

October 18, 2022

**VIA E-MAIL: GREGORY.WALKLIN@NEBRASKA.GOV**

Greg Walklin  
Director of Procurement and Grants  
Nebraska Department of Health and Human Services  
301 Centennial Mall South  
Lincoln, Nebraska 68509

Re: Molina Healthcare of Nebraska Inc.’s Response and Additional Information –  
Healthy Blue Protest of RFP 112209 O3

Dear Mr. Walklin:

We appreciate the opportunity to respond to your October 13, 2022 Memorandum Re: Protest, in which you invite Molina Healthcare of Nebraska, Inc. (“Molina”) to “provide additional information, as applicable, for DHHS’ review and response to the protest filed by Community Care Plan of Nebraska D/B/A Health Blue (“Healthy Blue”).” On behalf of Molina, below we respectfully respond to designated portions of Healthy Blue’s protest dated October 7, 2022 (“Protest”).<sup>1</sup>

## **I. INTRODUCTION**

Healthy Blue’s Protest makes strident claims of misrepresentations and omissions by Molina, but the weakness of Healthy Blue’s position is demonstrated, by its own admission, in the Protest itself. Healthy Blue supports each of its desperate allegations with disclosures and information Molina itself provided in its proposal, thus establishing without doubt Molina’s transparency and that DHHS had all responsive information necessary to support its proper award decision.

Notably, Healthy Blue’s protest omits critical definitional information relating to its principal allegation, that Molina misled DHHS regarding its use of subcontractors. Healthy Blue fails to disclose, in its misleading discussion of subcontractor requirements, the very definition that the agency provided to bidders in the RFP and in the Question and Answer process, to wit,

---

<sup>1</sup> Molina responds here to the portions of the Protest identified by DHHS. Molina does not provide a full examination of Healthy Blue’s proposal, or any defects in any of the other proposals. Molina reserves the right to do so as necessary.

that a “subcontractor” **shall not include “[e]ntities who perform ancillary functions** for an MCO[.]”<sup>2</sup> Molina’s proposal, contrary to Healthy Blue’s unsupported assertions, fully complies with all RFP and legal provisions, and Molina fully earned all of its scores and its ultimate award.<sup>3</sup>

Ignoring the terms of the RFP and of applicable law, Healthy Blue misstates the law regarding the agency’s wide discretion in evaluating and scoring proposals, claiming that the RFP “requires” or “compels” disqualification or arguing that any DHHS action urged by the Protest is “mandatory.” Each exaggerated claim by Healthy Blue is wrong: the RFP and applicable law afford DHHS wide discretion in evaluating and scoring bidders’ proposals: “the State reserves the right to evaluate proposals and award contracts in a manner utilizing criteria selected at the State’s discretion and in the State’s best interest.” RFP, at 9. Because, as Healthy Blue admits, Molina provided to the State and its evaluators all required information about subcontractors, as that term has been defined by the agency, and because Molina “misrepresented” nothing, the Protest should be dismissed.<sup>4</sup>

Molina categorically rejects, any insinuation of wrongdoing or any claim that it misled DHHS, intentionally or otherwise. Molina fully and in good faith complied with all RFP requirements, including those related to disclosure of subcontractors and fully and accurately outlined the nature of its relationship with its parent, Molina Healthcare, Inc. (“MHI”). Molina properly applied the RFP’s definition of subcontractor and disclosed both the subcontractors and ancillary vendors it proposed to use in providing high quality services to DHHS and to Nebraska’s Medicaid population. Healthy Blue’s speculative assertions about “excess redactions” neither accurately reflect the law, nor provide a basis for challenging the award to Molina.

## II. RELEVANT AWARD AND LEGAL STANDARD

Healthy Blue repeatedly suggests that DHHS “must” take some action in response to its misguided Protest. But Healthy Blue fails to recognize the broad discretion granted to DHHS and the Evaluation Committee under Nebraska law. In particular, in Section I.V of the RFP, the “State reserves the right to evaluate proposals and award contracts in a manner utilizing criteria selected at the State’s discretion and in the State’s best interest.” The RFP consistently and correctly reflects Nebraska law confirming DHHS’s wide discretion, employing throughout the RFP

---

<sup>2</sup> See RFP, Addendum Three, Questions and Answers Round Two, Question 17.

<sup>3</sup> While cursory review of Healthy Blue’s proposal identifies multiple flaws, omissions and examples of Healthy Blue’s failure to comply with the RFP, in keeping with DHHS’s request for a limited response, Molina does not intend to address them in detail here.

<sup>4</sup> Healthy Blue’s speculative improper redaction claim similarly ignores that a) it is the agency’s decision, “in its sole discretion,” not Molina’s, as to whether confidentiality designations meet legal standards, and b) regardless of any materials redacted from public view, DHHS’s evaluators received unredacted information and fairly evaluated Molina based on an unredacted proposal.

permissive terms such as “should” or “may,” to define DHHS’s authority in evaluating responsive proposals.

The RFP’s broad grant of discretion to DHHS is closely aligned with well-established Nebraska law on competitive procurements:<sup>5</sup>

Recognizing that public bodies exercise an official discretion when awarding bids, we have stated that courts will show deference when reviewing challenges to a public body’s responsibility determinations and award decisions: Where there is a showing that the administrative body, in exercising its judgment, acts from honest convictions, based upon facts, and as it believes for the best interests of its municipality, and where there is no showing that the body acts arbitrarily, or from favoritism, ill will, fraud, collusion, or other such motives, it is not the province of a court to interfere and substitute its judgment for that of the administrative body.

*Rath v. City of Sutton*, 267 Neb. 265, 284-85, 673 N.W.2d 869, 887 (2004). Recent Nebraska decisional law confirms the wide discretion DHHS possess in evaluating and scoring competitive bid proposals. See, e.g., Memorandum Opinion, *ACS State HealthCare, LLC v. Heineman, et al.*, Case No. 4:08CV3021 (D. Neb. Feb. 29, 2008); Memorandum and Order, *Coventry Health Care of Nebraska, Inc. v. Neb. Dept. of Admin. Servs.*, Case No. 4:16CIV3094 (D. Neb. Aug. 18, 2016); Order on Defendants’ Motion to Dismiss and Plaintiffs’ Temporary Injunction, *Nebraska Families Collaborative d/b/a Promiseship, et al. v. Nebraska Department of Administrative Services, et al.*, Case No. CI 19-2255 at 19 (Lancaster County Dist. Ct. 2019)

Healthy Blue has failed to demonstrate any basis for disqualification of the Molina proposal, any support for its request to rescore it, or any factual or legal basis to disturb the agency’s sound judgment.

### **III. DHHS CONDUCTED A THOROUGH, COMPREHENSIVE EVALUATION**

DHHS conducted a thorough, well-planned procurement consistent with Nebraska legal principles, Nebraska decisional law, and established best practices.

In the RFP, released April 15, 2022, DHHS described the procurement process, objectives and specific steps which would take place. Through the RFP, DHHS informed prospective bidders, in great detail, how the proposals should be submitted, evaluated and scored. In each provision of the RFP addressing the bidders proposals’ and conduct, DHHS reserved to itself the

---

<sup>5</sup> To find even any support for its extreme positions, Healthy Blue’s Protest travels far from Nebraska law, citing primarily to inapplicable decisions from other jurisdictions (New Jersey, Louisiana, Idaho, the Federal Circuit, etc.) But Nebraska law makes agency discretion clear and Healthy Blue has not identified anything that would restrict that discretion here.

discretion to address virtually all scenarios that might unfold during the procurement, and to exercise at all times its discretion and judgment as to what course of action would be in the “State’s best interest.” And the RFP made clear to vendors that the ultimate award decision, if any, would be made by DHHS according to its determination of the State’s best interests.

Following release of the RFP and submission of proposals, DHHS conducted two rounds of Questions and Answers, with detailed Answers provided by DHHS on May 16 and June 6, 2022. All bidders were directed to review and understand formal answers provided by DHHS. Proposals were opened on July 1, 2022, after which DHHS conducted a multi-month evaluation period in which the various members of the Evaluation Committee reviewed the various proposals and awarded scores. The Evaluation Committee was bound by written scoring criteria made available to vendors.

After the initial evaluation period, DHHS, using the discretion provided it in the RFP and Nebraska law, conducted Oral Interviews with each of the bidders; vendors’ presentations during Oral Interviews provided still further information to DHHS, and were evaluated and scored according to prescribed RFP terms. Following that Orals Interview process, DHHS issued final scores. DHHS issued the Notice of Intent to Award on September 23, 2022. In all, from the date of proposal opening to the issuance of the Notice of Intent to Award, DHHS provided more than two and a half months for the evaluation of the proposals, ensuring a full, thorough review of all proposals.

#### **IV. RESPONSE TO SECTION IA OF THE HEALTHY BLUE PROTEST**

Healthy Blue’s entire Protest as to Molina centers on the empty claims, given surface appeal only by its omission of relevant law, that Molina should be disqualified because it purportedly failed to disclose subcontractors, misrepresented the amount of work to be performed by its parent corporation, and misrepresented its in-house applications. Alternatively, Healthy Blue asks that Molina’s bid be rescored according to Healthy Blue’s own flawed evaluation criteria.

It must be emphasized, that the entire factual predicate for Healthy Blue’s baseless claims about Molina’s subcontractor disclosures relies completely on RFP-compliant disclosures made by Molina in its proposal. Stated another way, the only reason Healthy Blue can make these arguments is because **each of the allegedly non-disclosed entities was fully disclosed, by Molina, in Molina’s proposal.** Absent Molina’s fully compliant disclosures, Healthy Blue’s entire protest evaporates.

Healthy Blue’s Protest not only disproves itself factually but is based legally on its own material omissions from the operative definition of the term “subcontractor.” Healthy Blue ignores that Molina applied DHHS’ clear guidance as to the meaning of the term “subcontractor” to treat some entities as ancillary vendors, as opposed to subcontractors. Indeed, Molina specifically

describes these such vendors, and explains what role they will play. Molina misrepresented nothing.

**A. Molina Properly Disclosed Subcontractors It Proposed To Use And Further Disclosed Ancillary Vendors According To The Terms Of The RFP**

The RFP required the disclosure of “subcontractors” to be used by bidders. Specifically, the RFP states:

If the bidder intends to subcontract any part of its performance hereunder, the bidder should provide:

- a. name, address, and telephone number of the subcontractor(s);
- b. specific tasks for each subcontractor(s);
- c. percentage of performance hours intended for each subcontract; and
- d. total percentage of subcontractor(s) performance hours.

RFP, § VI.A.10. “Subcontractor” is defined by the RFP as an “[i]ndividual or entity with whom the contractor enters a contract to perform a [sic]portion of the work awarded to the contractor.” RFP, Glossary of Terms, p. xvi.

In the second round of Questions and Answers, DHHS clarified the definition of subcontractor with respect to Section VI.A.10, the section Healthy Blue partially discusses in its Protest. Question 17 of the second round of Questions and Answers asked, “[w]ith 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.” RFP, Addendum Three, Questions and Answers Round Two, Question 17. In response, DHHS again referred to the definition of “Subcontractor” in the Glossary of Terms, but also specifically emphasized that portion of the definition that states subcontractors “**perform a portion of the work awarded**” and that “[e]ntities who perform ancillary functions for an MCO are not ‘subcontractors.’” *Id.* Intentionally or otherwise, Healthy Blue fails to include this guidance clarifying the term subcontractor and specifically the DHHS clarification that vendors performing “ancillary functions” are not subcontractors as defined by the RFP and, as a result, not subject to the requirements of Section VI.A.10 of the Corporate Overview.

By cherry-picking words referenced in Molina’s proposal, without any of the context or explanation of the roles Molina described those various entities would play, Healthy Blue fails to provide any factual basis for its assertions, let alone its allegations of intentional deception. Healthy Blue fails to address whether any of those entities, as proposed, actually meet the

definition of subcontractor,<sup>6</sup> or whether they performed some other role to assist Molina in its performance of the duties under the contract. Unless an entity is performing a “portion of the work awarded,” i.e., the functions of an MCO, then they are not subcontractors and need not be listed in Section VI.A.10.

With respect to the specific vendors singled out by Healthy Blue—Outcomes MTM, Community Pharmacy Enhanced Services Network, CAQH, and CityBlock—none of those vendors meets the definition of “subcontractor” because none of them performs MCO services that were awarded under the contract. Instead, to the extent Molina actually proposes to use these vendors (which it does not, as noted below), each will provide ancillary services to Molina as it performs those MCO services. Specifically:

- Outcomes MTM was discussed in Molina’s proposal at V.N-40 as an example of a vendor Molina **might use**,<sup>7</sup> in addition to its internal staff resources, to conduct medication therapy management. If, after contract performance begins, Molina decided to use Outcomes MTM, and its work would go beyond simply being an ancillary vendor supporting Molina’s provision of services, Molina would of course follow contract requirements to gain any required agency approvals. If anything, Molina’s decision to disclose Outcomes MTM as a potential vendor it would consider if additional services were needed demonstrates Molina’s commitment to transparency – had Molina intended to hide anything, it would not have provided this language for the Evaluation Committee to review.
- Community Pharmacy Enhanced Services Network (CPESN): CPESN is discussed at various places in Molina’s proposal, including at V.L-1 and V.N-34. CPESN is not a Molina subcontractor, it is a provider. Molina obtained a letter of intent (“LOI”) from CPESN “that will allow members living in rural and frontier areas in Nebraska who often see their pharmacist with much greater frequency than their PCP to have better access to pharmacists for clinical support.” Molina Proposal at V.N-34. Molina did not propose to use CPESN to provide services awarded to

---

<sup>6</sup> Healthy Blue claims other bidders may have disclosed certain entities as “subcontractors” in their proposals, whereas Molina disclosed such entities, but did not specifically name them as “subcontractors.” Such analysis is inapposite, however, as there is no direct comparison between the discussion in Molina’s proposal for such entities, and the way Molina intends to use their services, and the ways those other bidders discuss or intend to use such entities’ services. If, as is the case, Molina is using such entities as ancillary vendors, i.e., they are performing activities ancillary to the core activities Molina has contracted to perform, then they are not subcontractors and need not be listed. Whether those same entities play a core or ancillary role for the other bidders is beyond Molina’s knowledge and does not indicate any failure by Molina to follow RFP requirements.

<sup>7</sup> Healthy Blue’s discussions of vendors mentioned in Molina’s proposal fails to provide any context for how those vendors were discussed and whether Molina actually stated it **would** use a vendor or **might** use a vendor, if appropriate, after contract performance started, and pursuant to the approval process contemplated by the contract.



Molina under the RFP, but instead described it as an enhancement to its community pharmacy network.<sup>8</sup>

- CAQH: CAQH, as intended to be used by Molina in Nebraska<sup>9</sup> and described in its RFP response at V.I-26, is an online repository of credentialing data that may be used by Molina to support its credentialing decisions. CAQH does not handle Molina's credentialing because Molina does so on its own. CAQH is a vendor that provides support to Molina's internal credentialing activity, which is the work awarded to Molina under the contract. Because CAQH does not handle credentialing for Molina, it is not a subcontractor. More importantly, because DHHS is moving to a centralized credentialing system, this will ultimately be irrelevant to the performance of the program.
- CityBlock: Healthy Blue's reference to CityBlock is a perfect example of the flawed and misleading nature of its entire Protest. **Nowhere does Molina's proposal suggest it would use CityBlock in Nebraska.** A close read of the Molina proposal would show, Molina's **only** reference to CityBlock at V.L-18 is as part of a "Case Study" describing how it partnered with local organizations in Ohio to provide high quality, innovative, inclusive services in that area. CityBlock is not a vendor or subcontractor, it is a provider on a fully risk-based VBP contract. Thus, Molina does not propose using CityBlock in Nebraska, Molina only discusses CityBlock to demonstrate the exact point Healthy Blue challenges, i.e., that Molina partners with local entities to innovate. Obviously, Healthy Blue did not bother to read or understand what CityBlock is before including it in their litany of unfounded allegations of wrongdoing.

Even imagining that Healthy Blue were correct about any of these allegations (which it is not), DHHS has the broad discretion to accept Molina's proposal, and to evaluate it according to the terms of the RFP. None of the provisions cited in the Protest relating to subcontractors is mandatory or requires disqualification. Section VI.A.10 states that bidders "**should**" list subcontractors and provide certain information. "Should" is a defined term under the RFP, which means "[e]xpected; suggested, but not necessarily mandatory." RFP, Glossary of Terms, p. xv. The same is true with respect to Section III.A of the RFP, which again states that information regarding subcontractors "should" be clearly defined. Thus, even if Healthy Blue were correct in any of its arguments (which it clearly is not) DHHS would nevertheless have the discretion to accept a proposal that does not precisely conform to Healthy Blue's mistaken definition of a

---

<sup>8</sup> Molina cannot address why Centene may have listed CPESN as a subcontractor, because it is not aware of what agreements or arrangements Centene may have with CPESN, or how it will use CPESN.

<sup>9</sup> Healthy Blue asserts that Molina lists CAQH as a subcontractor in Ohio as evidence that Molina should have listed it as such in Nebraska. This argument is a fallacy, however, as different states rely upon different definitions and standards for what constitutes a subcontractor and/or what must be disclosed in such a regard. The fact Molina may or may not list something one way in one state is inapplicable to whether it need be listed in another state.

subcontractor.<sup>10</sup> The exercise of such discretion would be particularly warranted where, as here, Molina identified in detail every one of the proposed vendors in its proposal and thus all vendors were subject to the Evaluation Committee's reasoned consideration.

As noted, Healthy Blue paradoxically identifies each of the vendors that Molina described in its proposal, but then claims Molina somehow did not disclose those same vendors. Healthy Blue also assumes that the Evaluation Committee, consisting of individuals chosen by DHHS because of their knowledge and expertise, would have been incapable of evaluating Molina's proposal and understanding its explanations about how it would use third parties to assist in its performance of the contract, whether those vendors were technically classified as subcontractors or ancillary vendors. And Healthy Blue provides no evidence to suggest the Evaluation Committee misunderstood Molina's clear explanations. The Evaluation Committee is not so limited in its capabilities that it needs Healthy Blue to do its job.

Molina properly disclosed and classified all third-party vendors according to the guidance provided to all bidders by DHHS. Healthy Blue's tortured arguments should be rejected.

## **B. Molina Made No Misleading Statements Regarding The Role Of Its Parent Corporation, MHI**

Healthy Blue next claims Molina omitted material information about work to be performed by its parent corporation. Again, Healthy Blue's own Protest demonstrates its own error by citing to specific disclosures in the fully transparent (and not "omitted") language in Molina's proposal.

In Section VI.A.10 of its proposal, Molina lists its parent, MHI, as one of the subcontractors it proposes using to assist it with performing a portion of the MCO work awarded to Molina. In doing so, it describes the "General Scope of Work to Be Performed" by MHI, noting it will provide a "range of administrative services." Molina also lists the percentage of work to be performed by MHI as between 3.5 and 4.0%.<sup>11</sup> Nothing in Molina's discussion under Section VI.A.10 suggests

---

<sup>10</sup> Similarly, DHHS has the discretion to not take any action upon an alleged instance of non-compliance with the RFP. Section I.L of the RFP states that non-compliance shall be grounds for action by the State, but that the State *may* choose what action, if any to take. "May", like should, is a defined term providing discretion to DHHS. *See* RFP, Glossary of Terms, p. xi. Courts have recognized this discretion of a procuring agency to determine whether to act upon an alleged non-conformity. *See, e.g.,* Order on Defendants' Motion to Dismiss and Plaintiffs' Temporary Injunction, *Nebraska Families Collaborative d/b/a Promiseship, et al. v. Nebraska Department of Administrative Services, et al.*, Case No. CI 19-2255 at 19 (Lancaster County Dist. Ct. 2019) ("The Court concludes that the Plaintiffs have not shown that they are likely to succeed on the merits. The Court first emphasizes that the State Defendants had discretion to decide whether non-responsiveness made a proposal nonconforming. The RFP provided that proposals 'shall' conform to the RFP but 'may' be found non-responsive if they did not conform.") (a copy of this decision is attached).

<sup>11</sup> Unlike 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-



the list provided there is an exhaustive list – instead, it clearly notes that the list constitutes general areas MHI will assist with and that the items listed there are part of a “range of services” to be provided.

Likewise, Healthy Blue appears to assume that, for those services identified as being those that will be provided by MHI, that MHI is performing 100% of those services. Healthy Blue’s assumption is mistaken. As noted throughout Molina’s proposal, MHI may provide a portion of these services, but many of the same services are being performed on the ground by Molina in Nebraska. The fact MHI assists with a function does not mean it is responsible for 100% of that function, as Healthy Blue misleadingly suggests.

In seeking to challenge the accuracy of Molina’s disclosures in Section VI.A.10, Healthy Blue cites to another section of the Molina proposal, Section V.K.49. Section V.K.49 is simply another section in which the bidders are requested to provide information about **subcontractors**. Healthy Blue’s protest appears to suggest that there is some difference between MHI the subcontractor and MHI the “parent” of Molina, but in both sections cited by Health Blue, Molina discusses MHI the same way, as a subcontractor that will assist Molina in performance of the contract.

Here again, Molina describes the role MHI will play in assisting Molina with the work. Molina provides additional detail about the role that MHI will perform, detail that is entirely consistent with Molina’s explanation in Section VI.A.10. Healthy Blue asserts, without any basis for doing so, that the roles identified in V.K.49 are greater than those listed in Section VI.A.10, and that they presumably involve MHI performing more than 3.5 to 4.0% of the work for the contract. Healthy Blue’s assertion, however, lacks any evidentiary support. Sections VI.A.10 and V.K.49 both clearly identify MHI as a subcontractor that will assist Molina in performing the services awarded to it. Molina outlines the role MHI will play and the services it will provide. The Evaluation Committee had access to the full range of Molina’s descriptions of MHI and was well equipped to analyze Molina’s descriptions and to score Molina’s proposal accordingly. Healthy Blue has not identified any reason the Evaluation Committee was incapable of reading Molina’s proposal and its discussion of MHI.

Finally, Healthy Blue’s reference to the location of Molina’s “key staff” is irrelevant. Initially, the current location of individuals to be considered as part of Molina’s key staff is not dispositive of where those individuals may be located once the contract award is complete and the contract executed. Individuals’ locations are subject to change post-award. The RFP is clear, per the Questions and Answers process, that key staff may be employed by a subcontractor, such as MHI. *See* RFP, Addendum One Questions and Answers, Question 42 (“Key staff may be employed by a subcontractor.”)

---

4.0% of services will be provided by its subcontracted parent. It is possible that this significant difference in the models used by the bidders is the cause of some of Healthy Blue’s confusion resulting in its misleading protest.

Healthy Blue's claim that Molina omitted anything about its parent company's work lacks any merit. As the very citations in the Protest establish, Molina fully disclosed the services to be provided by its parent.

### **C. Molina's Descriptions Of In-House Applications Were Accurate**

Healthy Blue next asserts Molina's proposal "deceived" DHHS with respect to "in-house applications." Healthy Blue again is mistaken.

Healthy Blue suggests in-house applications would actually be provided by subcontractors and that those subcontractors should have been disclosed as such. In support, Healthy Blue references two such services, Molina HelpFinder and the Molina Transportation Trip Management application.

Aside from vague and fact-deficient claims of wrongdoing, it is difficult to ascertain the nature of Healthy Blue's complaint. Molina HelpFinder, for example, **is not**, as Healthy Blue claims "powered" by Find Help, rather it is branding for the package of solutions Molina uses to speak about its broad approach to social determinants of health ("SDOH") closed loop referral systems and processes. Unlike other bidders, Molina does not offer a single solution for SDOH because Molina understands, in addition to its current processes, there are existing systems in Nebraska that Molina will leverage to bring a broad solution to the State. Molina's proposal speaks in great depth about its plan for partnering with local Nebraska partners, such as Unite Nebraska (211) which, in partnership with Unite Us and CyncHealth, has established a social care ecosystem to address Nebraskan's needs.. Molina purposefully used its own internal branding name for its approach to make it clear that Molina was **not** tied to a specific vendor, like Healthy Blue is, but instead is interested in providing a broad solution for providing these services.

The same is true for Molina's Transportation Trip management application, which is an enhancement to the NEMT benefit and discussed by Molina as an example of collaboration with members for program improvement. The application was made available to members to assist with the logistics of NEMT services. It is the process Molina offers that allows members to schedule trips through Molina's app services, regardless of any specific transportation vendor. These details were clearly described in Molina's proposal. The Evaluation Committee was more than capable of analyzing the services Molina offered and appropriately scoring those services. The "application" is not a subcontractor, but a tool to permit "trip scheduling, text message reminders and alerts on trip status, the ability to cancel a trip, and the ability to request the return ride with a click of a button." Molina Proposal at V.M-46. This is an application, not a service subcontracted to a third-party.

Molina fully described its in-house applications. Healthy Blue's generalized expressions of discontent should be ignored.

## **D. There Is No Basis To Alter Molina's Score And The Evaluation Committee's Discretion Should Not Be Disturbed**

In the alternative, Healthy Blue suggests that, if DHHS does not disqualify Molina, that it should ignore the careful evaluation conducted by the Evaluation Committee, and conduct a post hoc rescoring of the Molina proposal, using self-serving criteria Healthy Blue manufactured for its Protest.

As noted above, Healthy Blue's Protest relies solely on identified information provided in Molina's proposal, information that all was available to the Evaluation Committee in scoring the proposals. Healthy Blue has not identified any facts or information that were not available to the Committee or why any of their alleged "violations" of the RFP terms would have warranted an Evaluation Committee member changing their score. Instead, Healthy Blue seeks to substitute its self-interested judgement for that of the Evaluation Committee, which is not warranted by the facts or supported by Nebraska law. As noted above, both the RFP and Nebraska law provide wide discretion to DHHS to evaluate the proposals and determine which proposal would serve the "State's best interests."

Beyond that, however, the proposed rescoring suggested by Healthy Blue is irrational and would not be permitted by the actual evaluation criteria which DHHS must apply here, as provided by the RFP. For example, Healthy Blue attempts to apply a mathematical formula to the responses under Section VI.A.10 in which points should be assigned solely based on the number of subcontractors listed, irrespective of any other criteria related to the evaluation of responses in that section. Nothing in the evaluation methodology for the RFP would permit such a simplified scoring mechanism otherwise devoid of any discretion on the part of the Evaluation Committee.

Healthy Blue's alternative argument provides no lawful alternative to the agency and should be rejected.

## **V. RESPONSE TO SECTION I.B OF THE HEALTHY BLUE PROTEST**

Section I.B of the Healthy Blue protest focuses predominately on the two other successful bidders, UnitedHealthcare of the Midlands, Inc. ("United") and Nebraska Total Care, Inc. ("Centene"). Healthy Blue does, however, include an allegation that Molina improperly redacted portions of its proposal related to federal and state investigations. Such a claim, however, does not address the merits of Molina's proposal, the scoring of its proposal, or the access to information DHHS and the Evaluation Committee would have had when evaluating or scoring Molina's proposal. Healthy Blue's claim, moreover, ignores the language of the RFP and the process identified for challenging a proposal's redactions, which provides that DHHS has sole discretion over claims of excessive redactions. And finally, any claim that Healthy Blue "likely" would have had additional arguments to make had it had access to an unredacted copy of the proposal is wishful thinking and speculative at best.

Most importantly, DHHS has access to the fully unredacted version of Molina's proposal and it is DHHS's duty,<sup>12</sup> not protestors, to determine if a proposal has been excessively redacted – an issue applicable to all bidders, including Healthy Blue which made significant redactions throughout its own proposal. Because the unredacted versions were available to DHHS, the Evaluation Committee could evaluate all relevant information when assigning scores. The extent to which redactions were made is, moreover, an issue for DHHS' evaluation. It is not a valid protestable issue for which Healthy Blue could seek any relief that would elevate it into a successful bidder.

Healthy Blue's claim that Molina excessively redacted its proposal should be rejected as well.

## VI. CONCLUSION

As described above, each of Healthy Blue's complaints about Molina's proposal fail, factually and legally. Healthy Blue's claims regarding alleged misrepresentations are belied by each of the transparent disclosures in Molina's proposal that Healthy Blue itself points to. As such, Healthy Blue's protest should be denied.

Molina is committed to developing its relationship with DHHS and looks forward to serving the Medicaid beneficiaries in Nebraska once this protest is resolved. Please reach out with any additional questions or if there is additional information we can provide to assist your review.

Respectfully submitted,



Thomas J. Kenny

cc: Edward M. Fox II, Esq.

Attachment

---

<sup>12</sup> See RFP, Scope of Service, p. 1 (“The State will then determine, in its sole discretion, if the disclosure of the information designated by the Bidder as proprietary would 1) give advantage to business competitors and 2) serve no public purpose.”). The State in this case has not notified Molina of its belief that any of Molina's redactions failed to meet the RFP's requirements or otherwise are subject to disclosure.