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RENEWED REQUEST FOR STAY OF CONTRACT PERFORMANCE

Via Hand Delivery, Email, And USPS Priority Express Mail

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Re: Healthy Blue's Request For Meeting With Nebraska Department of Health and Human Services' Chief Executive Officer and Reconsideration of the Denial of Healthy Blue's Protest of the Notice of Intent to Award Under Request for Proposal for Medicaid Managed Care Program, Number 112209 O3

Dear Ms. Smith:

We, along with Troutman Pepper Hamilton Sanders LLP, represent Community Care Health Plan of Nebraska, Inc. d/b/a Healthy Blue ("Healthy Blue"). Healthy Blue submits this request for a meeting and reconsideration of Nebraska Department of Health and Human Services' ("DHHS") denial of Healthy Blue's October 7, 2022 Protest of DHHS' improper Notice of Intent to Award contracts for DHHS' Request for Proposal for Medicaid Managed Care Program,

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Number 112209 O3 (the “RFP”).¹ For the reasons stated in detail below, Healthy Blue respectfully renews its position that the Notice of Intent to Award should be invalidated, vendors disqualified, and/or for a re-procurement of services.

RELEVANT BACKGROUND

A. DHHS’s Flawed RFP Process

On or about April 18, 2022, DHHS issued the RFP, seeking vendors to provide services for its Medicaid Managed Care Program. (*See* RFP, Schedule of Events as amended by Addendum 5.) On July 1, 2022, Healthy Blue, an incumbent serving more than 120,000 citizens of the State of Nebraska since the beginning of Heritage Health, supported by the local knowledge and expertise of Blue Cross Blue Shield of Nebraska, who has served millions of Nebraskans since 1939, timely submitted its detailed proposal in response to the RFP. DHHS evaluated bidders based on their written proposals as well as oral interviews. On September 23, 2022, DHHS publicly posted a notification awarding contracts to three vendors: incumbents UnitedHealthcare of the Midlands, Inc. (“United”), Nebraska Total Care, Inc. (“Centene”), and new-entrant Molina Healthcare of Nebraska, Inc. (“Molina”, collectively “Contract Awardees.”) (*See* Notice of Intent to Award, p.1.) On the same date, Healthy Blue requested certain public records concerning the RFP and subsequent awards from DHHS (“PRA Request”).

The three vendors chosen received combined written and oral evaluation scores of 5746.43, 5695.58, and 5471.92. (*See* RFP, Evaluation Document, as amended by Addendum 4.) Healthy Blue was ranked fourth among the bidders, with a combined score of 5417.21, less than 55 points below Molina, the third-place vendor. (*Id.*) The difference between Molina’s and Healthy Blue’s scores amounts to less than 1% of Molina’s score and approximately 0.8% of the 6500 possible points in the RFP scoring process. Moreover, the difference between Healthy Blue’s score and that of the highest-scoring bidder is less than 330 points (less than 6% of the total points possible). Thus, the scores between bidders were exceedingly close, and any errors in the RFP process or evaluation likely had a dispositive impact on the outcome of the process.

As discussed at length below, the Contract Awardees’ RFP submissions each suffered numerous critical defects, but in addition to the failures of the Contract Awardees’ RFP submissions, there were flaws in the RFP process itself. Notably, there were significant, unexplained shifts from the scoring methods used in this procurement that substantially differed from the last Nebraska Medicaid procurement. First, DHHS decreased the number of scored technical questions from more than 110 in the prior procurement to a mere 42 for the RFP at issue, raising significant concerns as to how DHHS could meaningfully satisfy Best Value Evaluation Criteria (“BVC”) for

¹ Healthy Blue incorporates all arguments and statements made in its protest by reference, as if fully stated herein. For ease of reference, Healthy Blue’s October 7, 2022 Protest is attached hereto as **Exhibit 1**.

evaluating proposals.² As a result of this change, sixty-five percent of the technical questions were evaluated as pass/fail and based on evaluation of RFP responses for awardees, the bar to “fail” was quite low.³ This led to an arbitrary and capricious evaluation process that did not result in awards in the best interest of Nebraska’s most vulnerable population. Further, despite the decrease in scored questions, DHHS more than doubled the possible points which could be accrued from technical questions (Part 2 – Approach). Where the prior procurement allowed a maximum of 2,120 points for 110 technical questions, this RFP had a maximum of 5,000 points for 42 technical questions. The practical impact of this shift in scoring is that 42 technical questions largely drove the RFP awards. Had the remaining technical questions been properly scored, Healthy Blue likely would have received a contract award.

In this RFP, DHHS did not score any questions from the following areas in the technical section: Eligibility and Enrollment, Business Requirements, Grievances and Appeals, Subcontracting Requirements, Program Integrity, Claims Management, Reporting and Deliverables, Transition and Implementation, Electronic Visit Verification for Home Health Care Services, and Risk Bearing Partnerships (Question 1). The decision not to score answers in some of these areas is particularly troubling given that some of them included between five and seven individual questions.⁴ These inexplicable shifts in the number of questions and points resulted in an inflated impact of the few scored questions and, more importantly, an exponential increase in the potential impact of subjective opinions on relatively few substantive issues. The razor thin margin between scores in this RFP, combined with the shift to an evaluation with more opportunities for subjective bias, rendered the results of the RFP arbitrary and capricious, and increased the likelihood that Healthy Blue’s score was unfairly and disproportionately impacted by bias and not determined by discrete scored issues with demonstrable distinctions between bidders. Without any explanation or justification, this injection of potential bias into the RFP process and failure to score important technical requirements constitutes an abuse of DHHS’s discretion.

² To-date, DHHS has not produced any documents or information identifying when (pre- or post-submission) or why DHHS drastically reduced the number of scored technical questions; instead, opting for a predominately pass/fail technical evaluation, which is a much lower bar.

³ For example, as set forth more fully below, the RFP required bidders to identify all state and federal investigations during the last five years. Rather than substantively respond, United simply pointed DHHS to its current SEC 10-K disclosure which is non-responsive because it is limited by a materiality threshold and does not lookback five years. Because United did not even attempt to answer the RFP question-posed, this should have resulted in a “failed” score, but DHHS erroneously claimed in the initial protest decision that it could waive the defect.

⁴ Of particular note, DHHS failed to score questions 49 and 50, addressing subcontracting, in the current RFP while those questions were worth 1.18% of points in the prior RFP. Because Molina failed to appropriately respond to the RFP’s subcontracting questions and because the difference in Healthy Blue’s and Molina’s scores in the current RFP was less than 1%, the decision not to score these two questions, alone, likely changed the outcome of the RFP.

B. DHHS's Improper Protest Procedure

Although DHHS told bidders that it was committed to providing “transparency to bidders about the evaluation process for Request for Proposal 112209-O3,” (Memo to Bidders from Greg Walklin, July 20, 2022; *see also* October 13, 2022 Memo re Protest from Greg Walklin published “to provide complete transparency”), more than a month has passed since Healthy Blue made its PRA Request, and Healthy Blue still has not received many of the records to which it is entitled under Nebraska’s public records statute. DHHS has provided some records, but has omitted others, and has continuously refused to produce the redacted portions of Molina’s RFP proposal, without *any* basis in law. In its Protest Decision, DHHS merely invited Healthy Blue to seek judicial relief or petition the Nebraska Attorney General as a resolution to its PRA Request issues. (*See* Letter from Larry Kahl, Chief Operating Officer of DHHS, to Andre Barry (Oct. 24, 2022) (the “Protest Decision”), p. 4.) In other words, rather than address the fundamental fairness concerns raised by DHHS’ insistence that Healthy Blue meet the 10-day protest deadline while it simultaneously restricted access to administrative records, the Protest Decision essentially invited a lawsuit rather than comply with Healthy Blue’s reasonable request. In an effort to avoid litigation, on November 4, 2022, Healthy Blue petitioned the Nebraska Attorney General for assistance regarding obtaining these outstanding records that are central to its protest grounds.⁵

On October 7, 2022, Healthy Blue filed a protest of the Notice of Intent to Award identifying numerous deficiencies with the Contract Awardees’ proposals and DHHS’s flawed procurement process (“Protest”).⁶ Specifically, Healthy Blue advised DHHS that Molina’s submission misrepresented how it would provide services to DHHS and those Nebraskans who participate in the Medicaid program by artificially enhancing the apparent volume of services it would provide through Nebraska-based entities. Further, the Protest informed DHHS that Molina’s misrepresentations include both a failure to identify more than a dozen out-of-state subcontractors that would play crucial roles in the provision of Medicaid services as well as a misrepresentation of how much work would be performed by Molina’s California-based corporate parent. Additionally, Healthy Blue showed that Centene’s and United’s proposals both failed to comply with material provisions of the RFP. Specifically, Centene and United substantially misrepresented the numerous investigations that states across the country have initiated against them based on pervasive issues with management of Medicaid programs. Glaringly, United did not even attempt to respond to the question seeking state and federal investigations in the last five

⁵ Healthy Blue’s November 4, 2022 letter to the Nebraska Attorney General is attached hereto as **Exhibit 2**.

⁶ Healthy Blue reserves the right to amend or supplement the arguments asserted in its Protest as additional relevant information is acquired as a result of its currently unsatisfied requests for documents, emails, and other communications related to the RFP process.

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years, instead deflecting to its SEC 10-K disclosures, which does not include the information requested and should have resulted in a “fail.”

On October 13, 2022, DHHS issued a memorandum inviting the Contract Awardees to provide “additional information, as applicable, for DHHS’ review and response to the protest filed by” Healthy Blue. (Memorandum Re: Protest, from Greg Walkin, DHHS Director of Procurement and Grants to Contract Awardees (Oct. 13, 2022)) On October 18, 2022, United, Centene, and Molina each provided responses to DHHS’ memorandum, but those responses included numerous mischaracterizations of their proposals and Healthy Blue’s Protest contentions. Moreover, the awardees did not provide copies of their October 18 responses, nor did DHHS require it, and Healthy Blue did not receive a copy of the Contract Awardees’ responses until October 24, 2022. On the same date, without giving Healthy Blue any opportunity to respond to the Contract Awardees’ opposition to the Protest, DHHS summarily denied the Protest. The Protest Decision is flawed and improper because DHHS superficially avoided arguments raised in the Protest on the myriad deficiencies in the bids submitted by Molina, Centene, and United in the guise of “discretion.” DHHS failed in its duty to actually examine the serious deficiencies raised by Healthy Blue and instead blindly relied on the Contract Awardee’s responses to Healthy Blue’s Protest, adopting their positions as its own.

For the reasons set forth herein, and because the initial protest review failed to properly examine Healthy Blue’s grievance, Healthy Blue respectfully requests that DHHS grant Healthy Blue a meeting to present its issues and reconsider its position in the Protest Decision denying Healthy Blue’s request to invalidate the contract awards.⁷ Additionally, Healthy Blue urges DHHS to reconsider its decision not to stay the award until the resolution of this ongoing Protest, to avoid the need for cancellation of any executed contract. (*See* DAS Procurement Manual, § 6.20, p. 44, noting that cancellation of a contract is an express remedy for an error in the procurement process.)

⁷ *See* DHHS’ guidance document pursuant to Neb. Rev. Stat. 84-901.03 dated April 8, 2022 and entitled DHHS Procurement Grievance/Protest Procedures (“DHHS Protest Policy”), at p. 1. The policy provides that once a proper written request is made “[a] meeting will be scheduled and held with the bidder, Chief Operating Officer, and Chief Executive Officer or designee, for the bidder to present their issues.” *Id.* at p. 2.

GROUNDNS FOR RECONSIDERATION OF PROTEST

I. DHHS FAILED TO ADEQUATELY CONSIDER HEALTHY BLUE'S PROTEST GROUNDNS CONCERNING MOLINA'S PROPOSAL

a. Molina's Failure To Properly Disclose Subcontractors Merits Disqualification

Healthy Blue explained at length in its protest that Molina's response to the RFP failed to properly disclose the number of subcontractors it intended to use. (Protest, pp. 4-6.) As Healthy Blue then explained (and now reasserts), this deficiency merits disqualification of Molina's RFP response or, at minimum, a substantial reduction in Molina's score, placing Healthy Blue in third place as awardee. (*Id.*) Molina's main argument in response to Healthy Blue's protest is that Molina was excused from disclosing virtually any subcontractors in its RFP response because DHHS clarified that subcontractors, as defined by the RFP, did not include "[e]ntities who perform ancillary functions for an MCO[.]" October 18, 2022 Letter from Molina to Greg Walkin, Director of Procurement and Grants ("Molina Response") at 2. First, it is worth noting that no other MCO interpreted DHHS's guidance on this topic in the same way. What is more concerning, however, is the appearance that the agency adopted, without question, Molina's unreasonable explanation as a basis for its denial of Healthy Blue's protest and, in doing so, abdicated its responsibilities related to evaluations of proposals. In particular, there is no evidence yet produced showing that DHHS addressed or even considered the disparity between Molina's disclosure of subcontractors and the disclosure of other RFP bidders at the initial evaluation stage. Further, DHHS's blind acceptance of Molina's contention that it was not obligated to make the same level of subcontractor disclosures that other bidders made is either doubling down on its initial oversight or indicative of bias in favor of Molina.

As Healthy Blue pointed out in its protest, no other bid suffered from the same subcontractor disclosure violation as Molina. In fact, other bidders listed between *three and ten times* the number of subcontractors in their RFP responses.⁸ Molina proposed to use a similar number of subcontractors, as demonstrated in other areas of its RFP response, but deceptively declined to disclose them as "subcontractors," as required. By comparison then, Molina's RFP response should either have been disqualified or issued a significant point deduction for noncompliant subcontractor disclosures. Further, Healthy Blue's protest identified several subcontractors which Molina did not appropriately disclose, but where other bidders properly disclosed the same entities as subcontractors. In fact, there are many examples in Molina's RFP response where Molina mentions vendors and vendor partners without specifically naming the relevant entities (compiled pages 403, 521, 533, 628, 629, 745, 793, 952, 973, 974, 1013). Although it is incumbent upon DHHS to scrutinize Molina's RFP response, including its list of subcontractors, DHHS elected, without apparent reason, to qualify Molina's inconsistencies as

⁸ United disclosed twenty-eight subcontractors, Centene disclosed fourteen, and Healthy Blue disclosed thirty-six subcontractors.

waivable or permissible error. Since these subcontractors will be serving at-risk Nebraskans, the failure to know, much less vet, those subcontractors is not simply a procedural miscue that can be waived.

Molina’s Response ignores its own burden, which was part of the RFP, to provide details regarding its subcontractors. A careful analysis of RFP requirements, definitions, and the state’s own guidance issued through the Q&A process – the same guidance on which Molina relies – further supports Healthy Blue’s position. First, as explained at length in Healthy Blue’s protest, Molina failed to comply with the explicit RFP requirements for disclosing subcontractors. The RFP states that “if the bidder intends to subcontract *any part of its performance hereunder*, the bidder should provide” information regarding its subcontractors, including the tasks to be performed by each subcontractor, the percentage of performance hours intended for each subcontract, and the total percentage of subcontractor performance hours (emphasis added). (RFP § VI.A.10.) Molina’s response to Healthy Blue’s protest attempts to sidestep Molina’s failure to properly disclose subcontractors by arguing that Healthy Blue did not conclusively prove what services each undisclosed subcontractor would be performing for Molina under the contract. (Molina’s Response, pp. 5-6.) However, the major distinction between Molina’s disclosures and those of other MCOs confirms that Molina’s disclosures are insufficient. When this disparity is viewed in the context of the numerous vendors specifically named, but not disclosed as subcontractors in Molina’s RFP response, the burden should shift to Molina to demonstrate specifically how, absent deception, it was the only bidder with such limited subcontractor disclosures. Instead, DHHS simply ignored the RFP violation, putting Nebraskans at risk.

Second, with respect to the Q&As on which Molina’s response to Healthy Blue’s protest relies (*see* Question No. 17 below), what neither Molina nor DHHS acknowledges is that Molina omitted key portions of the Q&A from its protest response.

17.	Section VI.A.10. - Corporate Overview	175	<p>state agency.</p> <p>With respect to question 10. Subcontractors, please confirm the State is seeking information about individuals or entities delegated to perform core services required by the contract, and that vendors for administrative services are excluded from this question.</p>	<p>Bidders should provide the identified information about individuals or entities who fit the definition of “subcontractor” as defined in the Glossary of Terms: “Individual or entity with whom the contractor enters a contract to perform a portion of the work awarded to the contractor” (emphasis added). Entities who perform ancillary functions for an MCO are not “subcontractors.”</p> <p>Refer to the State Response to Question Number 64 of Addendum One Questions and Answers.</p>
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Specifically, Molina's Response conveniently failed to include two important things. First, the question asked DHHS to exclude "vendors for administrative services" from the definition of subcontractors, but DHHS refused. Instead, it only excluded vendors that perform an ancillary function from the definition. Second, in its Answer, DHHS reiterated the definition of a subcontractor includes any vendors that "**perform a portion of the work awarded** to the contractor. (emphasis in original)" (DHHS' response to Q&A No. 17) Further, DHHS also referred bidders to Question Number 64 from the first round of Q&A, further stressing the definition of a subcontractor, and referencing the applicable Code of Federal Regulations ("CFR") requirement. The CFR is consistent with the RFP, defining a subcontractor as "an individual or entity that has a contract with an MCO...entity ***that relates directly or indirectly to the performance*** of the MCO's...obligations under its contract with the State." (42 C.F.R. § 438.230.) Molina's assertion that all of the undisclosed subcontractors were completing only ancillary work and nothing that relates directly or indirectly to the performance of work awarded under the RFP defies belief.⁹ Thus, it is clear that the guidance given by DHHS in the Q&A process was not a justifiable basis to omit subcontractors from disclosure. No other MCO applied Molina's erratic and unreasonable interpretation of this requirement, and Molina's response confirms that it did not even follow this alleged interpretation of the Q&A response, as certain subcontractors referenced elsewhere in Molina's bid unquestionably provide non-ancillary work and should have been disclosed. Accordingly, it appears Molina limited its subcontractor disclosures to appear deceptively local. This failure to comply with the terms of the RFP, merits disqualification of Molina's RFP response or, at minimum, a score deduction.

⁹ Molina disingenuously attempts to skirt the issue by drawing a distinction between providers and subcontractors (*see* Molina's Response at 6). But Molina's own RFP Proposal acknowledges its use of subcontractors in multiple ways and manners: "We contract with third party vendors and service providers who provide services to us and our subsidiaries or to whom we delegate selected functions. Some of these third parties have direct access to our systems." (*See* Molina Proposal § VII.A.2, App VII.A-28); "Where service gaps are identified, Molina will support the existing Nebraska providers with an interest in expanding service delivery and will address gaps in services with innovative vendor solutions to further develop and strengthen healthcare access to the member community." (*See* Molina Proposal § V.E, V.E-18); "We contract with an external survey vendor to offer a confidential mechanism by which providers report on their experience with ease of reaching the call center, process of obtaining member information (e.g., eligibility, benefits), helpfulness of call center staff in obtaining referrals for patients in their care, and overall satisfaction with call center services." (*See* Molina Proposal § V.J, V.J-9); and "We offer telehealth solutions through our national vendor, but we understand that some areas lack the broadband to make this solution feasible. We will look to partner with Nebraska Extension to identify opportunities to host telehealth stations at the Extension offices and other community locations to improve access to telehealth services." (*See* Molina Proposal § V.L, V.L-45). This list is not even exhaustive, but merely by way of example.

b. Molina’s Failure To Properly Disclose The Amount Of Work To Be Performed By Its Parent Company Also Warrants Disqualification

In its response to Healthy Blue’s Protest, Molina boldly claims that only 3.5% to 4% of the work awarded will be subcontracted to its parent company. (Molina Response, pp. 8-10.) Molina further asserts that “[u]nlike Healthy Blue, which runs a significant portion of its operation out of its Indiana-based parent company, Elevance, Molina’s model is to house all critical, provider and member-facing services in Nebraska, hence only 3.5- 4.0% of services will be provided by its subcontracted parent.” (*Id.* at 8-9 n.11.). This is simply not true. Further, there is no allegation here that Healthy Blue misrepresented the amount of work to be performed out-of-state. In addition, unlike Molina, Healthy Blue leverages Blue Cross Blue Shield of Nebraska for additional experience and expertise in the state, who has been operating locally in the state since 1939.

A review of Molina’s RFP responses and actual work executed in other states further demonstrates that Molina’s claims are again disingenuous and deliberately misleading. For example, in obtaining a contract award in Mississippi, Molina recently represented to Mississippi officials that its parent company actually performs nearly 40% of the work, demonstrating how the Molina corporate structure works in practice. Mississippi is a mature market where Molina has operated for over four years, serving a population similar in size to the population an awardee would serve under the contract in the RFP. (See Molina Healthcare of Mississippi, Inc.’s Response to RFQ 20211210, Management Qualification: 4.3.1 p. 7 (“We have been a MississippiCAN health plan since October 2018. . . . [W]e serve 80,899 MississippiCAN Members [and] 14,125 CHIP Members.”)) Molina’s work in Mississippi is indicative of its operations in other markets, and most importantly, significantly undermines Molina’s representations about the involvement of its parent company in Nebraska health plan’s operations.

In the Mississippi RFP, bidders were asked to describe their organization and staffing. Serving 92,000 members, Molina indicated having 172 health plan employees in Mississippi supported by the resources from subcontractors, including Molina’s parent company, Molina Healthcare, Inc. The Mississippi RFP asked bidders for detailed disclosures about prior experiences with subcontractors, including the number of staff hours expanded by subcontractors during time of the contract. For its parent company, for a 4-year contract term, Molina indicated 865,280 hours. This equates to 216,320 staff hours annually, or 104 full-time equivalents (“FTEs”).¹⁰

Therefore, Molina’s Mississippi health plan would require approximately 104 full-time associates from its parent company to support 172 associates. Looking at just the amount of work subcontracted to Molina’s parent company for the local health plan, the parent company would be performing 37.7% of work between the two entities – an amount nowhere near the 3.5 to 4% range Molina deceptively claims here. Despite its knowledge of the disproportionate amount of work

¹⁰ The calculation of 104 FTEs is based on a 52-week year with 40-hour work weeks.

completed by its parent company in comparable contracts, Molina misrepresented this information in its Nebraska RFP bid, boldly claiming that it does not operate the same way as other bidders. Molina's own statements and performance in comparable markets establish that is not the case. Simply put, it is not feasible that a company who has never operated in Nebraska, yet in the states it currently operates, relies on its California-based corporate parent to perform 40% of the work, will suddenly transform its corporate structure to perform 96% to 97% of the work locally, and virtually without using any other subcontractors. Further, Molina will purportedly perform all of this work locally though it currently has no Nebraska-based footprint and no provider network. DHHS's refusal to address the substance of these allegations and its decision to instead, blindly accept Molina's dubious representations, is arbitrary, capricious, and an abuse of discretion.

c. Molina's Contentions Regarding Out-of-State Key Staff Members

Healthy Blue's protest also noted that virtually all of Molina's key staff were located outside of Nebraska. (Protest, p.7 n.5.) This fact runs contrary to Molina's false narrative that most of the resources it employed to carry out the work awarded would come from Nebraska. Further, it again demonstrates Molina's efforts to sidestep the requirements of the RFP. Now, in an effort to further its skewed appearance of locality to Nebraska, Molina incredibly disputes the significance of its out-of-state staff, arguing that its staff may "initially" be out of state but will ultimately relocate to Nebraska. (Molina's Response, pp. 9-10.) Molina also asserts that even if those key staff members weren't relocated, the RFP did not require key staff to be local to Nebraska or even employed by Molina itself. (*Id.*) DHHS, for its part, declines to address this issue at all. (*See generally* Protest Decision.)

As an initial matter, nowhere in the RFP does it state that the key staff could be located anywhere but Nebraska "initially." Rather, the RFP specifically required that "[f]or each key staff position marked with an asterisk in the table, the staff member must be based in Nebraska." (RFP p. 39.) The relevant table even notes that those staff members "Must be based in Nebraska." There would be no point in having this requirement as part of the proposal, if "key staff" could just change location after a contract is awarded. DHHS did not seek a transition period. But even if DHHS accepts Molina's proffered interpretation of the RFP – *i.e.* that key staff members may be employed out of state – this factor shows that Molina, at minimum, made inflated and misleading representations about how much work would be drawn locally from Nebraska and invalidates scoring for any credit given to such specious contentions. DHHS does at-risk Nebraskans no favors by ignoring such fundamental misrepresentations.

II. DHHS FAILED TO ADEQUATELY CONSIDER HEALTHY BLUE'S PROTEST GROUNDS CONCERNING UNITED'S PROPOSAL¹¹

a. United's Proposal Should Be Disqualified For Failure To Complete Mandatory Provisions Of The RFP

In its Protest, Healthy Blue identifies critical flaws in United's RFP proposal. Specifically, Healthy Blue notes that United: (1) completely failed to disclose its state and federal investigations contemplated by the RFP by directing DHHS to its most recent Form 10-K filing, and (2) failed to disclose at least four investigations¹² that were initiated against UnitedHealthcare Group and its affiliates in the past five years. (Protest, pp. 11-13.) In the Protest Decision, DHHS concludes that it did not find United's disclosures to be misleading, but then provides absolutely no facts or analysis to support its conclusion. (Protest Decision, p. 2.) Simply stating a conclusion without affording any basis for that conclusion is not an exercise of discretion, but the abandonment of its exercise. Further, the Protest Decision states that the "additional material provided by Healthy Blue in its protest does not necessitate revision of this conclusion..." again, providing no support for its conclusion.¹³ (*Id.*); see also *Bethesda Found. v. Buffalo Cnty. Bd. of Equalization*, 263 Neb. 454, 462 (2002) (stating that an agency's decision is "arbitrary when it is made in disregard of facts or circumstances and without some basis which would lead a reasonable person to the same conclusion").

Instead, DHHS merely asserts that it has broad discretion¹⁴ to "waive a deviation or error in disclosure, such as that referenced in the protest against United, as not being material, not

¹¹ Molina's proposal also likely should have been deemed non-responsive for failure to disclose pending or previous governmental investigations of its activities. However, Healthy Blue has been precluded from verifying those disclosures because Molina improperly redacted information about investigations against it, (*See* Molina Proposal § VII.A.7.), and DHHS refuses to offer the "transparency" into the evaluation of the RFP it purported to provide.

¹² Although Healthy Blue's initial search revealed only four undisclosed investigations, United's nondisclosures and misrepresentations indicate that further research may reveal more.

¹³ Providing no facts to support its actions is particularly concerning in this case, because Healthy Blue pointed DHHS to tangible evidence of actual investigations that United intentionally failed to disclose and, as discussed in further detail below, United's response only helped to prove Healthy Blue's point.

¹⁴ DHHS' discretion is properly invoked only when all mandatory RFP criteria are satisfied. (*See* RFP § I.V.3., p.9., granting DHHS discretion to "waive deviations or errors in the State's solicitation process and in bidder proposals *that are not material*, do not compromise the solicitation process or a bidder's proposal, and do not improve a bidder's competitive position." (emphasis added)) Here, Healthy Blue has identified numerous instances where bidders awarded

compromising of the bid solicitation process, or improving a bidder's competitive position." (Protest Decision, p. 3.) Contrary to DHHS' implication, its discretion is not without limitation. *See Rath v. City of Sutton*, 267 Neb. 265, 284–85 (2004) (citations omitted) (holding that an agency must not act "arbitrarily, or from favoritism, ill will, fraud, collusion, or other such motives..."). Both issues raised by Healthy Blue concerned material provisions of the RFP, and United's failure to adhere to those provisions most certainly had the effect of improving its competitive position. Section VI.A.7. of the RFP requires that each bidder disclose whether it (and its parent company, affiliates, and subsidiaries) is or has been the subject of ***any criminal or civil investigation by a state or federal agency***, during the past five years. Completion of this provision of the RFP was a mandatory minimum requirement for a bidder's proposal to be considered responsive. (*See* RFP's Evaluation Criteria, as amended by Addendum 4 (noting that "[p]roposals not complete or not meeting mandatory requirements **will** be excluded from further evaluation.") (emphasis added)); *see also* RFP, Glossary, p. xiv (defining a responsive bidder as a bidder "who has submitted a proposal which conforms to all requirements of the solicitation document"). Accordingly, United's failure to complete this section of the RFP properly compelled a finding that United's proposal was unresponsive. In fact, because Section VI.A.7 of the RFP was not a scored component, then it would have been a pass/fail component, which, for the reasons addressed above, United should have failed. In that case, United would not have been eligible for a contract award, and Healthy Blue would have been, at minimum, the third highest scoring bidder. Thus, United's competitive position was improved by its failure to comply with the RFP, contrary to the erroneous statement in the Protest Decision and, it **explicitly prejudiced Healthy Blue**.

Moreover, in the Protest Decision, DHHS appears to mischaracterize Healthy Blue's protest, with respect to United using its Form 10-K document, as one that merely "takes issue with this manner of disclosure of governmental investigations..." (Protest Decision, p.2.) However, Healthy Blue's Protest addressed the substance of the Form 10-K document referenced in United's proposal, not just the form of the alleged disclosure. Specifically, Healthy Blue advised that the Form 10-K document utterly fails to meet the RFP disclosure requirements for investigations in the last five years, because SEC filings only require "***material*** pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject." (*See* 17 CFR § 229.103 (emphasis added)). Form 10-K disclosures are not required to include all investigations across any particular timeframe, and certainly not all investigations as far back as five years. (*See id.*) The RFP does not limit the disclosure of civil investigations to only material proceedings not incidental to the business, nor does the RFP limit disclosure to investigations that are currently pending. (*See* RFP § VI, p.174.) In short, Form 10-K disclosures are not sufficient to capture all investigations within the 5-year timeline required by the RFP. Thus, it is not only the form of the disclosure (and DHHS's

contracts did not comply with mandatory provisions of the RFP. As such, DHHS is not entitled to rely on its discretion as a basis for disregarding mandatory provisions of the RFP. *See Little Blue Nat. Res. Dist. v. Lower Platte North Nat Res. Dist.*, 210 Neb. 862, 873 (1982) (noting agency must give due consideration to the relevant factors to avoid a clear error in judgment).

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failure to show its evaluators actually reviewed the document), but the substance of the disclosure which is fatally at variance with the RFP.

Additionally, in an obvious effort to muddy the waters and distract DHHS from several issues with its RFP proposal, United intentionally misrepresents several distinct and unrelated requirements in the RFP in its response to the Protest. Specifically, United asserts that its proposal does not suffer from material deficiencies because it provided its “litigation disclosures...in response to RFP Section VI.A.2.” October 18, 2022 Letter from United to Greg Walkin, Director of Procurement and Grants (“United Response”) at p.3.) United then says that Section VI.A.2 of the RFP “asked that the bidder [sic] ‘disclose any and all judgments, pending litigation or expected litigation...which might materially affect the viability or stability of the organization...’” so it responded to that specific requirement. However, United points to no authority that allows it to ignore Section VI.A.7 of the RFP, and have its omission pardoned by a post-hoc reference to a different section, Section VI.A.2. Neither is it sound agency policy to forgive an RFP violation if a bidder later claims that somewhere in the RFP information can be found; but if that is DHHS’s policy, then it is incumbent on DHHS to show that its evaluators scoured the RFP to find and properly score the omitted information. No such proof exists.

Unambiguously, Healthy Blue showed that United failed to comply with the provision requiring mandatory disclosures of all civil and criminal *investigations*, **not** judgments or any litigation, or sanctions (a completely different issue as addressed in the separate RFP section). Further, United says it stated, “due the nature of our overall business, UnitedHealth Group and its affiliates may be subject to various investigations and, while uncertain, would not individually or in the aggregate have a material adverse impact on its ability to perform the RFP services in response to RFP Section VI.A.7.” (United Response, p. 3.) This response is wholly insufficient as it fails to identify *any* investigations, required by the RFP and unreasonably imports improper limitations into the RFP. Given its failure to disclose any investigations, it is perplexing how United could even attempt to characterize its nonexistent investigation disclosures as “detailed and transparent disclosures that complied with the RFP’s requirements.” (*Id.*)

More troubling is that United’s cynical tactics have worked, at least so far – DHHS was apparently confused and simply accepted United’s contentions, even though they were plainly contrary to the mandatory provisions of the RFP. (Protest Decision, p.2.) The Protest Decision vaguely asserts that “United made disclosures of litigation activities pursuant to RFP § VI.A.2. and by referring to UnitedHealth Group’s Form 10-K filing,” yet by United’s own admission in its response, it apparently disclosed **none** of the pending investigations because they “would not individually or in the aggregate have a material adverse impact on its ability to perform the RFP services.” (United Response, p. 3.) Further, as discussed above, Healthy Blue’s Protest was to RFP Section VI.A.7 (investigations), not Section VI.A.2 (litigation). All other bidders were required to provide disclosure of all investigations, and it violates the terms of the RFP to “waive” material requirements for one bidder, but not all, with no apparent justification. DHHS’s actions

must be supported by “some basis which would lead a reasonable person to the same conclusion.” *Bethesda Found.*, 263 Neb. at 462. None exists.

United also incorrectly contends, once again obscuring the real issues, that “Healthy Blue took much [sic] same approach to its disclosures that United took” because in response to the RFP section requesting bidders to identify regulatory actions or sanctions Healthy Blue provided instances of non-compliance “**incurred as part of Medicaid managed care contracts ...**” (United Response, p. 4.) However, United deceptively omits the fact that during the RFP Q&A process, **DHHS limited the required sanction disclosures** to only those involving Medicaid and CHIP lines of business. (*See* DHHS’ response to Q&A No. 98.) Accordingly, Healthy Blue properly limited its responses to Medicaid managed care contracts. Unlike United, Healthy Blue did not omit any disclosures explicitly required by the RFP, and Healthy Blue was forthcoming in its narrative of what was being disclosed in conformance with the RFP and DHHS guidance. United’s blatant deceptions and material violations of the RFP should have caused its disqualification.

United intentionally misled DHHS in order to gain an advantage, to Healthy Blue’s detriment, and in turn failed to comply with the RFP. United did not complete Section VI, a **mandatory** minimum requirement for a proposal to be considered responsive. (*See* RFP § VI.A.7., p.174.) United’s proposal should have been disqualified, and United should not have advanced to Stage 2 of the evaluation process. (*See* RFP’s Evaluation Criteria, as amended by Addendum 4.) Further, United’s proposal does not disclose the required investigations, and United’s protest response does nothing to change or justify that fact. The Protest Decision ignored Healthy Blue’s Protest, opting to take the side of United and blindly accept mischaracterizations and misstatements, and as such, the DHHS’ protest decision should be reversed.

III. DHHS FAILED TO ADEQUATELY CONSIDER HEALTHY BLUE’S PROTEST GROUNDS CONCERNING CENTENE’S PROPOSAL

In its protest, Healthy Blue argued that Centene failed to disclose hundreds of millions of dollars its organization paid in at least seven states in the last five years to settle investigations alleging that it overcharged states’ Medicaid programs for pharmacy services. (Protest, p.10.) Section VI of the RFP requires that each bidder disclose whether it (and its parent company, affiliates, and subsidiaries¹⁵) is or has been the subject of ***any criminal or civil investigation by a state or federal agency***, during the past five years. (*Id.*) Centene is a subsidiary of Centene Corporation. Therefore, Centene was required to disclose any regulatory action or civil

¹⁵ The terms parent company, affiliates, and subsidiaries are not defined in the RFP. Thus, to ensure consistency with the RFP, the kinds of entities that fall within these categories should be interpreted in the broadest sense.

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investigation by a state or federal agency against Centene Corporation, and its affiliates, within the last five years. (*Id.*)

In answer to this charge, Centene contended in its protest response that “Healthy Blue appears to conflate no-fault settlements reached through proactive outreach *with investigations*. On June 14, 2021, Centene Corporation publicly announced that it had reached no-fault settlements with the states of Ohio and Mississippi and were in discussions with the states’ counsel to bring resolution to other affected states. (*See* Exhibit 1.) Consistent with the referenced proactive approach meant to avoid the need for an investigation and potentially litigation, Centene has entered into no-fault settlements with various other states related to its pharmacy benefit management business, as Healthy Blue’s Protest notes in its citations back to disclosures made by NTC in its own RFP Proposal. (*See* Protest, p.10, FN 10). Contrary to Healthy Blue’s unsubstantiated allegations, however, these no-fault settlements were reached after proactive outreach by Centene through discussions with the states’ counsel -- not in response to any undisclosed civil or criminal investigation.” (October 18, 2022 Letter from Centene to Greg Walkin, Director of Procurement and Grants (“Centene Response”) at p. 2.) (emphasis added). To substantiate this position, Centene attached a press release. But that press release does nothing to substantiate the origin and source of the payments announced.

Accepting, without documentation, Centene’s position, the Protest Decision states, “Nothing in Healthy Blue’s challenge of Centene’s disclosures justifies that the DHHS revise its evaluation of Centene’s proposal.” (Protest Decision, p, 2.) It is simplistic, or naïve, to accept without proof that Centene voluntarily paid hundreds of millions of dollars in reparations to a state without some type of “criminal or civil investigation” taking place, or perhaps more disturbingly, that DHHS ignored the very language of Centene’s press release that said the settlements were made, “**to resolve claims made by the states** related to services provided by Envolve Pharmacy Solutions, Inc. (Envolve), its pharmacy benefits manager subsidiary.” (Centene Response, Exh. 1)(emphasis added). “[C]laims made by the states” is hardly “proactive outreach,” and yet DHHS, by ignoring Healthy Blue’s protest, puts its most vulnerable residents at risk for future overcharges and “no-fault settlements” without any consideration of omitted, responsive RFP data whatsoever. At a minimum, the Attorney General of Texas appears to disagree with Centene’s spin of its payment: “Centene reached an \$166 million agreement with Texas to settle an investigation into Medicaid fraud, state Attorney General Ken Paxton said this week.” (<https://www.healthcarediver.com/news/centene-texas-166-million-state-settlement/632334/>). Again, while DHHS has discretion, this discretion is not limitless. DHHS’ award to Centene and refusal to acknowledge Centene’s material misrepresentations and failure to disclose billions of dollars it paid related to state investigations into Medicaid fraud should be alarming to Nebraskans and resulted in an award that was arbitrary and capricious.

CONCLUSION AND REQUEST FOR RELIEF

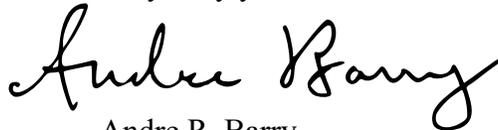
Based on the foregoing and the reasons contained in Healthy Blue’s Protest, Healthy Blue asserts that DHHS reached an arbitrary and capricious award determination by finding that Molina,

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Centene, and United's proposals were responsive and not subject to disqualification or, at a minimum, substantially lower scores in its Protest Decision. As a result of DHHS's arbitrary and capricious actions, its abuse of discretion, and its clearly erroneous reasoning¹⁶, as well as allowing competitors to improve their positions by a purported exercise of discretion to avoid RFP provisions, Healthy Blue has suffered prejudice. Accordingly, Healthy Blue respectfully requests that DHHS (a) grant Healthy Blue its required meeting with DHHS' CEO and stay the award pending the outcome of the ongoing Protest, and (b) reverse its findings in the Protest Decision and invalidate the awards, re-score the proposals, and/or pursue a re-procurement of the services.

Very truly yours,

A handwritten signature in black ink that reads "Andre R. Barry". The signature is written in a cursive, flowing style.

Andre R. Barry
For the Firm

Cc: James Washburn (via email)
William Droze (via email)

4868-0068-1277, v. 2

¹⁶ DHHS has authority to and should assess protests from a neutral position that best allows DHHS to carry out its legislative purpose and maintains the integrity of the procurement process, not from a position of post hoc justification like the manner DHHS proceeds in its Protest Decision. (*See* State of Nebraska Procurement Manual § 6.20, p.44, noting that any error or omission jeopardizing the integrity of the procurement process identified by the State must be corrected to protect the integrity of the bid.)

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†ATTORNEYS ADMITTED IN COLORADO ONLY

STAY OF CONTRACT PERFORMANCE REQUESTED

Via Hand Delivery, Email, And USPS Priority Express Mail

Larry Kahl
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Amara Block¹
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Email: as.materielpurchasing@nebraska.gov

¹ On April 8, 2022, DHHS published its guidance document pursuant to Neb. Rev. Stat. 84-901.03 entitled DHHS Procurement Grievance/Protest Procedures. The document states that it is “advisory in nature,” however, and does not reflect its authority or conformity with statutory and regulatory procedures of the Nebraska Department of Administrative Services, Materiel Division. Consequently, for avoidance of doubt, Healthy Blue lodges its protest with both agencies. “Protest,” as defined by the RFP, means a “complaint about a governmental action or decision related to a solicitation or resultant contract, brought by a bidder who has timely submitted a proposal response in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result.” (RFP, p. xiii.)

EXHIBIT

1

October 7, 2022

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With copy to:

Office of Procurement and Grants
Nebraska Department of Health and Human Services
P.O. Box 95026
301 Centennial Mall South
Lincoln, NE 68509
Email: DHHS.procurement@nebraska.gov

Re: Healthy Blue's Protest of Notice of Intent to Award Under Request for Proposal for Medicaid Managed Care Program, Number 112209 O3 Issued by the Nebraska Department of Health and Human Services

Mr. Kahl and Ms. Block:

This firm, along with Troutman Pepper Hamilton Sanders LLP, represents Community Care Health Plan of Nebraska, Inc. d/b/a Healthy Blue ("Healthy Blue"). Healthy Blue submits this Protest of the Notice of Intent issued by the Department of Health and Human Services ("DHHS") on September 23, 2022, to award contracts arising from the Proposal for Medicaid Managed Care Program, Number 112209 O3 (the "RFP"). Though DHHS has not yet delivered to Healthy Blue a substantial portion of the documents Healthy Blue requested immediately after the announcement of the Notice of Intent, the documents Healthy Blue has received confirm that the proposals submitted by awardees UnitedHealthcare of the Midlands, Inc. ("United"), Nebraska Total Care, Inc. ("Centene"), and Molina Healthcare of Nebraska, Inc. ("Molina") failed to meet the minimum standards established by the RFP and should have been disqualified, resulting in an award to Healthy Blue.

First, Molina's submission misrepresented how it would provide services to DHHS and those Nebraskans who participate in the Medicaid program by artificially enhancing the apparent volume of services it would provide through Nebraska-based entities. Molina's misrepresentations include both a failure to identify more than a dozen out-of-state subcontractors that would play crucial roles in the provision of Medicaid services as well as a misrepresentation of how much work would be performed by Molina's California-based corporate parent. Molina's obfuscation had the effect of inflating the proportion of the services Molina purported to provide in Nebraska itself, when in fact none of the key staff Molina identified in its proposal reside in the state. Unquestionably, the provision of local services is important to Nebraska's Medicaid members, but DHHS was not able to evaluate Molina's bid fairly due to Molina's omissions. Healthy Blue submits that Molina's misrepresentations, which were contrary to the express requirements of the RFP, compel disqualification of Molina's bid. And even if Molina were not disqualified, its scoring must be reduced substantially to account for Molina's misrepresentations. Given the razor thin margin between Molina and Healthy Blue, a reduction of Molina's score would elevate Healthy Blue to a contract award.

Second, Centene's and United's proposals both substantially misrepresent the numerous investigations that states across the country have initiated against them based on ubiquitous issues with management of Medicaid programs. Centene, for example, recently paid no less than \$489 million to at least ten states for alleged mismanagement and overbilling in its Medicaid pharmacy

benefit management (“PBM”) program, yet it disclosed only three PBM-based investigations, undercounting the scope of the issues plaguing its Medicaid management business. In addition, United entirely failed to disclose the scope of investigations to which it has been subject; United instead referred DHHS to an SEC filing and its website that did not comply with the RFP’s clear requirements. Healthy Blue believes Molina may have also failed to account properly the scope of the investigations to which it has been subject, but Molina improperly redacted its list, and DHHS has not provided an unredacted version of Molina’s proposal. Consideration of a bidder’s history of investigations – especially those related to Medicaid overbilling and alleged fraud – are critical for DHHS to preserve the integrity of Nebraska’s Medicaid program, yet DHHS was deprived of this information in evaluating proposals of Centene, United, and, possibly, Molina.

Additionally, based on the information Healthy Blue has received to date in response to its requests, DHHS does not appear to have provided any guidance to its scoring team to assist in evaluating proposals. The result has been widely disparate scoring of proposals. Training and guidance establish essential guardrails to ensure that the evaluation process complies with legal standards and consistently evaluates the proposals. Further, developing concrete and pre-determined scoring criteria before issuing an RFP, including the identification of pass/fail questions, helps to avoid arbitrary, unfair, and biased conduct with scoring after proposals are tendered to the agency. Healthy Blue submits that the proposals for the RFP were not evaluated consistently or fairly, requiring that the Notice of Intent be invalidated and a new procurement conducted.

As stated above, Healthy Blue has not received all of the documents requested in its timely public records request to DHHS. Healthy Blue cannot thoroughly review the fairness of the RFP award without this information. DHHS has promised to deliver additional (non-email) documents by October 21, which, along with the other documents that have not yet been provided in response to Healthy Blue’s timely public records request, Healthy Blue reserves the right to use to supplement its Protest.

For the foregoing reasons, Healthy Blue respectfully insists that the Notice of Intent to award contracts to Centene, United, and Molina be invalidated. As such, Healthy Blue requests a stay of the award until the resolution of this protest to avoid the need for cancellation of any executed contract, an express remedy of the protest process. (State of Nebraska Procurement Manual, § 6.20, p. 44.)

BACKGROUND

Nebraska’s Medicaid program, which is administered by DHHS’s Division of Medicaid & Long-Term Care (MLTC), provides health care services to Nebraska’s low-income residents and residents living with disabilities. (RFP § V(A), p.28.) Healthy Blue was incorporated on October 20, 2015, and has served the Heritage Health program since the program’s inception. Healthy Blue is backed by the resources and experience of a formal joint venture between Anthem Partnership Holding Company, LLC, a subsidiary of Elevance Health, Inc. (previously known as Anthem, Inc.), one of the nation’s leading Medicaid health care companies, and Blue Cross and Blue Shield of Nebraska (BCBSNE), a trusted choice for health care in Nebraska with more than 80 years of experience serving members in the state.

As an incumbent serving members since the beginning of Heritage Health, Healthy Blue is committed to transparency and remaining accountable to the State as well as to members, providers, and stakeholders. Healthy Blue's capacity to serve Nebraskans goes beyond performing functions of the RFP; Healthy Blue focuses on improving the lives of members and building healthier communities across the state. Backed by the strength of a joint venture between Elevance Health and BCBSNE, Healthy Blue creates a powerful alliance that offers a premier health solution for Medicaid members and a long-standing local presence that members recognize and trust and that Nebraska can rely on. Healthy Blue turns this alliance into practice through regular and ongoing communication and collaboration.

Healthy Blue is deeply committed to serving Nebraska and to providing exceptional healthcare coverage and services to the more than 120,000 Nebraskans whom Healthy Blue currently serves. In the last two years, Healthy Blue has made over \$6 million in community investments, aimed at improving whole-health for the state's most vulnerable population. For example, Healthy Blue sponsored a \$250,000 refrigeration system for the Lincoln Food Bank to support the unique needs of certain members, empowering them to lead healthier lives. In addition, Healthy Blue partnered with the Nebraska Diaper Bank, expanding the footprint of the organization to provide essential needs to Nebraska's youngest Medicaid recipients. In August 2022 alone, Nebraska Diaper Bank – with Healthy Blue's partnership and support – increased diaper donations by nearly 40%. Serving Healthy Blue's Nebraska Medicaid members remains a top priority and Healthy Blue plans to continue to deliver on promises to provide access to the services and supports to improve our members' health and well-being.

On or about April 18, 2022, DHHS issued the RFP, seeking vendors to provide services for its Medicaid Managed Care Program. (*See* RFP, Schedule of Events as amended by Addendum 5.) Bidders for the RFP were evaluated based on their written proposals as well as oral interviews. On September 23, 2022, DHHS publicly posted a notification stating that “the State of Nebraska intends to award contracts to three vendors: UnitedHealthcare of the Midlands, Inc., Nebraska Total Care, Inc., [and] Molina Healthcare of Nebraska, Inc.” (Notice of Intent to Award, p.1.)

The three vendors chosen received combined written and oral evaluation scores of 5746.43, 5695.58, and 5471.92. *See* RFP, Evaluation Document, as amended by Addendum 4. Healthy Blue was ranked fourth among the bidders, with a combined score of 5417.21, less than 55 points below Molina, the third-place vendor. (*Id.*) The difference between Molina and Healthy Blue's scores amounts to less than 1% of Molina's score and approximately 0.8% of the 6500 possible points in the RFP scoring process. Moreover, the difference between Healthy Blue's score and that of the highest-scoring bidder is less than 330 points (less than 6% of the total points possible). Thus, the scores between bidders were exceedingly close, and any errors in the evaluation likely had a dispositive impact on the outcome of the process.

Bidders were required to complete the RFP's Terms and Conditions of the solicitation as part of their proposals. (*See* RFP § II, p.10.) “A violation of the Terms and Conditions contained in the solicitation, at any time before or after the awards, *shall* be grounds for State action, which may include rejection of a bidder's proposal or withdrawal of the Intent to Award.” (RFP § I.L., p.6 (emphasis added).) Any error or omission jeopardizing the integrity of the procurement process identified by the State *must* be corrected to protect the integrity of the bid. (*See* State of Nebraska Procurement Manual § 6.20, p.44.) As set forth within, bidders to whom awards were made either

omitted them from its subcontractor list, creating an appearance of being more locally focused. (See Molina Proposal §§ V.F., V.I., V.N.)³ For example:

1. Molina mentions two entities in response to Technical Questions that United disclosed as subcontractors: “OutcomesMTM” is referred to as a “vendor partner” in Question 86 and “RubiconMD” is referred to a behavioral health provider and partner in Questions 33, 35, and 37.
2. Molina refers to “Community Pharmacy Enhanced Services Network,” an entity Centene identified as a subcontractor, as a “key provider” in response to Technical Question 80. It also states that it is “collaborating” with Community Pharmacy in response to Question 51.
3. Molina mentions two entities in response to Technical Questions that Healthy Blue disclosed as subcontractors: “CAQH” is noted as an “external data system” in Question 40, and “FindHelp” is referred to as a “platform” in response to Questions 17, 25, 28, 30, and 73.
4. Molina also references two entities that it previously disclosed in an Ohio RFP response as subcontractors: “CAQH” (mentioned above) and “CityBlock,” which is referred to as an “Ohio affiliate” in Question 51.

Molina’s omission of its subcontractors from its proposal is so extensive that it must have been intentional; it simply cannot be explained by inadvertent oversight. Similarly, Molina misrepresented the amount of work its parent company would perform under the contract (as discussed below), likely to make its business appear to the evaluators as more integrated and locally sourced. Molina’s intentional omissions amount to an improper attempt to score additional points and gain an unfair competitive advantage over other bidders based on inaccurate and misleading information. See *Gaglioti Contracting, Inc. v. City of Hoboken*, 307 N.J. Super. 421, 433 (App. Div. 1997) (finding that “failing to provide a subcontractors list, much like a consent of surety, provides the non-complying contractor with an added advantage over its competition); see also *MSC Indus. Direct Co.*, 140 Fed. Cl. at 643 (holding that rejection of bidder’s proposal was warranted for failing to provide its list of subcontractors when “the solicitation contained a clear requirement for submission of the [subcontractors] as part of the required narrative for the technical evaluation together with a clear statement that omitting any requirement will result in rejection of the proposal”). By failing to properly disclose the existence and identity of all subcontractors, Molina has unquestionably failed to comply with the pass/fail requirements of Section V.K. of the RFP.⁴

³ Molina’s limited disclosure of subcontractors also is a far cry from what other bidders disclosed. Specifically, UnitedHealthcare disclosed 28 subcontractors, Centene disclosed 14, and Healthy Blue disclosed 36 subcontractors.

⁴ Likewise, Molina’s responses to RFP Questions 49 and 50, which were scored on a pass/fail basis, should have resulted in a “fail” score for Molina based on insufficient subcontractor disclosures, because both questions require that the bidder disclose information for each

Moreover, Molina's failure to properly disclose its subcontractors is a violation of the Terms and Conditions of the RFP. RFP Section III.A. lists the bidder's duties if selected as a contractor and states in pertinent part: "If the Contractor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be *clearly defined* in the contractor's proposal." (Emphasis added.) The Contractor Duties in the RFP and all remaining Terms and Conditions had to be either accepted or rejected (and initialed) with comments by every bidder, and Molina accepted the Terms and Conditions of the RFP. (See Molina Proposal § II.) Based on this deficit alone, Molina's proposal must be rejected, and the intended award to Molina should be withdrawn. As noted above, "[a] violation of the Terms and Conditions [of the RFP] shall be grounds for State action," which includes rejection of a proposal, withdrawal of an Intent to Award, withdrawal of an Award, or even termination of the resulting contract after it has been executed. (See RFP § I.L.) The consequence of Molina's insufficient disclosure is unambiguous: Molina failed to submit a bid that complied with the RFP and its Terms and Conditions, and Molina's bid should be disqualified. See *Gaglioti Contracting, Inc.*, 307 N.J. Super. at 433 (holding that a "bidder's failure to include list of subcontractors with bid was a material, nonwaivable defect"); *MSC Indus. Direct Co.*, *supra*, 140 Fed. Cl. at 643.

2. *Molina Should Be Disqualified for Materially Misrepresenting The Amount Of Work To Be Completed by Its Corporate Parent.*

Molina's misrepresentations in its RFP response were not limited to its omission of subcontractors. First, Molina's description of the work to be completed by its parent company, Molina Healthcare, Inc., contains material omissions in Molina's response to Section VII(A)(10) of the RFP. In that section, Molina was required to list *all* work to be completed by California-based Molina Healthcare, Inc., but instead Molina's response includes a limited iteration of the work to be completed by its out-of-state corporate parent. Specifically, Molina's response to Section VII.A.10. states that the scope of work delegated to Molina Healthcare, Inc. would be limited to the following 12 categories:

- Human resources
- Legal
- Facilities
- IT
- Marketing/public relations
- Corporate finance
- Claims/encounters processing
- Member/provider call center overflow
- Models of care best practices
- Healthcare services support
- Medical policy and economics support
- Program integrity support
- Subcontractor/delegation oversight

subcontractor included in the proposal. However, by failing to accurately identify each subcontractor in its proposal, Molina's response in no way satisfies these RFP Questions.

(Molina Proposal § VII.A.10.) But elsewhere in its proposal, Molina acknowledges, tacitly or explicitly, that the work to be completed by its corporate parent Molina Healthcare, Inc. consists of over 26 services, including, among other things, a 24/7/365 Nurse Advice Line, enterprise pharmacy operations, national provider network, risk adjustment, subcontractor/delegation oversight support, and clinical services. (See Molina Proposal § V.K.49.)

As with its statements regarding subcontractors, this misrepresentation of the work to be performed by Molina's parent in the former section is far too extensive to be explained away as an innocent mistake. This conclusion is buttressed by reviewing a list of key staff for Molina's bid who are not residents of Nebraska. See **Exhibit A**. But obviously, if Molina minimizes the role of its corporate parent in Section VII.A.10., then Molina can (incorrectly) assert that a lower percentage of its work would need to be delegated, and that more work would be performed by the Nebraska-based entity actually being evaluated by DHHS. Thus, in the only scored subcontractor disclosure section, Molina substantially understated the percentage of work on the contract to be performed by its parent company, presumably to obtain a higher score.

These repeated, material misrepresentations throughout Molina's response to the RFP effectively undermine the basis for Molina's scoring and the intent to award. Thus, any intent to award should be revoked from Molina and instead granted to Healthy Blue, the next-highest-scoring bidder.

3. *Molina Intentionally Deceived Reviewers Regarding the Services Molina Provides Through Its In-House Applications.*

Molina also referenced a number of services it procures through subcontractors while implying that these services would be provided directly by Molina. For example, Molina identified "Molina HelpFinder" as a community resource and SDOH referral platform (see Molina Proposal § V(M)(73)), but a simple review of the resource as it is currently available in other areas shows that Molina HelpFinder is powered by FindHelp, a third-party vendor. Molina notably fails to identify FindHelp as a subcontractor in its proposal. In contrast, Healthy Blue offers similar services through FindHelp and accordingly listed FindHelp as a subcontractor in its proposal.

The lack of transparency regarding the Molina HelpFinder resource is not an isolated incident. Molina also states that it "developed the Molina Transportation Trip Management app" to assist members seeking transportation for medical services. (Molina Proposal § V.M.45.) This statement, too, is misleading. Molina advertises the same transportation benefit for Ohio Medicaid members, but in reality, those members must download a third-party app, Access2Care, in order to utilize the described benefits. See *Transportation Services*, MOLINA HEALTHCARE, <https://www.molinahealthcare.com/members/oh/mem/medicaid/overvw/coverd/services/transport.aspx> (last accessed Oct. 5, 2022). As with Molina's misrepresentations related to subcontractors, the inconsistencies in Molina's statements regarding the services provided through its in-house apps undermine Molina's credibility as a whole and further confirm that awarding the contract to Molina would not be in the best interests of the State.

4. *Alternatively, Molina's Overall Score Should Be Adjusted For Its Deficient Subcontracting Disclosures.*

Even if Molina were not subject to outright disqualification, which it should be, its misrepresentations demonstrate that Molina's score must be reduced substantially, such that the contract should instead be awarded to Healthy Blue. There are numerous sections of the RFP where scores were inflated due to Molina's misrepresentations of the work to be completed by the bidding entity itself, instead of subcontractors or its California-based corporate parent. At a minimum, Molina's scores must be significantly reduced in multiple sections of the RFP for its failure to fully disclose its subcontractors. The scoring impact of Molina's failure to disclose subcontractors is especially apparent in Molina's responses to the Corporate Overview section of the RFP. (*See* RFP § VII.A.10.) The Corporate Overview section was one of the RFP sections mandating the disclosure of all subcontractors along with specific tasks to be performed and the percentage of performance hours to be performed by each subcontractor. That Section alone was worth 150 points. (*See id.*)

Molina received an average of 125.7 points out of 150 points available for the response to that section, placing 3rd in this scoring category. But for the reasons stated above, Molina's score is inflated and should be significantly reduced. Failure to disclose multiple subcontractors pertained to all subsections of Section VI.A.10. Molina's disclosure of only 5 out of approximately 20 subcontractors amounts to less than 25% of the required disclosures. Even if Molina provided flawless responses regarding the five subcontractors it acknowledged, Molina must lose points for omitting entirely over a dozen subcontractors from the response to this section of the RFP. At a minimum, Molina should receive no more than 25% of the available points, or 37.5 points, for its response to RFP Section VI.A.10. Additionally, for misrepresenting the parent company and dental subcontractor percentage of work, Molina's score should be reduced even further for subsections c. and d.⁵ While Molina should not have received any points at all for intentionally failing to comply with this requirement, even granting Molina 37.5 points, commensurate with its limited disclosure, amounts to a net reduction of Molina's score by at least 88.2 points on this category alone, placing Healthy Blue in an awardee position.

For the failure to properly identify subcontractors Molina should be disqualified. In the alternative, Molina's score for its response to Section VI.A.10, should be appropriately reduced by approximately 88.2 points. Even a conservative re-calculation should have resulted in Molina's score being reduced to, at most, 5383.72. This adjustment would lift Health Blue's total score of 5417.21 into third place, ahead of Molina, justifying a contract award.⁶

⁵ These RFP subsections require a bidder to provide the "percentage of performance hours intended for each contract" and the "total percentage of subcontractor(s) performance hours." (RFP § VI.A.10.)

⁶ Further, Molina's failure to disclose its subcontractors and misrepresentation of the work conducted by its parent company and, thus, a failure of evaluators to realize that much of the work was subcontracted and not local, would have reduced Molina's score on many other questions. For example, disclosure of a third-party vendor FindHelp would have potentially affected Molina's scores for questions 28, 30, and 73.

B. CENTENE’S AND UNITED’S PROPOSALS SHOULD BE DISQUALIFIED AS NON-RESPONSIVE BECAUSE THEIR PROPOSALS FAIL TO COMPLY WITH THE RFP.⁷

1. *Centene Failed to Disclose Numerous Investigations And Settlements Against It Relating To Its Pharmacy Benefit Management Program and Medicaid Overbilling.*

Despite clear RFP requirements, Centene failed to disclose hundreds of millions of dollars its organization paid in at least seven states in the last five years to settle investigations alleging that it overcharged states’ Medicaid programs for pharmacy services. Section VI of the RFP requires that each bidder disclose whether it (and its parent company, affiliates, and subsidiaries⁸) is or has been the subject of ***any criminal or civil investigation by a state or federal agency***, during the past five years. (*Id.*) Centene is a subsidiary of Centene Corporation. Therefore, Centene was required to disclose any regulatory action or civil investigation by a state or federal agency against Centene Corporation, and its affiliates, within the last five years. (*Id.*)

In its proposal, Centene only disclosed three investigations related to its PBM program, in Ohio, Mississippi, and New York. (Centene Proposal, pp.273-74.) In addition to Centene’s three disclosed investigations, however, Centene’s parent company and affiliates have been the subject of many more investigations regarding their PBM program and allegations that Centene overbilled Medicaid program members for prescription drugs and pharmacy services during the past five years.⁹ As shown in the table below, Centene has paid hundreds of millions of dollars in settlements for allegations arising from its PBM program, but Centene did not disclose the vast majority of these settlements and their preceding investigations in its proposal¹⁰:

⁷ Molina’s proposal also likely should have been deemed non-responsive for failure to disclose investigations. However, it is not clear because Molina improperly redacted information about its investigations, as well as enforcement actions against it. (*See* Molina Proposal § VII.A.7.)

⁸ The terms parent company, affiliates, and subsidiaries are not defined in the RFP. Thus, to ensure consistency with the RFP, the kinds of entities that fall within these categories should be interpreted in the broadest sense.

⁹ *See, e.g.*, Andy Miller and Samantha Young, “Centene Agrees to Pay Massachusetts \$14 Million Over Medicaid Prescription Claims”, September 29, 2022, <https://khn.org/news/article/centene-massachusetts-medicaid-drug-settlement/>, last accessed on October 5, 2022.

¹⁰ In Centene’s SEC Form 10-K, included in its Proposal, the notes to the consolidated financial statements mention a settlement with the Ohio Attorney General as well as the attorneys general in nine other states; however, the notes fail to elaborate or even name the related investigations in the other states. Moreover, Centene’s financial statement notes state that Centene “is in discussions to bring final resolution to similar concerns in other affected states” and that “[a]dditional claims, reviews or investigations relating to the Company’s PBM business . . . may be brought by other states” (Centene Proposal, p.162.) Still, despite this apparently inadvertent admission, Centene’s proposal is entirely silent as to all but three state investigations into its PBM program.

Date	State	Approximate PBM Program Medicaid Settlement
June 2021	Ohio	\$88,000,000
June 2021	Mississippi	\$55,000,000
October 2021	Arkansas	\$15,200,000
October 2021	Illinois	\$56,700,000
December 2021	Kansas	\$27,600,000
January 2022	New Hampshire	\$21,000,000
July 2022	Texas	\$165,500,000
August 2022	New Mexico	\$13,700,000
August 2022	Washington	\$32,000,000
September 2022	Massachusetts	\$14,200,000
Total		\$488,900,000

Completion of Section VI of the RFP was a mandatory minimum requirement for a bidder's proposal to be considered responsive. (*See* RFP's Evaluation Criteria, as amended by Addendum 4 (noting that "[p]roposals not complete or not meeting mandatory requirements **will** be excluded from further evaluation.") (emphasis added)); *see also* *Great Lakes Dredge & Dock Co., LLC v. State ex rel. Coastal Prot. & Restoration Auth.*, 167 So. 3d 682, 691 (La. App. 1 Cir. 2014) (holding that a bidder's failure to complete a section of the solicitation rendered bid non-responsive and subject to rejection from consideration for state agency when the instructions indicated that failure to submit alternate prices would render the bid non-responsive and cause rejection). Centene's failure to disclose multiple investigations related to its PBM programs across the country is a direct violation of a material provision of the RFP and should concern DHHS. Centene's decision not to be forthcoming with respect to the large (and growing) number of investigations addressing Centene's misconduct in managing Medicaid programs exactly like the subject of this RFP must be viewed as an intentional attempt to gain a competitive advantage. Accordingly, DHHS should have deemed Centene's proposal non-responsive, and Centene should have been prohibited from advancing to Stage 2 of the evaluation process. (*See* RFP's Evaluation Criteria, as amended by Addendum 4; *see also* RFP, Glossary, p. xiv (defining a responsive bidder as a bidder "who has submitted a proposal which conforms to all requirements of the solicitation document").)

2. *United's Proposal Contains a Copious Number Of False And Misleading Statements, Is Incomplete, And Improperly Fails To Disclose Multiple Investigations.*

Similar to Centene, United's proposal suffers from material deficiencies and therefore, it also should have been disqualified. As an initial matter, United completely failed to disclose its state and federal investigations in the form contemplated by the RFP. Rather than disclosing and providing "an explanation with relevant details and the outcome" of any investigations against itself as well as its parent company, affiliates, and subsidiaries, as required by the RFP, United essentially sent DHHS evaluators on a fishing expedition. United's half-hearted response to this

section of the RFP included a bare reference to United's parent company's (UnitedHealth Group) Form 10-K document. (*See* United's Response to RFP § VI(A), PDF p. 33.)

The Form 10-K document referenced in United's proposal is UnitedHealth Group's Annual Report filing required by the U.S. Securities and Exchange Commission ("SEC"), but it utterly fails to meet the RFP disclosure requirements for investigations in the last five years. SEC filings only require "**material** pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject." 17 CFR § 229.103 (emphasis added); *see* also **Exhibit B**.¹¹ The RFP, by contrast, does not limit the disclosure of civil investigations to only material proceedings not incidental to the business, nor does the RFP limit disclosure to those investigations that are currently pending. (*See* RFP § VI, p.174.)

Not only was United's submission of its Form 10-K for only the most current fiscal year improper and insufficient to respond to RFP requirements, but United also failed to disclose numerous investigations that were initiated against UnitedHealthcare Group and its affiliates in the past five years. United's submission only disclosed two enforcement actions: (1) a January 2021 indictment against UnitedHealthcare Group's subsidiary for alleged anti-trust violations, and (2) a February 2017 action by the DOJ against UnitedHealthcare Group. (*See* United Proposal, Appendix VI.A.2.)

However, even a cursory search reveals at least four additional investigations against UnitedHealthcare Group in the past five years, none of which United included in its proposal. For example:

- (1) The U.S. Department of Justice (DOJ) investigated UnitedHealthcare's billion-dollar acquisition of Change HealthCare in March 2021;¹²
- (2) The U.S. Department of Labor and the New York State Attorney General investigated and filed suit against United Healthcare Insurance and United Behavioral Health regarding violations of the Mental Health Parity and Addiction Equity Act, and caused the companies to pay a \$15.8 million settlement and take corrective actions in 2021;¹³

¹¹ SEC's General Instructions for Form 10-K attached as attached hereto as **Exhibit B**.

¹² *See* Jeff Lagassee, "DOJ investigating UnitedHealth's \$13B acquisition of Change," Healthcare Finance (March 30, 2021), <https://www.healthcarefinancenews.com/news/doj-investigating-unitedhealths-13b-acquisition-change>.

¹³ *See* "United States Intervenes in False Claims Act lawsuit Against UnitedHealth Group Inc. for Mischarging the Medicare Advantage and Prescription Drug Programs," US Department of Justice (May 2, 2017), <https://www.justice.gov/opa/pr/united-states-intervenes-false-claims-act-lawsuit-against-unitedhealth-group-inc-mischarging>.

- (3) Ohio Attorney General investigated and filed suit against HealthCare Group's subsidiary OptumRx regarding claims of overcharging related to its PBM program in 2019;¹⁴ and
- (4) Louisiana's Attorney General filed suit against OptumRX and United Healthcare of Louisiana, Inc. d/b/a United Healthcare Community Plan regarding its PBM program on April 13, 2022, following an investigation beginning in September, 2021.¹⁵

United's proposal also asserts that any "material criminal or civil investigations are disclosed in our financial statements available on the UnitedHealth Group website...." (United Proposal, PDF p.33.) Putting aside the fact that the RFP requires disclosure of "any" state or federal agency civil or criminal investigation against United during the last five years, not just "material" investigations (RFP § VI, at p. 174), United's reference to its website fails to comply with the disclosure requirements of the RFP for the same reasons the Form 10-K does not conform.¹⁶ United's flouting of the RFP's clear specifications merits disqualification. *See, e.g., Parks v. Pocatello*, 91 Idaho 241, 245 (1966) (finding that "City Commission was under the legal duty to reject appellants' proposal" where the proposal did not conform to the city's advertised specifications).

Additionally, the RFP provides that the State could accept deviations from the requirements in the solicitation, but first "[a]ny deviations from the solicitation in Sections II through VI *must* be clearly defined by the bidder by the proposal ... and ... [a]ny specifically defined deviations must not be in conflict with the basic nature of the solicitation, requirements." RFP § I.I (emphasis added). Here, United's proposal could not be considered an acceptable deviation from the RFP because nowhere in United's 1,726-page proposal does it clearly define and/or indicate that (1) United would not disclose all of its required civil investigations or (2) it would fail to provide details about the investigations disclosed and their outcome, as contemplated by the RFP.

United appears to have intentionally misled DHHS in order to gain an advantage, to Healthy Blue's detriment, and in turn failed to comply with the RFP. United did not complete Section VI, a mandatory minimum requirement for a proposal to be considered responsive. (*See* RFP § VI, p.174.) United's proposal should have been disqualified, and United should not have

¹⁴ *See* Marty Schladen and Catherine Candisky, "Attorney General Dave Yost seeking \$16 million repayment from pharmacy middleman OptumRx, usatodaynetwork.com(February 19, 2019), <https://stories.usatodaynetwork.com/sideeffects/attorney-general-dave-yost-seeking-16-million-repayment-pharmacy-middleman-optumrx/>. It appears that OptumRX was also terminated as a result of the investigation.

¹⁵ *See* "Millions Overpaid For Prescriptions In Secretive Scheme, Lawsuit Filed By Attorney General Jeff Landry To Recover Inflated Charges," Louisiana's Department of Justice, <http://www.ag.state.la.us/Article/13028>, (last visited October 7, 2022).

¹⁶ Further, the "financial statements" on UnitedHealth Group's website do not appear to provide disclosure of any additional investigations not already included in the non-compliant Form 10-K Report.

advanced to Stage 2 of the evaluation process. (See RFP's Evaluation Criteria, as amended by Addendum 4.)

3. *Molina's Disclosed Investigations Were Improperly Redacted And Molina Should Be Required To Provide The Unredacted Version.*

The public copy of Molina's proposal improperly redacts its disclosures regarding the federal and state investigations against it, its parent company, and its affiliates. (See Molina Proposal § VII.A.7.) The RFP provides that it is the bidder's responsibility to request that certain records are withheld from public disclosure, otherwise all information will be shared to the public. RFP, Cover Page. The RFP further provides that absent a determination that information may be withheld pursuant to Neb. Rev. Stat. § 84-712.05, all records shall be deemed public documents and must be disclosed. *Id.*

Molina's description of its state and federal investigations does not fall within any category of documents that exempt such information from public disclosure under Neb. Rev. Stat. § 84-712.05. Thus, Molina improperly requested that DHHS redact its federal and state investigations disclosure, and DHHS improperly withheld such information. Descriptions of government investigations are not trade secrets or proprietary information protected from disclosure. Nor would Molina's description of government investigations constitute "[r]ecords *developed or received by law enforcement agencies* and other public bodies...when the records constitute a part of the...investigation." Neb. Rev. Stat. § 84-712.05 (emphasis added); *see also* *Evertson v. City of Kimball*, 278 Neb. 1, 15 (2009) (noting that "the investigatory exception does not apply to protect material compiled ancillary to an agency's routine administrative functions"). The portion of Molina's proposal containing its description of its state and federal investigations is not a record developed or received by a law enforcement agency as part of an investigation.¹⁷ This information should not be withheld from the public, and Healthy Blue requests that DHHS post an updated version of Molina's response without redacted state and federal investigations so that Healthy Blue can fairly evaluate Molina's compliance with this disclosure requirement. Healthy Blue reserves the right to supplement this Protest upon production of such information.

C. DHHS's SCORING PROCESS WAS FLAWED.

1. *DHHS Did Not Follow Its Own Guidance For Evaluating Bidders' Proposals.*

As discussed in detail *supra*, DHHS did not eliminate bidders who failed to complete the required sections of the RFP. Instead, DHHS allowed those bidders to move forward in the evaluation process despite not having responsive proposals. DHHS's acceptance of these incomplete proposals is in direct conflict with its evaluation procedure, which states:

To ensure responsiveness, the proposals will first be examined to determine if all items have been provided below, and if the mandatory requirements of the RFP

¹⁷ Molina was the only bidder who redacted this portion of its proposal response.

have been addressed and warrant further evaluation. Proposals not complete or not meeting mandatory requirements will be excluded from further evaluation.

(RFP's Evaluation Criteria, as amended by Addendum 4.)

Based on Molina's failure to disclose subcontractors and other material misrepresentations, Centene's failure to disclose required investigations, and United's failure to comply with the terms of the RFP, all three intended awardees should have been excluded from further evaluation.

Additionally, under the Terms and Conditions of the solicitation, bidders were required to complete Sections II through VI of the solicitation as part of their proposal. (*See* RFP § II, p.10.) A violation of the Terms and Conditions, at any time before or after the awards, *shall* be grounds for State action which may include, rejection of a bidder's proposal or withdrawal of the Intent to Award. (RFP § I.L., p.6.) It follows then that the failure to complete Sections II through VI of the solicitation is a violation of the Terms and Conditions of the RFP. Consequently, Molina, Centene, and United's failure to complete the required portions of the RFP is a violation of the Terms and Conditions, which mandates State action. (*Id.*) Notwithstanding these deliberate violations of the RFP, DHHS improperly determined that Molina, Centene, and United were entitled to a contract award and has taken no action to address the violations and material deficiencies.

2. *DHHS Failed to Provide Evidence That Proper Guidance On the Scoring and Evaluation Process Was Provided to Evaluators.*

Even after issuing the Notice of Intent to Award and receiving a timely public records request from Healthy Blue, DHHS has not supplied any training manuals or other materials to show that proper guidance on scoring and the evaluation process was provided to evaluators or that evaluators worked within any articulable prescribed guidelines. This is especially concerning where a substantial number of scores in this procurement were significantly out of reasonable range compared to other evaluator scores. For example, one of the proposal evaluators, Carisa Schweitzer Masek, scored each plan significantly lower than her counterparts. Ms. Masek scored Healthy Blue 19.5% less than the compiled score, whereas other bidders had deltas ranging from 12.4% to 17.1%. DHHS's failure to provide proper guidance documents to evaluators results in an erroneous award that is not in the best interest of Nebraska's citizens, because less responsible bidders than Healthy Blue were selected for the program.

Additionally, while DHHS stated that it determined which questions were scored using pass/fail metrics before issuance of the RFP, without the scoring guidance given to evaluators, bidders are unable to determine whether DHHS or evaluators arbitrarily changed the scoring criteria for proposals after the RFP was released. Further, the RFP provides that the Best Value Evaluation Criteria ("BVC"), i.e., scoring, is the "criteria against which **all responses** to the Technical Questions, and any Oral Presentation, will be measured ..." (RFP, Glossary p. vii (emphasis added).) However, 75 of the 114 Technical Questions, roughly **65%**, were evaluated based only as pass/fail requirements, which is highly unusual. Notably, numerous Quality

Management and Utilization Management questions were not even scored.¹⁸ It is unclear how DHHS could meet the BVC criteria for evaluating proposal responses without documentation from the agency related to why scoring was designed this way. DHHS's scoring and improper evaluation process created opportunities for undue influence and favoritism, which jeopardizes the integrity of the procurement process and, therefore, must be corrected. (*See* State of Nebraska Procurement Manual (2018), § 6.20, p. 44.)

D. DHHS FAILED TO PROVIDE THE REQUIRED DOCUMENTS IN TIME FOR HEALTHY BLUE TO THOROUGHLY INVESTIGATE THE RFP AWARD.

On September 23, 2022, the date the Notice of Intent to Award was published, DHHS released sparse materials regarding the RFP and proposal evaluations on its website. Specifically, in addition to the Notice of Intent to Award, DHHS released: (1) A one-page final evaluation document with a general summary of scores but no particularized breakdown of the points attributed to each subsection of the RFP, and (2) each of the bidders' redacted proposals. As a result of this limited disclosure of documents, Healthy Blue immediately submitted a public records request to DHHS to receive more substantive information related to the RFP. *See Exhibit C.*¹⁹ Healthy Blue specifically requested, among other things, "[a]ll instructions provided for purposes of evaluating RFP proposals" and emails and other communications regarding the RFP and between evaluators and bidders. *Id.*

Healthy Blue sent its public records request on September 23 – the same day that DHHS announced its Notice of Intent to Award. As of the date of this Protest, however, DHHS has failed to provide all of the requested information. To the contrary, DHHS has forecast that it would need to expend 2300 hours of attorney time and \$126,621.90 to produce the requested emails and an additional 950 hours and \$24,509.83 to produce Webex Messages. DHHS estimates that these email and Webex productions cannot be completed until sometime in 2023; which, if true, would significantly prejudice Healthy Blue's ability to understand the RFP evaluation and scoring process and to identify additional protest grounds. Again handicapping Healthy Blue, DHHS also has stated that it cannot produce the additional non-email and non-Webex documents Healthy Blue requested until October 21, well after DHHS's protest deadline. As discussed previously, Healthy Blue has not received any training manuals or other evaluation documents used by the evaluators to score the proposals. Healthy Blue also has not received any documentation explaining how pass/fail questions were determined before the RFP was released. The delay in providing the requested documents is unreasonable and obviously prejudices Healthy Blue; Healthy Blue has been required to submit this Protest without all the information requested and needed to analyze possible grounds to challenge the Notice of Intent to award.

¹⁸ For example, Questions 65, 69, 71, 72, 76, 78, 79, 81, 82, 83, 84, 86, were evaluated based on a pass/fail examination.

¹⁹ Healthy Blue's public record request is attached hereto as **Exhibit C**.

The delay also is particularly troubling when there are several instances of potential bias indicated from the few documents available to Healthy Blue thus far. Two examples of potential bias that could have affected the outcome of the scores on the RFP are:

- Ryan Sadler, the CEO and Plan President for Molina, lists Dannette Smith, CEO for NE DHHS as a reference on his resume. (*See* Molina Proposal, p.288.) As DHHS is aware, Ms. Smith is a final reviewer in the protest process, and Mr. Sadler is listed as key staff for Molina. This fact alone obviously raises substantial concerns of favoritism, fairness, and biasness with the scoring of proposals.
- DHHS's Plan Managers for United and Centene were listed as reviewers of the protests (Catherine Kearney and Travis Beck), but Healthy Blue's Plan Manager (Jeshena Gold) was not. Each Managed Care Organization has a Plan Manager that works closely as the liaison between the State and the plan. These Plan Managers develop strong working relationships with their assigned plan and have unique understanding of their plans' processes and procedures. Accordingly, United and Centene Plan Manager could likely be biased towards their plan when conducting the proposal reviews, an advantage not shared by Healthy Blue.

Without the benefit of reviewing evaluation training materials and other documentation, including the requested emails/communications, Healthy Blue cannot evaluate, let alone confirm, any potential bias or misconduct. The issue of bias is markedly important here because the point differential between Healthy Blue and the lowest scoring intended contract awardee (Molina) is a mere 55 points. As previously explained, the difference between scores amounts to less than 1% of Molina's score and approximately 0.8% of the 6500 possible points in the RFP scoring process. Therefore, it is crucial that Healthy Blue have the opportunity to review all relevant documents and communications regarding the RFP.

Simultaneously restricting access to the administrative record while insisting that a protest deadline be met also raises due process concerns. *See In re Int. of Mainor T.*, 267 Neb. 232, 243, 674 N.W.2d 442, 455 (2004) ("While the concept of due process defies precise definition, it embodies and requires fundamental fairness."). Consequently, Healthy Blue reserves the right to amend or supplement this Protest after DHHS provides the documents it has promised to deliver by October 21. To the extent Healthy Blue learns of additional facts or information relevant to the grounds for appeal stated herein (including emails or other documents contained in its public records request but which were not provided), or any other grounds for appeal, Healthy Blue will supplement this Protest.

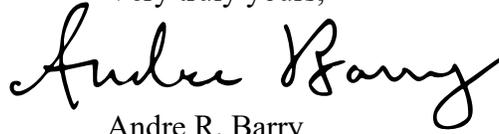
II. CONCLUSION AND REQUEST FOR RELIEF

Based on the foregoing, Healthy Blue asserts that DHHS reached an arbitrary and capricious award determination by finding that Molina, Centene, and United's proposals were responsive and not subject to disqualification or, at a minimum, substantially lower scores. As a result of DHHS's arbitrary and capricious actions, its abuse of discretion, and its clearly erroneous reasoning (all as set forth in this Protest), Healthy Blue has suffered prejudice. Accordingly, Healthy Blue respectfully requests that DHHS sustain its Protest, stay the award, and: (a) conduct a new evaluation correcting the errors described above; or (b) obtain revised proposals, evaluate

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those proposals as mandated by the RFP and make a new award decision in accordance with the evaluation criteria and scheme set forth in the RFP.

Very truly yours,

A handwritten signature in black ink that reads "Andre R. Barry". The signature is written in a cursive, flowing style.

Andre R. Barry
For the Firm

Molina Staffing locations, none are local to NE

Title	Name	Location
Chief Executive Officer (CEO)*	Ryan Sadler	Kentucky
Medical Director/Chief Medical Officer*	Jason Dees	Long Beach, CA
Dental Director	Jacinto Beard	Ohio
Behavioral Health Clinical Director	Sasha D. Waring	Seattle, WA
Behavioral Health Manager*	Joel Conger	Phoenix, AZ
Chief Operating Officer (COO)*	Tom Rodakowski	Illinois
Chief Financial Officer (CFO)*	Carol Swanson	Either NE or TX
Program Integrity Officer*	Scott Campbell	Long Beach, CA
Grievance System Manager*	Jeff Larsen	Seattle, WA
Business Continuity Planning and Emergency Coordinator	Michael Wilson	Long Beach, CA
Contract Compliance Officer*	Chris Mardesich	Long Beach, CA
Quality Management (QM) Coordinator*	Lynn Hansen	Long Beach, CA
Performance and Quality Improvement Coordinator*	Deborah Wheeler	Long Beach, CA
Maternal Child Health (MCH)/Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Coordinator*	Rebecca Schupp	Long Beach, CA
Medical Management Coordinator*	Jody Cruz	Long Beach, CA
Provider Services Manager*	James Messina	Long Beach, CA
Member Services Manager*	Blanca Trevizo	Long Beach, CA
Claims Administrator	John Belew	Long Beach, CA
Provider Claims Educator	Elizabeth Vigil	Long Beach, CA
Case Management Administrator*	Lorraine McDonald,	New York
Information Management and Systems Director	Matt Hall	Scottsdale, AZ
Encounter Data Quality Coordinator	Jeff Deshay	California
Tribal Network Liaison*	Cassandra Pena	Arizona
Pharmacist/Pharmacy Director*	Cynthia VanSteenburg	Long Beach, CA
Dental Management Coordinator	Rebecca Nomeland	Minnesota

**EXHIBIT
A**

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL	
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FORM 10-K

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934**

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 10-K.

- (1) This Form shall be used for annual reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) (the "Act") for which no other form is prescribed. This Form also shall be used for transition reports filed pursuant to Section 13 or 15(d) of the Act.
- (2) Annual reports on this Form shall be filed within the following period:
 - (a) 60 days after the end of the fiscal year covered by the report (75 days for fiscal years ending before December 15, 2006) for large accelerated filers (as defined in 17 CFR 240.12b-2);
 - (b) 75 days after the end of the fiscal year covered by the report for accelerated filers (as defined in 17 CFR 240.12b-2); and
 - (c) 90 days after the end of the fiscal year covered by the report for all other registrants.
- (3) Transition reports on this Form shall be filed in accordance with the requirements set forth in Rule 13a-10 (17 CFR 240.13a-10) or Rule 15d-10 (17 CFR 240.15d-10) applicable when the registrant changes its fiscal year end.
- (4) Notwithstanding paragraphs (2) and (3) of this General Instruction A., all schedules required by Article 12 of Regulation S-X (17 CFR 210.12-01 - 210.12-29) may, at the option of the registrant, be filed as an amendment to the report not later than 30 days after the applicable due date of the report.

B. Application of General Rules and Regulations.

- (1) The General Rules and Regulations under the Act (17 CFR 240) contain certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this Form.
- (2) Particular attention is directed to Regulation 12B which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in Rule 12b-2 should be especially noted. *See also* Regulations 13A and 15D.

C. Preparation of Report.

- (1) This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b-12. Except as provided in General Instruction G, the answers to the items shall be prepared in the manner specified in Rule 12b-13.
- (2) Except where information is required to be given for the fiscal year or as of a specified date, it shall be given as of the latest practicable date.
- (3) Attention is directed to Rule 12b-20, which states: "In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading."

D. Signature and Filing of Report.

- (1) Three complete copies of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, and five additional copies which need not include exhibits, shall be filed with the Commission. At least one complete copy of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.
- (2) (a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers, its principal financial officer or officers, its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions. Where the registrant is a limited partnership, the report must be signed by the majority of the board of directors of any corporate general partner who signs the report.

(b) The name of each person who signs the report shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the report. Attention is directed to Rule 12b-11 (17 CFR 240.12b-11) concerning manual signatures and signatures pursuant to powers of attorney.
- (3) Registrants are requested to indicate in a transmittal letter with the Form 10-K whether the financial statements in the report reflect a change from the preceding year in any accounting principles or practices, or in the method of applying any such principles or practices.

E. Disclosure With Respect to Foreign Subsidiaries.

Information required by any item or other requirement of this form with respect to any foreign subsidiary may be omitted to the extent that the required disclosure would be detrimental to the registrant. However, financial statements and financial statement schedules, otherwise required, shall not be omitted pursuant to this Instruction. Where information is omitted pursuant to this Instruction, a statement shall be made that such information has been omitted and the names of the subsidiaries involved shall be separately furnished to the Commission. The Commission may, in its discretion, call for justification that the required disclosure would be detrimental.

F. Information as to Employee Stock Purchase, Savings and Similar Plans.

Attention is directed to Rule 15d-21 which provides that separate annual and other reports need not be filed pursuant to Section 15(d) of the Act with respect to any employee stock purchase, savings or similar plan if the issuer of the stock or other securities offered to employees pursuant to the plan furnishes to the Commission the information and documents specified in the Rule.

G. Information to be Incorporated by Reference.

- (1) Attention is directed to Rule 12b-23 which provides for the incorporation by reference of information contained in certain documents in answer or partial answer to any item of a report.
- (2) The information called for by Parts I and II of this form (Items 1 through 9A or any portion thereof) may, at the registrant's option, be incorporated by reference from the registrant's annual report to security holders furnished to the Commission pursuant to Rule 14a-3(b) or Rule 14c-3(a) or from the registrant's annual report to security holders, even if not furnished to the Commission pursuant to Rule 14a-3(b) or Rule 14c-3(a), provided such annual report contains the information required by Rule 14a-3.

Note 1. In order to fulfill the requirements of Part I of Form 10-K, the incorporated portion of the annual report to security holders must contain the information required by Items 1-3 of Form 10-K; to the extent applicable.

Note 2. If any information required by Part I or Part II is incorporated by reference into an electronic format document from the annual report to security holders as provided in General Instruction G, any portion of the annual report to security holders incorporated by reference shall be filed as an exhibit in electronic format, as required by Item 601(b)(13) of Regulation S-K.

- (3) The information required by Part III (Items 10, 11, 12, 13 and 14) may be incorporated by reference from the registrant's definitive proxy statement (filed or required to be filed pursuant to Regulation 14A) or definitive information statement (filed or to be filed pursuant to Regulation 14C) which involves the election of directors, if such definitive proxy statement or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10-K. However, if such definitive proxy statement or information statement is not filed with the Commission in the 120-day period or is not required to be filed with the Commission by virtue of Rule 3a12-3(b) under the Exchange Act, the Items comprising the Part III information must be filed as part of the Form 10-K, or as an amendment to the Form 10-K, not later than the end of the 120-day period. It should be noted that the information regarding executive officers required by Item 401 of Regulation S-K (§ 229.401 of this chapter) may be included in Part I of Form 10-K under an appropriate caption. See the Instruction to Item 401 of Regulation S-K (§ 229.401 of this chapter).
- (4) No item numbers or captions of items need be contained in the material incorporated by reference into the report. When the registrant combines all of the information in Parts I and II of this Form (Items 1 through 9A) by incorporation by reference from the registrant's annual report to security holders and all of the information in Part III of this Form (Items 10 through 14) by incorporating by reference from a definitive proxy statement or information statement involving the election of directors, then, notwithstanding General Instruction C(1), this Form shall consist of the facing or cover page, those sections incorporated from the annual report to security holders, the proxy or information statement, and the information, if any, required by Part IV of this Form, signatures, and a cross-reference sheet setting forth the item numbers and captions in Parts I, II and III of this Form and the page and/or pages in the referenced materials where the corresponding information appears.

H. Integrated Reports to Security Holders.

Annual reports to security holders may be combined with the required information of Form 10-K and will be suitable for filing with the Commission if the following conditions are satisfied:

- (1) The combined report contains full and complete answers to all items required by Form 10-K. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made. If the information required by Part III of Form 10-K is omitted by virtue of General Instruction G, a definitive proxy or information statement shall be filed.
- (2) The cover page and the required signatures are included. As appropriate, a cross-reference sheet should be filed indicating the location of information required by the items of the Form.
- (3) If an electronic filer files any portion of an annual report to security holders in combination with the required information of Form 10-K, as provided in this instruction, only such portions filed in satisfaction of the Form 10-K requirements shall be filed in electronic format.

I. Omission of Information by Certain Wholly-Owned Subsidiaries.

If, on the date of the filing of its report on Form 10-K, the registrant meets the conditions specified in paragraph (1) below, then such registrant may furnish the abbreviated narrative disclosure specified in paragraph (2) below.

- (1) Conditions for availability of the relief specified in paragraph (2) below.
 - (a) All of the registrant's equity securities are owned, either directly or indirectly, by a single person which is a reporting company under the Act and which has filed all the material required to be filed pursuant to section 13, 14, or 15(d) thereof, as applicable, and which is named in conjunction with the registrant's description of its business;
 - (b) During the preceding thirty-six calendar months and any subsequent period of days, there has not been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within thirty days, with respect to any indebtedness of the registrant or its subsidiaries, and there has not been any material default in the payment of rentals under material long-term leases;
 - (c) There is prominently set forth, on the cover page of the Form 10-K, a statement that the registrant meets the conditions set forth in General Instruction (I)(1)(a) and (b) of Form 10-K and is therefore filing this Form with the reduced disclosure format; and
 - (d) The registrant is not an asset-backed issuer, as defined in Item 1101 of Regulation AB (17 CFR 229.1101).

- (2) Registrants meeting the conditions specified in paragraph (1) above are entitled to the following relief:
- (a) Such registrants may omit the information called for by Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations provided that the registrant includes in the Form 10-K a management's narrative analysis of the results of operations explaining the reasons for material changes in the amount of revenue and expense items between the most recent fiscal year presented and the fiscal year immediately preceding it. Explanations of material changes should include, but not be limited to, changes in the various elements which determine revenue and expense levels such as unit sales volume, prices charged and paid, production levels, production cost variances, labor costs and discretionary spending programs. In addition, the analysis should include an explanation of the effect of any changes in accounting principles and practices or method of application that have a material effect on net income as reported.
 - (b) Such registrants may omit the list of subsidiaries exhibit required by Item 601 of Regulation S-K (§ 229.601 of this chapter).
 - (c) Such registrants may omit the information called for by the following otherwise required Items: Item 10, Directors and Executive Officers of the Registrant; Item 11, Executive Compensation; Item 12, Security Ownership of Certain Beneficial Owners and Management; and Item 13, Certain Relationships and Related Transactions.
 - (d) In response to Item 1, Business, such registrant only need furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year which will, in the opinion of management, indicate the general nature and scope of the business of the registrant and its subsidiaries, and in response to Item 2, Properties, such registrant only need furnish a brief description of the material properties of the registrant and its subsidiaries to the extent, in the opinion of the management, necessary to an understanding of the business done by the registrant and its subsidiaries.

J. Use of this Form by Asset-Backed Issuers.

The following applies to registrants that are asset-backed issuers. Terms used in this General Instruction J. have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

- (1) *Items that May be Omitted.* Such registrants may omit the information called for by the following otherwise required Items:
- (a) Item 1, Business;
 - (b) Item 1A, Risk Factors;
 - (c) Item 2, Properties;
 - (d) Item 3, Legal Proceedings;
 - (e) [RESERVED];
 - (f) Item 5, Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities;
 - (g) [RESERVED];
 - (h) Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations;
 - (i) Item 7A, Quantitative and Qualitative Disclosures About Market Risk;
 - (j) Item 8, Financial Statements and Supplementary Data;
 - (k) Item 9, Changes in and Disagreements With Accountants on Accounting and Financial Disclosure;
 - (l) Item 9A, Controls and Procedures;
 - (m) If the issuing entity does not have any executive officers or directors, Item 10, Directors and Executive Officers of the Registrant, Item 11, Executive Compensation, Item 12, Security Ownership of Certain Beneficial Owners and Management, and Item 13, Certain Relationships and Related Transactions; and
 - (n) Item 14, Principal Accountant Fees and Services.

(2) *Substitute Information to be Included.* In addition to the Items that are otherwise required by this Form, the registrant must furnish in the Form 10-K the following information:

- (a) Immediately after the name of the issuing entity on the cover page of the Form 10-K, as separate line items, the exact name of the depositor as specified in its charter and the exact name of the sponsor as specified in its charter. Include a Central Index Key number for the depositor and the issuing entity, and if available, the sponsor.
- (b) Item 1112(b) of Regulation AB;
- (c) Items 1114(b)(2) and 1115(b) of Regulation AB;
- (d) Item 1117 of Regulation AB;
- (e) Item 1119 of Regulation AB;
- (f) Item 1122 of Regulation AB; and
- (g) Item 1123 of Regulation AB.

(3) *Signatures.*

The Form 10-K must be signed either:

- (a) On behalf of the depositor by the senior officer in charge of securitization of the depositor; or
- (b) On behalf of the issuing entity by the senior officer in charge of the servicing function of the servicer. If multiple servicers are involved in servicing the pool assets, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent function) must sign if a representative of the servicer is to sign the report on behalf of the issuing entity.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

OMB APPROVAL	
OMB Number:	3235-0063
Expires:	May 31, 2025
Estimated average burden hours per response	2,254.82

(Mark One)

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended _____
or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number _____

(Exact name of registrant as specified in its charter)

State or other jurisdiction of
incorporation or organization

(I.R.S. Employer
Identification No.)

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code _____

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered

Securities registered pursuant to section 12(g) of the Act:

(Title of class)

(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
 Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.
 Yes No

Note – Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Exchange Act from their obligations under those Sections.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter.

Note.—If a determination as to whether a particular person or entity is an affiliate cannot be made without involving unreasonable effort and expense, the aggregate market value of the common stock held by non-affiliates may be calculated on the basis of assumptions reasonable under the circumstances, provided that the assumptions are set forth in this Form.

APPLICABLE ONLY TO REGISTRANTS INVOLVED IN BANKRUPTCY

PROCEEDINGS DURING THE PRECEDING FIVE YEARS:

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes No

(APPLICABLE ONLY TO CORPORATE REGISTRANTS)

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

DOCUMENTS INCORPORATED BY REFERENCE

List hereunder the following documents if incorporated by reference and the Part of the Form 10-K (e.g., Part I, Part II, etc.) into which the document is incorporated: (1) Any annual report to security holders; (2) Any proxy or information statement; and (3) Any prospectus filed pursuant to Rule 424(b) or (c) under the Securities Act of 1933. The listed documents should be clearly described for identification purposes (e.g., annual report to security holders for fiscal year ended December 24, 1980).

PART I

[See General Instruction G2]

Item 1. Business.

Furnish the information required by Item 101 of Regulation S-K (§ 229.101 of this chapter) except that the discussion of the development of the registrant's business need only include developments since the beginning of the fiscal year for which this report is filed.

Item 1A. Risk Factors.

Set forth, under the caption "Risk Factors," where appropriate, the risk factors described in Item 105 of Regulation S-K (§ 229.105 of this chapter) applicable to the registrant. Provide any discussion of risk factors in plain English in accordance with Rule 421(d) of the Securities Act of 1933 (§230.421(d) of this chapter). Smaller reporting companies are not required to provide the information required by this item.

Item 1B. Unresolved Staff Comments.

If the registrant is an accelerated filer or a large accelerated filer, as defined in Rule 12b-2 of the Exchange Act (§240.12b-2 of this chapter), or is a well-known seasoned issuer as defined in Rule 405 of the Securities Act (§230.405 of this chapter) and has received written comments from the Commission staff regarding its periodic or current reports under the Act not less than 180 days before the end of its fiscal year to which the annual report relates, and such comments remain unresolved, disclose the substance of any such unresolved comments that the registrant believes are material. Such disclosure may provide other information including the position of the registrant with respect to any such comment.

Item 2. Properties.

Furnish the information required by Item 102 of Regulation S-K (§ 229.102 of this chapter).

Item 3. Legal Proceedings.

- (a) Furnish the information required by Item 103 of Regulation S-K (§ 229.103 of this chapter).
- (b) As to any proceeding that was terminated during the fourth quarter of the fiscal year covered by this report, furnish information similar to that required by Item 103 of Regulation S-K (§ 229.103 of this chapter), including the date of termination and a description of the disposition thereof with respect to the registrant and its subsidiaries.

Item 4. Mine Safety Disclosures.

If applicable, provide a statement that the information concerning mine safety violations or other regulatory matters required by Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Item 104 of Regulation S-K (17 CFR 229.104) is included in exhibit 95 to the annual report.

PART II

[See General Instruction G2]

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

- (a) Furnish the information required by Item 201 of Regulation S-K (17 CFR 229.201) and Item 701 of Regulation S-K (17 CFR 229.701) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act. If the Item 701 information previously has been included in a Quarterly Report on Form 10-Q or in a Current Report on Form 8-K (17 CFR 249.308), it need not be furnished.
- (b) If required pursuant to Rule 463 (17 CFR 230.463) of the Securities Act of 1933, furnish the information required by Item 701(f) of Regulation S-K (§229.701(f) of this chapter).
- (c) Furnish the information required by Item 703 of Regulation S-K (§229.703 of this chapter) for any repurchase made in a month within the fourth quarter of the fiscal year covered by the report. Provide disclosures covering repurchases made on a monthly basis. For example, if the fourth quarter began on January 16 and ended on April 15, the chart would show repurchases for the months from January 16 through February 15, February 16 through March 15, and March 16 through April 15.

Item 6. [Reserved]

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Furnish the information required by Item 303 of Regulation S-K (§ 229.303 of this chapter).

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Furnish the information required by Item 305 of Regulation S-K (§ 229.305 of this chapter).

Item 8. Financial Statements and Supplementary Data.

(a) File financial statements meeting the requirements of Regulation S-X (§ 210 of this chapter), except § 210.3-05, § 210.3-14, § 210.6-11, § 210.8-04, § 210.8-05, § 210.8-06 and Article 11 thereof, and the supplementary financial information required by Item 302 of Regulation S-K (§ 229.302 of this chapter). Financial statements of the registrant and its subsidiaries consolidated (as required by Rule 14a-3(b)) must be filed under this item. Other financial statements and schedules required under Regulation S-X may be filed as "Financial Statement Schedules" pursuant to Item 15, Exhibits, Financial Statement Schedules, and Reports on Form 8-K, of this form.

(b) A smaller reporting company may provide the information required by Article 8 of Regulation S-X in lieu of any financial statements required by Item 8 of this Form.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure.

Furnish the information required by Item 304(b) of Regulation S-K (§ 229.304(b) of this chapter).

Item 9A. Controls and Procedures.

Furnish the information required by Item 307 and 308 of Regulation S-K (§229.307 and §229.308 of this chapter).

Item 9B. Other Information.

The registrant must disclose under this item any information required to be disclosed in a report on Form 8-K during the fourth quarter of the year covered by this Form 10-K, but not reported, whether or not otherwise required by this Form 10-K. If disclosure of such information is made under this item, it need not be repeated in a report on Form 8-K which would otherwise be required to be filed with respect to such information or in a subsequent report on Form 10-K.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

(a) A registrant identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)) as having retained, for the preparation of the audit report on its financial statements included in the Form 10-K, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction must electronically submit to the Commission on a supplemental basis documentation that establishes that the registrant is not owned or controlled by a governmental entity in the foreign jurisdiction. The registrant must submit this documentation on or before the due date for this form. A registrant that is owned or controlled by a foreign governmental entity is not required to submit such documentation.

(b) A registrant that is a foreign issuer, as defined in 17 CFR 240.3b-4, identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)) as having retained, for the preparation of the audit report on its financial statements included in the Form 10-K, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction, for each year in which the registrant is so identified, must disclose:

(1) That, for the immediately preceding annual financial statement period, a registered public accounting firm that the PCAOB was unable to inspect or investigate completely, because of a position taken by an authority in the foreign jurisdiction, issued an audit report for the registrant;

(2) The percentage of shares of the registrant owned by governmental entities in the foreign jurisdiction in which the registrant is incorporated or otherwise organized;

(3) Whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the registrant;

(4) The name of each official of the Chinese Communist Party who is a member of the board of directors of the registrant or the operating entity with respect to the registrant; and

(5) Whether the articles of incorporation of the registrant (or equivalent organizing document) contains any charter of the Chinese Communist Party, including the text of any such charter.

PART III

[See General Instruction G(3)]

Item 10. Directors, Executive Officers and Corporate Governance.

Furnish the information required by Items 401, 405, 406 and 407(c)(3), (d)(4) and (d)(5) of Regulation S-K (§ 229.401, § 229.405, § 229.406 and § 229.407(c)(3), (d)(4) and (d)(5) of this chapter).

Item 11. Executive Compensation.

Furnish the information required by Item 402 of Regulation S-K (§ 229.402 of this chapter) and paragraph (e)(4) and (e)(5) of Item 407 of Regulation S-K (§ 229.407(e)(4) and (e)(5) of this chapter).

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Furnish the information required by Item 201(d) of Regulation S-K (§ 229.201(d) of this chapter) and Item 403 of Regulation S-K (§ 229.403 of this chapter).

Item 13. Certain Relationships and Related Transactions, and Director Independence.

Furnish the information required by Item 404 of Regulation S-K (§ 229.404 of this chapter) and Item 407(a) of Regulation S-K (§ 229.407(a) of this chapter).

Item 14. Principal Accountant Fees and Services.

Furnish the information required by Item 9(e) of Schedule 14A (§240.14a-101 of this chapter).

- (1) Disclose, under the caption Audit Fees, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's Form 10-Q (17 CFR 249.308a) or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.
- (2) Disclose, under the caption Audit-Related Fees, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the registrant's financial statements and are not reported under Item 9(e)(1) of Schedule 14A. Registrants shall describe the nature of the services comprising the fees disclosed under this category.
- (3) Disclose, under the caption Tax Fees, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice, and tax planning. Registrants shall describe the nature of the services comprising the fees disclosed under this category.
- (4) Disclose, under the caption All Other Fees, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in Items 9(e)(1) through 9(e)(3) of Schedule 14A. Registrants shall describe the nature of the services comprising the fees disclosed under this category.
- (5) (i) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7)(i) of Rule 2-01 of Regulation S-X.

(ii) Disclose the percentage of services described in each of Items 9(e)(2) through 9(e)(4) of Schedule 14A that were approved by the audit committee pursuant to paragraph (c)(7)(i)(C) of Rule 2-01 of Regulation S-X.
- (6) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

PART IV

Item 15. Exhibit and Financial Statement Schedules.

- (a) List the following documents filed as a part of the report:
 - (1) All financial statements;
 - (2) Those financial statement schedules required to be filed by Item 8 of this form, and by paragraph (b) below.
 - (3) Those exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter) and by paragraph (b) below. Identify in the list each management contract or compensatory plan or arrangement required to be filed as an exhibit to this form pursuant to Item 15(b) of this report.
- (b) Registrants shall file, as exhibits to this form, the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter).
- (c) Registrants shall file, as financial statement schedules to this form, the financial statements required by Regulation S-X (17 CFR 210) which are excluded from the annual report to shareholders by Rule 14a-3(b) including
 - (1) separate financial statements of subsidiaries not consolidated and fifty percent or less owned persons;
 - (2) separate financial statements of affiliates whose securities are pledged as collateral; and
 - (3) schedules.

Item 16. Form 10–K Summary.

Registrants may, at their option, include a summary of information required by this form, but only if each item in the summary is presented fairly and accurately and includes a hyperlink to the material contained in this form to which such item relates, including to materials contained in any exhibits filed with the form.

Instruction: The summary shall refer only to Form 10-K disclosure that is included in the form at the time it is filed. A registrant need not update the summary to reflect information required by Part III of Form 10-K that the registrant incorporates by reference from a proxy or information statement filed after the Form 10-K, but must state in the summary that the summary does not include Part III information because that information will be incorporated by reference from a later filed proxy or information statement involving the election of directors.

SIGNATURES

[See General Instruction D]

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____

By (Signature and Title)* _____

Date _____

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title)* _____

Date _____

By (Signature and Title)* _____

Date _____

Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Registrants Which Have Not Registered Securities Pursuant to Section 12 of the Act

(a) Except to the extent that the materials enumerated in (1) and/or (2) below are specifically incorporated into this Form by reference, every registrant which files an annual report on this Form pursuant to Section 15(d) of the Act must furnish to the Commission for its information, at the time of filing its report on this Form, four copies of the following:

- (1) Any annual report to security holders covering the registrant’s last fiscal year; and
- (2) Every proxy statement, form of proxy or other proxy soliciting material sent to more than ten of the registrant’s security holders with respect to any annual or other meeting of security holders.

(b) The foregoing material shall not be deemed to be “filed” with the Commission or otherwise subject to the liabilities

of Section 18 of the Act, except to the extent that the registrant specifically incorporates it in its annual report on this Form by reference.

- (c) If no such annual report or proxy material has been sent to security holders, a statement to that effect shall be included under this caption. If such report or proxy material is to be furnished to security holders subsequent to the filing of the annual report of this Form, the registrant shall so state under this caption and shall furnish copies of such material to the Commission when it is sent to security holders.

SCOTT D. KELLY
MARK A. CHRISTENSEN
RICHARD P. GARDEN, JR.
SUSAN K. SAPP
KEVIN J. SCHNEIDER
ROCHELLE A. MULLEN
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STEPHEN H. NELSEN (INACTIVE)
TERRY R. WITTLER (INACTIVE)

†ATTORNEYS ADMITTED IN COLORADO ONLY

September 23, 2022

VIA EMAIL

Nebraska Department of Health and Human Services
DHHS Public Records Office
DHHS.PublicRecords@nebraska.gov

Re: Request for Proposal Number 112209 O3

Dear sir or madam:

Pursuant to Neb. Rev. Stat. § 84-712, *et seq.*, we ask that you provide the following records, or copies of the same, related to DHHS Request for Proposal No. 112209 O3 (the "RFP"):

1. The complete procurement file for the RFP, including but not limited to the following—
 - a. All bids, replies, responses, proposals, best and final offers, clarification requests, and other documents submitted in response to the RFP, together with all exhibits and attachments to those documents.
 - b. All instructions and training materials provided for purposes of evaluating RFP proposals.
 - c. All questions posed by bidders or potential bidders, and all answers to questions from bidders or potential bidders.
 - d. All transcripts, emails, instant messages, chats (e.g., Teams chats), notes, memos, spreadsheets, slides, or other documents created, reviewed, or relied upon in connection to

EXHIBIT

C

12910 PIERCE STREET
SUITE 200
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(402) 397-1700

1207 M STREET
P.O. BOX 510
AURORA, NE 68818
(402) 694-6314

215 MATHEWS STREET
SUITE 300
FORT COLLINS, CO 80524
(970) 221-2637

131 W. EMERSON STREET
HOLYOKE, CO 80734
(970) 854-2264

communications with bidders or potential bidders or the evaluation of bids or proposals.

- e. All evaluations, scoring sheets, rankings, notes, analyses, and other documents used in evaluation of proposals, together with all evaluator entries or comments for all bidders both before and after oral presentations.
 - f. All documents used by any bidder in connection with the oral presentations conducted by DHHS.
 - g. Documents sufficient to show all individuals who served on the RFP evaluation committee or who served as consultants or advisers in connection with the award of contract(s) pursuant to the RFP.
 - h. All communications by or with bidders or potential bidders maintained as part of the file.
 - i. All communications by or with employees of the State of Nebraska or its consultants regarding the procurement.
 - j. All intents to award or award notices that have been issued.
 - k. All contracts (and drafts thereof) that have been drafted or executed.
2. All recorded communications and other documents (including correspondence, emails, text messages, instant messages, chats, messages sent using social media, and audio or video files) exchanged between those who evaluated responses to the RFP and those who submitted responses to the RFP.
 3. All recorded communications and other documents (including correspondence, emails, text messages, instant messages, chats, messages sent using social media, and audio or video files) exchanged between DHHS and bidders or potential bidders relating to the RFP.
 4. All recorded communications (including correspondence, emails, text messages, instant messages, chats, messages sent using social

media, and audio or video files) exchanged between and among the persons involved in scoring the RFP proposals and/or selecting the final awardees.

5. All communications between elected or appointed officials, or representatives of elected or appointed officials, and DHHS that relate to the RFP, responses to the RFP, or any person who responded to the RFP.
6. All documents constituting, summarizing, or otherwise describing or discussing negotiations related to the RFP.
7. All documents that DHHS or its representatives provided to any person who responded to the RFP in connection with the RFP.
8. All documents, whether created by DHHS or any other party, that refer or relate to any irregularities with respect to the RFP process or the evaluation of responses to the RFP. For purposes of this request, “irregularities” include (a) all deviations from the evaluation process set out in the RFP; (b) all deviations from statutory requirements, administrative rules or procurement policy with respect to the evaluation of responses to the RFP; (c) any actual or potential bias by anyone involved in the evaluation process; (d) any acts or communications that relate to any appearance of impropriety by anyone involved in the evaluation process; and (e) any effort to influence the evaluators by means not consistent with the procedures set out in the RFP.
9. Any bid protests and responses thereto submitted in connection with the procurement.
10. All documents produced to any other bidder in connection with the procurement.

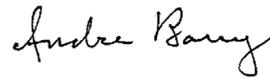
In construing the requests above, the terms “and” and “or” should be read broadly to make the requests inclusive rather than exclusive. If items listed in paragraphs 1a – j exist but are not maintained as part of an official file, they are nonetheless requested and should be produced.

Nebraska DHHS
September 23, 2022
Page 4

Pursuant to Neb. Rev. Stat. § 84-712(4), these records should be produced as soon as possible and without delay, but not more than four business days after receipt of this request. If the entire request cannot be fulfilled within four business days, we respectfully ask you to notify us as soon as possible, together with a statement of the earliest practicable date by which the request can be fulfilled. In any event, we believe the entire file, as requested in # 1, above, should be available and produced within the four days set forth in statute.

Thank you for your prompt attention to this request

Very truly yours,

A handwritten signature in cursive script that reads "Andre R. Barry".

Andre R. Barry
For the Firm

SCOTT D. KELLY
MARK A. CHRISTENSEN
RICHARD P. GARDEN, JR.
SUSAN K. SAPP
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November 4, 2022

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†ATTORNEYS ADMITTED IN COLORADO ONLY

VIA EMAIL to nedoj@nebraska.gov AND HAND DELIVERY

Attorney General Doug Peterson
Nebraska Attorney General's Office
2115 State Capitol
Lincoln, NE 68509

Re: Request for Proposal Number 112209 O3

Dear Attorney General Peterson:

We write seeking your prompt attention to an ongoing denial of rights related to public records requests to the Nebraska Department of Health and Human Services ("DHHS"). The requests concern records related to DHHS's RFP No. 112209 O3 for Heritage Health (the "RFP") for which an intent to award was announced on September 23, 2022. This procurement relates to state-wide Medicaid managed care services for more than 120,000 of the most at-risk Nebraskans whom Anthem Healthy Blue ("Healthy Blue") has been serving as an incumbent provider.

DHHS awarded contracts to three service providers. Our client, Healthy Blue, submitted a bid in response to that RFP, but was not awarded a contract despite having missed the third award slot by a very small points margin (less than 1%). Questions exist as to whether other selected providers should have been disqualified. The same day as the award announcement, Healthy Blue served a public records act request on DHHS, seeking information and documents related to the RFP and scoring and evaluation process. Yet, DHHS produced minimal responsive information such that Healthy Blue had to timely file its bid protest on October 7, 2022, without the benefit of public records that it had requested on September 23, 2022. DHHS denied the protest in a written letter dated October 24, 2022. Healthy Blue has until November 7, 2022, to request a meeting on the bid protest with DHHS.

EXHIBIT

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(970) 221-2637

131 W. EMERSON STREET
HOLYOKE, CO 80734
(970) 854-2264

November 4, 2022

Page 2

In the days following DHHS's award, on behalf of our client, Healthy Blue, we have sought public records from DHHS to better understand the basis for DHHS's decision and to explore the grounds for a possible protest, which Healthy Blue has a legal right to pursue. Copies of our written requests and the State's response are enclosed herewith. DHHS has provided some records in response to these requests, but has omitted others, and has refused to produce portions of the response of a successful bidder, Molina Healthcare, without any basis in law.¹ DHHS has also stated that it will withhold drafts of documents related to the RFP in reliance on a 1991 Attorney General Opinion that does not support this position. As set forth below, Nebraska's public records statute requires production of these records in their entirety.

1. Complete Molina Technical Proposal

Our initial public records request dated September 23, 2022, sought the complete procurement file for the RFP, including "[a]ll bids, replies, **responses, proposals**, best and final offers, clarification requests, and other documents submitted in response to the RFP, together with exhibits and attachments to those documents." (Emphasis added.) DHHS did not directly provide us with any other bidders' responses and proposals submitted in response to the RFP. It did make copies of those documents available to the public on webpage dedicated to the RFP. In doing so, however, DHHS redacted significant portions of Molina's technical proposal, including portions addressing Molina's "Contract Performance, and Criminal or Regulatory Investigations and Sanctions. (See [Request for Proposal for Agency Processed Services \(nebraska.gov\)](#), Vendor Responses dated September 23, 2022.) This information directly relates to whether Molina should have been disqualified as a bidder.

On October 27, 2022, to present the issue clearly and give DHHS another opportunity to provide the complete Molina proposal, we made another request—this time specifically seeking an unredacted copy of the Molina proposal, which had previously been requested on September 23. On November 2, 2022, DHHS wrote to us stating that it would take until November 30 to provide an unredacted copy of Molina proposal. This response was patently disingenuous. As we immediately pointed out to DHHS, a redacted version of the proposal has been

¹ In its response, DHHS stated that it would take until May 15, **2024**, to provide emails and WebEx chat, and that the charge for doing so would exceed \$150,000. For the time being, our clients have withdrawn their requests for emails and WebEx chat outside those items maintained as part of the RFP file but reserve the right to serve more targeted requests for such communications. For now, we are focused on production of the non-email, non-Web Ex documents that DHHS is required to provide pursuant to the public records statutes.

November 4, 2022

Page 3

made available on the internet by DHHS; there is no question that the Molina proposal exists, that DHHS has had it for months, and that DHHS failed to identify any basis to withhold any portions of the report in its response to our September 23, 2022, public records request, much less a pivotal page or two. DHHS's claim that it would take until November 30, 2022, to respond to our specific request for the complete Molina proposal was likewise not credible and in violation of Nebraska's public records statutes.

When we pointed these things out to DHHS on November 2, 2022, we received another email, this time claiming an exemption for "proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose." As set forth below, this exemption from disclosure does not apply.

DHHS is attempting to invoke the exemption for "commercial or proprietary information" in Neb. Rev. Stat. § 84-712.05(3). Notably, DHHS does not claim that the redacted information is a trade secret. Nor could it. A company's history of problems in contract performance, criminal and regulatory investigations, and sanctions is not a trade secret. To be exempt from disclosure under § 84-712.05(3), "commercial or proprietary information" must be such that disclosure would give advantage to competitors **and** disclosure must serve no public interest. See *Aksamit Resource Mgmt. v. Neb. Pub. Power Dist.*, 299 Neb. 114 (2018). There is a clear public interest in knowing these facts about those who seek to do business with the State of Nebraska—access public funds and serve at-risk Nebraskans—to facilitate the provision of Medicaid services to vulnerable members of the public. This public interest defeats any argument that this information is exempt from disclosure as "proprietary or commercial information."

As reflected in the attached correspondence, we pointed this out to DHHS on November 2, 2022 and received no response. We respectfully ask that your office direct DHHS to immediately produce the complete technical proposal from Molina.

2. Drafts of the RFP and Documents Related to the RFP

In DHHS's October 19, 2022, response to our initial request, the agency stated,

Notes and drafts of documents within an agency that are subject to approval by upper management which have not been issued are

November 4, 2022

Page 4

preliminary materials and not “records” or “documents” and may be withheld by the agency. See Op. Att’y Gen. No. 91054 (June 17, 1991). For this reason, drafts of the RFP and other documents related to the RFP that were not publicly posted are being withheld.

As an initial matter, we believe this 30 year old opinion is at odds with the plain language of Nebraska’s public records statutes, and specifically the definition in Neb. Rev. Stat. § 84-712.01(1) that “public records shall include **all** records and documents, regardless of physical form, of or belonging to this state,” without any exception or qualified exception for “drafts” or “preliminary materials.” As numerous courts have recognized since the issuance of this Attorney General’s opinion, “all means all.” *United States ex rel. Cairns v. D.S. Medical LLC*, 42 F.3d 828 (8th Cir. 2022); *Dunbar v. Twin Towers Condominium Ass’n, Inc.*, 26 Neb. App. 354 (2018) (rejecting proposal for a balancing test in the context of a request for records from a nonprofit corporation).

At this point, in the interest of time, we are not asking your office to reconsider AG Opinion No. 91054. We do ask that you examine all drafts of the RFP and other documents related to the RFP that were not publicly posted and thus withheld by the department to determine whether they qualify to be withheld pursuant to the test in AG Opinion No. 91054. We also reserve the right to challenge AG Opinion No. 91054 in a subsequent legal action.

3. Other Documents Not Produced

Separate and apart from the failure to produce “draft” documents, still other documents we requested have yet to be produced in any form despite our initial request being more than a month ago which we respectfully request that you prioritize:

1. DHHS has not produced any documents, evaluator comments, communications, or information related to scoring of numerous Corporate Overview sections. Information was provided for only 4 out of 10 sections— Sections 2, 8, 9, and 10.
2. DHHS has failed to produce any evidence related to how and when the decision was made to score some questions pass/fail, as opposed to scoring them.

November 4, 2022

Page 5

3. As to 42 questions that were scored, DHHS has failed to produce any records related to its decision to assign a particular number of points to each question.
4. DHHS has failed to produce any records of communications with evaluators. While we withdrew our initial request for emails in response to DHHS's estimates of time and expense to review emails, it is not credible to suggest that there were no documents other than emails used to communicate with evaluators, particularly when DHHS contends that it conducted multiple rounds of training.
5. DHHS has failed to produce any agendas or minutes of any meetings related to evaluation provided. The record produced to this point indicates guidance and training to the evaluators may have been provided through several meetings; however, neither agendas nor minutes were provided from those meetings.

In responding to our initial public records request sent on September 23, 2022, DHHS did not assert an exemption to any of these requests and did not claim that additional time was necessary to fulfill the requests for these documents. Accordingly, DHHS should be required to produce all these documents immediately to the extent they exist.

In its denial of Healthy Blue's initial protest, DHHS in essence invited Healthy Blue to seek the assistance of your office with regard to this records issue. Thus, the decision states "If Healthy Blue is dissatisfied with DHHS's response and compliance with the request, it is entitled under Neb. Rev. Stat. §84-712.03 to seek speedy judicial relief by petitioning for a writ of mandamus or by petitioning the Nebraska Attorney General for assistance in resolving non-compliance issues, including the assisting of filing suit against DHHS." Protest Decision at 4. In a sincere hope to avoid litigation, we respectfully urge your assistance with this important issue for Nebraska.

We understand that the records statute provides your office 15 days to respond to this request for assistance. However, given the ongoing bid protest proceedings, the passage of more than a month since Healthy Blue's initial request, and the imminent need to seek further review of the initial protest decision, we respectfully request an expedited response—including but not limited to immediate production of the unredacted Molina proposal.

November 4, 2022

Page 6

If you have any questions related to this urgent matter, please call my direct line at work, (402) 479-7143, which will ring through to my cell phone, or send me an email.

Very truly yours,

A handwritten signature in black ink that reads "Andre R. Barry". The signature is written in a cursive, flowing style.

Andre R. Barry
For the Firm

cc: Leslie S. Donley (via email to leslie.donley@nebaska.gov)
Wes Nespor (via email to wes.nespor@nebraska.gov)
Kelly McCurdy (via email to dhhs.publicrecords@nebraska.gov)

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TERRY R. WITTLER (INACTIVE)

†ATTORNEYS ADMITTED IN COLORADO ONLY

September 23, 2022

VIA EMAIL

Nebraska Department of Health and Human Services
DHHS Public Records Office
DHHS.PublicRecords@nebraska.gov

Re: Request for Proposal Number 112209 O3

Dear sir or madam:

Pursuant to Neb. Rev. Stat. § 84-712, *et seq.*, we ask that you provide the following records, or copies of the same, related to DHHS Request for Proposal No. 112209 O3 (the "RFP"):

1. The complete procurement file for the RFP, including but not limited to the following—
 - a. All bids, replies, responses, proposals, best and final offers, clarification requests, and other documents submitted in response to the RFP, together with all exhibits and attachments to those documents.
 - b. All instructions and training materials provided for purposes of evaluating RFP proposals.
 - c. All questions posed by bidders or potential bidders, and all answers to questions from bidders or potential bidders.
 - d. All transcripts, emails, instant messages, chats (e.g., Teams chats), notes, memos, spreadsheets, slides, or other documents created, reviewed, or relied upon in connection to

communications with bidders or potential bidders or the evaluation of bids or proposals.

- e. All evaluations, scoring sheets, rankings, notes, analyses, and other documents used in evaluation of proposals, together with all evaluator entries or comments for all bidders both before and after oral presentations.
 - f. All documents used by any bidder in connection with the oral presentations conducted by DHHS.
 - g. Documents sufficient to show all individuals who served on the RFP evaluation committee or who served as consultants or advisers in connection with the award of contract(s) pursuant to the RFP.
 - h. All communications by or with bidders or potential bidders maintained as part of the file.
 - i. All communications by or with employees of the State of Nebraska or its consultants regarding the procurement.
 - j. All intents to award or award notices that have been issued.
 - k. All contracts (and drafts thereof) that have been drafted or executed.
2. All recorded communications and other documents (including correspondence, emails, text messages, instant messages, chats, messages sent using social media, and audio or video files) exchanged between those who evaluated responses to the RFP and those who submitted responses to the RFP.
 3. All recorded communications and other documents (including correspondence, emails, text messages, instant messages, chats, messages sent using social media, and audio or video files) exchanged between DHHS and bidders or potential bidders relating to the RFP.
 4. All recorded communications (including correspondence, emails, text messages, instant messages, chats, messages sent using social

media, and audio or video files) exchanged between and among the persons involved in scoring the RFP proposals and/or selecting the final awardees.

5. All communications between elected or appointed officials, or representatives of elected or appointed officials, and DHHS that relate to the RFP, responses to the RFP, or any person who responded to the RFP.
6. All documents constituting, summarizing, or otherwise describing or discussing negotiations related to the RFP.
7. All documents that DHHS or its representatives provided to any person who responded to the RFP in connection with the RFP.
8. All documents, whether created by DHHS or any other party, that refer or relate to any irregularities with respect to the RFP process or the evaluation of responses to the RFP. For purposes of this request, “irregularities” include (a) all deviations from the evaluation process set out in the RFP; (b) all deviations from statutory requirements, administrative rules or procurement policy with respect to the evaluation of responses to the RFP; (c) any actual or potential bias by anyone involved in the evaluation process; (d) any acts or communications that relate to any appearance of impropriety by anyone involved in the evaluation process; and (e) any effort to influence the evaluators by means not consistent with the procedures set out in the RFP.
9. Any bid protests and responses thereto submitted in connection with the procurement.
10. All documents produced to any other bidder in connection with the procurement.

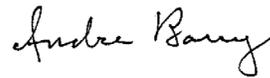
In construing the requests above, the terms “and” and “or” should be read broadly to make the requests inclusive rather than exclusive. If items listed in paragraphs 1a – j exist but are not maintained as part of an official file, they are nonetheless requested and should be produced.

Nebraska DHHS
September 23, 2022
Page 4

Pursuant to Neb. Rev. Stat. § 84-712(4), these records should be produced as soon as possible and without delay, but not more than four business days after receipt of this request. If the entire request cannot be fulfilled within four business days, we respectfully ask you to notify us as soon as possible, together with a statement of the earliest practicable date by which the request can be fulfilled. In any event, we believe the entire file, as requested in # 1, above, should be available and produced within the four days set forth in statute.

Thank you for your prompt attention to this request

Very truly yours,

A handwritten signature in cursive script that reads "Andre R. Barry".

Andre R. Barry
For the Firm



September 29, 2022

Andre R. Barry
Cline Williams Wright Johnson & Oldfather, L.L.P.

RE: Time and Cost Estimate in response to Public Record Request

Dear Mr. Barry:

Thank you for your public records request from September 23, 2022. A copy of your request is attached to this message for your reference as you review this time and cost estimate prepared in response to the request.

Emails

The agency identified approximately 99 individuals who were involved with the RFP at some point between September 1, 2021 and September 23, 2022. Since no search terms were provided, the agency requested OCIO to provide the total number of emails from those individuals during that time frame.

The search resulted in 138,345 emails.

Further, the agency requested a search of WebEx messages for records for those individuals. Please note that the agency does not have any search capability regarding WebEx messages. Each entry on a WebEx chat is its own separate entry, and must be manually opened and printed to review the messages. The system also does not provide messages in chronological order or by employee, and each WebEx chat has to be manually organized. As a result, the agency must request a pull of all messages for an individual during a certain time period and review them manually for responsiveness and to ensure that confidential or privileged information is not released contrary to state or federal law. As such, the numbers are simply the total generated and not necessarily the total number of messages that may be produced.

WebEx messages belonging to the 99 employees:

Webex: SPACES 1301 ACTIVITIES 54481 FILES 1203 WHITEBOARDS 1.

Regarding the emails, Webex, and the remaining items of the request, please refer to the HHS Document Search time and cost estimate below for the actual time and cost to produce responsive records.

HHS Emails

HHS EMAILS (138,345 potentially responsive emails total)

Employee Job Title	Hours	Description of Work	Unit Cost	Total Cost
Attorney III	16 total hours; first 4 hours free; TOTAL HOURS: 12 hours	Attorney administrative migration of data (non-privilege review)	\$32.86 per hour	\$525.76 -4 hours= 131.44 \$394.32
Senior IT Support Analyst	1 hours	IT email retrieval (actual billed cost to the agency)	\$80.00 per hour	\$80.00
Agency Assistant Legal Counsel	2305 hours	Responsiveness review of records/organize (non-privilege review)	\$54.71 per hour	\$126,147.58
			TOTAL	\$126,621.90

HHS WebEx Messages:

HHS WebEx Messages (56986 potentially responsive messages)

Employee Job Title	Hours	Description of Work	Unit Cost	Total Cost
Attorney III	8 total hours;	Attorney administrative migration of data (non-privilege review)	\$32.86 per hour	\$262.88
Senior IT Support Analyst	1 hours	IT email retrieval (actual billed cost to the agency)	Included above	
Office Manager	949 hours	Manually opening, printing, and responsiveness review of records/organize (non-privilege review)	\$25.55 per hour	\$24,246.95
			TOTAL	\$24,509.83

HHS Document Search:

The time and cost estimate for HHS documents, excluding emails and WebEx messages, responsive to this request is included below:

Employee Job Title	Hours	Description of Work	Unit Cost	Total Cost
Agency Assistant Legal Counsel	40 hours	Non-privilege responsiveness review	\$54.71	\$2,188.40
			TOTAL	\$2,188.40
			Grand Total for HHS emails, WebEx messages, and HHS documents	\$153,320.13

Please note that under public records laws, the first four hours of staff are free. The four hour threshold does not apply to the amount allowed to be charged by DHHS to produce electronic data under Neb. Rev. Stat. § 84-712(3)(b)(ii). As a result, the full cost for the time spent by IT to retrieve the information is outlined above.

Please know that you have ten business days to review the estimated cost, and request the agency fulfill the request, negotiate with the agency to narrow or simplify your request, or withdraw your request. If you do not respond within ten business days, the agency shall not proceed to fulfill your request.

The agency requires payment of a 10% deposit of the expected cost prior to moving forward with responding to the request. **Please**, only send the amount of the deposit requested as time estimates are just estimates. We will send you the final time and billing amount once it is completed. With the State billing system it is difficult to refund if there is an overpayment because the time ends up being less.

* Please be advised that this cost is an estimate. The final cost may be more, or less, depending on the actual time and cost expended by the agency in responding to your public records request.

If you intend to proceed with the foregoing, please send a check in the amount of **\$15,332.00** payable to “Nebraska Department of Health and Human Services.”

All payments must be sent to Nebraska Department of Health and Human Services, Attn: Tom Skutt, Legal Services, Nebraska State Office Building, P.O. Box 95026, Lincoln, NE 68509.

Given the volume of your request and the current workloads of our staff, the agency expects to be able to fulfill or provide an answer to your request **May 15, 2024**. However, this time frame is an estimate and may change as we go forward with the search and review process.

Based on the expected timeline, please let me know if the agency’s expected response remains timely based upon your needs and if your request should be fulfilled. If the information is available prior to the estimated date, it will be promptly sent to you upon payment of the full balance of the

costs. Under Neb. Rev. Stat. § 84-712(4), should you desire to modify or prioritize your request, please contact our office directly.

Sincerely

Wesley D. Nespor
Agency Assistant Legal Counsel
Nebraska DHHS

SCOTT D. KELLY
MARK A. CHRISTENSEN
RICHARD P. GARDEN, JR.
SUSAN K. SAPP
KEVIN J. SCHNEIDER
ROCHELLE A. MULLEN
TRENTEN P. BAUSCH
MICHAEL C. PALLESEN
RICHARD P. JEFFRIES
TRACY A. OLDEMEYER
TRENT R. SIDDEES
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JENNIE A. KUEHNER
TRAVIS W. TETTENBORN
BEAU B. BUMP
SHANNON E. FALLON
CRISTIN M. MCGARRY
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CLINE WILLIAMS
WRIGHT JOHNSON & OLDFATHER, L.L.P.

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September 30, 2022

LILY AMARE
JOHN F. ZIMMER, V
NATHAN D. CLARK
PAUL B. DONAHUE
ALISON JANECEK BORER
SYDNEY M. HUSS
BRITTNEY M. HOLLEY
LINCOLN J. KORELL
ISAIAH J. FROHLING
CHRISTOPHER B. GREENE
JESSICA K. ROBINSON
AARON N. GOODMAN
JEREMIAH J. PERKINS
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HARRISON J. KRATOCHVIL
EVAN D. RUNGE
KIMBERLY A. DUGGAN

STEPHEN E. GEHRING
L. BRUCE WRIGHT
ROBERT J. ROUTH
DAVID R. BUNTAIN
JOHN C. MILES
THOMAS C. HUSTON
DON R. JANSSEN
GARY R. BATENHORST
RICHARD A. SPELLMAN
DAVID O. COLVERT†
DONALD F. BURT (INACTIVE)
STEPHEN H. NELSEN (INACTIVE)
TERRY R. WITTLER (INACTIVE)

†ATTORNEYS ADMITTED IN COLORADO ONLY

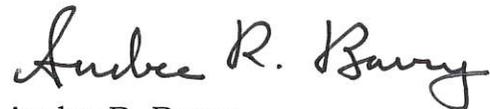
Nebraska Department of Health and Human Services
ATTN: Tom Skutt
Legal Services
Nebraska State Office Building
P.O. Box 95026
Lincoln, NE 68509

Re: Request for Proposal number 112209 O3
Public Records Request Deposit

Dear Mr. Skutt:

Enclosed please find check no. 265699 in the amount of \$218.84 for the deposit payment of DHHS's production of records described as DHHS Documents Search in the cost estimate we received from Wes Nesper on September 29, 2022.

Very truly yours,



Andre R. Barry
For the Firm

cc: Wes Nesper (via email only wes.nesper@nebraska.gov)
Encl.
4854-2490-1174, v. 1

October 19, 2022

Andre R. Barry
Cline Williams Wright Johnson & Oldfather, L.L.P.

RE: Non-email remaining documents

Dear Mr. Barry:

Thank you for your amended records request of September 23, 2022 (withdrawing requests for emails and Webex communications). A number of documents relating to evaluations was provided previously. DHHS records responsive to your request are being emailed together with this letter. The following information has been withheld:

Nebraska Public Records Law provides that the agency is not required to supply copies of any public record that is available on the custodian's website, unless the requester does not have reasonable access to the Internet due to lack of a computer, lack of Internet availability, or inability to use a computer or the internet; rather, the agency is required to provide the location of a public record online to the requester. Neb. Rev. Stat. § 84-712(3)(a). Public versions of the bidders' proposals, the RFP materials, questions and answers, notice of intent to award, and materials related to the protest are available on the Department of Administrative Services website. A link is provided.

<https://das.nebraska.gov/materiel/purchasing/112209%2003/112209%2003.html>

Notes and drafts of documents within an agency that are subject to approval by upper management which have not been issued are preliminary materials and not "records" or "documents" and may be withheld by the agency. See Op. Att'y Gen. No. 91054 (June 17, 1991). For this reason, drafts of the RFP and other documents related to the RFP that were not publicly posted are being withheld.

The following information has been redacted: Attorney-client communications under Neb. Rev. Stat. §§ 84-712.05(4) and 27-503(2), passwords and links to sharepoint sites and meetings. Passwords and links are redacted pursuant to Neb. Rev. Stat. § 84-712.05(9).

Certain emails were kept by the DHHS Director of Procurement and Grants in an electronic folder and did not need to be pulled from Outlook. Those are being provided even though you withdrew your request for emails. Other emails are not being produced.

The cost for these materials is as follows:

Initial IT estimate from OCIO actual cost	\$ 40.00
Agency Assistant Legal Counsel responsiveness review (23hrs-first 4) 19x54.71	\$1,039.49
Subtotal	\$1,079.49
Less deposit	\$ 218.84
Net due	\$ 860.65

If you believe the withholding of information requested is in error, you have the right, pursuant to Nebraska Revised Statute § 84-712.03, to appeal the decision by filing for relief by a writ of mandamus in the District Court in Lancaster County, Nebraska or to petition the Nebraska Attorney General for review

of this denial. For the purpose of an appeal, Wesley D. Nespor is the State official responsible for the decision to deny any portion of your request.

Thank you,

Wesley D. Nespor
Agency Assistant Legal Counsel
301 Centennial Mall South
P.O. Box 95026
Lincoln, NE 68509-5026

From: [Andre R. Barry](#)
To: DHHS.PublicRecords@nebraska.gov
Subject: Molina Proposal
Date: Thursday, October 27, 2022 3:22:37 PM

Dear sir or madam:

We write to request an unredacted copy of the Technical Proposal in response to RFP 112209 O3 from Molina Healthcare. A redacted copy of the Technical Proposal is posted to the DHHS website; however, there is no statutory basis that would justify the redactions. Thus, we are requesting that DHHS provide the entire Technical Proposal, without redactions.

Please provide the record in electronic format so that no copying is required.

Thank you for your attention to this request.

CLINE WILLIAMS

ANDY BARRY | Partner
CLINE WILLIAMS WRIGHT JOHNSON & OLDFATHER, L.L.P.
233 South 13th Street | 1900 US Bank Bldg. | Lincoln, NE 68508
Direct: 402.479.7143 | Main: 402.474.6900 | www.clinewilliams.com
Lincoln | Omaha | Aurora | Fort Collins | Holyoke

From: [Andre R. Barry](#)
To: [DHHS Public Records](#)
Subject: RE: PR Request: RFP 112209-O3/UNREDACTED MOLINA PROPOSAL (BARRY)
Date: Wednesday, November 2, 2022 2:11:31 PM

Kelly:

Thanks for your email.

The Molina proposal was requested in a letter dated September 23, 2022, and should have been provided on October 21, with other documents produced pursuant to that request.

A redacted version of the Molina proposal has already been posted to a DHHS webpage. The only request here is for an unredacted copy of that document, which DHHS unquestionably has and could easily un-redact. Respectfully, there is no reason why that document could not have been produced in its entirety before today, let alone any reason to delay production until November 30.

We reiterate our request for immediate production of this record.



ANDY BARRY | Partner
CLINE WILLIAMS WRIGHT JOHNSON & OLDFATHER, L.L.P.
233 South 13th Street | 1900 US Bank Bldg. | Lincoln, NE 68508
Direct: 402.479.7143 | Main: 402.474.6900 | www.clinewilliams.com
Lincoln | Omaha | Aurora | Fort Collins | Holyoke

From: DHHS Public Records <DHHS.PublicRecords@nebraska.gov>
Sent: Wednesday, November 2, 2022 12:50 PM
To: Andre R. Barry <abarry@clinewilliams.com>
Cc: DHHS Public Records <DHHS.PublicRecords@nebraska.gov>
Subject: PR Request: RFP 112209-O3/UNREDACTED MOLINA PROPOSAL (BARRY)

Good afternoon,

The agency is working on your attached request. Due to the workload demands on agency personnel, our office expects the agency will be unable to provide a response until November 30, 2022. If the agency's response is available sooner, our office will respond accordingly. Should you desire to modify or prioritize your request, please contact our office directly. Please be advised that public records law allows for a charge for the actual cost of collecting, reproducing, and mailing the records you have requested; however there is no cost for this request.

Nothing in this email shall be construed as a promise or guarantee, of any type, that any or all public records responsive to your request exist or can be produced. If the public record exists, withholding or redaction may be required by applicable law.

Thank you,

Kelly McCurdy | *Office Services Manager II*
LEGAL SERVICES

Nebraska Department of Health and Human Services

OFFICE: 402-471-4074

DHHS.ne.gov | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

From: [Andre R. Barry](#)
To: [DHHS Public Records](#)
Subject: RE: PR Request: RFP 112209-O3/UNREDACTED MOLINA PROPOSAL
Date: Wednesday, November 2, 2022 4:53:57 PM

Dear Mr. Skutt:

DHHS is proposing to award Molina a contract involving the expenditure of public funds in connection with healthcare services provided to Nebraska citizens. There is a clear public interest in full disclosure of what Molina told DHHS about its history of contract performance, criminal and regulatory investigations, and sanctions. This public interest defeats any claim that the redacted information is exempt from disclosure as “proprietary or commercial information.” See *Aksamit Resource Mgmt. v. Neb. Pub. Power Dist.*, 299 Neb. 114 (2018).

We reiterate our request for immediate production of the complete record.

CLINE WILLIAMS

ANDY BARRY | Partner
CLINE WILLIAMS WRIGHT JOHNSON & OLDFATHER, L.L.P.
233 South 13th Street | 1900 US Bank Bldg. | Lincoln, NE 68508
Direct: 402.479.7143 | Main: 402.474.6900 | www.clinewilliams.com
Lincoln | Omaha | Aurora | Fort Collins | Holyoke

From: DHHS Public Records <DHHS.PublicRecords@nebraska.gov>
Sent: Wednesday, November 2, 2022 4:43 PM
To: Andre R. Barry <abarry@clinewilliams.com>
Cc: DHHS Public Records <DHHS.PublicRecords@nebraska.gov>
Subject: PR Request: RFP 112209-O3/UNREDACTED MOLINA PROPOSAL

Good afternoon. The document requested is subject to review by public records to avoid the disclosure of “...proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose.” Neb. Rev. Stat. §84.712.05(3). A response to your request will be provided after the review is complete.

Sincerely,

Thomas Skutt, Jr., JD | *Public Records and Discovery Attorney III*
LEGAL SERVICES

Nebraska Department of Health and Human Services

OFFICE: 402-471-7020 | FAX: 402-742-2374

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