**State Protest Committee Meeting No. 15**

**Summary of Decision and Minutes**

**Protest of RFP # 31865-00603**

**Managed Care Organizations**

The Division of TennCare issued RFP # 31865-00603 for Managed Care Organizations (“the RFP”) on June 11, 2021. The State completed the evaluations and provided its Notice of Intent to Award the contract to Amerigroup Tennessee (“Amerigroup”), BlueCare Tennessee (“BlueCare”) and United Healthcare Community Plan (“United”) on November 8, 2021. On November 15, 2021, Rhythm Health Tennessee, Inc. (“Rhythm”) filed a protest of that determination and the required bond amount with Chief Procurement Officer Michael Perry (“CPO”).

On January 13, 2022, the CPO issued his written decision denying Rhythm’s protest. Rhythm appealed the CPO’s decision to the State Protest Committee on January 18, 2022. Position Statements were submitted by Rhythm, the CPO, TennCare, BlueCare, Amerigroup, and United. Supplemental Position Statements were also submitted by Rhythm and TennCare.

The State Protest Committee convened on July 15, 2022, to hear Rhythm’s appeal. The issues alleged by Rhythm in its November 15, 2021, appeal to the Committee, its Position Statement filed on March 31, 2022, and its Supplemental Position Statements filed on June 17, 2022, and June 22, 2022, included the following:

TennCare did not follow the rules, policies, and procedures of the CPO by:

(1) Failing to make all data relating to the RFP available for inspection;

(2) Failing to follow the evaluation process set forth in the RFP;

(3) Violating the RFP’s scoring methodology by creating “new” evaluation

tools, methodologies, and rules;

(4) Compromising the independence of the evaluators’ scoring of the RFP;

(5) Failing to document the evaluation process; and

(6) Overlooking responses submitted by proposals to RFP subcontracting requirements for behavioral health services.

After discussion and argument by counsel for each of Rhythm, the CPO, TennCare, BlueCare, Amerigroup and United, the State Protest Committee unanimously upheld the decision of the CPO denying Rhythm’s appeal based on the written position statements and oral presentations by counsel for each of the parties at the hearing as follows:

1. Regarding the allegation that TennCare failed to make all data relating to the RFP available for inspection, TennCare made all procurement files available and provided all information that was requested during the open file period as required by statute and CPO rules.
2. Regarding the allegation that TennCare failed to follow the evaluation process set forth in the RFP, Rhythm did not prove that the schedule of events were taken out of order by TennCare determining the winner and then scoring the proposals accordingly. The State Protest Committee determined that TennCare proved, with the full record that they presented, that there was not sufficient evidentiary support for that allegation.
3. Regarding the allegation that TennCare violated the RFP’s scoring methodology by creating “new” evaluation tools, methodologies, and rules, Rhythm did not establish that TennCare’s omission of a column from the scoring matrix and having some evaluators score only selected sections, materially affected the outcome. The State Protest Committee determined that using additional evaluators for specific sections based on subject matter expertise led to a better overall evaluation. Using such experts to evaluate certain sections is a common practice in procurements, especially technical ones like the TennCare MCO procurement.
4. Regarding the allegation that TennCare compromised the independence of the evaluators’ scoring of the RFP, the State Protest Committee found that TennCare explained how evaluators scored the RFP in compliance with CPO rules, policies, and procedures and did not find this to be an issue.
5. Regarding the allegation that TennCare failed to document the evaluation process, Rhythm alleged that the protest file did not contain notes from oral presentations. However, such notes are not a requirement for procurements and all other parts of the procurement file were documented.
6. Regarding the allegation that TennCare overlooked responses submitted by proposals to RFP subcontracting requirements for behavioral health services, the State Protest Committee found that TennCare explained that their communication with behavioral health services providers was not related to the core services in this procurement. Therefore, Rhythm did not prove this allegation.
7. The State Protest Committee members made the additional following comments:
   1. Contrary to Rhythm’s arguments, TennCare went to great lengths to make this procurement fair to all vendors. While the procurement was not error-free, those errors were not material and did not affect the overall outcome of the procurement scores.
   2. The TennCare solicitation coordinator’s communication with evaluators on scoring was not erroneous based on the record establishing that the evaluators confirmed their approval for any scores to be corrected, and such score changes did not materially affect the outcome.
   3. Rhythm argued theories, but TennCare responded to those adequately and showed that, when viewing the complete record, Rhythm did not prove such theories.
   4. The protesting party did not meet its burden of proof that the process was flawed or that there was bias on behalf of the evaluators for the TennCare proposal.
8. Upon motion and a proper second, the decision of the CPO is upheld and the protest is denied.

The State Protest Committee next addressed the protest bond which had been filed by Rhythm as the protesting party of the underlying protest to the CPO pursuant to Tenn. Code Ann. § 12-3-514. The State Protest Committee found that there was no reason to continue to hold the Protest Bond. The State Protest Committee unanimously voted to return the protest bond to Rhythm.