. 488, 494 (App. 2009). For the ALTCS E/PD RFP, AHCCCS appropriately exercised its regulatory discretion and complied fully with a reasonable interpretation of the limited requirements of A.A.C. § R9-22-602(A)(4).

As previously stated, AHCCCS first provided in Section H ¶ 8 of RFP NO. YH24-0001 (at p. 5) that the evaluation factors for the procurement, listed in their relative order of importance, were:

1. Programmatic Submission Requirements
2. Financial Submission Requirements

The AHCCCS RFP further informed prospective offerors that the awards shall be made to responsible offeror(s) whose proposal(s) is/are determined in writing to be the most advantageous to the state based upon the evaluation criteria. See Procurement File, ALTCS E/PD RFP No. YH24-0001, Section H at ¶ 8 “Evaluation Factors and Selection Process.” (citing A.R.S. § 36-2903, *et. seq.*)

Adding even more detail, the RFP next informed Offeror(s) that, with the exception of past performance issues, AHCCCS would only score and evaluate submitted proposals based upon information submitted to AHCCCS by the offerors and that “AHCCCS has established a scoring methodology to evaluate an Offeror’s ability to provide cost-effective, high-quality contract services in a managed care setting in accordance with AHCCCS’ mission and goals.” *Id.* AHCCCS informed offerors that although the award decision would be guided by the scores awarded by the evaluators, AHCCCS is not bound by evaluation scores and would make its decision based on a determination of which proposal(s) was/were deemed most advantageous to the State. *Id.*

Further, AHCCCS informed Offerors that the RFP included evaluation of narrative submission requirements, past performance, oral presentations¹⁰, and a cost bid analysis. *Id.* at Section H ¶ 20 “Submission Requirements.” AHCCCS provided Offeror(s) specific Narrative Submission Requirements, which included a designation of a couple of Narrative Submission Requirements that AHCCCS would not score during the evaluation process. See RFP NO. YH24-0001 Section I Exhibit H “Narrative Submissions Requirements.”

Given the foregoing, AHCCCS disclosed sufficient, material details that informed prospective offerors of the fundamental evaluation factors and their respective priority for purposes of evaluation, as well as the fact that AHCCCS had a scoring methodology to use with those evaluation factors, and that the scoring methodology was established to evaluate an offeror’s ability to provide cost-effective, high-quality contract services in a managed care setting and in accordance with AHCCCS’ established mission and goals. Finally, AHCCCS also informed the prospective offerors that AHCCCS was invoking the “most advantageous to the state” standard for final award decisions. The combination of the evaluation process objectives and details the RFP did disclose provided more than the basic “factors used to evaluate a proposal” required by the AHCCCS regulation. There is no basis to claim that AHCCCS acted contrary to law by structuring and limiting its disclosure of scoring and weighting details the way it did.

Nor was the decision to not disclose all details of the scoring methodology somehow arbitrary and capricious. AHCCCS elected not to require disclosure of such details in its RFPs because highly detailed listing of scoring criteria can lead to offerors trying to “game” the process and focus their proposals on supplying information for the factors capable of earning them the most possible points while shorting their responses to low-value submission factors. The regulatory requirements at A.A.C. § R9-22-602(A) grant AHCCCS the authority to protect against such gamesmanship and ensure a more authentic representation of the offeror’s proposed solution to AHCCCS’ needs, mission and goals. The balance in scoring methodology details struck here was

¹⁰ The scoring of Oral Presentations is addressed in its own section below because of the specific challenges to the scoring or Oral Presentations.

reasonable and legally authorized. There was nothing arbitrary and capricious about it, and the protest challenges fail to prove any improper agency action, even if they had not been untimely filed.

Protest Issue #3: AHCCCS failed to disclose that it would score oral presentations.

Protesters Mercy Care and Banner claim that AHCCCS erred by failing to provide notice to offerors that AHCCCS evaluators would score the Oral Presentations the RFP required the offerors to provide. [See e.g., 12-21-2023 Banner Protest Letter at p. 15 (“No mention is made of scoring, evaluating, or weighting oral presentations, and nothing even hints at that possibility, ...”); 12-20-2023 Mercy Care Bid Protest (“The RFP gave no indication that the oral presentation would be scored, and, indeed, it was not ‘designated for scoring’ according to the RFP’s own terms.”)].¹¹

AHCCCS’ Response

The assertion by Mercy Care and Banner that AHCCCS erred because it provided offerors no notice, nor any indication, that AHCCCS evaluators would score their oral presentations presents no basis for finding that AHCCCS acted contrary to law. After all, the argument that AHCCCS was somehow required to include specifics about scoring the oral presentations in the RFP parallels the broader arguments above that AHCCCS was required to disclose more about all aspects of how it would weigh the importance of various proposal submission components and how it would score the proposal submissions. Just as nothing in the statutes or regulations governing this AHCCCS ALTCS E/PPD procurement required more than AHCCCS actually provided the offerors about evaluation and scoring, there is nothing in any relevant statutes or regulations requiring AHCCCS to provide details about how the Oral Presentations would be scored.

Moreover, the two Protesters’ arguments that the RFP gave no indication at all that Oral Presentations might be scored is factually incorrect. Rather, the RFP at Section H, Instructions to Offerors, set the submission requirements for all offerors, and included, among other mandatory submission requirements, “Oral Presentation Information” at item B12. In that same RFP section, AHCCCS advised that it would hold oral presentations in a strict, monitored environment for the purpose of evaluation. The RFP, and subsequent notices of the Oral Presentation scheduling sent to Mercy Care and Banner, explicitly informed all offerors that “[p]resentations may be audio-taped by AHCCCS **for the Agency’s use in the evaluation process.**” (P. 18) (emphasis added); see also Procurement File, Oral Presentation Notifications. Factually, no offeror can claim any surprise that their Oral Presentations were part of the submissions by which AHCCCS’ procurement personnel would evaluate their respective RFP submissions and compare the strengths or weaknesses of their submissions against the relative strengths or weaknesses of the other offerors’ submissions.

Mercy Care’s and Banner’s assertions that RFP NO. YH24-0001 Section H, gave them no indication whatsoever that AHCCCS might score oral presentations, is also not credible. Even if the RFP had not created such

¹¹ Health Choice did not argue that it lacked notice that Oral Presentations were a scored item. This is likely because Health Choice performed well on the Oral Presentations. Instead, Health Choice argues it lacked notice of specific weighting and scoring information, and that its success relative to its Oral Presentation should have carried over to the scoring of its written submission requirements. Health Choice’s argument about lack of notice of specific weighting and scoring information, as discussed under Protest Issue #2 herein, is deemed an untimely and unmerited protest. Health Choice’s argument about AHCCCS’ lack of consistent scoring is addressed under Protest Issue #9 herein. Health Choice’s argument that its scores for its written submissions should reflect the same level of superiority over its competitors as its Oral Presentations scores did offers no facts that would justify such a conclusion.

a detailed oral presentation process, it would make little sense for an offeror to assume that a mandatory submission component is just a throw-away and will not be considered for evaluation or scoring purposes at all, absent an express indication AHCCCS intended so.

In addition, any such assumption here would be logically impossible. In the RFP, AHCCCS detailed the environment, use, and strict requirements for the oral presentations, and AHCCCS informed offerors that presentations may be audio recorded specifically for use in the “evaluation process.” So, the offerors were on express notice that the oral presentations were subjects of the “evaluation process”. Given that the RFP further advised the offerors that “AHCCCS has established a scoring methodology to evaluate an Offeror’s ability to provide cost-effective, high-quality contract services in a managed care setting in accordance with AHCCCS mission and goals,” See Procurement File, ALTCS E/PD RFP No. YH24-0001, Section H at ¶ 8 “Evaluation Factors and Selection Process”, the offerors were all on express notice that the “evaluation process” including oral presentations would also be subject to a “scoring methodology” built to evaluate matters that would be demonstrated through the oral presentations. There is no credible argument under these circumstances that Mercy Care and Banner had no idea their oral presentations might be scored.

The following are additional specific requirements expressed by the RFP that would have led reasonable offerors to understand their oral presentations were part of the evaluated RFP submissions:

- AHCCCS required pre-submittal of six individuals responsible for the Offeror’s oral presentation from each offeror. AHCCCS required those submittals be supplemented if an offeror needed to modify its attendees;
- AHCCCS recommended offerors include individuals with expertise in Medical Management, Case Management, and Quality Management as part of the presentation team. Those areas were critical portions of the “programmatic” submissions listed as one of the two primary evaluation factors in the RFP;
- AHCCCS held oral presentations in a controlled environment which forbid the usage of pre-prepared materials or presentations, laptops during presentation, cell phones, restricted communications to those outside of the oral presentation and preparation rooms, and required Offerors to provide their own internet connection;
- AHCCCS informed Offerors of the strict, controlled environment within the RFP and within the Oral Presentation Notifications AHCCCS sent each offeror;
- AHCCCS informed Offerors that they were forbidden from communicating to those outside of the oral presentation environment during both presentation and preparation phases; and
- Finally, AHCCCS monitored Offerors at all times during the oral presentation process, including during presentation preparation, to ensure compliance with their strict, controlled environment.

The foregoing structure did not amount to an impromptu “pop quiz” as suggested by the Protests. Rather, as expressed in great detail to the offerors through the RFP, the oral presentation phase was a test of the offerors’ ability, in a real-time setting, to impress AHCCCS with the combination of the offerors’ ability to prepare and to

sincerely and cogently delineate a plan matching AHCCCS' objectives. This is more like a classic setting in which AHCCCS set up a test, and the offerors would expect that their responses to the test would be evaluated in detail, subject to AHCCCS's established evaluation and scoring methodology.

The Procurement Officer notes that Banner and Mercy Care have participated in prior AHCCCS procurements that included oral presentations that were evaluated and scored. Also, by their actions in this procurement, Mercy Care and Banner confirmed they both understood the importance of the Oral Presentations. Mercy Care submitted to AHCCCS its list of presenters, as required, which included: its Deputy Chief Executive Officer; its Chief Clinical Officer, its Vice President of Quality Management, and various other directors or administrators. Mercy Care even listed its President and Chief Executive Officer as alternates. Similarly, Banner submitted its Chief Executive Officer, Chief Operations Officer, Chief Medical Officer, and various other administrators and directors to participate in the Oral Presentations. Banner's and Mercy Care's suggestions that they did not think the Oral Presentations would have any impact on their scoring is undermined by the fact that they engaged some of their highest-level executives to provide the oral presentations required by the RFP.¹²

Further, even if Banner's and Mercy Care's lack of notice claim was credible, the claim would provide no basis to set aside the contract awards. As noted above, a Protester claiming the agency relied on unstated evaluation criterion "must show that: (i) 'the procuring agency used a significantly different basis in evaluating the proposals than was disclosed; and (ii) the protester was prejudiced as a result-that it had a substantial chance to receive the contract award but for that error.'" *NEQ, LLC v. United States*, 88 Fed.Cl. 38, 48 (2009) (quoting *Banknote Corp. of Am., Inc. v. United States*, 56 Fed.Cl. 377, 387 (2003)), *aff'd*, 365 F.3d 1345 (Fed.Cir.2004). In other words, Mercy Care and Banner cannot succeed on this argument without showing that because AHCCCS failed to inform them that it would evaluate and score their oral presentations, they were actually prejudiced and eliminated from an award they otherwise had a substantial chance to receive. *See also, Weston Sols., Inc.*, 95 Fed.Cl. at 322.

But Banner and Mercy Care have offered no proof of actual prejudice arising from the alleged failure to inform them that AHCCCS would include their oral presentations in its scored evaluation. Neither Protester claims they would have structured or performed any differently in their oral presentations if they had more definitive notice that AHCCCS would score those presentations. Nor do Mercy Care and Banner claim that AHCCCS conducted the oral presentations in a manner other than what AHCCCS indicated it would use in the RFP and Oral Presentation Notifications. *See e.g., Labatt Food Serv.*, 577 F.3d at 1378 (requiring a Protester who claims agency relied on unstated evaluation criterion show the agency used a different basis in evaluating the proposals than disclosed). Finally, given the very specific structure and requirements the RFP set for the oral presentations, and the fact that Mercy Care and Banner enlisted their most senior executives to execute those presentations, it is not credible that the companies either did not take the presentation seriously, or that they would have radically changed and improved their oral presentations if they had just known that they were being scored. Because Banner and Mercy Care have made no attempt to show actual prejudice connected to this issue, their arguments about the evaluation of oral presentations present no valid grounds for protest or relief.

Protest Issue #4: AHCCCS erred by utilizing a flawed scoring system.

¹² Protester Banner suggests that Ms. Michele Barnard was not properly qualified per the expectations of the RFP to present for awardee Health Net. However, Banner has not provided adequate proof of its allegations, nor any proof of how Ms. Barnard's participation actually prejudiced Banner. Therefore, the allegation about Ms. Barnard provide no viable grounds for protest.

The Protesters make several challenges to the scoring methodology used by AHCCCS. They allege:

- AHCCCS erred in allowing Scope Team members to also participate as Evaluation Team members after the Scope Team knew what the relative scoring weights were for the scored proposal items;
- AHCCCS erred by departing from the scoring methodology and weighting of factors it has used historically in past, similar procurements, especially because they placed so much weight on the oral presentations and failed to weigh past performance as heavily as AHCCCS had in former procurements; and
- AHCCCS erred by using a scoring tool whose language does not match the RFP criteria.

AHCCCS' Response

The Protesters make a variety of challenges to the scoring values actually assigned to various aspects of the proposals. Yet, not all Protesters agree on why the scoring values are problematic, or which aspects of them constitute a procurement deficiency. In essence, these complaints appear to be structured in large part to target the aspects of the scoring system whose alteration or elimination would provide either the most relative benefit to the Protester making the argument, or that would have the most negative impact possible on scores assigned to the successful awardees, or to achieve both and catapult the complaining Protester's score ahead of or close to the scores of the awardees. In short, these protest grounds appear manipulated for effect.

In addition, each of these protest grounds suffers an identical, critical deficiency. Again, none of the Protesters have demonstrated specific prejudice that could have changed the outcome of the procurement for them and earned them a place in line for award. Without that sort of showing, these protest arguments provide no basis for disturbing the awards.

Addressing the merits of each of these arguments, they again are factually inaccurate and frequently speculative. For instance, the Protests include an argument that allowing Scope Team members to also serve as Evaluation Team members for individual scored items undermines the integrity of the evaluation process and allows the dual-purpose Scope Team members to manipulate scoring in favor of or against certain proposers because those team members would know the score values and relative score weights of the proposal aspects they were asked to evaluate. But this argument rests on pure speculation. Nowhere has any Protester shown any evidence that any such manipulation actually happened, or what impact it had on the scoring of their proposal or other proposals. Again, without proving such negative impacts actually altering the award outcome, the argument does not create a valid ground for protest.

Moreover, the evaluation and scoring process used here would not logically allow the sort of manipulation the Protesters raise the specter of. *See* ALTCs E/PD RFP NO. YH24-0001, Scoring Training, October 3, 2023 (AHCCCS000029-0076), *see also* Consensus Meetings (AHCCCS000077). First, only eight of the 22 evaluators were on the Scope Team. *Id.* (at AHCCCS000042-0057); *see also*, Procurement File, Executive Summary, ¶ Evaluation Process (pgs. 2-3). The weighting and points were not communicated as part of the scoring training, so the other 14 evaluators conducted evaluations without knowledge of the scoring values being impacted by their consensus evaluations and rankings of the Offerors on individual proposal elements. *Id.*, and *see*, Consensus Meetings (AHCCCS000077).

There were eight Narrative Submission Requirements (approximately 30 pages for each of five offerors) with various elements of each subject to evaluation; a cost bid (with initial and best and final offer evaluations for each of five offerors), and two oral presentations for each of five offerors. *See* ALTCS E/PD RFP YH24-0001, Scoring Training, October 3, 2023 (AHCCCS000042-0057). There were separate evaluation teams for each scored Narrative Submission Requirement, a separate evaluation team for the Cost Bid, and a separate evaluation team for the two oral presentations. *Id.*, *see also* Consensus Meetings (AHCCCS000077). Only 7 of the 22 evaluators were on more than one evaluation team. *Id.*; *see also* Procurement File, Executive Summary, ¶ Evaluation Process (p. 2), *see also* Consensus Meetings (AHCCCS000077).

Furthermore, the evaluations relied on consensus efforts using multiple evaluators for each scored element of the proposals, facilitated by the AHCCCS contracted consultants to encourage full, individual participation in the consensus discussion and development process. *See* Procurement File, Evaluation Process Overview, Overview of RFP Evaluation Process ¶ Consensus Evaluation (pgs. 1-2); *see also*, Consensus Meetings (AHCCCS000077). Even if the procurement had used just averages of pre-consensus discussion individual scores for each scored proposal element, it would have been nearly impossible for even a dual Scope and Evaluation Team member with malicious intent to manipulate the scoring to materially benefit or harm a particular offeror. *Id.*; *see also, id.*, ALTCS E/PD RFP YH24-0001, Scoring Training, October 3, 2023 (AHCCCS000060-0068); *see also* Consensus Meetings (AHCCCS000077). And, once the evaluation process moved to the development of consensus rankings, the theory that individual Scope Team members could somehow control the consensus outcomes on their teams is even less credible. Finally, the Protesters have not identified any evidence that any such manipulation was attempted, let alone that it succeeded. The Protesters have provided no proof that the use of Scope Team members on evaluation teams created any improprieties in the evaluation scoring process, or created any sufficient prejudice to any of the Protesters.

The Protests also suggest that all scoring may be called into question, but offer no justification for casting such suspicion on the AHCCCS evaluators. Rather, the procurement record shows that during the October 3, 2023 Scoring Training, all of the Scope Team and Evaluation Team members were trained on, among others things, their individual responsibilities and roles in the evaluation process. That training explained that the evaluation process included individual evaluator consideration and assessment of potential ranking of proposals for the proposal element being evaluated by the evaluation team to which the individual evaluator belonged. The training explained that the evaluation process continued thereafter with the consensus evaluation and ranking process from which the final rankings (and correlated scores) for the various proposals on each evaluated proposal element would be derived. For example, the training explained:

- “**You** have been chosen because of your subject matter expertise and **your** knowledge. Do not worry what someone else may think or how they may interpret the response;”
- “Rank each of the offerors how **you** believe they scored 1-5;”
- “All areas will be discussed during your Consensus Meeting(s);”
- “Utilize only your assigned scoring tool;”

- “You will be performing **your** individual initial review based on your interpretation of what has been submitted by the Offers;”
- “**DO NOT** be concerned with what anyone else may think or how anyone else may interpret the submission;”
- “Remember the purpose of doing an individual review is for your perspective;”
- “Enter your notes (strengths/weaknesses) of each Offerors response within the column of the Tool;” and
- “Provide your ranking based on Your interpretation.” (emphasis original)

See ALTCS E/PD RFP YH24-0001, Scoring Training, October 3, 2023, (AHCCCS000060, and AHCCCS000062). Thus, the training repeatedly emphasized the value and individual responsibilities of each evaluator, counteracting any possibility that a single evaluator, intending to manipulate the scoring, might somehow control scoring on any individually scored element.

Furthermore, the evaluation process limited each evaluator to evaluating only those areas to which they were assigned, and gave them no opportunity to influence scores outside those limited areas. *Id.* (at AHCCCS000042-0068), and see Consensus Meetings (AHCCCS000077). The evaluation process also invoked the consensus evaluation and ranking model, requiring detailed and robust discussions amongst the various evaluators for a scored item, and expressly limited the evaluators’ considerations to the proposal material submitted, with no consideration to the points value at stake for the relevant subject. See Procurement File, Evaluation Process Overview, Overview of RFP Evaluation Process ¶ Consensus Evaluation (pgs. 1-2); see also, Consensus Meetings (AHCCCS000077). This consensus process has been used repeatedly by AHCCCS for past procurements through which it has awarded contracts for awardees to provide managed care organization services. Not only were supervisory individuals and evaluators responsible for the work of the evaluation team members here familiar with the roles and responsibilities elaborated by the formal Scoring Training, but the Procurement Officer’s personal experience with such prior consensus evaluation processes provides substantial confidence that the evaluation process was neither subject to, nor influenced by, untoward or unfair individual evaluator manipulations.

Additionally, the Consultants’ process for facilitating consensus ranking would not allow such manipulation to occur. *Id.* Through the consensus evaluation meeting(s), the assigned team members established a consensus ranking for each requirement they were evaluating (narrative submission requirement, oral presentations, cost bid), which was then approved and signed by each evaluator for that element, and then incorporated into a consensus ranking document. *Id.*; see also, *id.*, Consensus Meetings (AHCCCS000077). Also, the Scoring Training made clear that the Consultant’s role included making sure all voices were heard and ensuring all team members genuinely endorse the final ranking and rationale write up. See Procurement File, ALTCS E/PD RFP YH24-0001, Scoring Training, October 3, 2023 (AHCCCS000067). The guided and interactive nature of such an evaluation process would expose someone who was not genuinely engaged in the consensus process but instead out to assist or harm a particular offeror. *Id.* (at AHCCCS000042-0068).

The foregoing instructions, training and procedural safeguards make the scoring system used here reasonable and appropriate, and make it especially inappropriate for anyone to second-guess the specific reasoning of the rankings that resulted from the consensus process. *Beta Analytics Int'l, Inc. v. United States*, 67 Fed. Cl. 384, 400-401 (Fed. Cl. 2005) (rejecting Protester arguments over failure of evaluators to detail their specific reasons for scores as unhelpful to the court because “this involves precisely the type of second-guessing about the [evaluation and scoring] minutiae that Courts are ill-qualified to perform.”); *see also, Frawner Corp. v. United States*, 161 Fed.Cl. 420, 450 (Fed. Cl. 2022 (citing *E.W. Bliss Co. v. United States*, 77 F.3d 445, 449 (Fed. Cir. 1996) (holding court will not “second guess” agency’s “technical ratings” which “deal with the minutiae of the procurement process”))).

The allegations that AHCCCS erred by departing from the scoring system, and the relative scoring importance or weights, that AHCCCS has used in past procurements are equally insufficient to overturn the award decisions here. Those particular objections – especially those aimed at adding substantial point emphasis for past performance issues - seem most designed to capture a specific advantage for the complaining Protester or inflict specific point damage on an awardee. However, nothing in the AHCCCS regulations or statutes requires in any way that AHCCCS forever lock itself into the exact same evaluation criteria and weighting and scoring systems it has used in the past. In fact, doing so just for the sake of consistency over the years suggests an arbitrary policy itself and undermines the value of the procurement process “to evaluate an Offeror’s ability to provide cost-effective, high-quality contract services in a managed care setting in accordance with AHCCCS mission and goals.” Nothing in the AHCCCS statutes or regulations, and nothing in the RFP, provided the Protesters reason to believe that AHCCCS would use exactly the same evaluation considerations, weighting of proposal submission requirements, or point distribution methodology it had used in specific, past procurements. Instead, given the applicable law and the discretion it vests in the procuring agency, that belief would not be reasonable.

Moreover, the Protesters have a mistaken perspective on what AHCCCS has or has not done for scoring on other similar procurements in the past. Past performance history has only recently been evaluated as part of managed care procurements by initially adding a past-performance submission requirement in the ACC RFP NO. YH19-0001 under Narrative Submission Requirement #18. These documents were also on the AHCCCS website at the time the RFP was issued - (<https://azahcccs.gov/PlansProviders/Downloads/RFPinfo/YH19/ACCRFP11022017.pdf>). There is no embedded history of particularized weighting and scoring of offerors’ past performance in prior procurements for similar services that entitles the Protesters to demand here that past performance, or any other factors or evaluated elements, be weighted or allocated points differently than they were here.

Also, the percentage of points assigned to the Programmatic factor in the ACC RFP NO. YH19-0001 (90%) procurement closely aligns with the Programmatic factor weighting in this procurement. Additionally, ACC RFP NO. YH19-0001 Narrative #18 and ALTCS E/PD NO. YH24-0001 B10 both evaluated the offeror's operational compliance reviews required under federal regulation. In the current procurement, RFP past performance was evaluated under B10 (35 points) and B11 (20 points). *See* Procurement File, Evaluation Process Overview-Overview of Overall Scoring Tool (p. 3); *see also*, ALTCS E/PD RFP YH24-0001, Scoring Training, October 3, 2023 (AHCCCS000048-0049); *see also*, Procurement File, Overall Scoring Tool. And, the current ALTCS E/PD solicitation did provide substantial emphasis on prior performance experience. *Id.* Narrative Submission Requirement B10 named the Operational Review documents that would be utilized for evaluation for Incumbent EPD Contractors, Incumbent non-EPD Contractors, and non-Incumbent Offerors. *Id.* These documents were also available on the AHCCCS website at the time the RFP was issued- <https://azahcccs.gov/Resources/OversightOfHealthPlans/OpReviews.html>

Also, in this case, LTSS-specific experience was included as an evaluation consideration for Narrative B10 as relayed in the B10 Ranking and Rationale document where it states: "*Offeror's operational review was for the ALTCS E/PD Program, which includes a comprehensive LTSS benefit package,*" resulting in a higher overall consensus score for those offerors who were Incumbent EPD Contractors. See Procurement File, EPD RFP YH24-0001, Scoring Tool, Final Ranking and Rationale – B10.

It is AHCCCS' standard practice to identify the overarching factors that will be evaluated and it is not required to, and does not, disclose the relative weighting of such factors with issuance of the RFP. AHCCCS has not deviated in the past decade or more from evaluation practices used in past procurements for similar services. AHCCCS is neither required to consider nor precluded from considering past performance, and the Agency has the discretion to assign the weight it deems to be appropriate. In accordance with A.A.C. § R9-22-602, AHCCCS is required to include, among other things, the factors used to evaluate a proposal. See Procurement File, ALTCS E/PD RFP No. YH24-0001, Section H, Instructions to Offerors, ¶ 8 "Evaluation Factors and Selection Process" (pgs. 5-6). Scoring method, specific numerical weighting, and/or other detailed scoring information is not required. Thus, the Protesters' assertions that somehow the current RFP abandoned a historically recognized emphasis on the offerors' past performance of similar contracted services is factually incorrect. See EPD RFP YH24-0001, Scoring Tool, Final Ranking and Rationale – B10, see also Overall Scoring Tool.

Finally, the argument that the scoring tool deployed in this procurement did not match the RFP criteria is not accurate. See Overall Scoring Tool. All Scoring Tools included evaluation considerations for each submission requirement, including Narratives, Oral Presentations, and Cost Bid, which were developed and finalized prior to the submission of proposals on October 2, 2023. The finalization of evaluation considerations resulted from evaluation team RFP Scoring Pre-Discussion meetings in which team members reviewed their assigned Submission Requirement and associated Scoring Tool. The teams worked to confer on the RFP's submission requirements and to develop, document, and finalize the evaluation considerations consistent with the RFP requirements. The evaluation considerations utilized on the scoring tools aligned with the RFP criteria as described in RFP Section H, Instructions to Offerors.¹³ See EPD RFP YH24-0001 Scoring Tools (AHCCCS000078-0132); see also, Procurement File, ALTCS E/PD RFP No. YH24-0001, Section H, Instructions to Offerors ¶ 8 "Evaluation Factors and Selection Process" (pgs. 5-6); see also, ALTCS E/PD RFP YH24-0001, Scoring Training, October 3, 2023 (AHCCCS000029-0076); see also Consensus Meetings (AHCCCS000077); see also, Procurement File, Evaluation Process Overview, Overview of RFP Evaluation Process ¶ Consensus Evaluation (pgs. 1-2).

The Protesters have failed to prove that AHCCCS's exercise of its procurement authority and its development, adoption and utilization of the evaluation considerations, weighting and scoring methodology for this RFP was: (1) contrary to law, (2) arbitrary or capricious, or (3) an abuse of the agency's delegated discretion. See, e.g., *City of Phoenix v. Wittman Contracting Co.*, 20 Ariz. App. 1, 3 (1973). Therefore, the challenges concerning AHCCCS' evaluation, weighting and scoring system for the ALTCS E/PD procurement do not present valid grounds for protest and provide no basis to question the award decision.

Protest Issue #5: AHCCCS erred by using a "forced ranking" system.

¹³ The Protests also argue that the evaluation process used here failed to adequately or appropriately consider the risk or reality of service disruptions to ALTCS E/PD eligible members that could result from a change in the incumbent ALTCS E/PD managed care contractors. For the reasons explained in the discussion under Protest Issue #9 below, such allegations are factually inaccurate, rest on unsubstantiated assumptions about service disruption risks and negative impacts on ALTCS E/PD eligible members, and do not provide a valid basis for protest.

The Protesters' challenge the ranking system used by AHCCCS in this RFP. They allege:

- That AHCCCS erred when it adopted and used a ranking system during evaluations that allowed evaluators to rank order each offeror on each scored proposal element, and then offered the number 1 ranked proposal 100% of the total points available for that element, the number 2 ranked proposal 80% of the total available points, and so on with the number 5 ranked proposal being assigned only 20% of the total points available for the relevant scored proposal element; and
- That this ranking system arbitrarily and unfairly skews perceptions of the true differences in the quality and responsiveness of the proposals because it means that a proposal nearly equal to higher ranked proposals can appear deserving of far fewer points and therefore materially inferior when that was not the evaluators' conclusion.

AHCCCS' Response

The Protesters have independently introduced the term "forced ranking" in their protest documents. "Forced ranking" is not a term defined by or used by AHCCCS, nor in any relevant Arizona law. The consensus ranking methodology used in this procurement is consistent with what has been used by AHCCCS in prior managed care procurements. The Protesters' position regarding the ranking and point allocation system misconstrues how the evaluators were trained to use the system, and how the system actually worked in its application. See Procurement File, Evaluation Process Overview-Overview of Overall Scoring Tool (pgs. 3-6)); see also ALTCS E/PD RFP No. YH24-0001, Scoring Training, October 3, 2023 (at AHCCCS000048-0049); see also, Procurement File, ALTCS E/PD RFP No YH24-0001, Section H, Instructions to Offerors, ¶ 8 "Evaluation Factors and Selection Process" (pgs. 5-6); see also, Procurement File, Overall Scoring Tool.

The ranking and point allocation system did not require that the evaluators assign every offeror a different rank on each evaluated and scored proposal element. See Procurement File, Evaluation Process Overview, ¶ Consensus Evaluation (pgs. 1-2); see also, *id.*, Evaluation Process Overview-Overview of Overall Scoring Tool (pgs. 3-6); see also, *id.*, Overall Scoring Too; see also, *id.*, ALTCS E/PD RFP No. YH24-0001, Scoring Training, October 3, 2023, (AHCCCS000042-0068); see also, Procurement File, Consensus Meetings (AHCCCS000077). Instead, the ranking and scoring system, and the instructions given to the evaluators, allowed them to consider similarly evaluated proposals as "tied", with a shared ranking and identical distribution of points on any ranked and scored submission requirement. *Id.* Under the ranking approach AHCCCS used, the evaluators were free to rank every one of the five proposals as equal on any of the evaluated and scored submission requirements. *Id.* In fact, the procurement record reflects that the evaluators took that training seriously and, on several occasions, evaluators provided different offerors equal ranking and points for a given proposal requirement. For instance, in the final rankings under Narrative Submission Requirement B6, the evaluation team members assigned the proposals of APIPA and Banner an equal final rank of 3. The evaluators of the second oral presentation question similarly assigned the proposals of Banner and Mercy Care equal final ranks of 4. Also, the records of the initial individual evaluator rankings for narrative submission requirement B8 show that one of the three evaluators assigned BCBSAZ and Health Net identical ranks of 4.

The selected RFP evaluation process further allowed AHCCCS to rank proposals as closely ranked or even tied across many, or even all, the scored proposal submission requirements. The RFP itself confirmed that this option existed, as it offered additional factors that AHCCCS could consider to determine the proposal whose selection was in the best interest of the State where the evaluation scoring resulted in negligible total point differences between two or more competing proposals. These additional factors included:

- “Potential disruption to members, and/or;”
- “An Offeror who has performed in a satisfactory manner (in the interest of continuity of care), and/or;”
- “An Offeror who participates satisfactorily in other lines of AHCCCS business, and/or;”
- “An Offeror’s past performance with AHCCCS, and/or;”
- “An Offeror’s past Medicare performance, and/or;”
- “The nature, frequency, and significance of any compliance actions, and/or;”
- “Any convictions or civil judgments entered against the Offeror’s organization, and/or;” and
- “Administrative burden to the Agency.”

See Procurement File, ALTCS E/PD RFP No. YH24-0001, Section H, ¶ 8 “Evaluation Factors and Selection Process” (p.5-6). Thus, there is no proof that the ranking approach forced the evaluators to create point differentials reflecting material differences in proposal value or quality even when the evaluators saw no such difference between particular proposals. See Procurement File, Evaluation Process Overview, ¶ Consensus Evaluation (pgs. 1-2); see also, *id.*, Evaluation Process Overview-Overview of Overall Scoring Tool (pgs. 3-6); see also, *id.*, Overall Scoring Tool; see also ALTCS E/PD RFP YH24-0001, Scoring Training, October 3, 2023, (AHCCCS000042-0068); see also, Consensus Meetings record (AHCCCS000077). The evaluators were instead allowed to do just the opposite and assign equal ranks (resulting in equal scores) if they truly felt that any proposal was equal to another on a given scored proposal submission requirement.

The procurement record reflects that AHCCCS procurement personnel and the AHCCCS Consultant for the ALTCS E/PD procurement conscientiously trained the evaluators that they had discretion and could rank (and thereby score) relatively equal proposals identically. See *id.* The Consultant took care to remind the evaluators through the consultant facilitation of the consensus evaluation discussions and ranking exercises of their power in that regard. Each proposal was scored based on required submissions for the Programmatic and Financial submissions detailed in RFP Section H, Instructions to Offerors. See Procurement File, Evaluation Process Overview-Overview of Overall Scoring Tool (pgs. 3-6); see also, *id.*, Overall Scoring Tool. The Programmatic and Financial Submissions were scored on a statewide basis. *Id.* The Offerors had the opportunity to earn/score a maximum total of 1000 points as follows: **Programmatic Submissions:** (1) Narrative Submission Requirements: B4 through B11, for a maximum of 610 points; (2) Oral Presentations: Oral Presentation 1 & 2, for a total maximum of 290 points; and **Financial Submission:** (3) Capitation Agreement/Administrative and Case Management Cost Components Bid, for a maximum of 100 points. *Id.*

In general, when the evaluators performed their consensus rankings, the most favorable rank (1) was given to the best submission for the requirement being evaluated using the evaluation considerations established on the relevant scoring tool, and the next most favorable rank (2) was given to the second most favorable

submission applying that same approach.¹⁴ The ranking process continued in this same manner until all offerors' proposals were ranked on the relevant evaluation element. *Id.* The rankings on each submission element were then given by the DHCS Contract and Policy Administrator to the DBF Finance Team for input into the Ranking Summary tab in the ALTCS E/PD Overall Scoring Tool file. *See* Evaluation Process Overview- Overview of Overall Scoring Tool (p. 4). In addition, for the Cost Bid, a Best and Final Offer (BAFO) process was utilized. *Id.* The ALTCS E/PD Overall Scoring Tool file utilized an Excel model for computing the overall RFP scores and contained the Ranking Summary, and a Scores Statewide worksheet. *Id.* The worksheet had a column for each offeror and a series of rows for each ranked/scored submission element. The rows for each submission element were programmed to retrieve and display each offeror's rank from the Ranking Summary tab and calculate the score for the specific submission requirement. *Id.* The following formula was used to calculate the individual score of an offeror for each scored submission element: "Maximum Points/Number of Offerors X Offeror's Inverse Rank = Score." *Id.*

The foregoing formula counted the number of offerors, and the maximum points for each scored submission element were then divided by the number of offerors. *Id.* The quotient was then multiplied by the offeror's inverse rank resulting in each offeror receiving a proportion of the points consistent with their consensus rank for the scored element. *Id.*

All points were rounded to the second decimal place. The following is a hypothetical example of how the ranking/scoring process worked. Assume that a scored element was worth a maximum of 100 points. The 100 points would be divided by the five offerors, resulting in the quotient 20. Assuming that the evaluators did not find any of the offerors tied on the evaluated element, the highest ranked (number 1) proposal would receive 5 x 20 points, or a total of 100 points for the element. Likewise, the lowest ranked (number 5) proposal would receive only 1 x 20 points, or a total of 20 points for the element. *See id.* (at p. 5); *see also* Overall Scoring Tool. The Scores Statewide worksheet calculated a total score for each of the offerors' proposals by summing the points assigned to their proposals for all submission elements. *Id.*

For the Cost Bid portion of the proposal submissions, AHCCCS utilized a call for Best and Final Offers ("BAFO"), meaning the Cost Bid submissions were re-evaluated and re-ranked by the Evaluation Team(s) after receipt and consideration of the BAFO submissions. *See* Procurement File, Evaluation Process Overview-Overview of Overall Scoring Tool (p. 6); *see also, id.*, Overall Scoring Tool; *see also, id.*, APIPA – Best and Final Offer; *see also, id.*, Banner – Best and Final Offer; *see also, id.*, BCBSAZ – Best and Final Offer; *see also, id.*, Health Net – Best and Final Offer; *see also, id.*, Mercy Care – Best and Final Offer. The revised ranks were provided to the DBF Finance Team by the DHCS Contract and Policy Administrator, and entered into the ALTCS E/PD Overall Scoring Tool file to calculate the final overall scores for each offeror's proposal. *See* Procurement File, Overall Scoring Tool.

A worksheet in the ALTCS E/PD Overall Scoring Tool file labeled "Overall Points All Offerors" calculated a final Total Score by offeror. *See* Procurement File, Evaluation Process Overview - Overview of Overall Scoring Tool (p. 6). The offerors and their respective ranks for each scored submission element were also electronically populated in the Ranking Summary All Offerors worksheet of the ALTCS E/PD Overall Scoring Tool file. *Id.* The Overall Final Score worksheet retrieved the total points by offeror from the Overall Points All Offerors worksheet and a formula arranged the total points by offeror in descending order. *Id.*; *see also*, Procurement File, Overall Scoring Tool.

¹⁴ Protestor BCBSAZ Health Choice is incorrect that the ranking did not reflect how well the proposal met the RFP requirement. In fact, just the opposite, the evaluation process used here ensured that the ranking would reflect the consensus differentiated assessment by the evaluation team members of how well or how poorly a proposal addressed the submission requirement being evaluated.

The Offerors received the following respective final ranks and total scores: 1st (highest overall score) Health Net (total score of 715 points); 2nd APIPA (total score of 668 points); 3rd Mercy Care (total score of 557.50 points); 4th BCBSAZ (total score of 537 points); and 5th Banner (lowest overall score) (total score of 522.50 points). See Procurement File, Overall Scoring Tool; see also, Procurement File, Executive Summary: Overall Final Score by Offeror, and Ranking Summary for Offerors by Submission Requirement (pgs. 4-5).

The process for consensus ranking and conversion of the same to total points here did not, therefore, automatically “force” disparities amongst equally strong proposals on any scored proposal submission element. The procurement record reflects instead that the evaluators followed their training and instruction and granted proposals equal rankings, and hence equal point totals, for proposal submission elements on which the assigned evaluators determined two proposals demonstrated equally strong submissions. See Procurement File, Overall Scoring Tool; see also, *Id.*, Executive Summary: Overall Final Score by Offeror, and Ranking Summary for Offerors by Submission Requirement (pgs. 4-5). The Protesters have therefore failed to demonstrate that the ranking system ever resulted in the skewed and inaccurate perceptions of the relative strength of any proposal that the Protesters complain of.

The use of a ranking system that can result in 20 percent point spreads on individually scored proposal submission elements for proposals that were not equal in quality does not violate any standard of procurement fairness applicable under Arizona law. Moreover, the procurement record affirms that the evaluators knew they could rank equivalent proposal submissions as equals, and did so where they felt appropriate, meaning they properly followed their instructions. Plus, attempts to inquire into the individual evaluator rationale for each evaluation or ranking decision is not appropriate, as it asks the reviewing official to second-guess the discretionary decisions of evaluators who were properly trained and whose work product shows they were following the evaluation and ranking instructions in a consistent manner for all offerors. See, e.g., *Beta Analytics Int'l, Inc.*, 67 Fed. Cl. at 400-401 (confirming that such second-guessing is inappropriate for reviewing courts).

In addition, the decision to set the scoring so that relative ranking would have an easily discernible impact on point totals for each evaluated element is not improper, and removing the step in which the AHCCCS team converted final rankings on each narrative or oral submission requirement to points would not change the relative point differential between the offerors on any particular submission requirement. Selection of the point totals assigned to any individual evaluation element is a matter left to the discretion of the procuring agency. See, e.g., *Blue Cross & Blue Shield of Maryland, Inc. v. U.S. Dep't of Health & Hum. Servs.*, 718 F. Supp. 80, 86 n. 15 (D.D.C. 1989) (court will not second guess the agency evaluation plan because “[d]ecisions as to point allocation and proper weight to be assigned to the various cost elements are matters within the discretion of the [agency], to which this Court must give due deference.”); see also *E.W. Bliss Co. v. United States*, 33 Fed. Cl. 123, 141 (1995), *aff'd*, 77 F.3d 445 (Fed. Cir. 1996) (“[I]n negotiated procurements such as this one, “[p]rocurement officials ... enjoy a greater degree of discretion in determining which proposal is most beneficial to the Government.”) (*cited in Frawner Corp.*, 161 Fed.Cl. at 450. Here, the ranking and point scoring system were established after lengthy review and input from personnel with considerable expertise in the delivery of services required by AHCCCS for its ALTCS E/PD programs. The decision that the ranking system and point totals for each submission requirement were appropriate and is entitled to deference.

Furthermore, if all the evaluators did was stop at the rankings and assign a point total corresponding to the ranking for each proposal for each submission requirement is – i.e., 5 points for the highest ranked proposal, 4 points for second highest ranked, 1 point for lowest ranked proposal, etc. – the offerors’ respective point totals would still maintain 20% differentials based on ranks. In other words, a proposal that was ranked highest (number 1) on six submission elements would achieve a score of 30 (5 X 6) points, whereas a different proposal that

received the third highest rank (number 3) on the same six elements would score only 18 (3 X 6) points. Mathematically, the lower-ranked proposal's total score would only be 60 percent (60%) of the highest scored proposal's total score. Yet, this would reflect the same degree of point differential as the two proposals would experience applying the scoring system used here and applying a total of 100 points to each of the same submission elements. In the latter case, the highest ranked proposal would achieve 100 points per element, for a total score of 600 points. The lower ranked proposal would receive a total of 60 points per element for a total score of only 360 points. Again, the total score of the lower ranked proposal would only be 60% of the highest ranked proposal's total score.

Given the foregoing, the relative difference in point totals between the various proposals on any given scored submission requirement would have been mathematically the same if AHCCCS had never converted the ranks to points. Therefore, the argument that the method AHCCCS used to convert the consensus rankings on each scored element to a point total somehow illegitimately exaggerated the evaluators' perspectives on differences between the proposals is inaccurate.

Implicit in the Protests is the assumption that each Protester's submissions were so nearly as strong as the highest ranked proposal for each scored element that even a ranking variance of 5 to 4 could not be justified. There are three principal problems with that assumption, however. First, the Protesters are asking the Procurement Officer to independently assess and second-guess the rankings completed through the comprehensive AHCCCS consensus ranking process, which is not appropriate in reviewing a procurement decision. Second, the Protesters have not demonstrated specific facts that would justify any second-guessing of the evaluator rankings, even if such reconsideration were appropriate.

The Protesters have also selectively applied their assumption of equivalency to demand elevation of their ranks and scores whenever they are lower than those assigned to the higher ranked proposals, but never acknowledging that such presumed equivalencies among the proposals would require that the favorable gaps between the Protesters' own higher ranks and higher points on various evaluated elements be substantially reduced. For example, the final rankings for Narrative Submission Requirement B8 placed Mercy Care's proposal in the highest ranked position. However, Mercy Care does not contend that APIPA's ranking of 2, or Banner's ranking of 3, or Health Net's ranking of 4 should be elevated to be roughly equivalent to its own. The Protesters thus apply the type of selective, self-serving assumptions that were rejected in *Beta Analytics Int'l, Inc.*, 67 Fed. Cl. at 400-401. There, the protester's argument that it was unfair to allow evaluators to award proposals extra points for exceeding the minimum RFP requirements implied "that every offeror whose proposal meets a[] S[tatement]O[f]W[ork]'s requirements should receive a perfect score." *Id.* But the reviewing court noted that "[t]his is a formula for *more*, not less, discretion, which would actually increase the chance of arbitrary awards—since contracting officers would often be picking between offerors who are exactly even in evaluated quality. And, in any event, if evaluators can be trusted to determine if proposals meet the requirements, there is little reason to suspect that they cannot figure out when requirements are exceeded." *Id.*

The Protesters cannot demand that only their proposals' ranks and scores, and no others', be improved. To do so would unfairly compress all other offerors' ranks and scores across the evaluated procurement submission requirements. And, that artificially compressed scoring would require the ultimate award decision to select between proposals that are virtually even in evaluated quality, even though the evaluation teams saw material differences in how well or how poorly the individual proposals met the RFP requirements. This would unjustifiably increase the chance for arbitrary selection decisions.

Finally, because the Protesters are unable to establish any proof that the ranking system caused their proposals to be inaccurately characterized and perceived as weaker than a competing proposal that was really its

equal, the Protesters are unable to prove through their arguments about the ranking system the required prejudice to their chance to obtain a contract award. At best, the Protests amount to speculation on this point, which is not an appropriate basis for granting a protest and disturbing a contract award.

Protest Issue #6: AHCCCS erred by failing to properly train its evaluation personnel.

To the extent the Protests assert a failure by AHCCCS to adequately train its evaluation personnel, the procurement record and discussion above establishes the opposite. The description above of the discussions and coaching provided to the evaluation team members in the August and September 2023 ALTCS E/PD RFP Scoring Pre-Discussion meetings, the formal evaluation training for the evaluators on October 3, 2023, and the coaching, feedback and facilitation provided by AHCCCS' experienced consultants during the consensus evaluation process for each submission requirement demonstrates that the training and guidance of AHCCCS evaluators was comprehensive, interactive and continuous.

The procurement record also demonstrates that the AHCCCS approach to evaluator training and guidance was designed to ensure the evaluators' advance understanding of the evaluation process and standards, and to thereafter observe, test and, if necessary, improve that understanding as experienced consultants monitored and facilitated the ongoing evaluation discussions.

Any accusations about a lack of training further ignore the baseline knowledge and experience of AHCCCS officials acting as evaluators, many of whom had participated previously in, or had knowledge of, similar procurements using the AHCCCS enhanced evaluation process for requirements involving managed care organizations. The integration of such experienced personnel in the evaluation process here, combined with the AHCCCS implementation of a robust consensus evaluation process in which experienced consultants actively encouraged evaluators to freely share their input, meant that less experienced evaluators, or those evaluators that might develop questions about the evaluation process and standards, could receive reliable, immediate guidance and feedback from their evaluation team colleagues or facilitating consultants.

None of the Protesters has demonstrated a lack of adequate training and guidance for the evaluators, and none of shown that any lack of training caused any material departures from the established evaluation process, or any improprieties or inaccuracies in the evaluation and scoring of proposals. None of the Protesters has demonstrated any prejudice to them resulting from any inadequate training. Therefore, the allegations about inadequacies in AHCCCS training of evaluators is factually inaccurate and unsupported, and provides no basis for questioning or overturning the evaluation results or award decisions.

Protest Issue #7: AHCCCS erred in its Cost Bid analysis which purportedly only valued the lowest-priced proposal.

Protesters Banner and Health Choice claim AHCCCS erred in its Cost Bid analysis. Banner claims that AHCCCS did not evaluate the most cost-effective proposals, but rather solely rewarded Offeror(s) who made the lowest-cost proposals. Health Choice similarly claims that AHCCCS conducted its evaluation arbitrarily and without transparency.¹⁵

¹⁵ Mercy Care did not criticize AHCCCS' cost bid evaluation or analysis. Mercy Care received the second-highest score for its cost bid submission.

AHCCCS' Response

Banner's claim that AHCCCS conducted its Cost Bid evaluation and analysis for the sole purpose of awarding the lowest-cost proposals is factually incorrect. AHCCCS considered multiple components in the Cost Bid evaluation. AHCCCS' Cost Bid analysis also evaluated and required offerors to agree and accept AHCCCS developed capitation rates; required submission of an administration cost component of the capitation rates; required submission of a case management cost component of the capitation rates; and, required development and submission of a signed actuarial certification. See Procurement File, ALTCS E/PD RFP No. YH24-0001 Section H at ¶ 20 "Submission Requirements". Included within the evaluation were consideration of the soundness of the actuarial certification of the proposals' Cost Bid information.

Health Choice's claim that AHCCCS did not provide sufficient transparency or directions for its Cost Bid evaluation is also factually incorrect. AHCCCS gave offerors three documents with the solicitation related to Rate Development Information: 1) Rate Development Documentation (discussing rate development information); 2) Non-Benefit Costs Bid Requirements (discussing the bid requirements); and, 3) Non-Benefit Costs Bid Submission (providing an excel workbook for Offerors to use for submission of their bids). See YH24-0001 – ALTCS E/PD Bidders' Library Data Supplement for Offerors Section F – Rate Development Information. Specifically, the "Non-Benefit Costs Bid Requirements" document gave Offerors directions for the completion of their submission, and the "Non-Benefit Costs Bid Submission" workbook gave Offerors a pre-filled excel sheet for the Offerors to populate and comply with the submission requirements. In addition to these three documents, multiple other documents containing additional information were made available in the Data Supplement for Offerors in the Bidders' Library available upon publication of the solicitation.

Further, AHCCCS allowed Offerors to submit questions and seek clarification from AHCCCS administration about the RFP if necessary. AHCCCS responded to these questions through amendments to the RFP, and AHCCCS issued three (3) amendments. This question and answer process included the ability for Offerors to submit questions and seek clarification about the Cost Bid Submission Requirements. AHCCCS also implemented a best and final offer (BAFO) process that allowed modification of the Cost Bid submissions for all Offerors.

The AHCCCS cost bid evaluation team members appropriately considered and evaluated all Cost Bid components that were included in the RFP submission requirements. See YH24-0001 - ALTCS E/PD Procurement Final Evaluation Report "Cost Bid Ranking and Rational". The evaluation team was guided by the pre-determined evaluation methodology, which required evaluation of all sections of the RFP submission requirements.¹⁶ Although Health Choice claims that other Offerors provided a similar rate structure where administration rates would decrease as membership increases, Health Choice decreased its rate structure disproportionately to other offerors. The procurement record indicates that Health Choice's and Banner's cost bid submissions were evaluated and scored appropriately.

Protest Issue #8: AHCCCS erred by not awarding three contracts in the central GSA

¹⁶ One of the Protests challenges the potential bias of one of the members of the Cost Bid evaluation team, claiming the members' prior employment with one of the selected awardees. However, the Procurement Officer finds no basis for contending that the evaluator was prohibited by law from acting as a member of the evaluation team, and the protest challenge does not identify how the evaluator exhibited bias or how that supposed bias actually prejudiced the Protester. Therefore, the suggestion of evaluator bias does not create a valid basis for protest of relief.

Protester Mercy Care, as the third highest scored offeror, “seeks an award of a statewide contract, or in the alternative, a contract for the central Geographic Service Area (GSA), as contemplated in the RFP.”¹⁷ The Protester claims that language in the RFP created an enforceable expectation that AHCCCS would award at least three contracts.

AHCCCS Response

Mercy Care argues that “AHCCCS previously stated that it anticipated awarding up to **three** contract awards in the central GSA [emphasis original].”¹⁸ The Protester posits that “[a]warding Mercy Care the third contract for the central GSA – consistent with the AHCCCS’ stated intent ... unquestionably would be in the best interest of the state”¹⁹ The Protester suggests that AHCCCS committed itself to award at least three contracts, and that it is a violation of the RFP terms for AHCCCS to award only two contracts. The Protester’s argument is factually incorrect and rests on a partial or inaccurate reading of the RFP statements about the number of awards that might be made at the close of the evaluation process. See Procurement File, ALTCS E/PD RFP No. YH24-0001, Section H, ¶ 11 Award of Contract (pgs. 7-8); see also *id.*, Section H, ¶ 12 Rejection of a Proposal – Responsibility, Responsiveness, Susceptibility, and Best Interest (pgs. 9-10). It also disregards the discretion that the agency retains about how many contracts to award.

Under the RFP, AHCCCS anticipated awarding a maximum of two Contractors in the North GSA, a maximum of two Contractors in the South GSA, and maximum of three Contractors in the Central GSA. See Procurement File, ALTCS E/PD RFP No. YH24-0001 Section H, ¶ 11 Award of Contract (p. 8). Per the RFP terms, a successful offeror might be awarded a contract as follows, *except as otherwise determined by AHCCCS and in the best interest of the state*:

- “Both the Central GSA and the North GSA;”
- “Both the Central GSA and the South GSA;”
- “The Central GSA, the South GSA, and the North GSA;” or
- “The Central GSA only.”

Id. Thus, the RFP expressly acknowledged that AHCCCS retained discretion about how many contracts to award.

The RFP further stated: “AHCCCS intends to make a total of three awards for this RFP, awarding GSAs based upon the winning bids in each GSA and may also consider Order of Preference indicated in Section I, Exhibit B: Offeror’s Bid Choice Form.” *Id.* However, the RFP also clarified that “[a]wards may result in zero, one, or two statewide Contractors.” *Id.* The latter language made clear that the word “intends” did not connote any sort of guarantee about the number of contracts that would be awarded. The terms of the RFP therefore expressed the discretion AHCCCS retained to determine the number of awarded contracts as well as the number of statewide contracts awarded for this procurement. The terms of the RFP do not mandate that AHCCCS award any particular number of contracts. See Procurement File, ALTCS E/PD RFP No. YH24-0001, Section H, ¶ 8 Evaluation Factors and

¹⁷ See 12-20-23 Mercy Care Bid Protest at p. 28

¹⁸ See 12-20-23 Mercy Care Bid Protest at p. 12

¹⁹ See 12-20-23 Mercy Care Bid Protest at p. 12

Selection Process (pgs. 5-6); *see also, id.*, Section H, ¶ 11 Award of Contract (pgs. 7-8); *see also, id.*, Section H, ¶ 12 Rejection of a Proposal – Responsibility, Responsiveness, Susceptibility, and Best Interest (pgs. 9-10).²⁰

The RFP language contained other acknowledgements of the broad discretion AHCCCS retained regarding any award decisions, and foreshadowing AHCCCS' right to award less than three contracts. For instance, the RFP provided:

- Pursuant to A.R.S. § 36-2903, *et seq.*, awards shall be made to the responsible Offeror(s) whose Proposal is determined in writing to be the most advantageous to the state based upon the evaluation criteria. *See* Procurement File, ALTCS E/PD RFP No. YH24-0001, Section H, ¶ 8 “Evaluation Factors and Selection Process” (pgs. 5-6).
- The final decision regarding the particular Offerors awarded Contracts would be made by AHCCCS. *Id.* “The decision will be guided, but not bound, by scores awarded by the evaluators. AHCCCS will make its decision based on a determination of which Proposals are deemed to be most advantageous to the State and in accordance with Section H, ¶11 “Award of Contract”, in this Section.” *Id.* (at p.5); *see also, id.*, Section H, ¶ 11 “Award of Contract” (pgs. 7-8).
- “In Accordance with applicable procurement regulations and best practices, at any time after the Proposal due date and time or during the evaluation of the Proposal, AHCCCS may reject an Offer based upon a determination that Offeror is not responsible, or that the proposal is not responsive or susceptible for award. AHCCCS may reject the Offer if doing so is in the best interest of the State.” *See id.*, Section H, ¶ 12 “Rejection of a Proposal – Responsibility, Responsiveness, Susceptibility, and Best Interest” (pgs. 9-10).

In sum, AHCCCS' regulations at A.A.C. §§ R9-22-602, R9-28-602, R9-22-603, R9-28-603, and the RFP at Section H, ¶ 8 “Evaluation Factors and Selection Process” (pgs. 5-6), Section H, ¶ 11 “Award of Contract” (pgs. 7-8), and Section H, ¶ 12 “Rejection of a Proposal – Responsibility, Responsiveness, Susceptibility, and Best Interest” (pgs. 9-10), made it clear to the Protesters that AHCCCS would only award a contract or contracts that were determined to be most advantageous to the state, pursuant to A.R.S. § 36-2903. *See* RFP, Section H, ¶ 8 “Evaluation Factors and Selection Process” (pgs. 5-6). AHCCCS' regulations further require AHCCCS to determine that multiple contract awards “are in the best interest of the state” before it is authorized to ever issue more than one award, which restriction was expressed in the Section H, ¶ 8 “Evaluation Factors and Selection Process” terms. *Id.* Given all the express prerequisites to award of even one additional contract, and the uncertainty going into the procurement evaluation process that AHCCCS would ever make the findings required for multiple awards, no offeror could claim to have reasonably relied on an assurance that AHCCCS would, without fail, award a third contract.

Additionally, even assuming the language of the RFP had somehow unequivocally stated “no matter the circumstances or proposal evaluation results, AHCCCS will be awarding three ALTCS E/PD contracts” (it did not), the Arizona courts have determined that no bidder or offeror in a government procurement has any legal right to be awarded a contract. For instance, the Supreme Court of Arizona held in *City of Scottsdale v. Deem*, that Arizona's statutes governing public procurement exist only to protect the public, and therefore create no private

²⁰ To the extent the Protest arguments rely on any statements in any documents that were shared only internally at AHCCCS and not published to any of the Protestors or other offerors, such records would not have created any expectations amongst the offerors, and would not create any binding obligations on AHCCCS to award a third contract.

rights in a bidder. See *City of Scottsdale v. Deem*, 27 Ariz. App. 480, 482 (1976) (“[T]he authority for letting public contracts is derived for the public benefit and is not intended as a direct benefit to the contractor.”); see also, *Grand Canyon Pipelines, Inc. v. City of Tempe*, 168 Ariz. 590, 592–94 (App. 1991). From this, the Arizona Court of Appeals has concluded “that Arizona follows those jurisdictions that find a bidder has no claim of entitlement to a public works contract and, therefore, no property interest in the contract.” *Grand Canyon Pipelines, Inc.*, 168 Ariz. at 593–94 (citing *Sowell's Meats & Services, Inc. v. McSwain*, 788 F.2d 226 (4th Cir.1986) (applying South Carolina law); *Coyne–Delany Co., Inc. v. Capital Development Board*, 616 F.2d 341 (7th Cir.1980) (applying Illinois law); *City Communications, Inc. v. City of Detroit*, 650 F.Supp. 1570 (E.D.Mich.1987); *ARA Services, Inc. v. School District of Philadelphia*, 590 F.Supp. 622 (E.D.Pa.1984) (disagreeing with *Three Rivers* holding by Western District Court of Pennsylvania); *Kendrick v. City Council of Augusta, Georgia*, 516 F.Supp. 1134 (S.D.Ga.1981); *Estey Corp. v. Matzke*, 431 F.Supp. 468 (N.D.Ill.1976); *Rice*, 526 N.E.2d 1193 (applying Indiana law); *Teton Plumbing & Heating, Inc. v. Board of Trustees*, 763 P.2d 843 (Wyo.1988). The Arizona law is clear, and the RFP created no enforceable expectation for the award of a third contract.

As a matter of law, neither Mercy Care nor any other Protester here can claim a protected property interest in the award of a contract, irrespective of what the RFP said about the number of contracts that may be awarded. The protest arguments to the contrary provide no basis to disturb the award decision here and award a third contract.

Protest Issue #9: AHCCCS conducted an arbitrary evaluation and its final consensus ranking is not supported by the record.

The Protesters claim that the Consensus Rankings are unsubstantiated and erroneous for various reasons. These protests grounds include:

- AHCCCS solely evaluated the Narrative Submission Requirements on whether offerors included key words within their written responses rather than how an offeror would meet the goals and standards of AHCCCS within this RFP.
- Similarly, AHCCCS utilized arbitrary evaluation considerations for the Oral Presentations that resulted in inexplicable differences between an offeror’s Narrative Submission performance and its Oral Presentation performance.
- AHCCCS cannot explain why individual evaluators changed their rankings of Offerors between the early creation of their individual rankings and the development of the final consensus rankings.
- AHCCCS’ final consensus rankings are not supported by the record. Instead, AHCCCS conducted an arbitrary and inconsistent evaluation and the record does not support the finding of disparities among the offerors’ proposals that support certain ranking decisions.

AHCCCS’ Response

Each of these arguments must be reviewed in the context of the evaluation and scoring process actually applied to the proposals. For the evaluations, AHCCCS used a rigorous evaluation methodology that incorporated national best practices and was consistent with previous AHCCCS procurements. Evaluators documented the relative strengths and weaknesses of each proposal with respect to delineated submission requirements. Evaluators then ranked the comparative strengths of the proposals against one another. That ranking process

provides for a clearer differentiation between offerors than can be achieved simply by awarding points in exchange for mere repetition or recitation of program standards or “key words”.

Evaluators arrived at final rankings through a consensus process that encouraged and allowed multiple evaluator perspectives to be shared and considered for each proposal and reduced the chance that relevant information about each proposal would be overlooked or misinterpreted during the evaluation. The consensus discussion was facilitated by a consultant with expertise in ensuring that evaluators reach a decision in accordance with the RFP terms and without bias.

The majority of the RFP evaluators (16 of the 22 individuals) selected to rank the proposals were experienced veterans of the AHCCCS managed care evaluation process and have participated in similar evaluations in past AHCCCS procurements. Further, the RFP evaluators were subject-matter experts specifically placed on a submission requirement evaluation team in their area of experience and expertise.

Prior to the public announcement of the RFP, AHCCCS had assigned the RFP evaluators to various interconnected teams for the development of the RFP and its evaluation considerations. The RFP evaluators used their experience and expertise to assist in the development of the RFP submission requirements in accordance with the goals of AHCCCS. Through this process, AHCCCS developed and issued a forward-looking RFP that addressed issues and objectives AHCCCS seeks to address and accomplish through the full contemplated contract term.

During periods in August and September 2023, but prior to the submission deadline for proposals, evaluation teams met as part of the ALTCS E/PD RFP Scoring Pre-Discussion meetings to review the submission requirement(s) they were assigned to evaluate and the associated Scoring Tool for the requirements. The teams worked to confer on the submission requirement and to develop, document, and finalize the evaluation criteria. Extensive time was dedicated to review the relevant submission requirement for each team, and what ideal offeror responses would entail. Coaching was also provided to the evaluators on how to objectively evaluate responses, looking beyond key buzz words, and instead focusing on the evaluation considerations the agency had assigned to the scoring tool they were using, which incorporated characteristics like whether a proposal submission contained comprehensive descriptions, expressed feasible or implementable plans and programs, and clearly answered the AHCCCS expectations expressed in the RFP submission requirements.

AHCCCS provided evaluation training to evaluators on October 3, 2023. Training for the assigned evaluators was led by experienced subject matter experts in the AHCCCS ALTCS Program, contract administration, and procurement personnel.

Over the years, AHCCCS has enhanced RFP evaluation process for requirements involving managed care organization services, in part to provide greater emphasis on strategic innovation, achievement, accomplishment, and furtherance of the AHCCCS program’s mission and vision. To that end, evaluators learn through their training and the consensus ranking process to look for and value offeror submissions that present a thorough, detailed, and clear explanation in their responses to the submission requirements that explore critical program strategies, as well as offeror responses that reflect or demonstrate commitment to AHCCCS’ guiding principles and values, successful historic achievement of relevant responsibilities, concrete accomplishments, innovation, flexibility, and the ability to execute strategic partnerships to name a few examples. Less emphasis, and hence lower scores, result from offeror responses that are more general in nature, or that merely promise compliance with or commitments to policies and program strategies with minimal detailed examples of how such commitments will be executed.

The actual evaluation process incorporated and capitalized on the foregoing by encouraging evaluators to first engage in initial independent and individualized study and assessment of proposals against delineated RFP submission requirements and evaluation considerations. But the evaluators know that these individual assessments are just preliminary. In fact, the Individual Scoring Tools for the ALTCS E/PD RFP specifically identified these individual rankings as “Draft Notes” and requested that individual evaluators provide a “Draft Ranking.” See *e.g.*, Individual Scoring Tool B6 at AHCCCS001489.

The individual assessments are followed by the evaluators sharing their observations, impressions, and concerns with their fellow evaluators for their assigned submission requirement during the refining discussions of the consensus meetings. By having each evaluator hear, consider, and comment upon their fellow evaluators’ impressions of each proposal, the consensus process allows evaluators to either obtain or provide clarifications and insights that build deeper, collective understanding and appreciation for the strengths and weaknesses of each proposal as it relates to the evaluators’ assigned submission requirement. It is not unusual for individual evaluator assumptions and assessments about the strengths, weaknesses, credibility, and feasibility of a proposal to change as a result of information and perspectives exchanged in the consensus discussions. And it is not unusual for this deeper perspective on a proposal to alter an evaluator’s thoughts on the appropriate ranking of a proposal amongst its peer proposals.

The following discussion addresses how the foregoing evaluation process is evident in, and impacted, the various individual requirement scoring decisions that have been protested here.

First, the Protesters claim AHCCCS conducted evaluations of the narrative submission requirements through consideration of whether the offerors included certain “buzz-words” in their proposals. The Protestors claim that the evaluators merely evaluated whether an offeror included key words without consideration of the actual substantial effects an offeror’s approach would have on AHCCCS’ goals described within the RFP. Further, the Protestors claim that the evaluation considerations included in the Final Ranking and Rationale spreadsheet supported the assertion that the evaluation considered only whether an offeror described certain information sufficiently, rather than whether the offeror could fulfil the goals and objectives of AHCCCS. The Protesters are factually incorrect.

The RFP and evaluation process considered not only whether an offeror responded fully to the submission requirement being evaluated, but considered whether an offeror provided AHCCCS forward-looking initiatives, solutions, and implementation strategies that coincide with AHCCCS’ stated goals, objectives, and issues AHCCCS intends to resolve or achieve over the life of any contract awarded pursuant to the RFP. Generally, the narrative submission requirements requested offerors provide a description of how they monitor an identified issue or challenge that AHCCCS’ members and their care managers face. The evaluation considerations that the AHCCCS team had provided evaluators for each submission requirement encouraged consideration of relevant characteristics of each proposal, such as whether an offeror described how it collects and uses program data, appoints task forces, or utilizes organizational groups to identify and track the identified issues and common objectives related to the managed care services provided to E/PD individuals. Generally, the offerors, each of whom are highly sophisticated parties experienced with prior AHCCCS RFPs and other RFP processes nationally, rarely failed to describe at least generally how they identify, monitor, or handle each covered issue. But, consistent with the structure of the RFP as seeking the proposal(s) that are most advantageous to the state, AHCCCS’ evaluators looked for more than merely superficial recognition of the basic RFP service expectations for each submission requirement. Instead, AHCCCS’ evaluators, as trained and guided subject-matter experts with expertise in the issues covered by their assigned narrative submission requirements, considered whether each

offeror’s response demonstrated a detailed and clear understanding of the AHCCCS requirements, communicated a deep grasp of the service challenges posed by the RFP and potential solutions for those challenges, and further demonstrated that the offeror would provide responsive and effective solutions that could actually be implemented over the life of the contract award.

Thus, the AHCCCS evaluation process valued forward-looking responses that evidenced the offeror could and would deliver effective solutions to the issues and objectives AHCCCS identified in each narrative submission requirement. The evaluation considerations provided to the various evaluation teams emphasized to the evaluators the appropriate consideration of whether offerors described viable solutions and had concrete and workable plans for implementation. *See e.g.*, Final Ranking and Rationale – B4 (evaluating how offeror will use collected data in the development and implementation of ALTCS Case Management best practices); Final Ranking and Rationale – B5 (evaluating how implementable an offerors’ person-centered service planning strategies); Final Ranking and Rationale – B6 (evaluating offeror on how they collect, use, and apply data, like performance metrics, to initiate improved solutions); Final Ranking and Rationale – B7 (requesting action steps and a three-year timeline on how offeror will work in an integrated fashion to identify and address network needs); Final Ranking and Rationale – B8 (requesting offeror identify its workforce development strategy and how it will achieve its desired outcomes); Final Ranking and Rationale (requesting offeror describe how it will implement best practices to address social risk factors). Contrary to the claims asserted by Mercy Care and Health Choice, the evaluation teams of designated, seasoned subject-matter experts thoughtfully applied evaluation criteria that differentiated offerors based upon how well these offerors’ strategies and solutions would be implemented, and how well AHCCCS’ objectives would be met, if the offeror were awarded a contract this cycle. The offerors claim that AHCCCS solely considered “buzz-words” in its analysis is factually incorrect, and therefore provides insufficient grounds for a successful protest.

Similar to their criticisms of the narrative submission requirement evaluations, the Protesters claim that AHCCCS conducted an arbitrary oral presentation process, likening the oral presentation process to a surprise “pop-quiz”. Moreover, Mercy Care claims that AHCCCS utilized arbitrary evaluation considerations when evaluating the oral presentations. Meanwhile, Banner and BCBSAZ Health Choice, although raising similar arguments, focus on the fact that BCBSAZ Health Choice performed well on the Oral Presentation portion, but somehow did not perform similarly on the narrative submission portion, as if the inconsistency must reflect an error in evaluation rather than a material difference between the quality of the BCBSAZ Health Choice narrative submissions and its oral presentation.

In response to arguments made by Health Choice and Banner, AHCCCS evaluators evaluated Oral Presentation submissions solely on what the offerors prepared and presented within the confines of the strictly controlled oral presentation environment. This protocol implemented what AHCCCS had informed offerors in the RFP, namely, that Oral Presentations did not have “any impact to the other areas of the submission or evaluation process.” *See* ALTCS E/PD RFP No. YH24-0001 Oral Presentation General Script (at AHCCCS000341). This is also consistent with the instructions and processes provided by AHCCCS for evaluation of the narrative submissions and Cost Bid, where evaluators were generally instructed to restrict their evaluation to the responsive information included in the designated section within each proposal. So, the Protesters’ attempt to make an issue of differences between how an individual offeror performed on the narrative submissions versus the oral presentations is unmerited. Where the evaluators on the oral presentations were properly following their instructions not to allow information from outside the oral presentations to inform their rankings, and vice versa when it came to evaluating the written narrative submissions and Cost Bid, it is no surprise that some offerors may have done a much better job of communicating their mastery of the requirements and their plans in writing

as opposed to oral presentations, and vice versa. Any disparities in oral presentation rankings, narrative submission requirement rankings, and Cost Bid rankings therefore do not suggest evaluation or scoring deficiencies and provide no grounds for a successful protest.

Mercy Care, on the other hand, claims that AHCCCS evaluated the Oral Presentations arbitrarily, but does so by claiming that AHCCCS conducted the Oral Presentation evaluation process inconsistent with the goals stated in the RFP. Mercy Care's claim that the Oral Presentation questions and evaluation criteria do not align with the objective of the RFP is unfounded.

Oral Presentation Question # 1 inquired how offerors identify the needs of family caregivers as it pertains to how ALTCS eligible members are served in the least restrictive setting. Oral Presentation Question #1 further requested that offerors describe what tools and resources they would use to assess risks and needs of family caregivers, and how they will use those tools to engage family caregivers and provide them needed supports and services. AHCCCS supplied the evaluators for Oral Presentation #1 the following considerations about the characteristics of the oral presentations to use in evaluating and ranking the proposers on that oral presentation requirement:

- Innovation
- Implementation
- Addresses-Person-Centered Service Planning
- Improves Outcomes (Quality/Member) and,
- Other Notable Considerations.

AHCCCS proposed to the evaluators the aforementioned evaluation considerations in alignment with the forward-looking nature of the question posed for Oral Presentation #1. Oral Presentation #1 asked the Offerors to identify how they recognize the needs of family caregivers and required a proposed solution or plan for how the offeror will address that issue if awarded a contract. Given the requirement for presentation of a forward-looking future action plan, AHCCCS evaluators reasonably considered whether the plan and methods proposed by each offeror were innovative and implementable, and whether they might improve the outcomes and quality of services provided to the members. Thus, similar to the evaluations of the narrative submission requirements, AHCCCS evaluated the Oral Presentations through the use of subject-matter experts who considered not only what methods or solutions an offeror could provide for a sensitive issue like family caregiver support, but whether the programs and methods described by the presenter could be implemented and produce effective results for AHCCCS ALTCS E/PD members during the life of any contract that might be awarded. The evaluations for Oral Presentation #1 did not conflict with the RFP requirements and the oral presentation requirements at all.

Mercy Care claims AHCCCS scored Oral Presentation Question #2 inconsistently with the information required by the question. But Oral Presentation Question #2 requested Offerors describe how they will commit to prevent, protect, and ensure the safety and security of its members. The question explicitly acknowledges that this is one of the goals of the State of Arizona—to enhance prevention of abuse, neglect, and exploitation of vulnerable adults. As an example of how broad the State's interests are in this area, the Arizona Legislature enacted and expanded the Adult Protective Services Act ("APSA"). Arizona's APSA provides protection of vulnerable adults from not only physical harm, but also financial exploitation and emotional abuse. See A.R.S. § 46-451, *et. seq.* Also in recent years, the Office of the Governor had established the Abuse and Neglect Prevention Task Force in connection with Executive Order 2019-03, ordering AHCCCS, DES and ADHS to engage in various actions to protect individuals with disabilities.

AHCCCS provided the evaluators for Oral Presentation Question #2 with the following considerations about the characteristics of the oral presentations to use in evaluating and ranking the proposers oral presentation under Question #2:

- Training and Commitment
- Includes Case Management Principles
- Proactive Strategies and,
- Reactive Strategies.

Mercy Care claims that these evaluation considerations did not coincide with the topics Oral Presentation Question #2 required offerors to address. But this position expresses a misunderstanding of how broad the State of Arizona/AHCCCS objectives are when it comes to protecting ALTCS member interests.

The Oral Presentation #2 evaluation considerations encompassed how an offeror planned to enhance prevention of abuse, neglect, and financial exploitation of vulnerable adults. Reasonably, AHCCCS evaluators could consider how an offeror utilized its Case Managers, those in direct contact and oversight of the members, to monitor and prevent abuse, fraud, and financial exploitation. Further, AHCCCS evaluators could reasonably consider how an offeror trained its staff, including Case Managers, to monitor, identify, prevent, and protect its members from abuse, neglect, and exploitation. Finally, AHCCCS evaluators considered how an offeror reacts to abuse, neglect, or exploitation reports and occurrences, and how they work to prevent those instances before they occur. An offeror that understands the national and statewide concerns about the protection of vulnerable adults would have known that these considerations would be considered for any long-term care organization like AHCCCS. In fact, the evaluators noted positive reactions to Mercy Care providing responsive information that addressed these key considerations.

Mercy Care further claims that Health Net, the offeror that received the highest ranking under Oral Presentation #2, gave a “wholly nonresponsive answer” because it included considerations about how it could address financial fraud/exploitation risks a vulnerable adult may face. Mercy Care went as far to say that “there is nothing in Health Net’s answer” that describes its commitment to prevent protect and ensure the safety and security of ALTCS’ members. This statement is unsupported. Health Net’s response acknowledging and committing answers to protection of vulnerable members from financial exploitation is directly relevant to the goals of the State of Arizona and AHCCCS as expressed in the multi-tiered protections incorporated in APSA, A.R.S. § 46-451 *et. seq.* The procurement record also indicates that Health Net gave sufficient responses addressing the physical abuses and exploitation vulnerable adults may face in a managed-care setting. Thus, Mercy Care’s extreme interpretation of the Oral Presentation #1 assignment as relating only to protection of members from physical abuse or neglect is a misreading of the presentation requirement. The evaluation and ranking of Health Net under Oral Presentation #2 does not suffer from any errors and provides insufficient grounds for a successful protest.

The Protesters further claim that AHCCCS cannot validly explain the ranking changes from individual draft rankings to the final consensus rankings for the Oral Presentations. On October 3, 2024, AHCCCS provided training and ensured that the individual evaluators had familiarity with the ALTCS E/PD Evaluation and Consensus Ranking process. AHCCCS explained to evaluators, as they were already aware, that there would be an Individual Evaluation process, and a Consensus Ranking process. See ALTCS E/PD RFP No. YH24-0001, Scoring Training, October 3, 2023 (AHCCCS000029-0076). During the Individual evaluation process, the evaluators made preliminary notes and rankings based upon their own unique perspective and review of the narrative submission requirement they were assigned based on their subject matter expertise, uninformed by the perspective of the

co-experts on their evaluation teams. But, as is abundantly clear from the procurement record, the individual evaluation process served as a mere preliminary starting point for discussions in the consensus discussion and ranking process.

In accordance with the established AHCCCS consensus evaluation process, after the individual evaluation process, the evaluators met with their assigned team. A consultant experienced in the consensus evaluation process joined each Consensus meeting and facilitated the evaluation process. During that process, the evaluators initially reviewed and discussed their individual notes and rankings with the other evaluators on their team, collectively considered, discussed, and evaluated the strengths and weaknesses of each offerors' submission in connection with the evaluation considerations on their scoring tool, shared their unique perspectives on both the proposals and, where appropriate, on the opinions or observations made by other evaluators about a proposal. During this team deliberation, the Consultant was expected to encourage each individual evaluator to share their thoughts and positions, comment on the other evaluators' perspectives and comments, and ensure that no individual evaluator dominated the Consensus Ranking process.

The cooperative consensus process also helped prevent unintended errors that might have arisen during the individual ranking process, like when an evaluator gave their top choice a fifth place ranking rather than the first place ranking they were supposed to use to denote the highest ranked proposal.²¹ Using this sort of consensus-building, give-and-take discussion, the evaluators ranked the relative position (1-5) of each proposal. It is no surprise that such a sharing and consensus-building process would result in reassessment and modification of initial evaluator conclusions and opinions. In fact, it would be surprising if such discussions never resulted in the better-informed evaluators changing their initial rankings.

At best, Protesters have hand-picked a few examples where a preliminary individual ranking from one evaluator was better than their final Consensus Ranking. But this does not prove any evaluation error. Moreover, the Protesters are careful not to discuss any examples in which the consensus process may have improved an evaluator's ranking decision *in favor of* the Protester. For instance, Protester Mercy Care received a ranking of "3" from one of the evaluators during individual assessments of narrative submission requirement B8, but that evaluator eventually agreed with their colleagues that Mercy Care should receive the highest ranking of "1" on that requirement. If the Protesters are correct that AHCCCS should disregard modifications made from the initial rankings, then they must consistently accept any deductions in ranking this causes for them. As they have offered no such adjustments, the Protesters' arguments are patently self-serving and not objective.

Given the foregoing, the Protesters' arguments relying on any changes between individual ranking notes and final Consensus Ranking for any submission requirements provide no grounds for the Procurement Officer to set aside the awards.

To the extent the Protesters infuse their challenges to ranking decisions made for their and others' proposals on the alleged failure of AHCCCS to consider and reach negative or adverse conclusions based on risks of member disruption or concerns with risks to member services, care or experience associated with transitioning to a relationship with a new managed care services provider, those arguments are without sufficient factual foundation and make unwarranted assumptions about such risks. The history of servicing eligible members under the Arizona ALTCS program has created substantial institutional knowledge within AHCCCS, the managed care organizations it contracts with, and service providers who those organizations utilize for service delivery about member transitions. The deliberate planning process for this RFP, and the established schedule for any member

²¹ The procurement record indicates this error was addressed and did not result in inaccurate scoring of any proposal.

transitions that may be required within the 2024 year as a result of AHCCCS' award decisions reflect that the agency has used that substantial institutional knowledge to address and mitigate with as much precision as possible any risks of member service disruption or other adverse impacts on ALTCS E/PD eligible members. The Protestors falsely assume large and unmanageable risks to the members served by the ALTCS E/PD program, and inaccurately assume that the AHCCCS evaluators ignored such issues entirely. Instead, the record affirms that AHCCCS and the subject matter experts involved with this RFP have conscientiously considered, planned for, and structured the procurement trajectory to ameliorate the types of chaotic transition dynamics the Protestors envision.

Moreover, the Protestors' arguments about failure to consider service disruption and member impacts fails to identify persuasive evidence that evaluators were required to consider such issues in any particular way for any particular element of the proposal evaluations, or that they consciously disregarded such issues in any particular circumstance. The Protestors have also failed to establish the proof of prejudice caused by such alleged evaluation oversights that would be necessary to support a valid protest. In summary, the arguments amount to

Finally, the Protestors claim AHCCCS cannot support the evaluators' Consensus Ranking for narrative submission requirements because the evaluators' Rationale and Major Observations, as included in each Narrative Submission Requirement Scoring Tool/Final Ranking and Rationale Spreadsheet, did not express substantial differences among offerors. The Protestors address this claim in different ways. Banner generally claims that the Final Ranking and Rationale Spreadsheets did not sufficiently document the agency's decision, and thus AHCCCS lacks sufficient rationale for the final ranking distinctions. Health Choice and Mercy Care criticized the Ranking and Rationale spreadsheets for not sufficiently explaining how various offerors whose final ranking exceeded theirs on a given requirement met the State's goals and evaluation considerations better than their proposal did.

Again, the Protestors' arguments are one-sided and fail to consider the negative implications of accepting their analysis on their own proposals. But they also fundamentally mischaracterize and ignore the details of the complete evaluation process. The consensus process is an organic discussion that is guided by an experienced consultant and encourages evaluators to actively share their perspectives, even as they may be actively modified by the contributions of their co-evaluators to the discussion. The entire consensus discussion is not recorded, and the Rationale Spreadsheet notes are never intended to capture the full set and detail of the rationale by which each individual evaluator eventually agreed to the final ranking numbers. Nor does anything in the Arizona statutes, the AHCCCS regulations, any other aspects of Arizona law, or the RFP require that the spreadsheet fully explicate all the reasons why the evaluators agreed on the final rankings they chose. Instead, the details, guidance, training, and use of skilled and experienced evaluators who understand through their training that the consensus ranking process guarantees that the rankings are arrived at after detailed consideration and elaboration through active dialog about the relative strengths and weaknesses of each proposal in relation to the RFP submission requirement being evaluated and the evaluation considerations established in the scoring tool for the requirement. That process affirms that the purported absence in any portion of the Rationale Spreadsheet comments of strong distinctions between two proposals receiving different ranks on a submission requirement does not signal an error in the ultimate rankings.

V. Conclusion

Having considered the details of the arguments made by the Protestors, many of the arguments are untimely, as set forth above. The remaining arguments reflect a misunderstanding or misrepresentation of the evaluation methodology applied to the RFP evaluations, and further frequently reflect self-serving, selective challenges that, if turned against the Protester, could also result in their own proposal losing substantial points.

None of the challenges made by the Protesters meet their burden of showing that AHCCCS has acted arbitrarily and capriciously, has abused its discretion in this procurement process, or has acted contrary to any applicable law. Nor has any Protestor demonstrated the type of prejudice caused to them by the procurement deficiencies they claim that would be required to prevail on a protest. Therefore, the Protests do not state any grounds for modifying the award decision made by AHCCCS. The Protests are denied. This letter constitutes the final Procurement Officer Decision of AHCCCS with respect to the ALTCS E/PD RFP NO. YH24-0001.

DATED this 2nd day of February, 2024.



Meggan LaPorte, MSW, CPPO
AHCCCS Chief Procurement Officer
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CC;

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Exhibit B

ALTCS E/PD RFP YH24-0001 ORAL PRESENTATION GENERAL SCRIPT

Offeror Name:

Date:

Welcome to the AHCCCS Oral Presentation process. Before we get started, I would like everyone to introduce themselves. Please give your first and last name, your title, and identify the organization that you are with. We will start with AHCCCS staff.

Introductions:

AHCCCS Staff:

NAME	TITLE	DIVISION
Jakenna Lebsock	Assistant Director	DHCS
Dara Johnson	Program Development Officer	DHCS
Melissa Arzabal	ALTCS-Case Management Program Manager	DHCS
Danielle Ashlock	ALTCS Project Manager	DHCS
Proctor		DHCS

We have an independent consultant assisting AHCCCS with the RFP Process. His role is to facilitate discussion and guide scoring teams through the review process in order to reach consensus.

Consultant

NAME	TITLE
Andy Cohen	

Thank you, Andy. I will now turn it over to the MCO to introduce your team.

Offeror Staff:

NAME	TITLE
1.	
2.	
3.	
4.	
5.	
6.	

Please note that AHCCCS has scripted what we will be telling you today. This is to ensure that we share the same information with all Offerors. Participating in the oral presentation process does not mean that the offeror will be offered a Contract, nor does it have any impact to the other areas of the submission or evaluation process.

As described in the RFP, *offerors are not permitted to distribute previously prepared presentations or materials during the oral presentations. Offerors may bring a laptop for accessing and referencing materials including but not limited to policies and procedures. Offerors will not be permitted to utilize a laptop for presenting oral presentations and offerors shall supply their own internet connection. Cell phones are not allowed in the room; therefore, you shall not rely on utilization of a cell phone for internet connection. Outside communication (e.g., cell phones, instant messaging, email, text messaging) is prohibited for the duration of the oral presentations. The offeror is also permitted to utilize any hard copy reference material brought with them.*

ALTCS E/PD RFP YH24-0001 ORAL PRESENTATION GENERAL SCRIPT

You have been instructed to place all your cell phones in the basket at the door and they should be placed in silence mode. This is a reminder that if you have not placed your cell phone in the basket please do so now. You may collect these items at the completion of the oral presentations.

In terms of housekeeping information: We have placed water bottles on the credenza; please feel free to take one at any time. Bathrooms are located just past the elevators to the right. You will need to ring the bell to be buzzed back in.

The oral presentations process will not exceed four hours. The oral presentation will be audio taped by AHCCCS solely for the Agency's use in the evaluation process. During the presentations you will be asked to present solutions to two questions. The process will be as follows:

1. The Offeror will be given a written copy of each question for which to prepare oral presentation responses. Only one question will initially be provided. The second question will be provided upon completion of the Offeror's presentation of the first question.
2. AHCCCS staff (excluding the proctor) will leave the room for 60-minutes (one hour) to allow the Offeror's team to discuss each question and to prepare a 30-minute timed oral presentation. There will be no audio taping during this time. The proctor will remain in the room and may move around the room during your preparation process. The Offeror may only use the laptop and Wi-Fi-connection tool to access and reference electronic materials. Staff that are not present in this room may not be contacted or consulted as part of the response planning.
3. As mentioned, an AHCCCS proctor will be present during the oral presentations, including during the Offeror's 60-minute preparation period. If the proctor observes prohibited use of electronic devices, they will stop the process and notify the Chief Procurement Officer. The Chief Procurement Officer reserves the right to terminate the Offeror's oral presentation.
4. The Offeror is permitted to utilize any hard copy reference material brought with them, including copies of policies and procedures to assist with preparing for the presentation.
5. AHCCCS has provided a whiteboard, flip charts, and markers for the Offeror to use in preparation for the Oral Presentation.
6. During the Offeror's preparation period, the AHCCCS proctor will provide the Offeror a notification when there is 15-minutes remaining in the preparation period and then again with a 3-minute remaining time.
7. Preparation time will end immediately at 60 minutes. The Offeror is not required to utilize the entire time allotted; if you would like to conclude earlier, please notify the proctor who will contact the scoring team to return to the room.
8. The Offeror will be provided 30 minutes to orally present a response to the question posed. The Offeror is not required to use the entire time allotted. Any one or more of the Offeror's presentation team may present.
9. During the Offeror's presentation period, the AHCCCS proctor will provide the Offeror a notification when there is 3-minutes remaining and again at a 1-minute remaining timeframe.
10. Presentation time will end immediately at 30 minutes. The Offeror is not required to utilize the entire time allotted.

ALTCS E/PD RFP YH24-0001 ORAL PRESENTATION GENERAL SCRIPT

11. AHCCCS staff will only respond to process or procedure questions related to the oral presentation process.

Are there any questions regarding the process?

I will now read the first question; a written copy of the question will also be provided to you.

Question #1 - Provide a detailed analysis and summary of the Offeror's understanding of the needs of family caregivers, particularly as it pertains to ensuring members are served in the least restrictive setting. Describe how the Offeror will engage family caregivers and prioritize addressing the needs of family member caregivers including what tools and resources will be utilized to assess risks and needs while identifying and providing needed supports and services.

AHCCCS Staff Re-Enter Room after 60-minute (1 Hour) Offeror Preparation Time

The 60 minutes of preparation time is now over. You will be given 30 minutes to present your response to the question, though you need not use the entire time allotted. During the presentation the proctor will provide a 3-minute and a 1-minute warning to allow you the opportunity to wrap up the presentation. Please let us know when the presentation is complete.

We are giving everyone a 10-minute break to get some water or utilize the restroom. We will be resuming promptly at time

I will now read the second question. As before, a written copy of the question will also be provided to you.

Question #2 - It is the right of every individual to be free from abuse, neglect, and exploitation and it is critical for the success, health, and well-being of the program's vulnerable members. The State of Arizona has taken numerous measures to enhance prevention of abuse, neglect, and exploitation of members as well as to inform and improve abuse monitoring to ensure the safety of vulnerable persons residing in long-term care settings and/or receiving long-term care services in their home. Describe how the Offeror will commit to prevent, protect, and ensure the safety and security of its members.

AHCCCS Staff Re-Enter Room after 60-minute (1 Hour) Offeror Preparation Time

The 60 minutes of preparation time is now over. You will be given 30 minutes to present your response to the question, though you need not use the entire time allotted. As a reminder, the proctor will provide a three-minute

ALTCS E/PD RFP YH24-0001 ORAL PRESENTATION GENERAL SCRIPT

and a one-minute warning to allow you the opportunity to wrap up the presentation. Please let us know when the presentation is complete.

Closing of Oral Presentation

This concludes the oral presentation part of the RFP process. Thank you for participating.

Exhibit C



ALTCS E/PD RFP YH24-0001

SCORING TRAINING

October 3, 2023

Sandi Borys, DHCS Contract and Policy Administrator

PURPOSE OF TODAY'S MEETING

- ❖ To ensure everyone is familiar with the ALTCS E/PD Evaluation and Consensus Ranking process *(also referred to as scoring)*.
- ❖ To learn your responsibilities regarding the Evaluation and Ranking process.
- ❖ To understand the role of the Consultants in the Consensus process.

REFRESHER OF THE ALTCS E/PD RFP

- ❖ The ALTCS E/PD procurement was issued on August 1, 2023
- ❖ The Contract will be in effect for a total of seven years the first part starts on October 1, 2024 through September 30, 2027
 - There will be two additional options for two two-year extensions with an ending date of September 30, 2031.
- ❖ As of August 2023, ALTCS E/PD currently serves approximately 26,000 members.
- ❖ The ALTCS E/PD Contract Award is estimated to be around \$15,463,100.00.

ALTCS EP/D REFRESHER

- ❖ Bids are solicited from Managed Care Organizations (i.e., health plans; Offerors) for the delivery and oversight of services to qualified members.
- ❖ AHCCCS will be awarding a total of three contracts:
 - Two in the North GSA consisting of Mohave, Coconino, Apache, Navajo, and Yavapai Counties.
 - Three in the Central GSA including Maricopa, Gila, and Pinal Counties.
 - Two in the South GSA consisting of Cochise, Graham, Greenlee, La Paz, Pima, Santa Cruz, and Yuma Counties.
- ❖ There is a potential for 0, 1, or 2 statewide contracts being awarded.

THE ALTCS E/PD SERVICES

- ❖ ALTCS E/PD Contractors serve members who are Elderly and/or who have a Physical Disability (E/PD) including:
 - Children with special health care needs,
 - Individuals with general mental health needs, and
 - Individuals with a Serious Mental Illness (SMI) designation.
- ❖ When members qualify for ALTCS E/PD services; the program coordinates and provides the integrated care for this population including:
 - Acute Care (*physical health*),
 - Behavioral Health,
 - Case Management Services (*at the Contractor-level*), and
 - Services and supports to all ages who have functional limitations and/or chronic illnesses, helping to support the ability for members to live or work in setting of their choice.

ALTCS E/PD TIMELINE

ALTCS E/PD YH24-0001 ANTICIPATED PROCUREMENT TIMELINE

Issued the ALTCS E/PD RFP	08/01/23	Cost Bid Narrative scoring is due by	10/10/23
First set of technical questions were due by	08/08/23	All other Narrative scoring is due by	10/11/23
First Amendment was issued on	08/15/23	Consensus Meetings Begin	10/12/23
Second set of technical questions was due by	08/15/23	Oral Presentations	10/24-11/02
Second Amendment was Issued on	08/30/23	Best And Final Offer (BAFO) is due by	10/19/23
Intent to Bid was due by 3:00 pm AZ time	08/31/23	Scoring ends	11/15/23
Third Amendment was issued on	09/08/23	Present findings to Exec and Scope	11/16/23
Proposals were due by 3:00 pm AZ time	10/02/23	Send to the Governors Office	11/21/23
Scoring Begins	10/03/23	Award	12/13/23

NOTE: All dates above are subject to change

ALTCS E/PD OFFERORS

LIST OF OFFERORS FOR THE ALTCS E/PD YH24-0001

1. **Arizona Physicians IPA, Inc** (dba United Healthcare Community Plan)
2. **Banner-University Care Advantage** dba Banner-University Family Care
3. **BCBSAZ Health Choice**
4. **Health Net Access, Inc** dba Arizona Complete Health-Complete Plan
5. **Mercy Care** (Administered by Aetna Medicaid Administrators)

CONFIDENTIALITY

- ❖ You have all signed the Procurement Disclosure Statement (PDS)
- ❖ You hold a Significant Procurement Role (SPR) and will be scoring your assigned RFP Submission Requirement(s) (*Narrative/Oral Presentations/Cost Bid*)
- ❖ **Keep materials and Discussions Confidential including but not limited to:**
 - Contractor responses,
 - All documentation,
 - Discussions should only be with your assigned team.
- ❖ **The scoring process remains confidential even after award.**

Questions?

NARRATIVES

B1 – EXECUTIVE SUMMARY

This is not a scored aspect of the submission

The Offeror shall provide an Executive Summary that includes:

- a. An overview of the organization,
- b. The Offeror's relevant experience providing healthcare for the population specified in this Solicitation, and
- c. A high-level description of the Offeror's proposed unique approach to meet Contract requirements.

This submission may be used in whole or part by AHCCCS in public communications following Contract awards.

B2 – SUBMISSION FORMAT

This is not a scored aspect of the submission however, they do need to address in each Narrative

The Offeror shall identify no more than three contracts, *The Offeror shall list only the three contracts that are not Arizona Medicaid Contracts that it wishes to cite. Throughout its RFP the Offeror does not need to include Arizona Medicaid Contracts in its list, which represent its experience in managing similar healthcare delivery systems to the ALTCS E/PD Program. *The Offeror must list the FIDE-SNP in B2 if the Offeror writes to experience related to the FIDE-SNP contract. The Offeror shall describe all programs for the contracts selected including those from Arizona. The description shall include but is not limited to geographic *coverage*, population served and enrollment, behavioral health/physical health integration status, years in program, and current contractual status. In response to the Narrative Submission Requirement that asks for the Offeror's experience as well as any other responses where experience is presented, the Offeror shall refer exclusively to the experience from the identified contracts in this response, and must always include Arizona experience, if applicable. Any contracts referenced in Narrative Submission Requirement responses which are not identified in this response will not be considered.

* RFP Amendment 2 Clarifications

B3 – ALL NARRATIVE SUBMISSIONS SHOULD INCLUDE

Built into each Narrative Scoring Tool as Broad Category

In each response for Narrative Submission Requirements (B4-B9) the Offeror shall include in its response how the Offeror will address health inequities, health disparities, and/or structural and health-related social needs and promote equitable member care.

B4 – MEMBER POPULATION *(5 PAGES)*

Scoring Team includes Brandi Howard, Dr. Megan Woods, and Samantha O’Neal

The ALTCS E/PD member population is complex, and their care often involves a combination of services and providers to effectively meet their needs. Provide a detailed description of how the Offeror will develop and implement best practices for ALTCS Case Managers, and leverage ALTCS Case Management staff to meet the needs of individuals with complex conditions, to:

- a. Decrease duplication of effort and enhance coordination of care with providers of physical and behavioral health services,
- b. Assist members prior to, and throughout transitions,
- c. Improve member engagement,
- d. Coordinate social and community support services,
- e. Identify, track, and manage outcomes for members with complex needs,
- f. Ensure appropriate identification of members that would benefit from High Needs Case Management and provide Case Management services in alignment with identified needs and reduce burden on members and families in coordinating member care.
- g. Monitor Case Manager performance and respond to identified issues, at the individual and system levels.

B5 – PERSON CENTERED SERVICE PLANNING (4 PAGES)

Scoring Team includes Danielle Ashlock, Dara Johnson, and Melissa Arzabal

How will the Offeror ensure that person-centered service planning:

- a. Includes active engagement with ALTCS members,
- b. Includes all aspects of quality of life,
- c. Is consistent with the individual's needs and wishes,
- d. Promotes access to services in home and community-based settings, and
- e. Results in high quality, equitable, and cost-effective person-centered care.

Additionally, how will the Offeror monitor and evaluate the Case Manager and the member experience and satisfaction to demonstrate the Offeror's person-centered service planning process complies with the values and principles of person-centered thinking, planning, and practice?

B6 – DATA AND PERFORMANCE METRICS

(6 Pages Consisting of 3-Narrative and 3-Sample Data)

Scoring Team includes Georgette Chukwuemeka, Dr. Megan Woods and Cindy Hostetler

- Provide a description of the types of data, including but not limited to performance metrics and data collected in partnership with members (e.g., data from member satisfaction surveys or member focus groups), the Offeror will collect, monitor, and analyze for the purposes of improving member health outcomes and informing program initiatives.
- Provide a detailed description of the processes utilized by the Offeror to inform and/or initiate improvement activities, including reporting tools, monitoring technologies, and/or partnerships, as well as processes used for member and population specific data analyses and MCO decision making processes.
- The Offeror shall limit its response to the submission requirement to three pages of narrative and should include up to *three pages of narrative and up to three, one-page sample utilization reports or other sample data or other sample data to demonstrate the Offeror's monitoring and analysis processes.

*[PAGE LIMIT 6 *with 3 pages of narrative and up to 3, one-page sample utilization reports or other sample data]*

**Revised with RFP Amendment 2*

B7 – NETWORK DEVELOPMENT *(4 Pages)*

Scoring Team includes Christina Quast, Gini Britton, and Jay Dunkleberger

- Describe the Offeror’s network development strategy, including methods to build Home and Community Based Services (HCBS) providers and institutional capacity in rural areas and maximize available resources. Also discuss specifically how the Offeror will assist rural nursing facilities seeking to expand into community-based care.
- Provide action steps and a timeline for the first three years of the Contract, along with measurable outcomes to be achieved. The action steps *should focus on the contract start (execution) date and shall illustrate how the Offeror’s operational areas will work in an integrated fashion to identify and address network needs.

*RFP Amendment 2 Clarification -

B8 – WORKFORCE DEVELOPMENT *(4 Pages)*

Scoring Team includes Bill Kennard, Jay Dunkleberger, and Jenna Girdosky

Describe the Offeror’s overall workforce development strategy including the Offeror’s workforce development philosophy, the use of data to inform strategies and monitoring activities to determine if strategies are effective, and achievement of desired outcomes. Additionally, the Offeror shall describe how the Offeror will:

- a. Assist and incentivize providers to improve workforce monitoring, assessing, planning, and forecasting workforce trends so that the provider can be more strategic in their efforts to recruit, select, train, deploy, and support their staff,
- b. Assist providers to improve post-training coaching and supervision to ensure the skills are applied and used effectively to improve member experience and outcomes, and
- c. Integrate the operations of the Offeror’s workforce development function within the operations of the network, medical management, and quality management departments.

B9 – SOCIAL DETERMINANTS OF HEALTH *(4 pages)*

Scoring Team includes Dr. Melissa Del-Colle, Rachel Conley, and Susan Kennard

Recent studies have shown that social, economic, and environmental conditions, in addition to health behaviors, can determine approximately 80% of health outcomes in the U.S. Given the Offerors' role in serving people with complex clinical, behavioral health, and social needs, it is critical to address social risk factors. For each of the following populations, describe how the Offeror will provide timely access to services and supports as well as monitor outcomes. The Offeror shall also identify its strategy(ies) for addressing potential barriers to care, as well as best practices to be implemented.

- a. Members residing in rural communities,
- b. Members residing in Tribal communities,
- c. Members in need of community resources, and Members in need of Peer and/or Family Support services.

B10 – COMPLIANCE REVIEWS

Scoring Team includes Christina Quast, Jakenna Lebsock, and Michelle Holmes

Pursuant to 42 CFR 438.358 (b)(iii), Medicaid agencies must conduct compliance reviews of their contracted Managed Care Organizations at least every three years. AHCCCS will evaluate compliance reviews and incorporate the Offeror's past performance as specified below:

- a. **Incumbent E/PD Contractors** - A submission is not required. AHCCCS will utilize the AHCCCS Calendar Year (CY) 23 ALTCS E/PD Operational Review (OR),
- b. **Incumbent non-E/PD Contractors** - A submission is not required. AHCCCS will utilize the most recent finalized AHCCCS Operational Review (OR), and
- c. **Non-Incumbent Offerors** - The Offeror shall submit its most recent review(s) that together comprise a complete evaluation. The review(s) shall be selected from one of the Medicaid Contracts cited in B2 in compliance with 42 CFR 438.358 (b)(iii) for a business line which includes provision of services that are comparable to the Scope of Services for this RFP. The Offeror shall include a description of how the services delivered in the business line for the submitted compliance review are comparable to the Scope of Services for this RFP. The Offeror's submission shall not exceed one page plus attached compliance review(s). AHCCCS reserves the right to validate the submitted review.

B11 - DSNP

Scoring Team includes Christina Quast and Tom Heiser

The Offeror shall submit its *2023 AZ Medicaid Plan D-SNP STAR rating. If the Offeror does not have a D-SNP STAR Rating in Arizona, the Offeror shall cite its *2023 STAR rating with the corresponding Medicare Contract Number, from one of the states for the Medicaid contracts cited in Submission Requirement B2, using the preference order detailed below. Preference order for STAR Rating from another State:

- a. FIDE SNP/DSNP Plan,
- b. Another type of SNP, or
- c. Medicare Advantage Plan.

**Revised with RFP Amendment 2*

ORAL PRESENTATIONS

B12 - ORAL PRESENTATIONS

Scoring Team includes:

Danielle Ashlock, Dara Johnson, Jakenna Lebsock, and Melissa Arzabal

Offerors shall participate in a scheduled oral presentation pertaining to key areas of the ALTCS E/PD Program. Oral presentations will be in-person.

Presentations may be audio-taped by AHCCCS for the Agency's use in the evaluation process. Audio-taped oral presentations will be published on the AHCCCS website once the Contract awards have been made. AHCCCS will notify each Offeror of its scheduled presentation.

The Offeror shall bring no more than six individuals to the meeting. All participants must be employees of the Offeror; no consultants may participate. Among these six individuals, the Offeror shall include individuals with expertise in:

- Medical Management,
- Case Management, and
- Quality Management

* **RFP Amendment 1 Clarification** - AHCCCS anticipates notifying Offerors by Thursday, October 5, 2023.

B12 - ORAL PRESENTATIONS

Scoring Team includes:

Danielle Ashlock, Dara Johnson, Jakenna Lebsock, and Melissa Arzabal

The Offeror will not be permitted to distribute previously prepared presentations or materials to AHCCCS. The Offeror **may bring a laptop** for accessing and referencing materials including but not limited to policies and procedures. The Offeror will not be permitted to utilize a laptop for presenting Oral Presentations. Additionally, the Offeror shall supply its own internet connection. **Cell phones are not allowed in the room**; therefore, the Offeror shall not rely on utilization of a cell phone for internet connection. Outside communication (e.g., cell phones, instant messaging, email, text messaging) is prohibited for the duration of the oral presentations. The Offeror is also permitted to utilize any hard copy reference material brought with them. AHCCCS will provide a whiteboard or flip charts and markers for Offeror use in preparing for the Oral Presentation.

AHCCCS may have staff in the room at all times for the oral presentation process including during presentation preparation, whether in-person or virtual, to ensure compliance with these requirements.

The Offeror shall submit with its Proposal a list of names and titles along with resumes of the participating individuals.

COST BID

COST BID

Scoring Team includes Bobbi Schmidt, Matt Varitek, Pam Sullivan

The Offeror shall submit the following:

- ❖ C1 – Agreement to Accept Capitation Rates - The Offeror shall submit an agreement that the Offeror will accept the actuarially sound capitation rates computed prior to October 1, 2024. The agreement shall be signed by the Offeror’s Chief Executive Officer.

*For the CYE 24 rating period, AHCCCS set the ALTCS-EPD underwriting gain percentage equal to 1.45% of the capitation rates, excluding premium tax. AHCCCS may revise the applicable underwriting gain percentage as part of capitation rate development each year.

Administrative and case management cost components will be bid by the Offerors. AHCCCS may use these bids in developing capitation rates; however, AHCCCS reserves the right to adjust the capitation rates, including the administrative and case management cost components, to maintain compliance with the Medicaid and CHIP Managed Care Final Rule and additional guidance from CMS published annually in the Medicaid Managed Care Rate Development Guides.

If any moral or religious objections were submitted as part of the RFP, *the Offeror shall include in its Capitation Agreement a statement attesting that the Offeror did not exclude from the administrative and case management bid submission(s) any related administrative and case management costs.

**Revised with RFP Amendment 2*

COST BID

Scoring Team includes Bobbi Schmidt, Matt Varitek, Pam Sullivan

- ❖ C2 – Administrative Cost Component Bid - The Offeror shall bid on the administrative cost component of the capitation rates. The Offeror shall include an administrative bid for each membership tier.
- ❖ C3 – Case Management Cost Component Bid - The Offeror shall bid on the case management cost component of the capitation rates. The Offeror shall include a case management bid for each GSA where the Offeror is submitting a bid.

COST BID

Scoring Team includes Bobbi Schmidt, Matt Varitek, Pam Sullivan

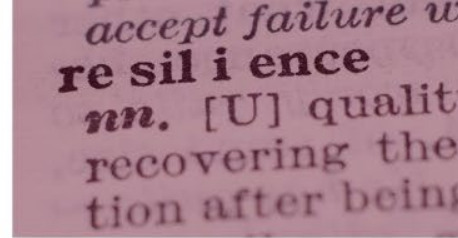
- ❖ C4 – Actuarial Certification - The Offeror shall ensure that an actuary who is a member of the American Academy of Actuaries certifies that the Administrative and Case Management Cost Bid Submissions meets the requirements of 42 CFR 438.5(e) by submitting a signed actuarial certification of all rates submitted with the submission.

BEST AND FINAL OFFER (BAFO)

Scoring Team includes Bobbi Schmidt, Matt Varitek, Pam Sullivan

AHCCCS reserves the right to request Best and Final Offers. In the event AHCCCS exercises this right, all Offerors that submitted a Proposal that is susceptible to award may be asked to provide a Best and Final Offer. The State reserves the right to award a Contract on the basis of initial Proposals received; therefore, the Offeror is encouraged to submit its most competitive bid.










- ❖ **RFP Definition - Best and Final Offer** - A revision to an Offer submitted after negotiations are completed that contains the Offeror's most favorable terms for price, service, and products to be delivered. Sometimes referred to as a Final Proposal Revision



INDIVIDUAL EVALUATION PROCESS

INDIVIDUAL EVALUATION PROCESS

- ❖ You will receive an email providing you with a link to where you will find the following documents:
 - Each Offeror's response to the assigned narrative and/or cost bid,
 - Each Offeror's submission related to B2 listing no more than three contracts that are not Arizona Medicaid Contracts that they will utilize to reference their experience in managing similar healthcare delivery systems, and
 - Individual scoring tool *(Use only the tool with your name on it)*.

	Arizona Physicians IPA, Inc
	Banner-University Care Advantage
	BCBSAZ Health Choice
	Health Net Access, Inc
	Mercy Care
	'00 List of Offerors with dba.docx
	BRANDI - EPD RFP_YH24-0001_Scoring
	DR. WOODS - EPD RFP_YH24-0001_Sco
	SAM - EPD RFP_YH24-0001_Scoring Too

AHCCCS000059

YOUR RESPONSIBILITIES IN THE SCORING PROCESS

- ❖ Your evaluation teams met to agree on the Broad Categories and the Criteria Considerations that now make up the Scoring Tool.

DO NOT SAVE ANYTHING TO YOUR COMPUTER AND ONLY WORK WITHIN THE ASSIGNED LINK.

- ❖ Utilize only your assigned scoring tool.
- ❖ You will be performing your individual initial review based on your interpretation of what has been submitted by the Offerors.
- ❖ **DO NOT** be concerned with what anyone else may think or how anyone else may interpret the submission.
- ❖ Remember the purpose of doing an individual review is for your perspective.
- ❖ Enter your notes (*strengths/weaknesses*) of each Offerors response within their column of the Tool.
- ❖ Utilize the “Other” area for items that may not fit under a Broad Categories - Criteria Consideration.
- ❖ Provide your ranking based on YOUR interpretation (*ties are ok but try to rank 1-5*).

INDIVIDUAL EVALUATION PROCESS

- ❖ Do not give any consideration to *contingent language* such as ‘we are exploring...’ or ‘we are taking under consideration...’
- ❖ Do not give any consideration to any references to various policies and/or manuals these references do not constitute an adequate response to the submission requirement.
- ❖ Do not consider your personal knowledge or experience of a particular Offeror.
- ❖ Do not consider information outside the allotted page limit (*indicated within the Submission Requirement of the Scoring Tool*) or any other information provided elsewhere in the bid.

YOUR RESPONSIBILITY

REMEMBER

- ❖ Your notes are based on your unique perspective. You have been chosen because of your subject matter expertise and your knowledge. Do not worry what someone else may think or how they may interpret the response.
- ❖ Rank each of the offerors how you believe they scored 1-5 (*1 being the best*).
- ❖ All areas will be discussed during your Consensus Meeting(s).
- ❖ It is strongly suggested that you do not print any documents related to the offerors or the scoring documents themselves. If you do YOU must ensure that the documents are shredded. Do Not put them into the shredding can in your office. You must physically put them into the locked shredding bin yourself.

DUE DATES

Cost Bid individual scoring is due NO LATER THAN 10/10.

B4-B11 are due NO LATER THAN 10/11.

Questions?



CONSENSUS EVALUATION PROCESS CONSULTANT'S ROLE

Andy Cohen and Scott Wittman with
Pacific Health Policy Group (PHPG)

CONSULTANT ROLE

- ❖ Reviews and synthesizes all individual notes
- ❖ Facilitates virtual (*in-person for oral presentations*) team evaluation meetings to come to consensus agreement
- ❖ Makes sure all voices are heard
- ❖ Ensures all team members endorse the final ranking and rationale write up
- ❖ Documents Offerors commitments
- ❖ Finalizes documentation for signature and award

TEAM CONSENSUS SCORING PROCESS

- ❖ **Meet virtually with your assigned Team and Consultant (*facilitator*)**
- ❖ **Consensus Ranking process – as a Team**
 - ❖ Review all individual notes and have discussions
 - ❖ Reminder do not take into account your personal opinions of an Offeror
 - ❖ Rate the strengths of each submission
 - ❖ Rank the comparative position of each submission
 - ❖ Compare strength of a response relative to the responses submitted by other Offerors
 - ❖ Determine single Ranking for each offeror for each requirement
 - ❖ Identify Contractor commitments
- ❖ **Finalize**
- ❖ **Sign**

TEAM CONSENSUS SCORING MEETINGS

MEETINGS CONSIST OF THREE SEPARATE MEETINGS

- ❖ First meeting is a four-hour meeting
- ❖ Second meeting is a 1.5-hour meeting
- ❖ Third meeting is a .5-hour meeting *(if needed)*

CONSENSUS MEETINGS

B4=MEMBER POPULATION 5 pages		B5=PERSON CENTERED SERVICE PLAN 4 pages		B6=DATA AND PERFORMANCE 3/3 = 6 pages		B7-NETWORK DEVELOPMENT 4 pages	
Brandi, Sam, Megan		Dara, Danielle, Melissa		Cindy, Georgette, Megan		Christina, Gini, Jay	
4-hour meet	10/20 @ 9-1	4-hour meet	10/19 @9-1	4-hour meet	10/18 @ 1-5	4-hour meet	10/18 @ 8-12
1.5-hour meet	11/6@8-9:30	1.5-hour meet	10/23 @ 9-10:30	1.5-hour meet	11/9 @ 1-2:30	1.5-hour meet	11/7@12:30-2
.5 meet	11/13 @ 12-12:30	.5 meet	11/9 @ 11-11:30	.5 meet	11/13 @ 2-2:30	.5 meet	11/14@8-8:30
B8=WORKFORCE DEVELOPMENT 4 pages		B9=SOCIAL DETERMINANTS OF HEALTH 4 pages		B10=COMPLIANCE REVIEW		B11=D-SNP	
Bill, Jay, Jenna		Dr. Del-Colle, Rachel, Susan		Chrstina, Michelle, Jakenna		Christina, Tom	
4-hour meet	10/17 @ 8-11 am	4-hour meet	10/16 @ 1-5	4-hour meet	10/13 @ 8-11	4-hour meet	10/16 @ 8-12
1.5-hour meet	11/07 @ 8-9:30	1.5-hour meet	11/6 @ 12:30-2:00	1.5-hour meet	10/30 @ 9-10:30	1.5-hour meet	10/27 @ 10-11:30
.5 meet	11/13 @ 11-11:30	.5 meet	11/14 @2-2:30	.5 meet	11/13 @ 9-9:30	.5 meet	11/8 @ 9-9:30

COST BID	
Bobbi, Matt, Pam	
4-hour meet	10/12 @ 8-12
3-hour meet	10/26 @ 9-12 pm
.5 meet	11/1 @ 1-2:30pm
BOBBI	MATT PAM

Oral Presentations 2 presentations			
Jakenna, Dara, Danielle, Melissa			
Oral presentation 10/24, 10/25, 10/26, 11/1, & 11/2 Discussion – 1-4			
1.5-hour meet	11/8 @ 1-2:30 pm		
.5	11/14 @ 11-11:30 am		
JAKENNA	DARA	DANIELLE	MELISSA

Examples of ALTCS E/PD Commitments

General statement in ALTCS EPD Contract:

The Contractor specified various actions it committed to take to enhance the ALTCS E/PD program in its Response to Request for Proposal YH24-0001. Consistent with RFP YH24-0001 Instructions to Offerors which provides: “The Proposal submitted by the Offeror will become part of the Contract with AHCCCS,” the Contractor shall ensure they effectuate all such commitments and report compliance in a manner determined by AHCCCS (e.g., deliverable submission, operational review). The list below is not intended to be an all-inclusive compilation of action items for the Contractor. However, the list is provided as a summary to identify many of the actions committed to be performed by the Contractor as part of its contractual obligations.

Examples of Our Current ALTCS E/PD Commitments

❖ **Banner-University Care Advantage Commitment example:**

Establish Case Management processes to include utilization of a Priority System to evaluate if the timing of a member's initial Case Management visit requires less than the AHCCCS standard of within 12 business days.

❖ **Mercy Care Commitment example:**

Establish mercy Care Paws Program including veterinarian care and boarding when the member's hospitalized.

❖ **United Healthcare Community Plan Commitment example:**

Establish Case Management processes to include utilization of a Priority System to evaluate if the timing of a member's initial Case Management visit requires less than the AHCCCS standard or within 12 business days.

Questions?

HELPFUL INFORMATION AND LINKS

*Any questions do not hesitate to reach out to:
Sandi Borys, Julie Ambur, or Kristina (Kris) Gill*

[SCORING TRAINING POWERPOINT PRESENTATION](#)

[YH24-0001 – ALTCS E/PD BIDDERS LIBRARY](#)

[SCORING TOOLS FOR B4 - B1 COST BID BAFB BIDDING TOOL
PRESENTATION](#)

Questions?

