**State Protest Committee Meeting No. 16**

**Summary of Decision and Minutes**

**Protest of RFP # 31865-00624**

**Third Party Liability (TPL) Services**

The Division of TennCare issued RFP # 31865-00624 for Third Party Liability (“TPL”) Services (“the RFP”) on August 2, 2021. The State completed the evaluations and provided its Notice of Intent to Award the contract to BRSi, L.P. dba Benefit Recovery (“Benefit Recovery”) on January 5, 2022. On January 12, 2022, Health Management Systems, Inc. (“HMS”) filed a protest of that determination and the required bond amount with Chief Procurement Officer Michael Perry (“CPO”).

On March 17, 2022, the CPO issued his written decision denying HMS’s protest. HMS appealed the CPO’s decision to the State Protest Committee on March 21, 2022. Position Statements were submitted by HMS, the CPO, TennCare, and Benefit Recovery.

The State Protest Committee convened on September 12, 2022, to hear HMS’s appeal. The issues alleged by HMS in its March 21, 2022, appeal to the Committee and its Position Statement filed on August 29, 2022, included the following:

Protesting Party HMS asserts that (i) the agency’s contract award was arbitrary, capricious, an abuse of discretion or exceeded its authority, and (ii) the agency violated the rules of the procurement in the way it conducted the evaluation process that led to the award to Benefit Recovery based on the following:

I. Benefit Recovery’s Proposal Was Non-Responsive Because Its Qualifications and Experience Did Not Meet the RFP’s “Size and Scope” Requirements

II. Benefit Recovery’s Proposal Could Not Rationally Have Been Scored as

Equivalent to HMS’s Proposal

III. TennCare’s Erroneous Decision to Exclude Portions of HMS’s Proposal Deprived

the Evaluators of Relevant Performance Data

IV. Benefit Recovery Misled Evaluators by Providing Incomplete and Misleading

Information with Respect to Its Personnel and Subcontractor

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

1. The State Protest Committee found no merit in the allegations that Benefit Recovery’s proposal was nonresponsive because its qualifications and experience did not meet the RFP’s size and scope requirement. The State Protest Committee found that the Evaluation Committee acted within its discretion when it determined that all three respondents had sufficient experience to meet the mandatory RFP requirement. This reading and interpretation of the mandatory requirement showed fairness and uniform application of the requirement for all respondents.
2. The State Protest Committee found no merit in the allegation that Benefit Recovery’s proposal could not rationally have been scored as equivalent to incumbent HMS’s proposal. HMS did not demonstrate that the evaluators erred in the scoring of the proposals. Respondents may not substitute their judgment and second-guess the evaluators’ scoring, without additional evidence of bias. While HMS gained experience as the incumbent, that incumbency does not equate to higher scoring in the RFP process and is not properly part of the independent evaluation criteria in the RFP.
3. The State Protest Committee found no merit in the allegation that TennCare erroneously excluded portions of HMS’s proposal and thereby deprived the evaluators of relevant performance data. TennCare properly exercised its discretion delegated to it by the CPO when it required the removal of certain information from the technical proposals to ensure the technical proposals contained no pricing or cost information. The State Protest Committee noted this instruction was not arbitrary as it applied to all respondents; and no complaint was filed by any respondent at that stage in the RFP process.
4. The State Protest Committee found no merit in the allegation that Benefit Recovery misled evaluators by providing incomplete and misleading information with respect to its personnel. HMS complained that Benefit Recovery did not comply with the RFP because one of Benefit Recovery’s key personnel lacked a bachelor’s degree. The State Protest Committee concluded that it was not a strict requirement for the person to have a bachelor’s degree at the time the proposals were submitted. Moreover, given the length of time before the contract at issue would become effective, there is a likelihood the named person would meet the degree requirement or be replaced by another person.
5. The State Protest Committee found no merit in the allegation that Benefit Recovery misled evaluators by providing incomplete and misleading information with respect to its subcontractor. The record established that the subcontractor was qualified and could perform the work.
6. The State Protest Committee also made the following determinations:
7. HMS failed to carry its burden of proving that the agency’s contract award was arbitrary, capricious, an abuse of discretion or exceeded its authority.
8. HMS failed to carry its burden of proving that the agency violated the rules of the procurement in the way it conducted the evaluation process that led to the award to Benefit Recovery.
9. Upon proper motion and second, the State Protest Committee unanimously voted to deny the protest and to uphold the CPO’s previous decision that the procurement was not arbitrary or capricious; there was no abuse of discretion; no authority was exceeded; the procurement was conducted in a fair and uniform way; and no rules were violated.

The State Protest Committee next addressed the protest bond which had been filed by HMS 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 HMS.