Medicaid MCO RFP Protest Summary

SITUATION AND BACKGROUND
On Monday, August 19, 2019, Louisiana Healthcare Connections (LHCC) delivered its protest of the Medicaid managed care organization (MCO) contract awards to the State Procurement Officer.

Louisiana’s Procurement Code is designed to ensure public confidence in a fair and equitable system of public contracts awarded under a process free from bias or favoritism. However, it is immediately obvious that this RFP process was tainted by multiple conflicts of interest from the start.

Even with the limited documents received in response to its public records requests, LHCC has discovered that key Louisiana Department of Health (LDH) personnel were put in the impossible position of adjudicating a significant health policy dispute with LHCC on behalf of LDH, at the same time that they played critical roles in evaluating LHCC’s proposal. They had taken a clearly hostile posture toward LHCC well before the RFP process began; LDH should never have assigned them to the evaluation committee. Those evaluators were acting as both judge and prosecutor against LHCC; no one could be fairly asked to do both of those things at the same time.

This document summarizes multiple serious issues in the evaluation process, described in more detail in our protest, including:

A. Conflicts of interest and improper bias by members of the RFP evaluation scoring committee
B. Arbitrary and capricious inconsistency in scoring MCO proposals
C. Arbitrary and capricious inconsistency in consideration of recent experience with proposers
D. Failure to reject two proposals that plainly did not meet mandatory RFP requirements, possibly due to additional conflicts of interest
E. The possible withholding or destruction of public records related to the evaluation process

As a result of these issues, LHCC requests that the Chief Procurement Officer immediately vacate the contract awards, and either (1) order LDH to issue a new RFP or (2) order LDH to properly and objectively re-evaluate the proposals of all six MCOs, without bias, inconsistency and violations of the Procurement Code and RFP protocols.

The Medicaid beneficiaries of Louisiana, health care providers, the State, LHCC, and the other MCOs responding to the RFP all deserve better than this tainted, unfair process. These results, if permitted to stand, will threaten the health and well-being of hundreds of thousands of our state’s most vulnerable and hard-working residents.

SUMMARY OF MAJOR ISSUES

A. Conflicts of interest and improper bias targeted against LHCC by members of the RFP evaluation committee (pages 15 - 19)

Louisiana procurement law requires a fair and equitable process that protects against bias in contract awards. Conflicts of interest among members of the evaluation committee resulted in an unfair and biased process, and at least partially explains the capricious scoring that occurred.

• Two members of the five-member RFP evaluation committee, Michael Boutte and Stacy Guidry — as well as an LDH subject-matter expert, Whitney Martinez, who assisted the committee — were put in the untenable position of adjudicating a serious health policy dispute between LHCC and LDH at the same time that those individuals were evaluating LHCC’s proposal.
The ongoing dispute is over a health policy designed to reduce the number of preventable hospital readmissions and improve the quality of hospital care, which LHCC implemented on January 1, 2016. In July 2018, LDH decided to retroactively prohibit the policy, a change that LDH emails indicate was prompted by Ms. Martinez. LHCC disputes this retroactive prohibition in accordance with its rights under its current contract.

Recent public records requests uncovered emails between LDH employees demonstrating animosity toward LHCC while they were on the RFP evaluation committee. Mr. Boutte and his colleagues plainly demonstrated themselves to be in an adversarial posture toward LHCC; that alone should have disqualified them as evaluators in the RFP process.

Ms. Martinez later fell asleep during LHCC's oral presentation to the LDH evaluation committee during the RFP process, a clear indication that she and her LDH colleagues had already made up their minds on LHCC's proposal.

B. Arbitrary and capricious inconsistency in scoring MCO proposals (pages 20 - 29)

Louisiana procurement law and the Guidelines for Proposals Evaluation required evaluators to ensure scoring is consistent and unbiased. The evaluators’ scoresheet, perhaps motivated by the conflicts of interest described above, were neither consistent nor unbiased.

- LDH failed to establish guidance to evaluators on consistent scoring of strengths, weaknesses, and their degree, and how to consider recent experience (page 21).

- The evaluation scoresheets are replete with examples of glaring inconsistencies: where other MCOs were credited as having "strengths" for components of their programs that LHCC also has (or surpasses), LHCC's scoresheet was silent. In other cases, where other MCOs and LHCC had the same components that were viewed as weaknesses, LHCC's weaknesses were deemed to be "major" where others' were simply "weaknesses."

- LHCC's protest describes more than 20 examples of arbitrary and capricious scoring. These inconsistencies were not insignificant: LHCC suffered between 114 and 202 points in reductions due to arbitrary and capricious inconsistencies in scoring (pages 23-29).

- Had LHCC been evaluated consistently with the other MCOs, it would have finished in third place and would have been awarded a contract.

C. Arbitrary and capricious inconsistency in consideration of recent experience with the proposers (pages 21 - 24)

LDH failed to provide any guidance or criteria for whether, when or how evaluators should consider recent experience with proposers. Inconsistent and arbitrary citations of “current” or “recent” experience gave evaluators with conflicts of interest a way to “put their thumb on the scale” during the scoring process.

- Evaluators inconsistently considered proposers’ experiences in other markets. In particular, the evaluation of LHCC's "Proposer Organization & Experience" included reference to purported “penalties” incurred by LHCC in other markets. However, the evaluators make no reference to two proposers' tumultuous departures from Iowa's Medicaid program in 2017 and 2019, respectively. Their departures — which left Iowan residents scrambling to find coverage and, in one case, left many providers without millions of dollars in payment for their services — are examples of far more recent and relevant experience with other proposers that the evaluators arbitrarily omitted (pages 22 – 23).
• The scoresheet also fails to note that one of these proposers pointedly did not list Iowa as a reference, even though the RFP required contact information for each state where they have had a Medicaid managed care contract within the past three years.

• To make matters worse, evaluators even cited unsubstantiated "current experience" to contradict black-and-white facts provided in records submitted by the MCOs to LDH, such as LHCC’s significant reductions in provider complaints related to claims.

• Some of the documents that LDH provided to justify its use of recent experience are dated July 26, 2019, over a month after scoring was completed (June 24, 2019), raising concerns about their validity.

• Consideration of "current" or "recent" experience gives preferential treatment to non-incumbents, with whom evaluators have little to no experience.

• Finally, the Louisiana Procurement Code only allows LDH to assess each proposal based on the criteria actually presented in the RFP. Because these "current" and "recent" experience criteria were not included, LDH should not have considered them in the evaluation process.

D. Failure to reject two proposals that plainly did not meet mandatory RFP requirements, possibly due to additional conflicts of interest (pages 32 - 38)

LDH was required – but failed – to exclude proposers that failed to meet mandatory qualifications required by the RFP, or that provided glaringly inaccurate information in their proposals.

1. One proposer failed to demonstrate RFP mandatory qualifications and should have been disqualified for submitting an incomplete proposal (pages 33 - 35):

   a. Audited financial statements to prove the financial soundness and stability of material subcontractors, an RFP requirement which was re-emphasized in the RFP Q&A

   b. RBC (risk-based capital) certification to demonstrate its solvency, which proves to LDH that the insurer is financially able to operate reliably in the managed care program

   • These omissions are especially relevant in light of this proposer’s disruptive departure from the Iowa Medicaid managed care program in 2017, leaving more than $14 million in provider claims unpaid.

   • A possible explanation for this proposer’s unusual treatment may be that their chief executive is a former LDH employee who hired Ms. Guidry, a member of the evaluation committee, at LDH. That personal relationship should have caused Ms. Guidry to recuse herself from the evaluation process due to her conflict of interest.

2. Another proposer submitted substantially inaccurate information about its provider network and should have been disqualified for submitting an inaccurate proposal (pages 35 - 38):

   • This proposer submitted a Provider Network file that inaccurately included hundreds of providers who had not agreed to join their Medicaid network.

   • Since the contract awards were announced, over 320 of the primary care physicians and 150 specialists that this proposer listed in its Provider Network listing have stated that they do not accept Medicaid.

   • Even a cursory evaluation of this proposer’s Provider Network listing should have identified to LDH that this proposer had significantly overstated their provider network, and that it did not
conform to the RFP’s requirement that each provider have "signed contracts or letters of agreement."

- This proposer’s overstating of its network was just one of many errors in their purported provider network listing; additionally, hundreds of entries were submitted with required information missing (e.g., national provider number (NPI), addresses, phone numbers, accessibility for patients with disabilities, etc.).

- LDH’s decision to give this proposer the highest score for its promised provider network was highly unfair to LHCC, which has done the hard work of actually building the largest Medicaid provider network in Louisiana.

- Rather than being awarded the highest score for its provider network, this proposer should have been disqualified for its substantially inaccurate and deficient submission.

E. The withholding or destruction of public records of the evaluation process (page 12)

Our efforts to review the evaluation process have been hampered by LDH’s failure to release evaluators’ handwritten notes in response to public records requests, as required by state law.

With respect to the lack of handwritten notes, there are only two credible possibilities, both of which are extremely troubling:

- First, that LDH intentionally and unlawfully shredded the handwritten notes. Indeed, a draft "Managed Care Procurement Evaluator Training" document produced by LDH states that "individual notes of Review Team members will be shredded." If LDH shredded the evaluators’ notes, it would be an egregious violation of Louisiana’s laws on the maintenance of public records.

- Second, that LDH has handwritten notes and is refusing to produce them in response to public information requests, which would raise troubling questions about LDH’s motivations.

A theoretical third option — that there was only a single page of handwritten notes written about LHCC by the 32 evaluation participants who reviewed six proposals totaling thousands of pages — is not at all credible, including because some documents already produced by LDH make reference to individuals taking notes.