STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)))	**BEFORE THE CHIEF PROCUREMENT OFFICER**
In the Matter of Protests of:	))	DECISION
Qualis Health	))	CASE Nos. 2010-108 & 2010-109
Georgia Medical Care Foundation d/b/a Alliant ASO	)))	
Materials Management Office RFP No. 5400001140 Quality Improvement Organization for Department of Health & Human Services)	)))	POSTING DATE: MAY 25, 2010 MAILING DATE: MAY 25, 2010

This matter is before the Chief Procurement Officer (CPO) pursuant to letters of protest from Qualis Health (Qualis) and the Georgia Medical Care Foundation d/b/a Alliant ASO (Alliant) filed March 22, 2010. With this request for proposals (RFP), the Materials Management Office (MMO) attempts to procure a quality improvement organization (QIO) "to assist the Department of Health and Human Services (DHHS) in meeting the requirements for a statewide utilization control program for Medicaid services, in accordance with 42 CFR 456-Utilization Control. This includes providing utilization reviews for inpatient hospital services, mental hospitals, intermediate care facilities, and inpatient psychiatric care services for individuals under age 21, as outlined in the South Carolina State Plan for Medical Assistance. In addition, DHHS seeks additional pre-authorization reviews, pre-payment review and quality review functions." [Ex. 1, p. 16, Overview] In the letters, Qualis and Alliant protest MMO's notice of intent to award to the Carolinas Center for Medical Excellence (CCME) dated March 11, 2010 challenging CCME's responsive to the RFP involving its price offer and the qualifications of its staff, the state's evaluation of CCME's proposal, the reasonableness of CCME's price and the impartiality of one evaluator.

In order to resolve the matter, the CPO conducted a single hearing for both cases April 29, 2010. Appearing before the CPO were Qualis, represented by Sue-Ann Shannon, Esq.; Alliant, represented by Alexander J. Brittin, Esq.; CCME, represented by Michael Montgomery, Esq.; DHHS, represented by Deirdra Singleton, Esq.; and MMO, represented by John Stevens, State Procurement Officer. This Decision follows.

NATURE OF PROTESTS

In its letter of protest, Qualis raises the following allegations:

1. CCME's proposal is non-responsive to the essential requirements of the RFP because, in pertinent part, CCME did not indicate that registered nurses will perform all initial medical necessity reviews, except Organ Transplant Services, as required by the RFP;

2. CCME's proposal is non-responsive to the essential requirements of the RFP because it failed to indicate that its mental health professional would have the required licensure;

3. CCME's proposal is non-responsive to the essential requirements of the RFP because it failed to indicate that its psychologist would meet the clinical experience requirement;

4. CCME's proposal attempts to modify the RFP and impose conditions on DHHS to use physical, occupational and speech therapists to conduct the initial review;

5. CCME's proposal incorrectly lists its pricing for Year One;

6. CCME's proposal should be rejected because its price was unreasonable.

Alliant's initial and amended protest letters raise the following allegations:

1. CCME's proposal is non-responsive because it modified the bid schedule and improperly provided for a period of only four years and six months rather than for the required five years, and therefore, DHHS failed to properly evaluate the offerors' prices over the same period;

2. DHHS placed an unfair and improper emphasis on price;

3. DHHS failed to properly evaluate CCME's proposal with regard to personnel, or in the alternative, CCME failed to propose to perform all medical necessity reviews with registered

nurses as required by the RFP and instead stated it intends to conduct these reviews with non-registered nurses.

4. CCME's proposal was non-responsive because it conditioned its proposal and offered non-registered nurses to perform initial case reviews;

5. MMO failed to conduct a proper cost technical trade-off analysis;

6. MMO failed to evaluate CCME's price reasonableness; and

7. CCME improperly listed one of the evaluators as a reference.

The letters of protest, including Alliant's amended protest, are attached and incorporated herein by reference in their entirety.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On September 4, 2009, MMO issued the RFP. [Ex. 1]

2. On September 8, 2009, MMO issued Amendment #1. [Ex. 2]

3. On September 23, 2009, MMO and DHHS conducted a pre-proposal conference.

4. On October 6, 2009, MMO issued Amendment #2. [Ex. 3]

5. On October 29, 2009, MMO issued Amendment #3. [Ex. 4]

6. On November 16, 2009, MMO issued Amendment #4. [Ex. 5]

7. On November 25, 2009, MMO issued Amendment #5. [Ex. 6]

8. On December 10, 2009, MMO opened the four proposals received. The price proposals were as follows:

Offeror	Offer Price
CCME	$18,472,520.00
Alliant	19,999,914.07
First Health	25,211,796.00
Qualis	37,524,300.00

[Ex. 7]

9. On February 12, 2010, due to excessive pricing offers, MMO issued a request for Best and Final Offers (BAFO) removing ultrasounds from the scope of work for prior authorization services. [Amendment # 6, Ex. 15]

10. On February 19, 2010, MMO opened the following BAFOs:

Offeror	Offer Price
CCME	$13,058,838.00
Alliant	16,944,752.47
First Health	19,304,856.00
Qualis	29,204,220.00

[Ex. 16]

11. On March 9, 2010, after completing the evaluation of proposals, the composite scores were as follows:

Offeror	Score
CCME	445
Alliant	406.6
First Health	369.45
Qualis	347.05

[Ex. 19]

12. MMO posted a notice of intent to award to CCME on March 11, 2010.

13. On March 22, 2010, Alliant and Qualis submitted their protests to the CPO.

14. On March 25, 2010, Alliant also submitted an amended protest.

WITHDRAWALS OF ISSUES OF PROTEST

During the hearing, both Qualis and Alliant (Protestants) withdrew allegations from their protest letters. Qualis withdrew the following:

- Protest Issue 2 that CCME was non-responsive regarding its mental health professional's licensure;
- Protest Issue 3 that CCME was non-responsive based on its psychologist's clinical experience; and
- Protest Issue 6 that CCME's price was unreasonable.

Alliant withdrew the following:

- Protest issue 2 that there was an unfair and improper emphasis on price;
- Protest Issue 5 that DHHS failed to conduct a proper cost technical trade-off analysis;
- Protest Issue 6 regarding CCME's price reasonableness; and
- Protest Issue 7 that CCME improperly listed one of the evaluators as a proposal reference.

REMAINING ISSUES OF PROTEST

Therefore, the following issues remain before the CPO:

1. Allegation that CCME was non-responsive to the requirements of the RFP based on how it listed its price on the Bidding Schedule

Specifically, the protestants contend that: 1) CCME's proposal incorrectly lists its pricing for Year One (Qualis #6); 2) CCME's price proposal improperly provided pricing for a period of only four years and six months, not the full five years the RFP required; 3) CCME modified the Bidding Schedule by expressly stating it proposed prices for six months of services in Year One (Alliant #1)

2. Allegation that CCME was non-responsive to the requirements regarding all initial medical necessity reviews

Specifically, the Protestants claim that CCME'S proposal was non-responsive to the essential requirements of the RFP and should be rejected because: 1) the RFP required that all initial medical necessity reviews, except organ transplant services, must be performed by registered nurses and CCME did not indicate it would comply with this requirement (Qualis #1 and Alliant #3); 2) CCME's proposal attempts to modify the RFP and impose conditions upon DHHS to use physical, occupational and speech therapists to conduct the reviews (Qualis # 4); 3) and DHHS failed to properly evaluate CCME's proposal with regard to its personnel or, alternatively, CCME was allowed to submit a price with non-qualified personnel because CCME's proposal states that it intends to conduct initial reviews with personnel who are not registered nurses (Alliant #3 and 4).

CONCLUSIONS OF LAW

1. Price Proposal

Qualis' and Alliant's protests of CCME's price offer involved how CCME entered its price offer on the bidding schedule. Protestants allege that CCME altered the bidding schedule by bidding a price for six months, not a full 12 months for Year One, thereby violating the bidding instructions. Protestants argued that the State should have found CCME nonresponsive due to CCME's alteration of the bidding schedule and rejected CCME's offer. Alternatively, they assert that MMO erred in its evaluation of CCME's price proposal in not finding it nonresponsive because the alteration resulted in CCME being evaluated on only 4 ½ years rather than five years. CCME did amend the bidding schedule. However, the question is whether CCME's alteration of the bidding schedule caused its proposal to be nonresponsive.

Offerors were to provide a price for Year One for implementation/setup and for operation of the contract. For Years Two – Five, the offerors were to provide pricing for each year to conduct the contract. However, the CPO finds that a discrepancy existed between the RFP's Scope of Work/Specifications section and the bidding schedule regarding what period of time offerors were asked to offer a price for operation of the contract for Year One.

The Scope of Work/Specifications advises offerors of an implementation period of January 1, 2010 – June 30, 2010 defining the first six months of 2010 as "implementation," not "operations." It reads:

> Implementation encompasses those activities required to ensure a smooth transition from the incumbent Contractor to the successful Offeror. This will entail development of a series of SCDHHS-approved plans and performance of activities prior to the actual beginning of contract operations. It is anticipated that implementation may begin as early as **January 1, 2010** and end **June 30, 2010.** [Ex. 1, p. 19, Implementation]

It further indicates that the operations period for Year One would be only six months by defining the operations period for Year One as beginning July 1, 2010. Specifically, it reads:

> During Operations, the Offeror must perform the responsibilities described in this RFP. It is expected that Operations will begin **July 1, 2010.** The Offeror is subject to monitoring and evaluation by SCDHHS as set forth in 42 CFR Part 456 – Utilization Control. The Offeror is required to adhere to the contract performance requirements as well as the requirements of any federal and state legislation or regulations which are in effect or enacted during the contract period that are directly applicable to the contract. [Ex. 1, p.21, Operations]

However, the bidding schedule asked offerors to provide an implementation price for Year One but also a monthly price for operation of the contract and then to extend that monthly price times 12 months for a total annual fee. Specifically, it reads, "Annual fee (Monthly total x 12)," which conflicts with the Scope of Work/Specifications for Year One that announced January 1-June 30, 2010 as an implementation period with operation not to begin until July 1, 2010. Surprisingly, none of the offerors raised the question about the disparity despite it being apparent on the face of the solicitation documents.

Offerors approached the bidding schedule for Year One differently. For example, CCME offered a front-end loaded implementation price of $677,640 and an operations (performance) price of $1,380,846 for a total Year One price of $2,058,486. [Ex. 22][1] In contrast, Alliant offered a lower implementation price of $250,000 and a back-end loaded operations price for Year One of $3,248,840.18 for a total Year One price of $3,498,840.01. [Ex. 26] At the hearing, CCME testified that it offered pricing for the full five year period and indicated it merely had entered the caption indicating its operations price for Year One was for "6 months" for clarity; Alliant also argued it provided pricing for a total of five years.

[1] The CPO has used the prices from the BAFOs in this analysis rather than those from the initial price proposals. However, the alteration was the same in both documents.

Georgia Gillens, MMO Procurement Manager, testified that she determined each offeror's total price for evaluation in accordance with the bidding schedule instructions that total contract amount equaled "Annual Fees Plus Implementation." For example, the total contract amounts utilized for her evaluation were: CCME - $13,058,838 (Implementation of $677,540, Year One operation of $1,380,846, Year Two operation of $2,601,408, Year Three operation of $2,694,012, Year Four operation of $2,797,032, and Year Five operation of $2,907,000): and Alliant - $16,944,752.47 (Implementation of $250,000, Year One operation of $3,248,840, Year Two operation of $3,301375.87, Year Three operation of $3,344,342.94, Year Four operation of $3,381,221.49, and Year Five operation of $3,418,989.99).

Protestants argued that the RFP prohibits offerors from altering the bidding schedule. They are correct, and the CPO takes this matter seriously. The RFP reads,

> All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.) [Ex. 1, p. 10, COMPLETION OF FORMS/CORRECTION OF ERRORS]

However, in this case, the CPO disagrees that this makes CCME's proposal non-responsive. As stated previously, CCME testified that it offered a price for the full five years in its initial price proposal and BAFO. Further, CCME did not qualify its offer but actually offered a price for Year One exactly as the Scope of Work/Specifications in the RFP required. The RFP defined the maximum contract period as 01/01/2010 – 12/31/2015. [Ex. 1, p. 7, MAXIMUM CONTRACT PERIOD] The RFP defined "implementation" as the period of January 1-June 30, 2010 and "operation" as the period of July 1-December 31, 2010 when the new contractor would actually be performing quality improvement services.[2] In its price proposal, CCME offered its implementation price for the first six month period

[2] In fact, the operations phase of this contract cannot begin until July 1, 2010, as the existing contract for these services does not expire until June 30, 2010.

and its operations price for the second six month period, which totals its price for Year One. CCME further explained its intent in its BAFO stating, "This BAFO was prepared expecting that Operations will begin July 1, 2010 as outlined in Section 3.2 Operations of the Request for Proposals." [Ex. 22, CCME's BAFO offer]

At the very most, CCME's alteration was a minor informality. The South Carolina Consolidated Procurement Code defines a minor informality or irregularity as one which is merely a matter of form or is some immaterial variation from the exact requirements that has no effect or merely a trivial or negligible effect on total bid price and the correction or waiver of which would not be prejudicial to other offerors. S.C. Code Ann. § 11-35-1520(13); See also, In Re: Protest by Gregory Electric Company, Inc., Case No. 1989-17C (finding that the intent of the Code and Regulations is that the State be given the flexibility to correct minor variations from exact bid requirements, whether or not the requirements are mandatory, so long as correction does not affect performance or prejudice the other bidders.) The situation here involved merely a matter of form and the price offers were ultimately evaluated equitably.

Specifically, Ms. Gillens testified that she evaluated the price offers as instructed – annual fees plus implementation for Year One plus the annual fees for Years Two – Five. Although the discrepancy between the Scope of Work/Specifications and the bidding schedule caused the different approaches in the offers, it had no consequence in the evaluation of price – it did not matter whether vendors front-end loaded Year One as "implementation" or back-end loaded Year One as "operations"- all vendors were evaluated based on the price they offered for the full possible five year period. Therefore, this allegation is without merit and is denied.

Regardless, according to the solicitation, "In determining award, unit prices will govern over extended prices unless otherwise stated." [Ex. 1, p. 55] The unit price for operation was the monthly

total offered by each offeror, which the bidding schedule asked each offeror to extend. With unit price prevailing, DHHS will only pay the awarded offeror for the actual number of months of operations, which the RFP identified for 2010 as July 1 – December 31.[3]

2. Registered Nurse Requirement

Protestants also allege that CCME's proposal was non-responsive because CCME offered staff to perform the initial medical necessity reviews for some services who were not registered nurses (RNs), as required by the RFP. The Code defines a responsive offeror as a person who has submitted an offer which conforms in all material aspects to the RFP. S.C. Code Ann. § 11-35-1410(7).

The RFP established the staffing qualifications necessary for conducting initial medical necessity reviews under the contract. In relevant part, the RFP read, "[a]ll initial medical necessity reviews,

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[3] Although it is irrelevant based on the CPO's findings that CCME's price proposal did provide the total price for five years, the CPO notes that, for argument sake, even if the total of monthly price provided by Alliant, who was the second highest offeror, was changed to six months instead of 12 for Year One like CCME's proposal and Alliant's implementation price for Year One remained as stated in its proposal, CCME would still have received the highest score. The explanation of the result is below:

Alliant's implementation price = $250,000
Plus: Alliant's monthly operations price for Year One of $270,736.68 x 6 months = $1,624,420
Alliant's Total Year One Price = $1,874,420 ($250,000 + $1,624,420)
Alliant's Total Contract Amount on BAFO = $15,320,332

CCME's Total Contract Amount on BAFO = $13,058,838 [Ex. 22, p. 4]

Since, CCME's proposed price is the lowest price, it receives a full 30 points from each evaluator for its Price Proposal. Alliant's score for proportion of the 30 points available for price would be determined mathematically as follows: $13,058,838/$15,320,332 = 0.8524), Thereafter, the points received for the evaluation scores for price are as follows:

CCME	30 x 5 evaluators = 150
Alliant	25.572 (30 x 0.8524) x 5 evaluators = 127.86

Alliant's total score = 406.6 less previous score for total contract amount 115.60 = 291 plus new score for total contract amount of 127.86 = a total score of 418.86.

Therefore, the revised composite scores would have been as follows:

CCME	445
Alliant	418.86

Accordingly, CCME remains the highest scoring offeror even if six months were removed from Alliant's Year One offer.

except Organ Transplant Services, must be performed by registered nurses." [Ex. 1, p. 20, Staffing, 3.3.1.3][4] The RFP defined "[m]edically reasonable and necessary" or "medically necessary" as procedures, treatments, medications or supplies that are:

> 3.4.1.1.1 ordered by a physician, dentist, chiropractor, mental health care provider, or other approved, licensed health care practitioner to identify or treat an illness or injury;
> 3.4.1.1.2 administered in accordance with recognized and acceptable medical and/or surgical discipline at the time the patient receives the services and in the least costly setting required by the patient's condition; and
> 3.4.1.1.3 administered in compliance with the patient's diagnosis and standards of care and not for the patient's convenience. [Ex. 1, p. 21]

Specifically, the RFP required initial medical necessity reviews to be conducted by registered nurses for the following services: 1) inpatient admissions except for deliveries and births; 2) single organ transplant services; 3) surgical justification reviews; 4) outpatient physical/occupational and speech therapy; 5) durable medical equipment; and 6) mental health counseling services. [Ex. 1, p. 23, Prior Authorization Services][5]

In its proposal, CCME wrote "Only registered nurses will conduct initial medical necessity reviews <u>for inpatient admissions</u>. [Ex. 20, p. 143, Review Staff] (Emphasis added)[6] Therefore, CCME specifically agreed that it would use RNs to perform initial medical necessity reviews for inpatient admissions. However, CCME did not definitively agree to use RNs for all initial medical necessity reviews. In this same section of its offer, CCME stated, "To perform the review of outpatient therapies CCME <u>will use</u> licensed physical, occupational, and speech therapists to conduct the initial review." [Ex. 20, p. 144, Review Staff] (Emphasis added). Therefore, CCME unequivocally indicated it would

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[4] While the RFP required physicians to do all initial reviews for organ transplant services, the exception was later modified to permit RNs to conduct the first level of screening and provide authorization for single organ transplants. However, a physician is still required to authorize double or multiple organ transplants that are new or emerging. [Ex. 25, p. 26, Question 28].

[5] The ultrasounds during pregnancy services were removed in the BAFO.

[6] In discussing inpatient admissions in more detail, CCME further referenced its use of RNs for inpatient admissions services stating, "[o]ur on-call team will consist of RNs…[a]ll on-call RN's will be equipped with laptops" as well as "[i]f during the course of a review, criteria are not met or a case is otherwise questionable, our RN reviewer will refer the

use licensed physical, occupational and speech therapists, to conduct the initial medical necessity reviews for outpatient physical/occupational and speech therapy services, rather than RNs as required by the RFP.[7] Despite CCME's argument at the hearing, no probative evidence that the therapists' training and qualifications were equal to or better than that of an RN was offered. Therefore, the CPO has no basis but to agree that CCME's proposal was non-responsive in this regard because it did not conform with all material requirements of the RFP. Accordingly, this issue must be granted.

Also troubling to the CPO is CCME's statement regarding its review of the services that "[d]uring the first three months of the contract, we propose to have a registered nurse validate the automated review outcomes (of its web-based application) prior to issuing any notifications (of medical necessity approvals)." [Ex. 20, p. 222, Web-Based Application]. It is unclear if this statement suggests or indicates that CCME intends to use staff other than RNs after three months to validate the automated reviews. Further, while CCME was clear it would use RNs for initial medical necessity reviews for inpatient admissions and therapists for the reviews of therapy services, CCME also used the term "nurse" or "nurse reviewer" in its proposal, which makes its proposal unclear on whether CCME agreed to use RNs or licensed practical nurses for some of the other services.[8]

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request to one of our PCs (Physician Consultants) for review and rendering a determination." [Ex. 20, p. 228, Emergency Admissions and p. 228, Physician Consultant Referrals and Reviews].

[7] In contrast, CCME later merely suggested using physical therapists rather than RNs to conduct initial medical necessity reviews for the durable medical equipment services stating, "[t]o ensure that PA requests for DME (Durable Medical Equipment) are evaluated by an appropriate professional, we suggest that physical therapists (PTs) review all requests for Cranial Molding Orthotic Devices and Power Wheel Chair packages." [Ex. 20, p. 258, Durable Medical Equipment] (Emphasis added). Such an alternative suggestion is acceptable if the offeror has offered a responsive proposal and agreed to provide RNs for this service unless DHHS chooses the alternative. However, the CPO notes that CCME's proposal is ultimately unclear whether it is actually agreeing to offer RNs or physical therapists for the durable medical equipment reviews based on the following conflicting statement, "If the PT (Physical Therapist) determines that SCDHHS criteria have not been met, the request will be denied." [Ex. 20, p. 263, Power (Motorized) Wheel Chair Package]

[8] For example, CCME's proposal stated, "[o]ur current review staff consists of 23 nurses with more than 500 years combined clinical and review experience," "[w]e will ensure that the Nurse Reviewers will be credentialed clinicians with clinical experience, and "[a]ll initial medical necessity reviews will be conducted by our nurse reviewers as described in more detail in Sections 3.5, 3.6, and 3.7 of this proposal" [Ex. 20, p. 143-144, Review Staff].

DETERMINATION

It is truly disappointing to the CPO that neither Qualis or Alliant offered any professional testimony to support their allegations. Instead, the protestants relied upon minimal testimony from State of South Carolina participants in the procurement process, and primarily, argument. Further, CCME argued that its alternative personnel offered to conduct initial medical necessity reviews were equal to or surpassed RNs' expertise. However, CCME offered no expert testimony to support its contention.

As Mr. Brittin stated at the opening of the hearing, the protest comes down to two issues: 1) Did CCME propose 4.5 years, not 5? and 2) Was CCME's proposal non-responsive because CCME offered staff to perform the initial medical necessity reviews for some services who were not RNs, as required by the RFP.

As stated previously, the CPO finds that CCME's price proposal reflected a total offer price for five years and therefore was responsive. Accordingly, this issue is denied. However, based on the reasoning above, the CPO concludes that CCME's offer was non-responsive because it did not agree to utilize RNs for initial medical necessity reviews on all required services. Accordingly, this protest issue is granted, and the intended award to CCME is cancelled. The State is directed to proceed in a manner consistent with this decision and in accordance with the Code and the Regulations.[9]

Voight Shealy

R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

May 25, 2010
Date

Columbia, S.C.

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[9] The procurement manager is encouraged to consider exercising her discretion to conduct Discussions pursuant to Regulation 19-445.2095(I), and it hereby authorized to do so in regards to this procurement.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2009-2010 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars ($250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 23, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

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March 22, 2010

Via e-mail and Hand Delivery

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Re: Protest of RFP No. 5400001140 to Provide a Quality Improvement Organization ("QIO") for the SC Department of Health and Human Services

Dear Mr. Shealy:

Pursuant to S.C. Code Ann. § 11-35-4210 (Supp. 2010), please consider this letter to constitute the protest of Qualis Health ("Qualis") to the Notice of Intent to Award the contract for the services described in RFP No. 5400001140 to Carolinas Center for Medical Excellence ("CCME") to provide QIO services for the South Carolina Department of Health and Human Services ("DHHS"). The Intent to Award ("Award") was posted on March 11, 2010.

CCME's Proposal Is Non-Responsive to the Essential Requirements of the RFP and Should Be Rejected Pursuant to Reg. 19-445.2070(A).

1. RFP Section 3.3.1.3.1 requires: "Registered Nurses: all initial medical necessity reviews, except Organ Transplant Services, must be performed by registered nurses." This requirement was clarified in Amendment 4 on page 26, which states that the Registered Nurses ("RN") conducting all initial medical necessity reviews must be licensed in South Carolina or a nurse compact state.

a. CCME describes Sandra (Sandi) Owens, LPN, who is a part of its operations department and implementation team, as a Licensed Practical Nurse (LPN), which does not meet the RFP requirement that reviewers be RNs. Further, the CCME proposal does not state that Ms. Owens is licensed in South Carolina or in a nurse compact state. Ms. Owens is listed as the Medicaid Assistant Program Manager (p. 138 and 147), where one of her duties is to "provide training and coordinating content with review supervisor." Her duties are also described on page 140, which indicates that Ms. Owens is providing a number of clinical review tasks related to this contract despite the fact that she does not meet the minimum requirements for initial medical review. These include:

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i. Finalize new procedures and protocols
ii. Prepare staff training materials and programs
iii. Prepare staff training materials and programs on SCDHHS programs and policies
iv. She is also listed as managing "administrative reviewers" on pages 141 and 149. These reviewers are described as conducting medical reviews.

b. CCME indicates (pages 141 and 144) that it "will use physical, occupational, and speech therapists to conduct the initial review." This methodology does not comply with the minimum qualifications to have RNs conduct these reviews.

c. CCME indicates (pages 140 and 185-186) that Audra Troy, MS, OTR/L, is the manager of outpatient review. Although Ms. Troy is a licensed occupational therapist, she is not a RN and therefore does not meet the minimum requirements of the RFP.

d. CCME lists "administrative reviewers" on pages 141 and 149 of its response. However, it does not describe the qualifications of these individuals who report to the LPN, Sandi Owens. On page 149, their major tasks are listed as:

i. Perform review in a timely and accurate manner following review procedures and protocols
ii. Apply review criteria and policies accurately
iii. Record review findings accurately

Although the qualifications of these administrative reviewers are not described, it is unlikely that they are RNs. Since they are described as conducting reviews, the RFP requires that they be licensed RNs, which does not appear to be their professional background.

2. RFP Section 3.3.1.3.4 requires: "A licensed professional with psychiatric experience." This requirement was clarified in Amendment # 4. In the first question submitted by Vendor B, the question was "regarding the licensed professionals with psychiatric experience listed in 3.3.1.3.4, what kind of license(s) is (are) acceptable to meet this requirement? Licensed social worker, counselor, psychologist, registered nurse, and MD?" The State answered this question by stating that: "All of the licensed professionals identified above are acceptable, as long as they are licensed in accordance with South Carolina law and have experience in the psychiatric field."

CCME indicates (p. 264) that "all requests for outpatient mental health counseling services will be evaluated by a licensed mental health professional (MHP)...." CCME does not indicate that it will hold one of the licensure categories described in the question in Amendment # 4 listed above, nor does this response indicate that these professionals will be licensed in accordance with South Carolina law.

3. RFP Section 3.3.1.3.5 requires: "A Psychologist with a minimum of a Master's degree in psychology and 4 years clinical experience directly related to mental retardation related disabilities (MR/RD) obtained subsequent to the Masters degree, or a license to practice psychology in the State of South Carolina and 2 years of clinical experience in MR/RD." CCME indicates (p. 144) that "CCME will contract with a practicing psychologist following contract award." It does not indicate that the psychologist will meet the clinical experience requirement; nor does it indicate this professional will be licensed in the State of South Carolina.

CCME's Proposal Attempts to Modify the RFP and Impose Conditions upon DHHS in Contravention of S.C. Code Ann. Reg. § 19-445.2070(D) (Supp. 2009).

4. CCME indicates (pages 141 and 144) that "CCME will use physical, occupational, and speech therapists to conduct the initial review." This methodology imposes conditions on the DHHS, since the State is requiring RNs to conduct these reviews.

5. CCME indicates that Audra Troy, MS, OTR/L, will supervise the outpatient reviews even though she is not a RN, as required by the RFP

CCME's Proposal Incorrectly Lists Its Pricing for Year One

6. CCME's first year costs were listed as only for six months. All of the other offerors appear to have listed the first time period as a year, as required by the cost proposal form. The cost proposal form has the column listed as Year 1. So, this impacted their overall price. On information and belief, this will impact the overall scoring.

CCME's Proposal Should Be Rejected Because Its Price is Unreasonable.

7. CCME's price is unreasonable and should be rejected pursuant to Reg. 19-445.2095.J(c) (Supp. 2009).

Conclusion

For the above stated reasons, Qualis requests that the Chief Procurement Officer determine that CCME's proposal is non-responsive to the essential requirements of the RFP, that its proposal attempts to modify the RFP and impose conditions upon DHHS, and that the proposal pricing is

unreasonable and is incorrectly listed on the pricing proposal form and skewed the overall scoring to the detriment of Qualis. The award to CCME should be overturned and a resolicitation should be ordered. Thank you for your consideration of the above.

Very truly yours,

M. Elizabeth Crum

Cc: Georgia Gillens
Molly Crum, Esquire
Marci J Weis, Chief Operating Officer

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March 22, 2010

VIA EMAIL & FACSIMILE

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Re: Protest of Intent to Award To
Carolinas Center for Medical Excellence
Under Contract #4400002225/Solicitation #5400001140

Dear Mr. Shealy:

The Georgia Medical Care Foundation d/b/a Alliant ASO respectfully submits this pre-award protest against the intent to award the Quality Improvement Organization – DHHS contract, to the Carolinas Center for Medical Excellence ("CCME"). By notice dated March 11, 2010, the Materials Management Office (the "Agency") issued a notice stating that it intends to award the above referenced contract to CCME on March 23, 2010.

This protest is timely filed within the deadline set by the Request for Proposals ("RFP") Protest clause. The tenth day for timely filing this protest fell on Sunday March 21, 2010. The deadline is extended to the next business day pursuant to S.C. Code of Laws Section 11-35-310(13)("If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day"). As this protest is timely filed, Alliant ASO also requests a stay of the procurement during the pendency of its protest. S.C. Code of Laws Section 11-35-4210(d)(7).

Alliant ASO is an aggrieved party with a right to protest. On December 8, 2009, Alliant ASO submitted a proposal in response to the RFP. Alliant ASO revised its proposal on March 5,

2010. Alliant ASO was ranked the second most advantageous proposal to the government. But for the improper actions and evaluation by the Agency, Alliant ASO would have been selected for award. Therefore, Alliant ASO was prejudiced by the Agency's actions.

A. GROUNDS FOR PROTEST

1. The Agency Failed to Properly Evaluate CCME's Price That Was Proposed For A Period Of Only Four (4) Years And Six (6) Months, Not The Full Five (5) Years Called For By The RFP

The RFP states that offerors must submit prices for five (5) years of services. The Maximum Contract Period – Estimated clause, states:

> Start date: 01/01/2010 End date: 12/31/2015. Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award.

Amendment #6 issued on February 12, 2010 provides for pricing over the potential five (5) year period. The RFP clearly stated that all offerors must propose prices for the full five (5) year contract period. The Fixed Pricing clause states: "Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms."

Offerors were directed to submit pricing on a Bidding Schedule/Price-Business Proposal form. The form clearly states that the monthly totals are for a twelve (12) month period. See Bidding Schedule form ("Annual Fee (Monthly Total x 12)"). The RFP under the Completion of Forms/Correction of Errors clause, states, in relevant part: "Do not modify the solicitation document itself ***(including the bid schedule)***" (emphasis added). The RFP's Evaluation Factors states that "Price" represents a potential 30 points out of a possible 100 total points. According to the Evaluation Factors, Price is comprised of:

> The total of all costs of ownership to the State including annual maintenance and license fees ***for the potential five (5) year contract period.*** (Emphasis added.)

Notwithstanding the clear language of the RFP, CCME's price proposal is for only four (4) years and six (6) months. That is, CCME failed to submit pricing for the required five (5) year period. Alliant ASO, on the other hand, provided prices for the full five (5) years. Likewise, all other offerors provided prices for the full five (5) years.

By not submitting bid prices for all twelve (12) months of year one, CCME violated the express prohibition against modifying the bid schedule. More importantly, CCME's evaluated price reflects a shorter period of time than that bid on by Alliant ASO (the full five (5) year

period). The Agency's comparison of CCME's shorter period of performance to Alliant ASO's full five (5) year period resulted in an unfair (*apples-to-oranges*) evaluation. CCME's shorter period of performance resulted in an overall lower price and a higher evaluated price score (receiving 30 points out a possible 30 for the Price factor). If CCME's price had been submitted for the full five (5) year period, then its price would have been higher. This would have changed the evaluated price scores too.

It was prejudicial and unfair for the Agency to allow CCME to modify the bid schedule and submit pricing for a shorter period of time than specified by the RFP. If the Agency had followed the terms of the RFP, CCME's proposal would have been rejected as nonresponsive. Alternatively, CCME's price would have been higher, resulting in a lower price score. In either case, Alliant ASO's proposal would have then the most advantageous to the government and selected for award.

2. The Agency Placed An Unfair And Improper Emphasis Upon Price

The best and final offeror ("BAFO") scores prepared by the Agency and dated March 9, 2010 shows that price was over emphasized in the evaluation scheme. According to the BAFO scores:

EVALUATOR #1	
AWARD CRITERIA	POINT RANGE
A	1-45 points
B	1-30 points
C	1-25 points

ALLIANT ASO/GA MEDICAL	FIRST HEALTH	THE CAROLINAS CTR	QUALIS HEALTH
POINTS AWARDED	POINTS AWARDED	POINTS AWARDED	POINTS AWARDED
45	43	42	45
23.12	20.29	30	13.41
25	23	25	25
93.12	86.29	97	83.41

EVALUATOR #2	
AWARD CRITERIA	POINT RANGE
A	1-45 points
B	1-30 points
C	1-25 points

ALLIANT ASO/GA MEDICAL	FIRST HEALTH	THE CAROLINAS CTR	QUALIS HEALTH
POINTS AWARDED	POINTS AWARDED	POINTS AWARDED	POINTS AWARDED
35	20	30	30
23.12	20.29	30	13.41
15	10	22	18
73.12	50.29	82	61.41

EVALUATOR #3	
AWARD CRITERIA	POINT RANGE
A	1-45 points
B	1-30 points
C	1-25 points

ALLIANT ASO/GA MEDICAL	FIRST HEALTH	THE CAROLINAS CTR	QUALIS HEALTH
POINTS AWARDED	POINTS AWARDED	POINTS AWARDED	POINTS AWARDED
39	38	35	34
23.12	20.29	20	13.41
23	22	24	23
85.12	80.29	89	70.41

EVALUATOR #4	
AWARD CRITERIA	POINT RANGE
A	1-45 points
B	1-30 points
C	1-25 points

ALLIANT ASO/GA MEDICAL	FIRST HEALTH	THE CAROLINAS CTR	QUALIS HEALTH
POINTS AWARDED	POINTS AWARDED	POINTS AWARDED	POINTS AWARDED
30	40	35	30
23.12	20.29	30	13.41
20	25	25	20
73.12	85.29	90	63.41

EVALUATOR #5	
AWARD CRITERIA	POINT RANGE
A	1-45 points
B	1-30 points
C	1-25 points

ALLIANT ASO/GA MEDICAL	FIRST HEALTH	THE CAROLINAS CTR	QUALIS HEALTH
POINTS AWARDED	POINTS AWARDED	POINTS AWARDED	POINTS AWARDED
35	27	33	31
23.12	20.29	30	13.41
24	20	24	24
82.12	67.29	87	68.41

GRAND TOTAL			
406.6	369.45	445	347.05

Every Agency evaluator awarded the full 30 points to CCME for price. Alliant ASO was awarded 23.12 points for pricing by every evaluator. Alliant ASO's evaluated price score was almost 7 points lower. The next lowest priced offeror is First Health. However, First Health is

only 2 ½ points lower than Alliant ASO. There is no logical reason to have given the lowest price the full 30 points for price. This starting point places a greater emphasis on price. Even if the Agency had properly evaluated CCME's price, there is no fair and logical reason why Alliant ASO's price is a full 7 points lower when First Health is only 2 ½ points lower. The Agency placed an unfair and unreasonable emphasis upon price in the evaluation process. In addition, the Agency unfairly and unreasonably reduced Alliant ASO's price score in proportion to CCME. If the price scores had been evaluated properly the outcome would have been materially different.

3. The Agency Failed To Properly Evaluate CCME's Proposal With Regard To Its Personnel; Alternatively, CCME Was Allowed To Submit A Price With Non-Qualified Personnel

The RFP at section 3.3, entitled "Staffing," states that "The Offeror must ensure that its staff is knowledgeable of South Carolina Medicaid, other state health care programs, and related federal and state laws and regulations." This means that "The Offeror will provide sufficient staff to perform the required tasks and meet the performance standards." RFP section 3.3.1.

When it comes to medical necessity reviews, the RFP states that all such reviews must be performed by registered nurses. RFP section 3.3.1.3.1. This requirement was clarified in amendment 4, page 26, that states: "All initial medical necessity reviews, except Organ Transplant Services, must be performed by registered nurses." CCME did not propose to perform all medical necessity reviews with registered nurses as required by the RFP.

For example, CCME's proposal describes Sandra (Sandi) Owens, a Licensed Practical Nurse ("LPN"), who is a part of CCME's operations department and implementation team. A LPN does not meet the RFP requirement that reviewers be RNs. Ms. Owens is listed as the Medicaid Assistant Program Manager (CME's Proposal at pages 138 and 147) where one of her duties is listed as "provide training and coordinating content with review supervisor." Her duties are also described on page 140 of CCME's proposal, which indicates that she is providing a number of clinical review tasks related to this contract despite the fact that she does not meet the minimum requirements for initial medical review. These include:

i. Finalize new procedures and protocols

ii. Prepare staff training materials and programs

iii. Prepare staff training materials and programs on SCDHHS programs and policies

iv. She is also listed as managing "administrative reviewers" on pages 141 and 149 of CCME's proposal. These reviewers are described as conducting medical reviews.

CCME's proposal also states that it "will use physical, occupational, and speech therapists to conduct the initial review." (pages 141 and 144). Use of "therapists" does not comply with the minimum qualifications to have RNs conduct these reviews.

Similarly, CCME's proposal states that Audra Troy, MS, OTR/L, will be the manager of outpatient review (CCME's Proposal at pages 140 and 185-186). Although Ms. Troy is a licensed occupational therapist, she is not a RN and therefore does not meet the minimum requirements of the RFP.

CCME's proposal goes on to list "administrative reviewers" on pages 141 and 149 of its proposal. However, CCME does not describe the qualifications of these individuals who report to the LPN, Sandi Owens. On page 149 of CCME's proposal, the administrative reviewers major tasks are listed as:

i. Perform review in a timely and accurate manner following review procedures and protocols

ii. Apply review criteria and policies accurately

iii. Record review findings accurately

Although the qualifications of these administrative reviewers are not described, it is unlikely that they are RNs. Since they are described as conducting reviews, the RFP requires that they be licensed RNs, which does not appear to be their professional background.

Finally, CCME's proposal states that "CCME will use physical, occupational, and speech therapists to conduct the initial review." (CCME's proposal at pages 141-44). To allow physical, occupational, and speech therapists to conduct the initial review is in direct violation of the RFP at section 3.3.1.3.1 that requires an RN to conduct such reviews.

CCME's failure to utilize the services of registered nurses for all medical necessity reviews described above was not properly evaluated by the Agency in its evaluation and score of CCME Qualifications.

Moreover, by allowing CCME to use non-qualified personnel (other than registered nurses) for medical necessity reviews, CCME was allowed to unfairly violate the terms of the RFP, without consequence, and improperly reduce its proposed pricing. The Agency should not have allowed CCME to propose less qualified staff. This is a direct violation of RFP section 3.3.1.3.1. It is also a direct violation of the Contractor Personnel clause that states: "The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them."

If the agency had properly evaluated CCME's personnel, it would have rejected its proposal for offering non-qualified staff. In the alternative, the Agency should have reduced

CCME's Qualifications score for offering non-qualified staff and rejected its pricing for not proposing qualified staff.

4. The Agency Improperly Allowed CCME to Condition Its Proposal

The RFP under the Responsiveness/Improper Offers clause, subpart b, states:

> Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. ***Offers which impose conditions that modify material requirements of the Solicitation may be rejected.*** (Emphasis added.)

CCME improperly conditioned its proposal upon pricing that reflects only six (6) months for year one. In addition, CCME improperly conditioned its proposal upon using non-qualified personnel (non-RNs) for initial case review. Under the Responsiveness/Improper Offers clause, the Agency should have rejected CCME's proposal as nonresponsive. Yet, the Agency failed to reject CCME's proposal.

5. The Agency Failed To Conduct a Proper Cost Technical Trade-Off Analysis

The RFP states that award will be made: "to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State." The determination of "most advantageous to the State" requires a trade-off of cost versus technical. There is no indication that such a tradeoff was made. Rather, the outcome suggests that price was the dominate factor and award was given to the lowest price offeror. There is no indication that any trade-off occurred to identify the offer most advantageous to the state. If a proper trade-off had occurred, the Agency would have determined that Alliant ASO would have been determined the most advantageous to the State.

6. The Agency Failed To Evaluate CCME's Price Reasonableness

According to CCME's proposal, its price per review is approximately $8.00. It is not reasonable nor possible for CCME to conduct the required reviews for this price. The Agency failed to properly assess the reasonableness of CCME's proposed price. If it had done so, then CCME's price would have been rejected as unreasonable. See Reg. 19-445.2095.J(c).

7. One Of The Evaluators Was Improperly Listed As A Proposal Reference In CCME's Proposal

Evaluator number 2 is listed as a reference on page 474 and 476 of CCME's proposal. It was improper and unfair to allow CCME to use an evaluator as a reference in support of its proposal. It is unclear is there was a material impact.

B. REQUESTS FOR RELIEF

Alliant ASO respectfully requests that the Agency rescind its intent to award a contract to CCME and award the Quality Improvement Organization – DHHS contract to Alliant ASO.

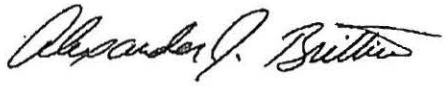
In the alternative, Alliant ASO respectfully requests that a determination be made that the Agency evaluated CCME's proposal in violation of law and the terms of the RFP. It is requested that the Agency be directed to take the following actions:

1. Properly evaluate CCME's price by taking into account the fact that it did not propose prices for the full five (5) years;
2. Give proper weight to the price evaluation factor;
3. Properly evaluate CCME's proposal with regard to its personnel, from a qualifications and price perspective;
4. Reject CCME's proposal for imposition of conditions upon acceptance of its proposal;
5. Conduct a proper cost technical trade-off analysis; and
6. Conduct a proper price reasonableness analysis.

In the final alternative, Alliant ASO respectfully requests that it be awarded a reasonable reimbursement amount for having to file this protest, including reimbursement of its reasonable bid preparation costs.

If you have any questions or need any additional information, please contact me at the above listed numbers. Thank you for your time and consideration of this matter.

Respectfully submitted,



Alexander J. Brittin

cc: Dennis L. White, CEO

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March 25, 2010

VIA EMAIL & FACSIMILE

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vshealy@mmo.sc.gov)
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Re: Amendment To Protest of Intent to Award To
Carolinas Center for Medical Excellence
Under Contract #4400002225/Solicitation #5400001140

Dear Mr. Shealy:

The Georgia Medical Care Foundation d/b/a Alliant ASO respectfully submits the following amendment to its March 22, 2010 protest, challenging the Materials Management Office's (the "Agency") intent to award the Quality Improvement Organization – DHHS contract to the Carolinas Center for Medical Excellence ("CCME").

This amendment is timely filed within five (5) days of Alliant ASO's initial protest. S.C. Code of Laws Section 11-35-4210(b)("a protestant may amend a protest that was first submitted within the time limits established by subsection (1)(b)"). This amendment provides additional documents in support of the arguments raised in Alliant ASO's March 22, 2010 protest letter.

A. AMENDED PROTEST

1. CCME's Bidding Schedule Expressly States That It Only Proposed Prices For Six (6) Months Of Services In Year 1

Alliant ASO incorporates herein its earlier arguments. In support of its earlier arguments, Alliant ASO offers **Exhibit A**, CCME's best and final offer bidding schedule. In the second to the last row, second column, under the heading "YEAR 1," CCME modified the bidding schedule by adding the words "6 months." This violates the RFP under the Completion of Forms/Correction of Errors clause that states, in relevant part: "Do not modify the solicitation document itself ***(including the bid schedule)***" (emphasis added).

Moreover, CCME's evaluated price reflects a shorter period of time than that specified in the form (a "monthly total x 12")(**Exhibit A**, last row, first column) and the number of months bid on by Alliant ASO (12 months for Year 1). The Agency's comparison of CCME's shorter period of performance to Alliant ASO's full five (5) year period resulted in an unfair (*apples-to-oranges*) evaluation (4.5 years versus 5 years).

2. The Agency Placed An Unfair And Improper Emphasis Upon Price

Alliant ASO relies upon its earlier argument.

3. CCME's Proposal States That It Intends to Conduct Initial Reviews With Personnel Who Are Not Registered Nurses

Alliant ASO incorporates herein its earlier arguments. In support of its earlier arguments, Alliant ASO notes that the RFP states that: "All initial medical necessity reviews, except Organ Transplant Services, must be performed by registered nurses." RFP section 3.3.1.3.1. CCME's proposal, however, states that certain personnel who lack the proper qualifications will conduct medical necessity reviews:

Exhibit B states that "licensed physical, occupational and speech therapists" will be used to conduct initial outpatient reviews. This statement from CCME's proposal violates RFP section 3.3.1.3.1.

Exhibit C states that CCME has decided that for durable medical equipment, physical therapists will be used for reviews of "all requests for Cranial Molding Orthotic Devices and Power Wheel Chair packages." This statement from CCME's proposal violates RFP section 3.3.1.3.1.

Exhibit D at page 140 identifies Darious Jones and Audra Troy as supervisors. Page 141 states that "[s]upervisors of the review teams will be working supervisors so that a significant portion of their time will be spent performing reviews. . .This approach assures that the review is conducted by the appropriate staff." However, as indicated on page 140, neither Mr. Jones nor

Ms. Troy are RNs or MDs. CCME's proposed use of Mr. Jones and Ms. Troy to perform review services violates RFP section 3.3.1.3.1.

Exhibit E identifies the following individuals (who are not RNs or MDs) as performing reviews: Assistant Program Manager (Sandi Owens); Supervisor MH/BH Review (Mr. Jones); MH/BH Reviewers; Supervisor OT/PT/ST Review (Ms. Troy); and Administrative Reviewers. Use of these persons violates RFP section 3.3.1.3.1.

4. The Agency Improperly Allowed CCME to Condition Its Proposal

Alliant ASO relies upon its earlier argument.

5. The Agency Failed To Conduct a Proper Cost Technical Trade-Off Analysis

Alliant ASO relies upon its earlier argument.

6. The Agency Failed To Evaluate CCME's Price Reasonableness

Alliant ASO incorporates herein its earlier arguments. In support of its earlier arguments, Alliant ASO offers **Exhibit F**. Under section 5.C, Prior Projects and Contracts, CCME was required to identify the "approximate contract price to include the original estimate of cost, the actual cost, and explanation of any variance." See Amendment 4 at 5. CCME not only violated the RFP but its failure to provide the pricing information required by the RFP thereby preventing the Agency from making a proper price reasonableness determination.

7. One Of The Evaluators Was Improperly Listed As A Proposal Reference In CCME's Proposal

Alliant ASO incorporates herein its earlier arguments. In support of its earlier arguments, Alliant ASO offers **Exhibit F** that identifies on page 474 and 476 an Agency evaluator as a reference in support of CCME's proposal.

B. REQUESTS FOR RELIEF

Alliant ASO respectfully renews its requests that the Agency rescind its intent to award a contract to CCME and award the Quality Improvement Organization – DHHS contract to Alliant ASO.

In the alternative, Alliant ASO respectfully requests that a determination be made that the Agency evaluated CCME's proposal in violation of law and the terms of the RFP. It is requested that the Agency be directed to take the following actions:

1. Properly evaluate CCME's price by taking into account the fact that it did not propose prices for the full five (5) years;

2. Give proper weight to the price evaluation factor;

3. Properly evaluate CCME's proposal with regard to its personnel, from a qualifications and price perspective;

4. Reject CCME's proposal for imposition of conditions upon acceptance of its proposal;

5. Conduct a proper cost technical trade-off analysis; and

6. Conduct a proper price reasonableness analysis.

In the final alternative, Alliant ASO respectfully requests that it be awarded a reasonable reimbursement amount for having to file this protest, including reimbursement of its reasonable bid preparation costs.

If you have any questions or need any additional information, please contact me at the above listed numbers. Thank you for your time and consideration of this matter.

Respectfully submitted,

Alexander J. Brittin

cc: Dennis L. White, CEO

EXHIBIT

A

VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

Medical Review of North Carolina, Inc. DBA The Carolinas Center for Medical Excellence - BAFO

BIDDING SCHEDULE (NOV 2007)

Cost Proposal	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
Implementation Costs	$677,640	NA	NA	NA	NA
Flat Monthly Fees - Services					
Inpatient Admissions	83,151	78,493	80,939	83,747	86,697
Organ Transplant Services	4,954	4,676	4,820	4,958	5,103
Surgical Justification Reviews	10,854	10,109	10,282	10,436	10,599
Outpatient Physical/Occupational and Speech Therapy	35,227	33,551	34,902	36,456	38,086
Durable Medical Equipment	6,304	6,036	6,310	6,580	6,863
Mental Health Counseling Services	17,558	16,563	17,074	17,804	18,569
PERM Reviews	552	520	534	548	563
Sterilizations	9,277	8,439	8,855	9,268	9,700
Abortions	42	41	43	45	47
Intermediate Care Facility for the Mentally Retarded	3,189	3,066	3,217	3,367	3,524
Institutional and Community Based Services	56,776	53,122	55,252	57,575	60,013
Utilization Review Plans	2,257	2,168	2,273	2,377	2,486
Monthly Total	230,141	216,784	224,501	233,161	242,250
	6 months				
Annual Fee (Monthly Total x 12)	1,380,846	2,601,408	2,694,012	2,797,932	2,907,000

TOTAL CONTRACT AMOUNT (Annual Fees plus Implementation Costs)	$13,058,838
**Implementation must be proposed as a total fixed cost (if any) and documented for CMS match*	

EXHIBIT

B

All initial medical necessity reviews will be conducted by our nurse reviewers as described in more detail in *Sections 3.5, 3.6* and *3.7* of this proposal. CCME proposes to use InterQual® Acute and Pediatric severity of illness criteria and InterQual® Behavioral Health screening criteria for review of the medical necessity of inpatient admissions. InterQual® is nationally recognized criteria used by the majority of South Carolina's hospital utilization review departments and by South Carolina's managed care organizations. These criteria will be supplemented by SCDHHS policies and guidelines.

If criteria are not met or a case is otherwise questioned, the QIO reviewer will refer the review request to a physician reviewer of the same specialty as the requesting physician. CCME has a panel of 74 practicing South Carolina physicians. The following table shows a breakdown by specialty.

CCME South Carolina Physician Reviewers by Specialty

Specialty	Number	Specialty	Number
Anesthesiology	1	Internal Medicine	9
Cardiovascular	5	Nephrology	3
Cardiovascular /Vascular Surgery	2	Neurological Surgery	1
General Dentist	2	Obstetrics/Gynecology	5
Emergency	3	Otolaryngology	3
Eye, Ear Nose and Throat	3	Ophthalmology	2
Family Practice	7	Orthopedic Surgery	2
Gastroenterology	3	Plastic Surgery	3
General Surgery	6	Psychiatric	2
Geriatrics	1	Pulmonary Diseases	2
Thoracic Surgery	1	Rehab-Physical Medicine	1
Hematology/Oncology	1	Urology	3

We anticipate that two other categories of review staff will be needed. To perform the review of outpatient therapies CCME will use licensed physical, occupational and speech therapists to conduct the initial review. CCME currently employs eight occupational, physical and speech therapists and will hire additional therapists for work on this contract.

Sheridan Baldwin a psychiatric nurse will join CCME's staff after contract award. Her resume is included in *Exhibit 3.3-1, Resumes*. Ms. Baldwin will be used as part of our MH/BH review team.

CCME will contract with a practicing psychologist following contract award. This will allow us to consult with SCDHHS in the selection. It is also our experience that a better candidate can be found once the award has been made than could be obtained at this point in time. The

EXHIBIT

C

- Fetal abnormalities
- History of recurrent pregnancy loss

If the reviewer determines the case does not meet the established medical necessity criteria, it will be referred to a physician consultant (PC) for final review. All PCs performing ultrasound reviews will have an OB/GYN specialty. Using the established criteria and professional experience, the PC will issue a final determination to approve or denial the request. The appropriate notification will then be issued within 24 hours of receipt of the completed request.

3.5.6 DURABLE MEDICAL EQUIPMENT

3.5.6 The Offeror MUST implement and maintain procedures for, but not limited to, the evaluation and pre-certification of the medical necessity for Cranial Molding Orthotic Devices and the Power (motorized) Wheel Chair package.

The Offeror will use criteria that are nationally recognized or, where none are available, follow medical best practices designated by SCDHHS' Medical Director for approval.

Prior authorization (PA) requests for Cranial Molding Orthotic Devices and the Power (motorized) Wheel Chair package will be accepted via mail, facsimile, telephone or on-line. QIRePort will be used to track all received PA requests, review determinations and outcome notifications, following the PA process displayed in the flowchart located *Section 3.5, Prior Authorization Services*. Regardless of the method of submission, all requests and determinations will be stored in our review database.

We understand that if nationally recognized criteria are not available, we will be required to follow medical best practice guidelines, as designated and approved by SCDHHS' Medical Director. SCDHHS' Durable Medical Equipment (DME) Provider Manual outlines coverage criteria for Power Wheel Chairs. CCME has researched available medical necessity criteria used by CMS and other state Medicaid agencies for Power Wheel Chairs. The criteria established by SCDHHS are in alignment with that of other Medicaid agencies and CMS.

The June 8, 2009, *South Carolina Medicaid Bulletin* outlines the latest criteria for Cranial Remolding Orthotic Devices, as well as an amendment to the Power Wheel Chair policy. CCME proposes to apply the medical necessity criteria currently established by SCDHHS for durable medical equipment, as the provider community is already familiar with the requirements. Staff conducting these reviews will have ready-access to the SCDHHS Durable Medical Equipment Provider Manual found on-line at http://www.scdhhs.gov/ServiceProviders/ProviderManuals, as well as any SCDHHS Medicaid Bulletin updates.

Our physical therapists have 75 years of combined clinical experience in acute inpatient care, outpatient rehabilitation, home health, and skilled nursing/assisted living facilities.

To ensure that PA requests for DME are evaluated by an appropriate professional, we suggest that physical therapists (PTs) review all requests for Cranial Molding Orthotic Devices and Power Wheel Chair packages. We currently employ four PT's who are located in our North

QIRePort will generate a unique authorization number for approved requests. Providers and physicians, as appropriate, will be notified of the authorization number by fax, secure Website or verbally by telephone. Additionally, QIRePort will generate written notifications which will be issued to providers within 24 hours of the review determinations.

If the PT determines that SCDHHS criteria have not been met, the request will be denied. However, it is CCME's standard protocol that any review not meeting screening criteria or cases where the reviewer questions the medical necessity or appropriateness of the service, is referred to a Physician Consultant (PC). If the Department desires, we will continue this process to further ensure that services are not denied inappropriately. We do understand that the PC cannot override SCDHHS Policy or Requirements. Denial notices will be generated by QIRePort and issued to the provider, physician, and the recipient.

Sharon Eubanks, Program Manager, will be responsible for assuring that all PA requests for DME are finalized and providers notified of the approval or denial within 15 business days of receipt of the request. She will also make certain that a copy of all approval and denial notifications are sent to SCDHHS' Division of Pharmacy and DME Services. We are aware of the liquidated damages that will be imposed in the event that we do not meet the deliverables outlined in this Contract.

3.5.7 Mental Health Counseling Services

3.5.7.1 The Offeror MUST implement procedures to authorize outpatient mental health services provided to children and adults (This will not include community mental health centers or services authorized by state agencies).

3.5.7.2 The Offeror MUST develop a process to evaluate the medical necessity for mental health services using criteria that is evidence-based and nationally recognized.

3.5.7.3 The Offeror MUST make a determination within 24 hours of receipt of the request

3.5.7.4 The Offeror MUST provide procedures to ensure ease of submission of requests by providers that would include clarity regarding support documentation, multiple methods of submission, and timeliness of response to the request.

Eligible adult and child Medicaid recipients are allowed 12 mental health psychiatric and counseling visits per state fiscal year, July 1 through June 30. Inpatient services are excluded from the limit count.

Prior authorization (PA) requests for outpatient mental health counseling services for children and adults will be accepted via mail, facsimile, telephone or on-line. QIRePort will be used to track all received PA requests, review determinations, and outcome notifications, following the procedures previously described in *Section 3.5, Prior Authorization Services*. Regardless of the method of submission, all requests and determinations will be stored in our review database. We understand that services provided by community mental health centers or services authorized by state agencies are exempt from this process.

Providers will be required to submit relevant recipient information to support the medical necessity for outpatient mental health counseling services. This information will include, but is not limited to, the following data elements found on SCDHHS' Medical Necessity Statement:

- DSM treatment diagnosis (most recent edition)

EXHIBIT

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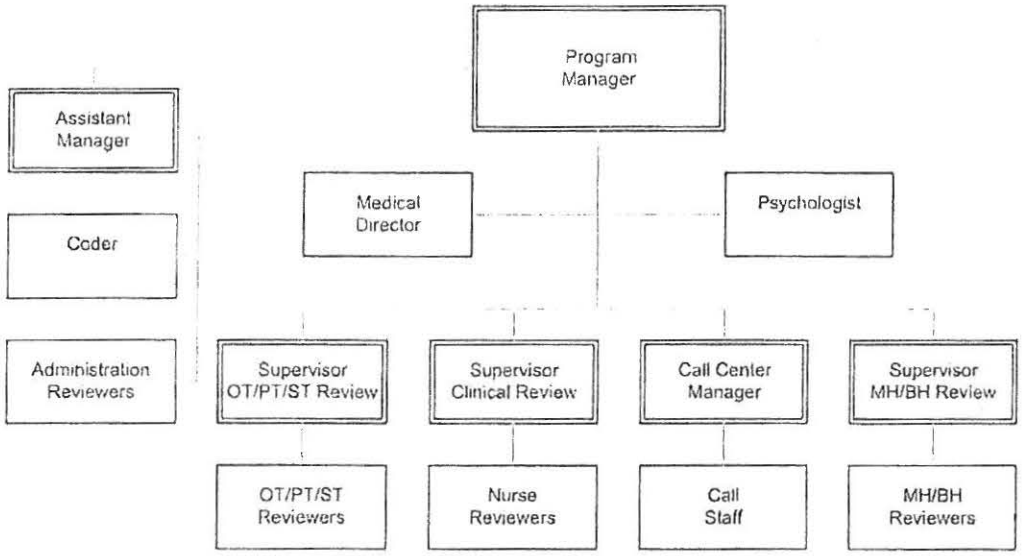
Team Member	Implementation Team Role	Tasks	FTE During Implementation
Sandi Owens, LPN, CCME Review Specialist	Assistant Team Leader	➢ Finalize review procedures and protocols ➢ Prepare staff training materials and programs ➢ Prepare staff training materials and programs on SCDHHS programs and policies	1.0
Karen Bell, MBA/MHA,BSN,RN, CCME Manager of Review Systems and Staff	Staffing	➢ Finalize position descriptions ➢ Recruit review staff	0.5
Doug Hardy, MBA, CCME Director of IT	Call Center	➢ Finalize call center plans ➢ Finalize call center procedures and protocols ➢ Recruit call center staff ➢ Coordinate call center systems, physical plant and equipment set-up	0.5
Seema L. Mishra, MD, FAAFP	Medical Director	➢ Support development of review procedures and protocols ➢ Develop training material and programs for Physician Reviewers ➢ Assist in interface with SCDHHS ➢ Assist in interface with providers	1.0
Darius Jones, MA,LPC/I,NCC, CCME Care Improvement Specialist	Mental and Behavioral Health Review	➢ Finalize review procedures and protocols for mental health and behavioral health review ➢ Assist in the preparation of staff training material and programs ➢ Assist in recruitment of mental health and behavioral health review staff	1.0
Audra Troy, MS, OTR/L, Manager Outpatient Review	PT/OT/ST Review for Adults and Children	➢ Assist in the development of review procedures and protocols for the review of outpatient therapies	.25
Jennifer Anderson, MHSA, PMP	Project Management Support and Training	➢ Assist in finalization of work plan ➢ Prepare training materials and conduct project management training for staff	0.1
Lisa Epting, CCME Manager of Office Services	Facilities	➢ Obtain additional office space if needed ➢ Procure equipment as needed	0.1

Team Member	Implementation Team Role	Tasks	FTE During Implementation
VieBridge	Support Systems	➢ Customize PA software and systems as needed ➢ Maintain secure web-site for provider and SCDHHS access	Per subcontract

Operational Staffing

As required by the contract CCME will have the full program team in place and trained on the first day of the seventh month of the contract. We believe the following organizational structure will provide the greatest efficiency and effectiveness for the program.

Operational Phase Organization Chart



The organizational structure combined with our fully integrated and highly automated support systems enable us to conduct review efficiently and accurately. As shown on the organizational chart, staff will be organized into review teams by profession and will be used to conduct all categories of review appropriate to that professional category. Supervisors of the review teams will be working supervisors so that a significant portion of their time will be spent performing reviews.

This approach assures that the review is conducted by the appropriate staff but also makes the most efficient use of staff time and provides us the flexibility to adjust to shifting workloads.

Key Personnel

3.3.1.2 Employ the following Key Personnel
3.3.1.2.1 Program Manager

EXHIBIT

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	REVIEW TEAM			
Review Category	Clinical Review Team (RN/MD)	Therapy Review Team	MH/BH Review Team	Administrative Review Team
Prior Authorization	Inpatient Organ Transplant Surgical Justification Ultra Sounds	Adult PT/OT/ST DME	Mental Health Counseling	
Retrospective/Prepay	PERM		ICF/MR ICBS Free Standing Inpatient Psych	Sterilization Abortion
Other	Continued Stay	OP/PT for Children		UR Plans

By organizing and assigning review according to type and conducting cross-training, this team approach allows us to accommodate shifts in workloads within a team's area of responsibility

It is also essential that sufficient qualified staff be on each team. Based on the review volumes and our system's capabilities and efficiencies we have calculated the number of staff required for each team. The following chart shows the staffing levels for our entire operational team.

Preliminary Staffing Chart

Position	Major Tasks	Total FTEs
Program Manager	Manage all contract operations Assure all reports and deliverables are provided on time and accurately Assure all internal standards are monitored and met Assure adequate, qualified staff are employed and trained Primary interface with SCDHHS Primary interface with provider groups Assure provider information and training is up to date and meets contract performance standards Assure staff maintain proper customer relations and provides services in a courteous and professional manner	1.0
Assistant Program Manager	Assists Program Manager Assures Review policies and protocols are up-to-date and approved by SCDHHS Assists in the preparation of reports and deliverables Responsible for provider training and coordinating content with review supervisors	1.0

Position	Major Tasks	Total FTEs
Nurse Reviewers	Perform review in a timely and accurate manner following review procedures and protocols Apply review criteria accurately Record review findings accurately Refer cases to a physician as required	5.5
Supervisor MH/BH Review	Assures that all cases requiring MH/BH professional review is performed timely and accurately Assures that MH/BH reviewers are trained and up to date on review criteria, policies, procedures and protocols Works with Psychologist and Medical Director to assure that cases referred are completed in a timely manner Perform review in a timely and accurate manner following review procedures and protocols	1.0
MH/BH Reviewers	Perform review in a timely and accurate manner following review procedures and protocols Apply review criteria and policies accurately Record review findings accurately Refer cases to a physician as required	1.75
Supervisor OT/PT/ST Review	Assures that all cases requiring therapist review is performed timely and accurately Assures that therapy reviewers are trained and up to date on review criteria, policies, procedures and protocols Works with Medical Director to assure that cases referred are completed in a timely manner Perform review in a timely and accurate manner following review procedures and protocols	1.0
OT/PT/ST Reviewers	Perform review in a timely and accurate manner following review procedures and protocols Apply review criteria and policies accurately Record review findings accurately Refer cases to a physician as required	.5
Administrative Reviewers	Perform review in a timely and accurate manner following review procedures and protocols Apply review criteria and policies accurately Record review findings accurately	1.0
Coder		1.0

EXHIBIT

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- Beverly Hamilton
  Bureau Chief, Care Management and Medical Support Services
  SCDHHS
  1801 Main Street
  Columbia, SC 29202
  (803) 898-2555
  hamiltbv@dhhs.state.sc.us
  CCME contract: External Quality Reviews of Medicaid Managed Care Organizations

- Zenovia Vaughn
  Division Director of Hospital Services,
  SCDHHS
  (803) 898-2500
  vaughnz@dhhs.state.sc.us
  CCME contract: Medical Utilization and Quality Improvement

- Larry Nason, Chief, Facility and Community Care
  NCDHHS/DMA
  2501 Mail Service Center, Raleigh, NC 27699-2501
  (919) 855-4345
  larry.nason@dhhs.nc.gov
  CCME contracts: Personal Care Services Compliance Review, Quality Assurance & Quality Improvement for Community-Based Services Program

- Susan Ryan, Policy Project Manager, Medicaid Eligibility Unit
  NCDHHS/DMA
  2501 Mail Service Center, Raleigh, NC 27699-2501
  (919) 855-4016
  susan.ryan@dhhs.nc.gov
  CCME contract: Reviews of Emergency Services Provided to Aliens

5.C Prior Projects and Contracts

5.C. PRIOR PROJECTS AND CONTRACTS

Prior projects and Contractual details SHALL be organized as ordered below:

- *Customer name, reference individual, and title of reference, along with the address and telephone number. (The customer staff member offered for reference should be the highest-ranking staff member who has personal knowledge of the Offeror's performance.)*
- *General narrative project description highlighting the Offeror's responsibilities as the Prime Contractor, a Subcontractor, or other role*
- *Dates and time period of the project.*
- *Original schedule and actual Contract completion dates and the explanation of any variance.*
- *Approximate Contract price to include the original estimate of cost, the actual cost, and explanation of any variance.*
- *Role of the Offeror: Narrative project description highlighting the Offeror's responsibilities as Prime Contractor, Subcontractor, or other role.*

Project	Description	Contact
Medicaid Utilization and Quality Improvement SC Department of Health and Human Services March 1989 - June 2007 Primary Contractor Project Completed	Completed onsite compliance reviews of Medicaid providers Verified appropriateness of plans of care through recipient assessment and interview Performed EQRs of managed care and medical home plans to assure compliance with federal and state regulations Completed a number of QI projects on a variety of topics, including hypertension, diabetes, asthma and emergency services Reviewed requests for Medicaid assistance through the Tax Equity and Fiscal Responsibility Act waiver program Used claims data to develop sample selected for retrospective reviews	Zenovia Vaughn Division Director of Hospital Services, SCDHHS (803) 898-2500 vaughnz@dhhs.state.sc.us 1801 Main Street Columbia, SC 29202
Nursing Facilities Support Contract NC Division of Health Service Regulation April 2002 – May 2007 Primary Contractor Project Completed	Collaborated with skilled nursing facilities to address resident wandering, falls and medication safety for quality improvement Developed performance measures based on MDS data Contract evolved into current Nursing Home Onsite Consultation Program	Beverly Speroff Chief, Nursing Home Licensure and Certification, NCDHHS (919) 855-4555 beverly.speroff@ncmail.net 2711 Mail Service Center Raleigh, NC 27699
Palliative Care Quality Measurement Project Centers for Medicare & Medicaid Services August 2006 – February 2008 Primary Contractor Project Completed	Conducted literature review, stakeholder interviews and review of existing measures Created assessment instruments for end-of-life care Developed quality measures and tools to collect quality measures data Developed assessment materials that are referenced in CMS' Hospice Conditions of Participation	David Russo Project Officer, CMS (617) 565-1310 david.russo@cms.hhs.gov JFK Building, Room 2350 Boston, MA 02203
Prior Approval (PA) of Outpatient Therapies NC Division of Medical Assistance October 2002 – December 2008 Primary Contractor Project Completed	Performed PA reviews for outpatient specialized therapy services Designed and implemented web site for providers to electronically submit PA requests and receive outcome notifications Used claims data to develop sample selected for post payment validation of services	Nora Poisella Clinical Policy and Programs (919) 855-4310 nora.poisella@dhhs.nc.gov 2501 Mail Service Center Raleigh, NC 27699-2501