



AETNA BETTER HEALTH® OF NEBRASKA

April 20, 2016

VIA FEDEX AND
ELECTRONIC MAIL (Byron.Diamond@Nebraska.gov)



Byron L. Diamond
Director, Nebraska Department of Administrative Services
Room 1315
State Capitol
P.O. Box 94664
Lincoln, NE 68509-4664

Re: Request for Protest Meeting by Coventry Health Care of Nebraska, Inc., d/b/a Aetna Better Health of Nebraska (“Aetna Better Health”) Regarding March 8, 2016 Notice of Intent to Award for Request for Proposal No. 5151 Z1

Dear Director Diamond:

Pursuant to the Nebraska Administrative Services, Materiel Division–State Purchasing Bureau, Standard Protest/Grievance Procedures for Vendors, this correspondence constitutes the written *request for a meeting* with you and the Materiel Division Administrator regarding the protest filed on behalf of Coventry Health Care of Nebraska, Inc., d/b/a Aetna Better Health of Nebraska (“Aetna Better Health”) with respect to the DAS second Notice of Intent to Award, dated March 8, 2016 (“Second Award Notice”), which expressed DAS’ intent to award three contracts, in response to RFP No. 5151 Z1 (“the RFP”).

We also respectfully invite Ms. Phillips, CEO of DHHS, and Mr. Lynch, Director of Medicaid. Given DHHS’ keen interests and expertise in Medicaid issues, their knowledge of Aetna’s qualifications and performance and their responsibilities in managing the program, we would welcome their attendance.

This request for a meeting is being made because the response from the Materiel Division Administrator¹ has not satisfied the grievances raised and bases for protest identified by Aetna Better Health.

¹ It is noteworthy that the response addressed to Aetna Better Health is almost identical to the response simultaneously issued with respect to the AmeriHealth, Inc. protest. Despite the fact that the two protests were

Aetna Better Health's point of contact for its protest and this request is:

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Aetna Better Health respectfully submits that the re-scoring process used to identify the Apparently Successful Bidders ("Re-scoring"), after prior protests were granted and the proposals were rescored, was contrary to Nebraska law, DAS' own policies and procedures and resulted in two contractors being chosen that pose significant business and legal risk to the State.

Specific issues to be addressed at the meeting are outlined below. In addition, the meeting will address the significant errors of law and fact in the April 7, 2016, correspondence from Bo Botelho, the Materiel Division Administrator, denying Aetna Better Health's protest ("Botelho Letter").²

BASES FOR MEETING REQUEST

While Aetna Better Health recognizes that the State retains discretion in conducting a competitive procurement, it submits that the State's discretion is confined by clear boundaries imposed by statute and common law. Administrator Botelho's response to Aetna Better Health's Protest fails to acknowledge *any* limits on agency discretion, fails to address the statutory or legal issues raised in the Protest and errs as a matter of law by concluding that the very ground rules DAS created and published "do not have the authority of law."³

SPECIFIC ISSUES TO BE ADDRESSED

- Failure to minimize risk to the State.
- Failure to apply the correct legal standard.
- Improper agency reliance on outside information to favor some bidders over others.
- Failure to meet statutory requirements regarding character and past performance.
- Violations of the legally-binding agency Manual.
- Disproportionate and Prejudicial Impact on Aetna Better Health.
- Drastic and Unexplained Scoring Changes.
- Failure to rely on qualified evaluators with "subject matter expertise."

different in many significant ways, and raised different grounds for protest, the Materiel Division did not specifically respond to either protest.

² This Request is timely filed pursuant to the terms of the RFP, Section III.B., and the Nebraska Administrative Services, Materiel Division–State Purchasing Bureau, Standard Protest/Grievance Procedures for Vendors, because it is filed within ten (10) business days of the April 7, 2016 date for the response of the Materiel Division Administrator.

³ *Botelho Letter* at 3. Contrary to the Botelho Letter's assertion, the statutorily-mandated procurement Manual in fact is legally binding on DAS. *See* Neb. Rev. Stat. § 73-504(2) (services procurements over \$50,000 "shall be bid in the manner prescribed by the division procurement manual . . .").

- Mischaracterization of Aetna Protest.
- Disregard of various RFP requirements including prohibiting off-shoring and scoring of value-added services.
- Failure to follow DAS' own policies and procedures.
- Failure to provide full due process.

In addition to the above, the full explication of the bases for Aetna Better Health's protest of the Second Notice of Intent to Award are described in detail in the Protest and Protest Supplement filed previously with Materiel. Those documents are expressly incorporated here in lieu of repeating them in this meeting request.

STAY OF CONTRACT IMPLEMENTATION

Despite the fact that the grievance and protest process provided for in the RFP and DAS regulations is not yet complete, DHHS announced on April 15, 2016 that it had executed contracts with the three Apparently Successful Bidders, in violation of Aetna Better Health's due process rights. Aetna Better Health objects to the State's execution of such contracts during a period when its protest has not been fully and finally resolved per DAS's own regulations.

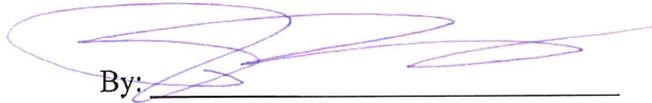
Upon conclusion of the Meeting, Aetna Better Health respectfully requests that that DAS withdraw its Second Notice of Intent to Award contracts under the RFP and respectfully requests that (1) WellCare be disqualified as a non-responsible bidder, (2) WellCare's proposal be rejected as non-responsive based on its inclusion of improper and illegal terms, (3) Nebraska Total Care be disqualified as a non-responsible bidder and (4) that Aetna Better Health be again awarded a contract under the RFP.

Enclosures

cc: Calder Lynch, Director, Department of Health and Human Services, Division of Medicaid and Long-Term Care (via Email and Hand Delivery with Enclosures)
Courtney Phillips, Chief Executive Officer, Nebraska Department of Health and Human Services (via Email and Hand Delivery with Enclosures)

[Signature Page to Follow]

Respectfully submitted on behalf of Coventry
Health Care of Nebraska, Inc. d/b/a Aetna Better
Health of Nebraska,

A handwritten signature in purple ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

By: _____

Pamela Sedmak

S.V.P. and President of Aetna Medicaid