

Janice K. Brewer, Governor
Thomas J. Betlach, Director

801 East Jefferson, Phoenix, AZ 85034
PO Box 25520, Phoenix, AZ 85002
Phone: 602-417-4000
www.azahcccs.gov



Our first care is your health care
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

June 24, 2011

Michael W. Sillyman
Kutak Rock LLP
Suite 300
8601 North Scottsdale Road
Scottsdale, Arizona 85235-2742

Re: Director's Decision on appeal regarding RFP No. YH12-0001

Dear Mr. Sillyman:

This decision is in response to SCAN's appeal of the Procurement Officer's decision dated June 10, 2011, regarding awards made on the above-mentioned Request for Proposal (RFP). I am upholding the Procurement Officer's decision and denying SCAN's appeal for the reasons set forth below.

Factual and Procedural Background

On January 31, 2011, AHCCCS issued RFP No. YH12-0001 soliciting proposals from qualified managed care entities to provide covered services to the ALTCS EPD population. Consistent with A.A.C. §§ R9-28-602 and R9-22-602, Section H of the RFP set forth the evaluation factors in order of relative importance, to wit: capitation, program, organization, and provider network. Section I, Paragraph 14, of the RFP enumerated submission requirements specific to each of the evaluation factors. Each offeror was required to include in its proposal a response to each submission requirement.

SCAN submitted a proposal within the designated timeframe for GSA 52, Maricopa County. For purposes of scoring the proposals, AHCCCS established numerous evaluation criteria for each of the submission requirements. Prior to the receipt of proposals, each evaluation criteria, submission requirement, and evaluation factor was assigned a specific weight that, when applied to the "raw" score (that is, the points for each criteria before any weighting), resulted in a final weighted score for each evaluation factor and a final weighted total score that could range from zero to 100.

On Thursday, May 5, 2011, AHCCCS announced the award of contracts under the RFP, including three contracts in GSA 52. SCAN, as an unsuccessful incumbent, requested and was granted a "capped" contract. Such a contract permits SCAN to continue to provide services to members enrolled with SCAN but precludes SCAN from the assignment of new members except in limited circumstances.

On Friday, May 6, 2011, AHCCCS made the following materials available for public inspection during normal business hours at the agency's main address:

Michael W. Sillyman

June 24, 2011

Page 2 of 4

- The weights assigned to each of the evaluation factors (capitation 30%, program 30%, organization 25%, provider network 15%);
- The proposals submitted by each offeror;
- A listing of the evaluation criteria for each submission requirement;
- The raw scores of each offeror for each criteria associated with each submission requirement;
- The weighted scores of each offeror for each evaluation factor; and
- The total weighted score of each offeror.

The last four items – the list of evaluation criteria, raw scores, weighted scores, and total scores – are contained in a two documents referred to as the Scoring Binders.

On Friday, May 6, 2011, SCAN hand delivered a public records request for copies of records relating to the awards to three other Offerors (Bridgeway, Mercy Care Plan, and Evercare) as well as records relating to the non-award to SCAN. On May 10, 2011, the AHCCCS Procurement Officer and other AHCCCS representatives conducted a conference call with SCAN representatives including the Chief Executive Officer for SCAN. During that call AHCCCS informed SCAN that the records were available for public inspection at its offices during normal business hours at which time SCAN could indicate those documents it would like to copy. Jami Snyder, ALTCS Program Manager at AHCCCS, offered to meet with SCAN on May 17, 2011. By letter delivered via electronic mail on May 16, 2011, SCAN declined to meet with Ms. Snyder and requested copies of the relevant records. AHCCCS provided SCAN copies of the records on May 17, 2011.

On Tuesday, May 31, SCAN submitted to AHCCCS (electronically and by hand delivery) a Bid Award Protest regarding GSA 52, Maricopa County. The protest alleges errors in the scoring of SCAN's proposal such that, if the scores were changed as requested by SCAN in its protest, SCAN would have received 4 additional raw points in the area of Organization and 22 additional raw points in the area of Program. With respect to the each of the disputed scores, SCAN alleged that AHCCCS failed to award SCAN points for information contained in its proposal that was (in SCAN's opinion) responsive to specific evaluation criteria. With respect to six of the 26 points, SCAN supplemented its arguments through comparisons to the scoring of proposals from other offerors.

On June 10, 2011, the AHCCCS Procurement Officer denied the protest on the basis that the protest was not filed within the timeframe established in A.A.C. §§ R9-28-604 and R9-22-604(D). On June 15, 2011, SCAN filed an appeal of the Procurement Officer's decision, and, pursuant to A.A.C. §§ R9-28-604 and R9-22-604(I), requested that the appeal be resolved on the record without hearing.

Decision and Rationale

I am upholding the Procurement Officer's determination that the protest was not filed within the timeframe established by rule. A.A.C. §§ R9-28-604 and R9-22-604(D)(3) provide that protests alleging improprieties in the evaluation of an RFP must be filed within ten days

Michael W. Sillyman

June 24, 2011

Page 3 of 4

after the protester knew or should have known the basis of the protest. SCAN did not submit its protest within this timeframe. Each of the disputed scores in SCAN's protest of May 31, 2011 was based on a comparison of SCAN's proposal to SCAN's scores on each of the evaluation criteria. Obviously, SCAN had actual knowledge of the content of its own proposal even before the proposal was submitted to AHCCCS for consideration. The Scoring Binders (which included the criteria and SCAN's scores) and all proposals were available to SCAN on May 6, 2011. The AHCCCS administrative rules for procurement state that proposals are available for public inspection as of the date of the award. A.A.C. §§ R9-28-603 and R9-22-603(B)(1). The Arizona Public Records Act, specifically, A.R.S. § 39-121.01(D)(1), states that any person may request to examine public records during the regular business hours of the agency. SCAN is presumed to know the law. In addition, SCAN was explicitly informed of its ability to view the Scoring Binders and proposals at AHCCCS' offices. Despite being specifically informed of their right to inspect, SCAN elected to await receipt of copies of the documents. While the Public Records Act provides SCAN the additional right to copies, the fact remains that it was SCAN's choice to await copies rather than conduct an inspection. Had SCAN taken prompt action to review the Scoring Binders and proposals at AHCCCS' offices during normal business hours, it would have known the basis of its protest as early as May 6, 2011. Clearly, a protest submitted on May 31, 2011 is untimely under the standard in the administrative rule.

I do not find, as argued by SCAN, that May 18, 2011 was the earliest date that SCAN should have known the basis of its protest. For that reason, it is not necessary for me to address SCAN's arguments that a protest filed on May 31, 2011 was within ten days of May 18, 2011. However, because the Procurement Officer's decision referenced May 17, 2011 as the "date most favorable to SCAN" and for the sake of making a complete record, I will address those arguments.

First, as noted above, the factual basis for SCAN's protest is based primarily in its own proposal and the Scoring Binders. While SCAN received a copy of the Scoring Binders and all the proposals on May 17, 2011, the Scoring Binders and the proposals were available for inspection as of May 6, 2011. While SCAN may argue that information in other proposals supported its protest, information in those proposals were not necessary for SCAN to know the basis of its protest, particularly since the protest relied on the SCAN proposal relative to the SCAN score for each of the 26 disputed points and referenced other proposals in only 6 of the 26 disputed points. As such, the length of those proposals and the amount of time SCAN took to review those proposals is not material to determining when SCAN knew or should have known the basis for its appeal. Thus I agree with the Procurement Officer to the extent that his decision finds that May 18, 2011 is not the relevant date. Furthermore, I find that the protest is untimely regardless of whether, strictly for the sake of argument, May 17th or May 18th is considered the operative date.

A.A.C. §§ R9-28-101(B) and R9-22-101(B) define "day," for purposes of Title 9, Chapter 28 of the Arizona Administrative Code, to mean a calendar day unless otherwise specified. Ten calendar days from May 17, 2011 and May 18, 2011 are, respectively, Friday, May 27, 2011, and Saturday, May 28, 2011. SCAN appears to argue in a footnote to its appeal that A.A.C. § R9-34-203 or R9-34-303 should apply to the computation of time for the filing of a protest of an RFP. They do not. Those rules appear in a different Chapter of the Administrative

Michael W. Sillyman
June 24, 2011
Page 4 of 4

Code and clearly apply specifically and only to administrative appeals filed by applicants or receipts regarding eligibility or benefits. There is no logical or legal reason to assume that those rules supersede the definition found in the chapter applicable to protest procedures. SCAN also argues in its appeal that A.R.S. § 1-303 applies and, based upon that statute, the protest should be considered timely. That statute provides that when “anything...is provided to be done upon a day...and the day...falls on a holiday, it may be performed on the next ensuing business day...” However, A.R.S. § 301(A) defines holidays to include Sundays and Memorial Day (which fell on Monday May 30, 2011) but does not include Saturdays. Obviously, this argument has no application to either Friday, May 27 or Saturday, May 28, 2011.

Conclusion

For all of the foregoing reasons, I am upholding the decision of the Procurement Officer and denying SCAN’s appeal.

Dated June 24, 2011



Thomas J. Betlach, Director

cc: Matt Devlin
Kari Price
Shelli Silver
Michael Veit
Jami Snyder
Gina Relkin