BACKGROUND

The New Mexico Medicaid program is a State and Federal cooperative program authorized by Title XIX of the Social Security Act, 42 U.S.C. ch. 7. The Medicaid program, which is jointly funded by the state and federal government, provides services for physical health, behavioral health and long-term services and supports for qualified low income and disabled New Mexicans. New Mexico Medicaid serves more than 850,000 residents of this state. The New Mexico Human Services Department (“HSD”) is the single state agency legislatively authorized to administer the state’s Medicaid program. NMSA 1978, § 27-2-12 (2006).

In September 2017, HSD issued a request for proposal, RFP No. 18-630-8000-0001 (the “RFP”). The purpose of the RFP was to select managed care organizations to provide managed care Medicaid services through the state’s “Centennial Care” program. “Centennial Care” is the name of the Medicaid managed care program that was launched in January of 2014 and provides a comprehensive delivery system for Medicaid members. The managed care portion of the program currently serves approximately 700,000 members and is administered by four managed care organizations (“MCOs”): United Healthcare of New Mexico, Inc. (“United” or “UHC”); Presbyterian Health Plan, Inc. (“Presbyterian” or “PHP”); Blue Cross Blue Shield of New Mexico, Inc. (“BCBS”); and Molina Healthcare of New Mexico, Inc. (“Molina”).

Through the 2017 RFP process, HSD solicited competitive proposals from MCOs to provide services to members of the New Mexico Medicaid managed care program and the second iteration of Centennial Care, known as “Centennial Care 2.0,” beginning in 2019.

The RFP delineated the process for dispute, or protest, of the award decision. The language of the RFP provides an administrative process that allows all unsuccessful Offerors the ability to protest contact awards. (RFP at 2.2.15):

“Any protest by an Offeror must be timely and conform to NMSA 1978, § 13-1-172, and applicable procurement regulations. The fifteen (15) Calendar Day protest period for Responsive Offerors shall begin on the day following the Contract award and will end at the Close of Business fifteen Calendar Days after the Contract award. Protests must be written and must include the protestor’s name and address as well as the RFP number. Protests must also contain a statement of grounds for protest, including appropriate supporting exhibits, and must specify the ruling requested . . . .”

1 A copy of the full RFP is available at: http://www.hsd.state.nm.us/Centennial_Care_RFP.aspx.
Eight Offerors responded to the RFP and three contracts were awarded: PHP, BCBS and Western Sky Community Care, Inc. (“Western Sky”). A Notice of Contract Award was sent by HSD on January 19, 2018, notifying the unsuccessful Offerors and advising them of their right to protest the decision. (Exhibit # 1.) The 15-day protest period began on January 20, 2018. Because the 15th day fell on a Saturday (February 3, 2018), HSD granted prospective protestors until 5:00 pm (MT) on Monday, February 5, 2018, to submit their protests.

The protest period is designed to provide each Offeror with an equal opportunity to protest the decision. Four of the unsuccessful Offerors filed protests by the February 5, 2018 deadline: Molina (supplement filed February 16, 2018); United (supplements filed February 21, 2018 and March 8, 2018); AmeriHealth Caritas New Mexico, Inc. (“AmeriHealth”) (supplement filed February 23, 2018); and WellCare of New Mexico, Inc. (“WellCare”) (supplements filed February 12, 2018 and February 21, 2018).²

**SUMMARY OF AMERIHEALTH PROTEST AND REQUESTED RELIEF**

In their protest, AmeriHealth alleges that:

1. HSD impermissibly used unsolicited exhibits in its evaluation process, which resulted in inflated scores for the successful Offerors.
2. HSD’s scoring of the price proposals was arbitrary and capricious³, inequitable, irregular, and erroneous;

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² A fifth unsuccessful Offeror, Amerigroup Community Care of New Mexico, Inc. did not file a protest. A copy of each Offeror’s protest, supplements, and exhibits can be found at: http://www.hsd.state.nm.us/Centennial_Care_RFP.aspx.

³ The New Mexico Supreme Court has instructed that an arbitrary and capricious act is a “willful and unreasonable action, without consideration and in disregard of facts of circumstances[,]” . . . it is one lacking a standard or norm,” . . . “not governed by any rules . . . [or where the administrative agency] acted without an adequate determining principal.” Planning and Design Solutions vs. City of Santa Fe, 1994-NMSC-112, ¶23, 118 N.M. 707. An award is improper [only] if [HSD] acted arbitrarily and capriciously, its decision was not supported by substantial evidence, or it is otherwise in violation of the law. See, NMSA 1978, § 13-1-183; NMSA 1978, § 39-3-1.1. See also, McDaniel v. NM Board of Medical Examiners, 1974-NMCA-062, ¶8, 86 N.M. 447 (stating that in reviewing the decision of an administrative agency, “the questions to be answered . . . are restricted to whether [it] acted fraudulently, arbitrarily or capriciously, [or] whether the order was supported by substantial evidence and generally whether the action of the administrative body was within the scope of its authority.”) (quoting, Llano, Incorporated v. Southern Union Gas Company, 1964-NMSC-257, 75 N.M. 7 ) (internal quotation marks omitted).

The review should focus its inquiry on whether the agency’s “findings are supported by substantial evidence on the record as a whole.” Perkins v. Department of Human Services, 1987-NMCA-148, ¶19, 106 N.M. 651 (quoting Garcia v. NM Human Services Department, 1987-NMCA-071, 94 N.M. 175); See also Planning and Design Solutions vs. City of Santa Fe, 1994-NMSC-112, ¶22, 118 N.M. 707. A whole record review requires that the reviewer “consider not only evidence in support of one party’s contention, but also to look at evidence which is contrary to the administrative findings; it must then decide whether on balance the agency’s decision was supported by substantial evidence [,]” while “viewing the evidence in light most favorable to the decision made by [HSD].” Id.; Attorney General of New Mexico v. New Mexico Public Service Commission, 1984-081, ¶11, 101 N.M. 549 (citing Garcia, supra). “Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” In re Timberon Water Company v. NM Public Service Commission, 1992-NMSC-047.
3. HSD failed to hold oral presentations despite a need to provide the Evaluation Committee with clarification of the Offerors’ written responses;

4. Mercer, the entity that administered the RFP, had a conflict of interest due to a financial tie to Western Sky, one of the successful Offerors;

5. The cost proposals of the successful Offerors are detrimental to New Mexico and Federal taxpayers.

In their February 23, 2018 supplemental protest, AmeriHealth alleges that:

A. Mercer had an additional actual or potential conflict of interest due to an inquiry about a contracting agreement from the parent company of one of the successful Offerors;

B. HSD decided to award contracts to only three Offerors in the interest of its own convenience rather than the best interest of the public;

C. HSD utilized response considerations that were not disclosed in the RFP; and

D. The RFP grading methodology contradicts the response considerations in the evaluation guide and the consensus score sheet and further demonstrates the scoring irregularities.

AmeriHealth’s protest requests three separate remedies by HSD: (1) award a contract to AmeriHealth; (2) rescore all bids based solely on the evaluation factors spelled out in the RFP and conduct oral presentations; or (3) rescind the awarded contracts for Centennial Care 2.0 and rebid the procurement.4

**FINDINGS OF FACT**

**A. Introduction**

1. On August 31, 2012, HSD issued Request for Proposal No. 13-630-8000-0001 (the “2012 RFP”) to select MCOs to provide managed care Medicaid services under a new management delivery system entitled “Centennial Care."

2. Mercer’s Government Human Services Consulting Group (“Mercer GHSC”) provided consulting services during the 2012 MCO procurement assisting with the procurement evaluation process. (Exhibit #2, Affidavit of Nancy Smith-Leslie, ¶12 and Exhibit #3, Affidavit of Jared Nason, ¶5.)

3. All Offerors to the 2012 RFP were aware of Mercer GHSC’s role in the procurement process. (Exhibit 2, Smith-Leslie Affidavit, ¶12.)

4. Seven MCOs submitted proposals and four were selected to provide services under Centennial Care: BCBS; Molina; Presbyterian; and United.

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4 AmeriHealth, February 5, 2018 protest, p.20
5. Three of the unsuccessful Offerors timely filed protests of that procurement: Amerigroup Community Care of New Mexico, Inc.; Lovelace Health Systems, Inc. d/b/a Lovelace Community Health Plan; and Western Sky.

6. The Centennial Care program serves approximately 700,000 New Mexico Medicaid recipients through a Section 1115 Demonstration Waiver that was approved by the Centers for Medicare & Medicaid Services (“CMS”), a division of the U.S. Department of Health and Human Services (“HHS”), for a five year period, from January 2014 through December 2018. (Exhibit #2, Smith-Leslie Affidavit, ¶¶4 and 5.)

7. Although there were protests to the RFP, the four contracts for Centennial Care were executed by the former HSD Cabinet Secretary, Sidonie Squier, with services to begin on January 1, 2014, to align with the Section 1115 Demonstration Waiver.

8. Most of 2013 was a “readiness review period” to ensure that the four MCOs were prepared to cover all services and accept enrollment for Centennial Care beginning January 1, 2014. (Exhibit #2, Smith-Leslie Affidavit, ¶11.)

9. The Centennial Care waiver agreement with CMS expires December 31, 2018, and HSD is in the process of renewing the 1115 Demonstration Waiver to be effective January 1, 2019. (Exhibit #2, Smith-Leslie Affidavit, ¶6.)

10. HSD conducted extensive public input sessions and outreach events from October 2016 through October 2017, to obtain feedback about its plan to renew the Section 1115 Demonstration Waiver. (Exhibit #2, Smith-Leslie Affidavit, ¶7.)

11. Throughout the year-long process, HSD presented its timeline for both the waiver renewal and the procurement of the MCOs, describing how the two processes were in alignment. (Exhibit #2, Smith-Leslie Affidavit, ¶7.)

12. Representatives from the New Mexico Department of Health (“DOH”) and the New Mexico Children, Youth and Families Department (“CYFD”) also participated in the public input process for the Section 1115 Demonstrative Waiver renewal and offered feedback, including provisions of new Medicaid services, such as home visiting for at-risk families. (Exhibit #2, Smith-Leslie Affidavit, ¶9)

13. Given that the Section 1115 Demonstration Waiver and MCO contracts expire in December 2018, HSD sought bids from companies for the provision of managed care services for Centennial Care 2.0. (Exhibit #2, Smith-Leslie Affidavit, ¶13.)

B. RFP No. 18-630-8000-0001

14. On September 1, 2017, HSD issued a Request for Proposal (RFP No. 18-630-8000-0001) soliciting “competitive, sealed proposals from managed care organizations (MCOs) to provide services to Members of the New Mexico Medicaid managed care,” with the services to begin on the “Go-Live” date of January 1, 2019. RFP at 6, 15 and 17.
15. The purpose of the “competitive RFP is to select offerors that have the experience and expertise to perform the requirements described within.” RFP at 10.

16. HSD sought partners that are able to continue to advance the goals of Centennial Care 2.0. MCOs must have the capability to provide an integrated, comprehensive delivery system that offers the full array of Medicaid services, including acute, behavioral health, pharmacy, institutional and home and community-based services. RFP at 8.


18. The RFP specified that the proposal had to be received by HSD no later than 3:00 pm MDT on November 3, 2017. RFP at 17.

19. In the RFP, HSD published its “best estimate” of the schedule that will be followed to complete the procurement process. (Exhibit #2, Smith-Leslie Affidavit ¶14 and RFP at 16.)

20. The initial RFP estimated dates were “subject to change at HSD’s discretion.” RFP at 17.

21. The estimated timeline for contract negotiations with successful offerors was shorter than anticipated, largely because a draft of the expected contract was provided with the RFP and there were few requested changes. (Exhibit #2, Smith-Leslie Affidavit, ¶14.)

22. In Amendment 2 to the RFP, issued on October 20, 2017, HSD stated that:

   Following the procurement, HSD’s intent is to contract with three to five MCOs unless it is in the State’s best interest to do otherwise. The number of contractors selected and awarded through this procurement process is solely at HSD’s discretion based on the best interests of the State. HSD intends to award a contract that shall be effective on or about [March 15, 2018] and ending [December 31, 2022]. Thereafter, HSD reserves the right to renew this Agreement for on-year period(s), not to exceed 8 years for the total contract period. Rates will be re-evaluated every year. (Amendment 2 to the RFP at 2.)

23. Oral presentations were at HSD’s discretion. RFP at 17 and 21.

24. The RFP disclosed the criteria that HSD would consider in evaluating the bids, including each factor, the maximum points available for each factor and each sub-factor. RFP at 37 (Scoring Summary), 41 (Technical Proposal Scoring), and 64 (Cost Proposal Scoring).

25. The RFP referenced that successful offerors “who enter into a Contract will have adjustments made to their cost bids for the impacts of items excluded from the Cost Proposal and adjustments made for any changes deemed ‘material’ by the State and its
actuaries which may include: significant changes in program demographics; programmatic 
changes (benefits or reimbursements) occurring after the procurement; [and] list of 
excluded Cost Proposal rate elements (e.g., 1115 [Demonstration] Waiver Renewal 
impacts, add-ons, and assessments).” RFP at 65.

26. Offerors were also advised that their “Cost Proposal [would] be adjusted based on the 
relative position of its proposal within the revised minimum and maximum rate range.” 
RFP at 65.

27. The RFP did not require offerors to propose price offers that the offeror deemed 
“actuarially sound.” (Exhibit #2, Smith-Leslie Affidavit, ¶19.)

28. Offerors were advised that there would be two mandatory pre-proposal conferences to 
permit offeror representatives “to ask questions and clarify issues concerning the RFP and 
procurement process.” RFP at 18.

29. The pre-proposal conferences were held on September 17, 2017, with the morning 
conference focused on the RFP & Technical Proposal and the afternoon session, Actuarial 
& Cost Proposal, focused on “data, rates, costs, Cost Proposal and actuarial issues related 
to the procurement.” RFP at 18.

30. No later than September 29, 2017, Offerors were permitted to submit written questions 
“about the intent or clarity of the RFP and its appendices.” RFP at 17 and 19.

31. The RFP was open “to any Offeror capable of performing work as described in the Sample 
Contract (Appendix O) and addressed in Section 1.3 of the RFP, Summary of Work, subject 
to the following stipulations:

1. An Offeror must be licensed by the New Mexico Public Regulation 
Commission, Division of Insurance, to assume risk and enter into prepaid 
capitation contracts at least six (6) months before the Go-Live date;

2. An Offeror must be either (i) National Committee for Quality Assurance 
(NCQA) accredited in the State of New Mexico, or (ii) NCQA accredited 
in another state that currently provides Medicaid services and achieve New 
Mexico NCQA accreditation within two (2) years of the Contract start date;

3. Pursuant to the Government Conduct Act, NMSA 1978, §§ 10-16-1 et seq., 
an Offeror shall have no direct or indirect interest that conflicts with the 
performance of services covered under this Contract;

4. Pursuant to NMSA 1978, § 13-1-191, § 30-24-1 through 30-24-2, and §§ 
30-41-1 through 30-41-3, an Offeror shall not provide or offer bribes, 
gratuities, or kickbacks to applicable State personnel;

5. An Offeror shall ensure that it will comply with the New Mexico 
Governmental Conduct Act, NMSA 1978, §§ 10-16-1 et seq.;
6. An Offeror shall complete any and all required disclosure forms, including but not limited to campaign disclosure forms and other attestations; and

7. The burden is on the Offeror to present sufficient assurances to HSD that awarding the Contract to the Offeror shall not create a conflict of interest.

8. An Offeror must disclose to HSD its relationships with other entities contracting with the State, noting all entities, organizations and contractors doing work for both the State and the Offeror, and the nature of the work. Offerors must use the format provided in Appendix J – Disclosure Contractor Relationship and submit this information in the Exhibit Binder (Tab 1). RFP at 12-13.

32. The RFP stated that the “Evaluation Committee” would be a body “appointed by HSD to evaluate the Offerors proposals.” RFP at 15.

33. The Evaluation Committee comprised subject matter experts to evaluate and score Section 6, Technical proposal sub-sections. (Exhibit #4, List of Evaluators.) All of these subject matter experts are HSD employees. Id.

34. The “Mandatory Requirements” included, among other things, a “List of References” that would identify the three Reference entities, including the contact name and phone number for each. RFP at 37-40.

35. References from Offerors were to “be submitted directly to HSD by the Reference source, not by the Offeror, independent of the other Proposal materials.” RFP at 17.

36. On December 22, 2017, HSD issued its Scoring Results Summary for Centennial Care 2.0. (Exhibit #5, 2017 Centennial Care 2.0 Scoring Results Summary.)

37. On March 15, 2018, Chief Procurement Officer Gary Chavez issued a memorandum finding, pursuant to NMSA 1978 § 13-1-173 and NMAC § 1.4.1.83 that there were no exceptional circumstances warranting a stay of the procurement and that proceeding with the awards was necessary to protect the interests of HSD and ensure the safety of Medicaid Members. (Exhibit #6, Memo from Gary Chavez)

38. On March 13, 2018, pursuant to NMAC § 1.4.1.90, Gary Chavez, designated HSD Cabinet Secretary Brent Earnest to preside over the proceeding for the purpose of reviewing the protests and issuing findings, conclusions and recommendations for resolutions of the protests. (Exhibit #7, Designation)

C. AmeriHealth Specific Findings of Fact
39. On October 26, 2017, Peter Jakuc, AmeriHealth’s Senior Vice President and Chief Development Officer, submitted a “Letter of Transmittal Form” expressly accepting the “Conditions Governing the Procurement.” (Exhibit #8, AmeriHealth’s Letter of Transmittal)

40. AmeriHealth agreed “that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section 4 of this RFP.” (Exhibit #8, AmeriHealth’s Letter of Transmittal.)

41. On January 19, 2018, Daniel Clavio, the RFP’s Procurement Manager, wrote to AmeriHealth advising AmeriHealth that it was not a successful Offeror. (Exhibit #1, Clavio letter to Peter Jakuc dated January 19, 2018.)

**DISCUSSION**

**AmeriHealth’s February 5, 2018 Protest**

The RFP for Centennial Care 2.0, the conditions of which AmeriHealth accepted, states in Section 2.2.15 that the deadline for protests “shall begin on the day following the Contract award and will end at the Close of Business fifteen (15) Calendar Days after the Contract award.” Further “Protests must also contain a statement of grounds for the protest, including appropriate supporting exhibits, and must specify the ruling requested.” AmeriHealth’s February 5, 2018 protest was timely and complied with the criteria set forth in the RFP. AmeriHealth also included a series of Inspection of Public Records Act (IPRA) requests, and indicated that it would provide “supporting material” for the grounds stated in the protest after receiving the requested IPRA documents.5

1. **Inflated Scoring of Contract Winners by Impermissible Evaluation of Unsolicited Exhibits Contrary to the Provision of the RFP**

   In this argument, AmeriHealth asserts that “All three Offerors awarded contracts (the “Winning Offerors”) included unsolicited exhibit material with their proposals. The Evaluation team awarded these Offerors higher scores than other Offerors, without demonstrable reasons for such, on the questions for which the three winning Offerors included exhibits.” From this, AmeriHealth concludes that the higher scores awarded to the successful Offerors resulted from positive consideration given to their unsolicited exhibits.

   AmeriHealth lists a number of questions for each successful Offeror for which the Offerors provided exhibits, despite the fact that exhibits were not permitted for those questions and the RFP stated in Section 3.4.4 that unsolicited exhibits would not be considered. AmeriHealth notes that in some cases the Evaluation Committee comments mention that exhibits are not allowed, and in other cases the Committee comments do not refer to the exhibits. AmeriHealth assumes that in the cases where no comments about the exhibits were made, the Committee considered the exhibits

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5 In its February 23, 2018 supplementary protest, AmeriHealth added new grounds for protest based upon a theory of “rolling protests” linked to the discovery of new information. As is discussed below, these issues are untimely under the agreed rules governing the protest.
and gave the Offerors credit for them. AmeriHealth contends that the consideration of these exhibits gave the successful Offerors an unfair advantage and improperly skewed the results of the evaluations in their favor.

The problem with AmeriHealth’s argument is that it is based on the lack of evidence, rather than the presence of it. AmeriHealth assumes that the Committee’s silence on the subject of the exhibits is evidence that they were taken into account. In no case did the Committee affirmatively state that it considered the exhibits, or that the successful Offerors were given credit for them. This is not sufficient proof that the Evaluation Committee improperly considered the unsolicited exhibits to the advantage of the successful Offerors.

Further, AmeriHealth makes the blanket statement that the successful Offerors received higher scores “without demonstrable reasons for such,” but offers no evidence supporting the contention. In AmeriHealth’s subjective view, its answers to the particular questions deserved as many points as the answers of the successful Offerors. Nevertheless, it is the province of the Evaluation Committee, in its sole discretion, to weigh the responses and assign points to them. While it is understandable that an offeror would favor its own response over others, in the absence of evidence of impropriety, the opinion of the Evaluation Committee is the standard that is adopted.

2. **Arbitrary and Capricious, Inequitable, Irregular, Erroneous Scoring of Offerors’ Submissions Invalidates Scoring as Defective.**

   In this section of its protest, AmeriHealth contends that 1) substantially similar responses received inexplicably different scores, 2) nonexistent alleged missing information and efficiencies were erroneously cited, causing evaluators to unreasonably score AmeriHealth lower due to their mistakes, 3) evaluators failed to accurately score responses of winning Offerors containing deficiencies, and 4) other scoring deficiencies.

   In the evaluation of the responses, points were earned based on the quality of each response in accordance with HSD’s vision for Centennial Care 2.0 as set forth in the RFP and its evaluation factors. All proposals are not entitled to the full amount of points available for each evaluation criteria simply for providing a response. Less satisfactory and descriptive responses earned fewer points and more thorough and satisfactory responses earned more points. It was the consensus scoring group’s exclusive authority and duty to assess the quality of each proposal.

   Protestors cannot substitute their subjective judgment about the quality of their responses for that the consensus scoring group. *McDaniel v. NM Bd. of Medical Examiners*, 1974-NMSC-062, ¶17, 86 N.M. 447 (explaining that “administrative bodies whose members, by education, training or experience” may properly be given “special weight and credence to findings concerning technical or scientific matters”). Arguments that certain parts of protestors’ proposals should have received more points or that their competitors deserve fewer points is nothing more than biased disagreement with how their proposals were received.

   AmeriHealth has identified areas in which they disagree with assessments, but they have identified no violation of law. The Procurement Code and its regulations require HSD to fairly and equitably evaluate proposals based on the “factors set forth in the RFP” but leave the specific
application of those standards to the agency’s discretion. NMSA 1978, § 13-1-117 (1984). If a question in the RFP asked an offeror to discuss a certain subject area, the Evaluation Committee should expect that the offeror will able to address relevant matters within the scope of that subject area. The Evaluation Committee, in its sole discretion, assessed the quality of the responses and awarded points accordingly. There is no credible evidence that the Committee abused its discretion in the manner in which it conducted its work.

3. HSD Failed to Hold Oral Presentations Despite the Evaluation Committee’s Noted Need for Clarification to Offerors’ Written Responses

AmeriHealth disputes HSD’s decision to forego oral presentations. It argues that oral presentations were necessary because AmeriHealth scored only 29 points behind the third successful Offeror and believes an oral presentation would have improved its score. It also contends that, inasmuch as it received the maximum amount of points on the cost component, by not holding oral presentations, HSD missed an opportunity to maximize value for New Mexico taxpayers. Oral presentations would also have allowed offerors to answer questions for the Committee in areas where their response required clarification.

AmeriHealth acknowledges that the RFP, section 2.2.11, “provides that HSD has the discretion to require finalists to present their proposals and provide clarifications to the Evaluation Committee during an Oral Presentation.” Despite acknowledging the discretionary nature of oral arguments and the fact that the RFP clearly states that oral arguments were at the option of HSD, AmeriHealth argues, “HSD should have used its discretion to hold Oral Presentations for a number of reasons...” AmeriHealth protest at 18

Oral presentations are held for the benefit of the procuring agency. It is the procuring agency that decides if they are needed, not the Offerors. The RFP clearly stated that oral presentations regarding the RFP were to be conducted at HSD’s discretion.

HSD was responsible for evaluating and scoring the bids. The evaluation committee, having determined they were satisfied that the procurement process had provided the information necessary to make decisions, without oral presentations, did not hold oral presentations. AmeriHealth did not object to HSD’s decision to not hold oral presentations until after learning they were unsuccessful.

HSD utilized its discretion and declined to hold oral presentations. It was HSD’s decision not to conduct oral presentations, as “they were deemed unnecessary by the evaluation committee.” (Exhibit #2, Smith-Leslie Affidavit, ¶15, Exhibit # 9 Memo from Jessica Osborne to Dan Clavio.) This decision complied with the plain language of the RFP stating that oral presentations would occur “[a]t HSD’s discretion.” RFP at pp. 17 and 21 provide sufficient justification for HSD’s action. HSD’s decision not to conduct oral presentations was not arbitrary and capricious and it was not an abuse of discretion.

4. Incurable Conflict of Interest of Mercer in the RFP

AmeriHealth contends that “Mercer, the consultant hired to develop and draft the RFP, develop the RFP factors and rate tables, manage the procurement process, and train the State’s RFP Evaluation team, has an impermissible conflict of interest in participating in the RFP process,
by virtue of its relationship with one of the Winning Offerors, Western Sky.” AmeriHealth protest at 18-19.

Western Sky, one of the three successful Offerors, is a wholly owned subsidiary of Centene Corporation. Centene has another subsidiary, Envolve, which is a specialty health services company providing services, such as pharmacy benefit delivery. AmeriHealth’s argument with respect to Mercer is predicated upon the premise that Mercer’s contractual relationship with Envolve would inevitably prejudice it in favor of Western Sky. This leads to the contention that Mercer directed the procurement in such a way as to insure that Western Sky would be a successful offeror. This contention is not supported by credible evidence, however.

AmeriHealth overstates Mercer’s role in the procurement. The affidavits of the Medical Assistance Director and HSD staff explain Mercer’s role, which was clearly facilitative.

Mercer served as a consultant in this RFP, just as it did in 2012. HSD was responsible for evaluating and scoring the bids. Thirty-two HSD subject matter experts from HSD’s Medical Assistance Division and Behavioral Health Services Division served as the state’s RFP evaluation committee. (Exhibit #4, List of Evaluators.) They participated on 15 evaluation teams (including the executive committee) and were assigned based on their expertise. (Exhibit #4, List of Evaluators.) During the weeks of November 6, 2017 through December 3, 2017, each HSD evaluator independently read assigned sections of the RFP, within their area of expertise, and scored each Offeror’s response. (Exhibit #2, Smith-Leslie Affidavit, ¶24.) From December 4, 2017 to December 15, 2017, the HSD evaluators participated in the consensus scoring sessions. (Exhibit #2, Smith-Leslie Affidavit, ¶24.) These sessions resulted in one consensus team grade per question. (Exhibit #2, Smith-Leslie Affidavit, ¶24.) The process is further described in the “scoring results summary.” (Exhibit #5, 2017 Centennial Care 2.0 Scoring Results Summary.) Furthermore, it was HSD who signed the awards to the winning offerors. All final decisions regarding the Medicaid program were made by HSD as is required by law. On December 18, 2017, the executive evaluation committee for the 2017 Centennial Care 2.0 MCO met to review and discuss the scoring result summary for the RFP and develop recommendations for the medical assistance director regarding the RFP. After discussion in the meeting, the committee agreed, by consensus that contracts be awarded to Presbyterian Health Plan Incorporated, Western Sky Community Care and Blue Cross/Blue Shield of New Mexico. These recommendations were arrived based upon the independent judgment of the committee members, and were not directed, guided, or influenced by any third party. (Exhibits #10 through #16, affidavit of Karen Meador, affidavit of Linda Gonzalez, affidavit of Kari Armijo, affidavit of Jason Sanchez, affidavit Angela Medrano, affidavit of Michael Nelson, and affidavit of Wayne Lindstrom.)

Mercer’s Government Human Services Consulting Group (GHSC) has a long-standing consulting relationship with HSD. In that capacity, it provided the same facilitation services for the procurement of Centennial Care in 2013 that it has done here. The role played by Mercer in this RFP is defined clearly. All substantive decisions and recommendations were made by the evaluation committee and there is no evidence that their deliberations were directed or otherwise unduly influenced by Mercer. There are no credible claims of bias, secrecy, or conflicts of interest in the outcome of the RFP evaluation, much less evidence of any such unfairness in the process.
Mercer’s Health and Benefits Consulting Practice, which is separate from GHSC, only has a pre-screening contract with Envolve for the purpose of benefit plan design for its corporate customers that involves no compensation for either Mercer or Envolve. (Exhibit #17, David Dross affidavit ¶ 6, 7) What is more, the members of Mercer’s GHSC group that assisted with the procurement were unaware of the contract between Mercer and Envolve prior to Molina filing litigation against HSD subsequent to the award of the contracts. (Exhibit # 3, Jared Nason affidavit and Exhibit # 18, Mercer letter to Collins)

Mercer has no interest, direct or indirect, in Centene’s, or Western Sky’s, operations. (Exhibit # 2, Affidavit of Nancy Smith-Leslie, ¶¶ 36-38; Exhibit # 19, Affidavit of Carmen Fontanez, ¶¶ 7-8; and Exhibit # 18, Mercer letter to Collins). Western Sky is a wholly-owned subsidiary of Centene Corporation. (Exhibit # 19, Affidavit of Carmen Fontanez, ¶ 3; Exhibit #20, Affidavit of Brent Layton, ¶¶ 13 and 18.) Centene has another separately held subsidiary, Envolve. Id. Envolve specializes in managed Medicaid business and is the pharmacy benefit manager (PBM) serving the largest managed Medicaid population. Envolve’s scale and scope brings necessary tools and services to manage drug trends while providing the most appropriate and affordable access to care. (Exhibit #19, Affidavit of Carmen Fontanez, ¶ 4.) Western Sky discloses and references Envolve as a subcontractor in its proposal to HSD. (Exhibit # 20, Affidavit of Brent Layton, ¶ 19.)

In October 2016, Envolve and Mercer Health & Benefits, not Mercer Government Human Services Consulting, entered into a single contract referred to as a Master Service Provider Agreement (“MSPA”). The MSPA provides no financial benefit to Mercer Health & Benefits as it is a zero dollar contract. (Exhibit # 19, Affidavit of Carmen Fontanez, ¶ 5.) Under the terms of the MSPA, Mercer Health & Benefits has the option to refer plan sponsors to Envolve. (Id.) The MSPA does not contain any monetary remuneration between the parties for services or property. (Id. at ¶ 6.) Mercer does not derive any financial benefit from the success of Envolve and will not benefit from any revenue Envolve obtains from Western Sky’s operations in New Mexico. (Id.) Mercer will not benefit from any revenue and profit Envolve or Western Sky obtains from operations in New Mexico or through other plan sponsors that would contract with Envolve in the future. (Exhibit # 19, Affidavit of Carmen Fontanez, ¶¶ 8-9; and Exhibit #18, Mercer letter to Collins).

None of the individuals from Mercer Government Human Services Consulting who assisted HSD with the 2017 RFP had any knowledge of a relationship between any Mercer business and Centene, Envolve, or Western Sky, prior to the award of Centennial Care 2.0. (Exhibit # 3, Jared Nason affidavit, and Exhibit #18, Mercer letter to Collins.) Even if Mercer Government Human Services Consulting had been aware that Mercer Health & Benefits had entered into a MSPA with Envolve, Mercer had absolutely no decision making authority in the RFP evaluation and scoring process. (Exhibit # 2, Affidavit of Nancy Smith-Leslie, ¶ 25). HSD subject matter experts, not Mercer, scored each of the proposals following weeks of consideration. (Exhibit # 2, Affidavit of Nancy Smith-Leslie, ¶¶ 12, 24-25; and Exhibit # 18, Mercer letter to Collins). The extent of Mercer’s role in the scoring process was in compiling scores for the cost offers, which is a transparent and computational process. (Id.)

AmeriHealth did not present any evidence suggesting a conflict of interest existed regarding Mercer’s role in the procurement, that there was any bias or unlawful activity related to the
procurement, or that HSD proceeded in anything but good faith by evaluating each of the proposals related to the Centennial 2.0 procurement.

5. **Cost Proposals of Winning Offerors Are Detrimental to New Mexico and Federal Taxpayers Covering the Costs of Managed Care Organizations for Centennial Care 2.0.**

AmeriHealth asserts that it deserved a contract by virtue of its high score on its response to the cost component of the RFP. It claims, without citing supporting evidence, that the offerors chosen by HSD will each cost the State between $10 million and $20 million dollars than AmeriHealth. For this reason, AmeriHealth maintains that denying it a contract was not in the best interest of New Mexico’s citizens.

What AmeriHealth argument does not recognize is that costing, although important, is but one of the criteria upon which the contract awards were based. The Evaluation Committee, while certainly concerned with cost, also was tasked with selecting offerors who were best equipped to effectuate the service goals of Centennial Care 2.0 and meet the care needs of eligible Medicaid recipients by the most efficient means. Thus, whereas some procurements look specifically at which bidder offers to provide the necessary services at the lowest cost, Medicaid procurements involve a wide range of considerations. In this case, the Evaluation Committee considered all relevant factors and criteria in arriving at its determinations and, while cost was a significant factor, it was not dispositive.

**AmeriHealth’s February 23, 2018 Supplemental Protest**

In its initial protest on February 5, 2018, AmeriHealth indicated that it would provide “supporting material” for its original protest at such time as it received and was able to evaluate responses to its IPRA requests to HSD. (AmeriHealth protest, p.1) On February 23, 2018, AmeriHealth issued a supplemental protest, which did not provide supporting material for its original protest, but which raised four new protest issues, as set forth above. Section 2.2.15 of the RFP, to which AmeriHealth agreed, makes it clear that all grounds for protest must be identified and submitted within fifteen days of the award of the contracts. AmeriHealth’s contention that it may continue to identify grounds for protest as they are identified, and that each discovery of a new issue begins a new fifteen day protest period, has no merit. New issues raised after February 5, 2018 are, therefore, untimely, and need not be addressed. A review of the newly raised issue also reveals that, in addition to being untimely, they are not meritorious.

**A. Actual or Potential Contractor Conflict Issue**

As part of the response to its IPRA request, AmeriHealth inadvertently received a copy of an October 16, 2017 email from Procurement Manager Daniel Clavio to Chief Procurement Officer Gary Chavez and Assistant General Counsel Constance Tatham in which the participants discussed the disclosure by Mercer of a potential contract opportunity with the parent company of one of the Centennial Care 2.0 offerors.\(^6\)\(^7\) Clavio was seeking input from the others as to whether

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\(^6\) This is a separate alleged conflict than AmeriHealth’s previous concern regarding Mercer’s relationship to Western Sky.

\(^7\) The email in question is subject to attorney-client privilege. Upon request from HSD, AmeriHealth refused to return or destroy the email. HSD maintains its position, but will address AmeriHealth’s argument.
such a relationship would create a conflict of interest. In that email Mr. Clavio pointed out that
Mercer was approached by the “parent company of an offeror”\(^8\) regarding some work in the parity
area. AmeriHealth also alleges that the contact described in Mr. Clavio's email was improper
because it violated the "communication blackout" in place at that time. Healthcare Services
Corporation ("HCSC") is the entity that had the communication with Mercer that is referred to in
Mr. Clavio's email. (Exhibit # 2, Affidavit of Nancy Smith Leslie, ¶38.)

The contact did not violate the "communication blackout" clause of the RFP. This
communication blackout is limited in scope to matters pertaining to the procurement and states:
"Offerors may contact only the procurement manager [Daniel Clavio] regarding this procurement.
Other state employees, consultants, and agents do not have the authority to respond on behalf of
HSD...an offer that contacts another state employee or agent in violation of this requirement will
be excluded from further participation of procurement." (See RFP at p. 11.)

“In September 2017, HCSC was looking for a contractor to assist it in conducting a review
and assessment that could further support compliance with mental health parity requirements for
HCSC's commercial line of business. “ (Exhibit #21, Affidavit of Peter Fischer ¶3.) Mr. Fischer
knew that Mercer had some involvement with this type of review, so he made a brief, preliminary
contact with Jonathan Meyers of Mercer and had an approximately 20-minute phone call with
Mr. Meyers on October 3, 2017. (Id. at ¶¶ 4-5.) During that call Mr. Meyers mentioned that
Mercer was involved in another project in New Mexico and that a firewall would have to be put
in place if this parity review contract were pursued. (Id. at ¶5.) Within a short time after that
October 3 call, HCSC decided to hire another contractor. Mr. Fischer had no further contact with
Mercer after the brief phone call on October 3. (Id. at ¶6.)

Mr. Fischer's communication with Mr. Meyers of Mercer was limited and unrelated to the
procurement. There is no evidence that Mr. Fischer discussed Medicaid business, the RFP, or Blue
Cross Blue Shield New Mexico's involvement with the RFP. The blackout clause prohibits
communications about matters "regarding this procurement." Since, as Mr. Fischer's affidavit
demonstrates, the limited communication between HCSC and Mercer did not concern the RFP or
the procurement, there was no violation of the "communication blackout" and there was no conflict
of interest.

The current MCOs have frequent contacts with HSD about matters relating to the current
Centennial Care Program. The plain and unambiguous language of the blackout clause does not
prohibit and cannot be interpreted as prohibiting all non-RFP related communications between an
offeror and HSD. It would not be reasonable to interpret the blackout clause as prohibiting all
non-RFP related communications between an offer and Mercer. The fact of an isolated preliminary
contact between HCSC and Mercer, that did not result in any present or future contractual
arrangement, is insufficient to constitute a conflict, or appearance of conflict, sufficient to require
the rebidding of the procurement. Further, a contact between Mercer and an Offeror’s parent
company that was wholly unrelated to the procurement, does not qualify as a violation of the
communications blackout.

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\(^8\) BCBSNM is an operating division of Healthcare Services Corporation ("HCSC"). There is not a parent subsidiary
relationship as Mr. Clavio incorrectly indicated in his email of October 16, 2017.
B. HSD Considered Awarding Contracts to the Top Four Scored Offerors and Appears to have Declined to Contract with Four in the Interest of its own Convenience Rather than the Interest of the Public.

AmeriHealth acknowledges that in the Amendments to the RFP, HSD revealed an intent to award contracts to “three to five MCOs, unless it is in the State’s interest to do otherwise.” RFP Sec. 1.4. It concedes, therefore, that HSD’s decision to award three contracts was within the parameters set forth in the RFP. It argues, however, that in the “interest of the public” HSD should have awarded a fourth contract to AmeriHealth, primarily due to AmeriHealth achieving the highest score in the cost portion of the evaluation. (Supplemental Protest, p.5) AmeriHealth also bases its argument on a copy of handwritten notes apparently written by an unidentified evaluator that it obtained via its IPRA request. The undated notes, identified as AmeriHealth’s Exhibits B and C, reveal that the author, at some point was weighing the pros and cons of awarding contracts to three or four MCOs. The notes do not reveal whether they were made as part of a group discussion, or whether they reflect the views of others. The notes also do not reveal an opinion of the author, one way or the other.

HSD selected the three highest scoring proposals, PHP, BCBS and WS, and awarded those offerors contracts. The primary justification for the selection of those offerors was that the executive evaluation committee for the 2017 Centennial Care 2.0 MCO RFP determined that those offerors scored very high in each of the three scoring sections (Technical, References and Cost). (Exhibit #22, Memo from Daniel Clavio.) As stated in the Executive Evaluation Committee report to Daniel Clavio:

- The three (3) highest-scoring plans overall demonstrated strong scores in the Technical Proposal.
- Contracting with three (3) MCOs furthers HSD’s efforts to create administrative simplicity for providers and state oversight staff while maintaining adequate choice for Members.
- The recommendation will provide stability in the NM Medicaid program through the retention of two incumbent MCOs while providing a new MCO option for Members.
- A reduction in the number of MCOs has the potential to create economies of scale and encourages lower administrative costs. (Exhibit #9, Memo from Jessica Osborne to Dan Clavio)

HSD’s decision to select three MCOs complied with the plain language of the RFP. In Amendment 2 to the RFP, HSD stated that:

Following the procurement, HSD’s intent is to contract with three to five MCOs unless it is in the State’s best interest to do otherwise. The number of contractors selected and awarded through this procurement process is solely at HSD’s discretion based on the best interests of the State.

Amendment 2 to the RFP at 2.

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9 The notes also suggest that a fourth contract would have been awarded to AmeriHealth, due to its top score in the cost section.
Similar language is found in Section 1.4 of the initial RFP. AmeriHealth’s argument that HSD erred in awarding three, rather than four, contracts is unfounded in light of the clear language of the RFP and its Amendments.

The RFP also is clear that there was no pre-determination that any specific number of Offerors would be awarded contracts. It was a discretionary decision made only after the scoring of the listed factors and in light of the relative quality of the proposals. By the clear language of the RFP, HSD did not “reduce” the number of MCOs, but, in its discretion, selected a number of MCOs within a stated continuum that the Offerors knew in advance and that AmeriHealth did not dispute prior to the Notice of Award.

Unlike other procurements which use strategies to solely seek purchase of products or services at the lowest cost, healthcare procurements use a multifaceted strategy focused on the managed care company’s technical ability to deliver covered services to patients with complex health needs, through goals set by the state, in a cost effective and efficient manner. HSD conducted a competitive procurement process that aligns with its managed care program goals of improving care integration, driving value-based payments, and streamlining administrative processes. HSD has selected offerors that demonstrated understanding and experience in meeting those goals on the basis of the content of their responses to the specialized questions in the RFP. Eight companies submitted proposals, and the State selected the top three.10

AmeriHealth’s contention that the decision to award three contracts was for HSD’s “convenience,” rather than in the public interest is also based on its speculative interpretation of the handwritten notes. It describes its conclusion as a “reasonable interpretation” of the notes, but offers no proof that the notes reflected the ultimate conclusions of the author or the opinions of anyone else. Further, NMAC § 1.4.1.43.A makes clear that “An award shall be made to the responsible offeror whose proposal is most advantageous to a state agency taking into consideration the evaluation factors set forth in the RFP.” Efficiency, economies of scale, and ease of administration, therefore, are valid considerations for a state agency in weighing the merits of a proposed contract award. To the extent that the Evaluation Committee included these considerations in its deliberations, therefore, it was proper for it to do so. AmeriHealth’s allegations are without merit and should be rejected.

C. Procurement Evaluation Guide Contains Response Considerations not Included in the Questions.
D. 2017 RFP Grading Methodology Contradicts the Response Considerations in the Evaluation Guide and the Consensus Score Sheet and Further Demonstrate the Scoring Irregularities.

AmeriHealth here contends that HSD violated NMAC § 1.4.1.43.A, quoted above, by adding response considerations to the evaluation guide for the RFP that go beyond the evaluation factors set forth in the RFP. Specifically, AmeriHealth contends that the response considerations “deviate from the language of the question, asking for consideration of factors that perhaps an offeror may creatively offer, but may perhaps omit in the interest of adhering to the question posed

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10 The evaluator’s notes also reveal that a negative consideration to adding a fourth MCO was that AmeriHealth scored lowest on the technical section of the response.
and prescribed page limits.” (SP, p. 7) Thus, AmeriHealth argues that HSD “hid the ball in violation of the lawful purposes of procurement and the means to effectuate lawful procurement.” (SP, p. 8) It states “To evaluate an offer based on evaluation factors outside the RFP is a violation of law and arbitrary and capricious,” citing Planning and Design Solutions v. City of Santa Fe, 1994-NMSC-112 (SP, p. 9) AmeriHealth is mistaken, but this, also, is an argument that was not raised in the original protest.

HSD did not (1) rely on undisclosed criteria in evaluating proposals for Centennial Care 2.0 or utilize evaluation criteria that were not disclosed. The RFP specifically identified each evaluation factor that was considered in scoring proposals along with the number of points that could be awarded for each factor.

Points were earned based on the quality of each response in accordance with HSD’s vision for Centennial Care 2.0 as set forth in the RFP and its evaluation factors. All proposals are not entitled to the full score for each evaluation criteria simply for providing a response. Less satisfactory and descriptive responses earn fewer points and more thoughtful, thorough and satisfactory responses earn more points. It was within the consensus scoring group’s authority to assess the quality of each proposal. AmeriHealth cannot now substitute their judgment about the quality of their responses for that of the consensus scoring group.11

The Procurement Code gives HSD and all state agencies substantial latitude in determining how to structure an RFP to procure services such as those covered by Centennial Care 2.0. The Procurement Code, with respect to RFPs, requires what is set out and specifically enumerated in NMSA 1978, Sections 13-1-112 and 13-1-114, supra. The regulations provide that, “[a]t a minimum the RFP shall include the following . . . all of the evaluation factors and the relative weights to be given to the factors in evaluating proposals.” See NMAC 1.4.1.31(a)(6). These provisions required HSD only to notify prospective offerors of the evaluation factors relevant to the procurement and to evaluate the submitted proposals based on the published factors. Planning and Design Solutions v. City of Santa Fe, 1994-NMSC-112, ¶29.

Planning and Design does not stand for the proposition that agencies cannot provide guidance for their evaluation teams, especially where the guidance is designed to avoid arbitrary and capricious results. Planning and Design was a case where the City of Santa Fe issued an RFP that listed and weighed four main factors the city would use in evaluating the proposal: 25 percent for the project approach; 10 percent for a project schedule; 20 percent for the experience and expertise of the firm; and 35 percent for the experience and expertise of assigned personnel. Planning and Design, 118 N.M. at 709. A California firm was selected as the “most advantageous to the city,” and when the contract was being ratified by the City Council, the council rejected the California firm and selected the forth place firm which was the “highest local firm on the list.” Id. The New Mexico Supreme Court held that the combination of introducing a new “locality” requirement into the RFP and failing to follow the city’s own procurement regulations by selecting the fourth place firm amounted to arbitrary and capricious behavior. Id. The “response

11 McDaniel v. NM Bd. of Medical Examiners, 1974-NMSC-062, ¶17, 86 N.M. 447 (explaining that “administrative bodies whose members, by education, training or experience” may properly be given “special weight and credence to findings concerning technical or scientific matters”).
considerations” by the evaluation committee are not comparable to the City of Santa Fe’s introduction of an entirely new evaluation factor (company location).

HSD chose the top bidders and disclosed, in the RFP, the factors that guided that determination. AmeriHealth has identified areas in which they disagree with assessments, but they have identified no violation of law. The Procurement Code and its regulations require HSD to fairly and equitably evaluate proposals based on the “factors set forth in the RFP” but leaves the specific application of those standards to the agency’s discretion. NMSA 1978, § 13-1-117 (1984). If a question in the RFP asked an offeror to discuss a certain subject area, HSD is permitted to believe that the offeror will be able to address with sufficient knowledge and detail matters within the scope of that subject area.\(^\text{12}\)

There is no requirement in the Procurement Code or the regulations that HSD identify every detail of each “evaluation factor” that it wants an offeror to address. AmeriHealth offers no authority to support the notion that an unsuccessful Offeror’s subjective disagreements with HSD’s evaluation are sufficient to support a bid protest.

“Response considerations” are not new evaluative criteria and do not stand in place of the direct questions asked in the RFP. “Response considerations” are used as guidance to ensure that evaluations teams fully considered the question at issue in an effort to not be arbitrary and capricious. All the response considerations were tied to the question itself and, though some did not track the exact language of the question, they do not constitute a new factor into the RFP. AmeriHealth alleges that the response considerations changed the questions, but does not provide examples or evidence that this occurred.

Centennial Care 2.0 RFP provided potential Offerors with detailed information about what factors HSD would evaluate. First, the RFP asked Offerors to meet certain mandatory requirements of which most were subject to a pass/fail determination. The only exception was for references, for which a maximum of 300 points were available. (RFP 4.3.4.) Second, the RFP separated the technical proposal into 12 sections, each covering and constituting a separate factor, including:

1. Experience & Qualifications (maximum 130 points);
2. Provider Network & Agreements (maximum 70 points);
3. Benefits & Services (maximum 160 points);
4. Care Coordination (maximum 280 points);
5. Long-Term Services & Supports (maximum 160 points);
6. Information Systems & Claims Management (maximum 220 points);
7. Native Americans (maximum 50 points);
8. Member & Provider Services (maximum 80 points);

\(^\text{12}\) HSD chose subject matter experts to evaluate and score Section 6 Technical Proposal sub-sections relative to each individual’s area of expertise. For example, RFP § 6.5 sought responses relating Long-Term care. HSD chose individuals that had years of experience in long-term care and supports: Tallie Tolen, Angela Medrano, Joey Kellenaers, and Shari Roanhorse. Exhibit #4, List of Evaluators. Each sub-group was required to consider a large amount of information relating to numerous complex subject areas and then evaluate which Offerors’ proposal make the most sense for the New Mexico Medicaid program.
9. Quality Improvement & Management (maximum 60 points);
10. Reporting & Program Integrity (maximum 50 points);
11. Financial Management (maximum 50 points); and
12. Value-Based Purchasing (maximum 80 points).\(^\text{13}\)

Within each of these technical proposal factors, the RFP required Offerors to respond to 94 separate questions designed to elicit details of the Offerors’ proposals.

AmeriHealth affirmatively indicated their acceptance of the evaluation process. Section 2.3 of the RFP provides that “submission of a proposal constitutes acceptance of the evaluation process contained in Section 4 of this RFP[,]” and Section 4 is where the factors, and the points available for each factor are specifically identified. Each protestor concurred “that submission of our proposal constitutes acceptance of the Evaluation Factors considered in Section 4 of this RFP.” (Exhibit #8, AmeriHealth’s Letter of Transmittal.)

HSD followed the Procurement Code and its regulations when it promulgated the Centennial Care 2.0 RFP. The RFP (1) provided all the information required by NMSA 1978, § 13-1-112(A); (2) explicitly listed each of the factors that would be considered in evaluating the proposals received to the RFP and the relative weights given to those factors (the maximum points available for each factor); and (3) provided that “[e]ach proposal shall be evaluated to determine whether the requirements as specified in the RFP have been met.” As required by NMSA 1978, § 13-1-112 and NMAC § 1.4.1.31(A), the RFP included specifications for the services to be procured and a statement of the relative weights to be given to those factors in evaluating criteria.

The Evaluation Committee, upon evaluating each proposal, concluded the successful Offerors were most advantageous to HSD and awarded contracts to them. The Centennial Care RFP and HSD’s evaluation satisfied all of the requirements set forth in the Procurement Code and the Procurement Regulations. It was fully compliant with law. AmeriHealth’s contention to the contrary is meritless.

**RECOMMENDED CONCLUSION**

HSD’s disclosure of evaluation criteria in the RFP was consistent with law and its decision to award contracts to the successful offerors was not arbitrary or capricious and is supported by the record with substantial evidence. Moreover, to the extent that AmeriHealth was aware of the scoring criteria in October 2017, its arguments are untimely under the rules of the procurement and, therefore, are waived.

The New Mexico Human Services Department’s ("HSD" or "Agency") decision to award contracts to Blue Cross/Blue Shield of New Mexico ("BCBS"), Western Sky Community Care, Incorporated ("Western Sky") and Presbyterian Health Plan ("PHP") . . . "successful offers” was appropriate.

\(^{13}\) The total number of available points for the technical proposals was 1,390.
HSD’s procurement of MCO services for Centennial Care 2.0 via the RFP is a matter of great importance for the State of New Mexico (the "State"), HSD and the citizens of the State, especially those who will receive Medicaid coverage under Centennial Care 2.0.

HSD’s evaluations of all proposals submitted under the RFP conformed with the RFP specifications and complied with all applicable law and were therefore not arbitrary or capricious.

The scoring procedures applied by HSD in evaluating each offeror's cost proposal shows that they were reasonable and not arbitrary or capricious.

Substantial evidence exists that HSD conducted this procurement with deliberate and extensive attention to detail, significant planning and foresight, and incorporating best practices and lessons learned in the procurement of Centennial Care 2.0’s predecessor, Centennial Care, other national Medicaid procurement practices, and fully in accord with applicable law and regulations. Therefore, no violation of law occurred.

No conflict exists that tainted the procurement. The review of evidence clearly demonstrated that concerns about Mercer were without merit and not grounded in fact.

HSD’s decisions were in the public interest.

The following contracts were properly awarded and are enforceable

- Blue Cross/Blue Shield: PSC18-630-8000-0033 CC2.0
- Presbyterian Health Plan: PSC18-630 8000-0034 CC2.0
- Western Sky Community Care Inc.: PSC18-630-8000-0035 CC2.0

The protest should be denied and the contracts awarded to the successful offerors should be affirmed as required by §1.4.1.84(c)(1) and §1.4.1.88(b)(1)(a) and NMAC.

Respectfully Submitted,

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