

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND)	
)	
)	ORDER
IN RE: Appeals by Arkansas Foundation)	
for Medical Care and Keystone Peer)	
Review Organization, Inc.)	Cases No. 2011- 6 and 2011-7
)	
RFP No. 5400002492)	
)	
(From Protests of Carolinas Center for)	
Medical Excellence; Georgia Medical)	
Care Foundation, Inc., d/b/a Alliant ASO;)	
and Arkansas Foundation for Medical Care)	

This case came before the South Carolina Procurement Review Panel (the Panel) for a hearing on January 18, 2012, pursuant to two separate requests for administrative review by Keystone Peer Review Organization, Inc. (KePRO) and Arkansas Foundation for Medical Care (AFMC). On June 21, 2011, the Chief Procurement Officer for Goods and Services (the CPO) issued a decision granting five grounds of protest brought by Carolinas Center for Medical Excellence (CCME); Georgia Medical Care Foundation, Inc., d/b/a Alliant ASO (Alliant); and AFMC. The CPO found portions of KePRO's proposal to provide Quality Improvement Organization (QIO) services for the South Carolina Department of Health and Human Services (SCDHHS) to be non-responsive and ordered that the contract be re-solicited. In the hearing before the Panel, KePRO was represented by John E. Schmidt, III, Esquire, and Melissa J. Copeland, Esquire. CCME was represented by Michael H. Montgomery, Esquire. Alliant was represented by E. Wade Mullins, III, Esquire. AFMC was represented by Daniel T. Brailsford, Esquire. SCDHHS was represented by Vicki Johnson, Esquire. The CPO was represented by Molly R. Crum, Esquire, and Keith C. McCook, Esquire.

Introduction

MMO conducted this resolicitation¹ on behalf of the South Carolina Department of Health and Human Services (SCDHHS) seeking to acquire a quality improvement organization (QIO)

to assist SCDHHS in meeting the requirements for a statewide utilization control program for Medicaid services, in accordance with 42 CFR Part 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 (State Plan). In addition, SCDHHS seeks additional pre-authorization reviews, pre-payment review and quality review functions as outlined in this Request for Proposal (RFP).

Record at PRP89. The Panel notes that the initial RFP was eighty-nine pages long and contained standard State contract clauses as well as those specifications drafted for SCDHHS's particular needs. Although not technically a "solutions-based procurement,"² the RFP did seek creative solutions from offerors to provide the services sought to increase efficiency and cost-effectiveness. In particular, the Panel notes the RFP included the following statements:

SCDHHS reserves the right to consider other options, if innovative alternatives are more cost effective and ensure the same or better outcomes with quality results for the program. In addition, SCDHHS reserves the right to make appropriate adjustments in the Scope of Work by written agreement between SCDHHS and the Offeror on an as needed basis.

Record at PRP91. Moreover, the RFP section detailing how implementation would take place required that the awardee submit a comprehensive work plan within fifteen days of the contract

¹ The Panel heard an appeal from the first solicitation in August 2010. The Panel's decision in that case is *In re: Protests of Qualis Health and Georgia Medical Care Foundation d/b/a Alliant ASO*, Panel Case No. 2010-4 (August 30, 2010).

² The Panel understands that this term more properly applies to information technology solicitations wherein the State seeks substantial input from offerors in creating software programs to meet specified State needs. However, the 2006 amendments to section 11-35-1530 of the Procurement Code, which arguably relax strict responsiveness requirements, apply to all RFPs, not just information technology ones. See *In re: Protest of College Source, Inc.*, Panel Case 2008-4 (January 8, 2009) (wherein the Panel discusses a solutions-based procurement).

award for SCDHHS approval. Record at PRP92. Presumably, SCDHHS would confirm at that time that all requirements of the solicitation were going to be met by the awardee.

The current solicitation was issued on December 7, 2010, and was amended twice, once on December 8, 2010, and once on January 14, 2011. Four offerors submitted proposals, which were opened on January 28, 2011. After the proposals were evaluated and ranked, KePRO was the top ranked offeror, and AFMC was the second highest ranked offeror. The other two offerors were Carolinas Center for Medical Excellence (CCME) and Georgia Medical Care Foundation, Inc., d/b/a Alliant ASO (Alliant). On March 25, 2011, MMO posted an intent to award to KePRO. The other three offerors all protested the intent to award, and the intended award was suspended on April 4, 2011. The CPO held a hearing and ultimately granted five grounds of protest and ordered that the intent to award be canceled. The five grounds of protest the CPO granted were all issues of responsiveness. He also ordered the State to resolicit based on *In re: Protest of Carter Goble Associates, Inc.*, Panel Case 1989-25 (February 7, 1990). Both KePRO and AFMC timely filed requests for further administrative review before the Panel.³

Discussion

In his order, the CPO found KePRO's offer to be non-responsive with regard to five grounds of protest raised variously by AFMC, CCME, and Alliant.⁴ Those five grounds may be summarized as follows: (1) whether KePRO's offer of a .6 FTE Medical Director satisfied the RFP's requirements; (2) whether KePRO's offer satisfied the RFP's requirement that the review process for physical therapy, occupational therapy, and speech therapy be completed within forty-eight hours; (3) whether KePRO's offer satisfied the RFP's requirements regarding prior

³ Because of the complexity of the RFP and the protest issues, the Panel will include factual findings with the discussion of each protest ground rather than providing a complete recitation of the facts here.

⁴ Based on the chart used by the CPO in his decision, these three protestants collectively raised twenty-two issues of protest in their initial and amended protest letters.

authorization for corneal and kidney transplants; (4) whether KePRO's offer satisfied the RFP's requirements regarding the provision of support during administrative hearings; and (5) whether KePRO's offer satisfied the RFP's requirements regarding the operation of a call center. In the hearing before the Panel, the parties agreed that the Panel need only consider those five grounds of protest in its review of KePRO's responsiveness. Therefore, the Panel will first address each of those five grounds separately below.

Additionally, AFMC raised a separate ground of appeal asserting that the remedy ordered by the CPO, resolicitation, was not required by this Panel's precedent as set forth in *In re: Protest of Carter Goble Associates, Inc.*, Panel Case No. 1989-25 (February 7, 1990). The Panel will address this ground after its discussion of the responsiveness grounds.

I. Responsiveness

Under the RFP source selection process, only proposals from responsive offerors are evaluated, ranked, and considered for award. See S.C. Code Ann. § 11-35-1530(7) (2011) ("Once evaluation is complete, all *responsive* offerors must be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the request for proposals.") (emphasis added). The Procurement Code defines a responsive offeror as one "who has submitted a[n] . . . offer which conforms in all material aspects to the . . . request for proposals." S.C. Code Ann. § 11-35-1410(7) (2011). However, stating a solicitation specification in mandatory terms does not necessarily create a material or essential requirement. The Panel has noted that a requirement is not material or essential "if variation from it has no, or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being performed." *In re: Protest of National Computer Systems, Inc.*, Panel Case No. 1989-13 (September 5, 1989). The Panel will examine each of the five

responsiveness grounds to determine first whether or not the requirement was material and second whether KePRO's proposal was responsive to that material requirement.

A. Medical Director

AFMC, CCME, and Alliant all assert that the RFP required offerors to propose a full-time Medical Director. KePRO contends that the language of the RFP itself required not a full-time Medical Director, but rather a "dedicated" Medical Director. Although the parties presented considerable testimony regarding the intent of SCDHHS in drafting the RFP and the intent of KePRO in drafting its proposal, the Panel finds that its inquiry can be answered by comparing the language of the RFP itself with KePRO's written offer. Section 3.3.1.2 of the Scope of Work portion of the RFP identifies a Medical Director as one of the "Key Personnel" which the offeror must employ and have "dedicated to the project." Record at PRP93. Unfortunately, the RFP does not further define "dedicated." However, when asked by a vendor in the previous solicitation⁵ whether the Medical Director had to be employed full-time, SCDHHS responded by restating the language from Section 3.3.1.2: "SCDHHS expects the vendor to have its key staff dedicated to the project as indicated in Section 3.3 of the solicitation so that all requirements of the solicitation are met." Record at PRP647 and PRP624. Based on the language of Section 3.3.1.2 and this answer, the Panel concludes that the employment of a Medical Director was a material requirement of the RFP. However, the Panel also finds that the language used in Section 3.3.1.2 did not require the Medical Director to be employed full-time because SCDHHS chose to use the word "dedicated," not "full-time." Moreover, SCDHHS

⁵ The Panel agrees with the CPO that every solicitation, even a resolicitation, stands independently from any other. The decision of the procurement staff in the instant solicitation to refer offerors to the Question and Answer section of an amendment in the previous solicitation is regrettable and should not occur in the future. However, because the instant solicitation did indeed refer offerors to those questions and answers, the Panel disagrees with the CPO and finds that those answers are relevant to the responsiveness issue of whether the Medical Director was required to be employed full-time.

declined to equate “dedicated” with “full-time” when specifically asked whether or not the Medical Director had to be a full-time employee.

The Panel’s analysis cannot end there, however, because the CPO found that language located elsewhere in the RFP created a requirement that the Medical Director be employed full-time. Specifically, the CPO relied on the following language, which described the information an offeror should include in its “Transmittal Letter”:

A statement indicating that the key staff and management staff proposed for the project will be those actually assigned. The key employees will remain affiliated with this project full time throughout the term of the Contract as long as the Offeror employs them.

Record at PRP124 (emphasis added). The Panel does not agree with the CPO that this use of the words “full time” imposed a material requirement that all key personnel were to be full-time employees. Read in its full context and consistently with the staffing requirements set forth in section 3.3.1.2, the Panel finds that this quoted language sought reassurance from offerors that the key employees named in their proposals would be the ones actually assigned to the project and that they would remain assigned to the project throughout the term of the contract, not that they would be full-time employees.

Having found that the employment of a Medical Director was a material requirement of the RFP, the Panel next must decide whether KePRO’s proposal satisfied that requirement. First, in its Transmittal Letter KePRO states:

Selected staff based on their specific sets of experience and skills relative to the tasks and requirements of the RFP. These individuals are assigned to and will remain affiliated with this contract throughout its duration should it be awarded to KePRO as long as they remain employed with KePRO.

Record at PRP217. The Panel finds that this language expressly assures the State that the staff identified in the RFP will be assigned and remain assigned with the project throughout its

duration, exactly as requested. Next, in its response to Section 3.3.1.2, KePRO first states: “KePRO understands and agrees to abide by all of the requirements in this section,” Record at PRP261, and then identifies Dr. Edgar B. Barnard, MD, as its proposed Medical Director. *Id.* The Panel finds that KePRO’s proposal was fully responsive to Section 3.3.1.2 of the RFP when it identified and agreed to employ Dr. Barnard as the Medical Director for the QIO project.⁶

B. Second Level Reviews for Physical, Occupational, and Speech Therapy

AFMC, CCCE, and Alliant all assert that KePRO’s proposal failed to agree that second level reviews for Physical, Occupational, and Speech Therapy would be completed within forty-eight hours as required by the RFP. This time frame is established by Section 3.5 of the RFP, which addresses prior authorization reviews and provides in relevant part: “If a second level consultant’s review is required, a determination must be made within forty-eight (48) hours of the initial request.” Record at PRP98. Physical, occupational, and speech therapies are all services for which SCDHHS sought prior authorization reviews. The Panel finds that the forty-eight hour time frame is a material requirement of the RFP.

In its response to Section 3.5, KePRO provides an overview of its philosophy and approach to prior authorization services. Record at PRP335 – PRP338. Within this overview, KePRO states

The combination of review and validation processes is highly customized to the *specific State requirements* – both contractual and regulatory – with custom configurations at both program and system levels. We will discuss the specific

⁶ AFMC, CCME, and Alliant all placed considerable reliance on KePRO’s inclusion of a proposed staffing chart in responding to this portion of its proposal. The Panel finds the staffing chart to be irrelevant in light of its ruling that the RFP did not require the Medical Director to be a full-time employee. In any event, the staffing chart also appears to be superfluous because Section 3.3.1.4 of the RFP provides that offerors must “[s]ubmit its staffing plan to SCDHHS for approval within fifteen (15) business days of the contract award date.” Record at PRP94. Moreover, Section 3.3.2 states “SCDHHS reserves the right to approve or disapprove the Offeror’s key personnel, or to require removal or reassignment of any personnel SCDHHS determines are unwilling or unable to perform the terms of the contract.” Record at PRP95. KePRO agreed to provide SCDHHS with a copy of KePRO’s “comprehensive staffing plan for this contract within fifteen business days of the award contract date” with the understanding that it was subject to SCDHHS approval. Record at PRP270.

methodologies that are most appropriate for South Carolina's program during the implementation phase. In collaboration with SCDHHS, we will develop a program appropriate for your specific circumstances and goals, and which can be configured to meet evolving circumstances and objectives.

Record at PRP336. Because Section 3.5 is the RFP section which establishes the time frames for prior authorization reviews, the Panel finds that KePRO expressly agreed to conduct the second level reviews within the forty-eight hour time frame set forth by this section by agreeing to meet SCDHHS's specific needs in the paragraph quoted above.

The Panel's analysis cannot end there, however, because the other parties assert and the CPO found that a sentence in KePRO's response to Section 3.5.4 changed the forty-eight hour time frame requirement to three days. KePRO argues that the sentence the other parties rely upon was a stray sentence which was included accidentally in its response to Section 3.5.4. Moreover, KePRO argues that the inclusion of that sentence did not require SCDHHS to reject its proposal for non-responsiveness. Thus, the Panel must first determine exactly what requirements are established by Section 3.5.4. Then the Panel will examine KePRO's response to determine its responsiveness to that section.

Looking at Section 3.5.4 itself, the Panel finds that it sets forth additional review requirements for physical, occupational, and speech therapies. Record at PRP99. Specifically, Section 3.5.4 asked offerors to "implement procedures for review and pre-certification of physical therapy (PT), occupational therapy (OT) and speech therapy (ST) for adults in an outpatient setting." *Id.* Furthermore, Section 3.5.4.1 required offerors to "utilize nationally recognized criteria for evaluating and determining [the] medical necessity" of the therapy requested. *Id.* Nothing in Section 3.5.4 or Section 3.5.4.1 establishes a time frame at all. Therefore, the Panel finds that to be responsive to Sections 3.5.4 and 3.5.4.1, an offeror was

obligated to agree to utilize nationally recognized criteria for evaluating medical necessity for the requested therapy.

In its proposal, KePRO first quotes the language of Section 3.5.4 and then states, “KePRO understands and agrees to abide by all requirements in this section.” Record at PRP346. After this statement, KePRO describes its experience with providing prior authorization for physical, occupational, and speech therapy. Record at PRP 346 – PRP347. Then KePRO quotes the language of Section 3.5.4.1 and again states that it “understands and agrees to abide by all requirements in this section.” Record at PRP347. Thereafter, KePRO identifies InterQual Criteria as the nationally recognized criteria it would utilize in determining medical necessity for physical, occupational, and speech therapy. *Id.* KePRO also references the specific rules, criteria, and exceptions adopted by the South Carolina Medicaid program. *Id.*

The next page of KePRO’s proposal provides a screenshot of its review tool, which is designed to capture the case details necessary for conducting a review. Record at PRP348. Following the screenshot, KePRO notes that cases not meeting the review criteria will be referred to a physician consultant for a second level review. *Id.* It is at the end of this paragraph that the disputed sentence appears, and it states: “Physician consultants complete their determinations within three days of receipt.” Record at PRP349. Ms. Karen M. Eaton of KePRO testified that this sentence was an error and should not have been included in the proposal. The Panel agrees. Having found that Sections 3.5.4 and 3.5.4.1 only sought information regarding nationally recognized review criteria, the Panel finds that the disputed sentence was clearly an error as it was not specifically responsive to Sections 3.5.4 and 3.5.4.1. Moreover, the Panel finds that KePRO’s proposal with regard to Sections 3.5.4 and 3.5.4 is expressly responsive to the stated requirements, which concerned nationally recognized review

criteria, not the time frame for completing second level reviews. In summary, the Panel finds that KePRO's proposal was responsive to Section 3.5 when it agreed to complete second level reviews within forty-eight hours, and that its proposal was also responsive to Sections 3.5.4 and 3.5.4.1 when it identified nationally recognized criteria for conducting prior authorization reviews.⁷

B. Prior Authorizations for Organ Transplant Services

Alliant argued and the CPO found below that KePRO's proposal failed to offer and implement prior authorization procedures for kidney and corneal transplants as required by the RFP. KePRO contends that its proposal was fully responsive to the RFP's requirements and that the CPO looked at the wrong portion of its proposal in reaching his decision. The relevant provision in the RFP is located at Section 3.5.2 and states:

The Offeror must implement procedures to prior authorize the following organ transplant requests: heart, lung, liver, pancreas, multi-organ, bone marrow/stem cell, kidney, corneal and small bowel. These transplant requests must be reviewed by appropriate medical professionals. RNs can conduct the first level of screening and provide authorization for single organ transplants. However, a physician must authorize double or multiple organ transplants or transplants that are new or emerging. The Offeror must utilize evidence-based and nationally recognized criteria for evaluating and determining an organ transplant's medical necessity.

3.5.2.1 The Offeror must utilize evidence-based and nationally recognized criteria for evaluating and determining the medical necessity of an organ transplant.

Record at PRP98. This section of the RFP clearly requires prior approval services for kidney and corneal transplants. Furthermore, the Panel finds that this is a material requirement because

⁷ At worst, KePRO's inclusion of the disputed sentence created an ambiguity in its proposal. However, the Panel finds that the ambiguity in this instance did not require the State to reject KePRO's proposal because KePRO had expressly agreed to the forty-eight hour time frame in its response to Section 3.5. Nonetheless, the Panel again notes that the Procurement Code allows discussions with vendors to clarify questions of responsiveness. S.C. Code Ann. § 11-35-1530(6) (2011). Although not required by the Procurement Code, such discussions in this case would have been advisable. The Panel encourages procurement staff to read proposals carefully for these types of ambiguities – especially when the RFP is a complex one and the State has expressed a desire for innovative solutions – and to take advantage of the Procurement Code's allowance of discussions.

omitting certain transplants from the prior approval services would undoubtedly affect overall price.

In its proposal, KePRO directly quotes the language from Sections 3.5.2 and 3.5.2.1 and responds:

KePRO understands and agrees to abide by all requirements in this section.

The medical director, peer reviewers, and utilization management staff reference transplant criteria established by national medical professional societies, associations, and organizations for all procedures in addition to approved criteria developed by KePRO. *Organ transplant requests criteria will, at a minimum, include: heart, lung, liver, pancreas, multi-organ, bone marrow/stem cell, kidney, corneal and small bowel.* The nurse reviewers can approve the transplants if they meet criteria, but any potential denial is sent to a specialty-matched physician.

KePRO utilizes our core Prior Authorization Process for Organ Transplant Services which includes details concerning the approval procedures, notification of insufficient information, reconsiderations, and time frame requirements.

Please see Appendix 11 for the transplant quick reference guide we use in our Florida Medicaid contract work.

Record at PRP342 – PRP343 (emphasis added). The Panel finds that KePRO's offer with regard to Sections 3.5.2 and 3.5.2.1 is expressly responsive to the RFP's requirements that prior authorizations be conducted and that evidence-based, nationally recognized criteria be used for kidney and corneal transplant requests. In addition, the Panel finds that KePRO's inclusion of Appendix 11 merely offered an example of how KePRO performed similar services for another state and in no way modified its agreement to meet the State's requirements for prior authorization of organ transplant services, including kidney and corneal transplants.

However, the Panel must also consider the CPO's examination of KePRO's response to Section 3.5.2.2 because that is the section the CPO relied on in finding that KePRO was non-responsive. Section 3.5.2.2 provides:

3.5.2.2 The Offeror must provide procedures for receipt of the request and

notification to the provider of the decision. For approved procedures, the Offeror must develop a method for notifying the provider of Centers for Medicare and Medicaid Services (CMS) approved transplant facilities for each type of transplant request.

Record at PRP98. The Panel finds that this particular provision requires offerors to establish procedures for notifying providers of prior authorization decisions.

KePRO's response first quotes the above language from Section 3.5.2.2 and then states, "KePRO understands and agrees to abide by all requirements in this section." Record at PRP343. Further down in its response to Section 3.5.2.2, KePRO includes a bullet point under a chart⁸ which states, "All solid organs with the exception of kidney and cornea transplants require prior authorized [sic] regardless of the age of the beneficiary or the diagnosis." Record at PRP344. This is the sentence the CPO relied upon in finding KePRO's proposal failed to propose prior authorization services for kidney and corneal transplants. However, as noted above, KePRO did expressly agree to provide prior authorization services for kidney and corneal transplants in the RFP section actually addressing those services, Section 3.5.2, a fact apparently overlooked by the CPO in his review. Furthermore, Section 3.5.2.2 requires something separate: procedures for notifying providers of prior approval decisions. The Panel finds that KePRO's offer is responsive to this requirement as well when it states:

KePRO follows established and approved procedures using Atrezzo for notifying providers, physicians, and/or beneficiaries of the review determination by fax, web, or verbal notice by telephone, and written notification within 24 hours of the determination.

⁸ In the hearing before the Panel, Ms. Eaton testified that the chart included by KePRO in Section 3.5.2.2 merely represented an alternative solution for establishing criteria for prior authorization reviews and that KePRO also indicated an intention to design the actual criteria to meet the State's actual needs. If so, then the chart's proper placement would have been in KePRO's response to the previous RFP section, Section 3.5.2.1. The Panel cautions vendors to make sure the information they include is specifically tailored to each individual RFP section, especially when the offer is lengthy and complex. Nonetheless, the Panel finds that the inclusion of the chart in Section 3.5.2.2 did not require the State to reject KePRO's proposal. *See* discussion at footnote 7 above.

Record at PRP344. The Panel concludes KePRO's proposal was fully responsive to the RFP's stated requirements for prior authorization of organ transplants.

D. Provision of Support for Administrative Hearings

Alliant argued and the CPO found that KePRO's proposal failed to agree to offer on-site support for administrative appeal hearings as required by the RFP. CCME joined Alliant in this argument in the hearing before the Panel. KePRO contends its proposal expressly agreed to comply with the RFP's requirements concerning support for administrative hearings.

Administrative hearings are addressed by Section 3.10 of the RFP, which generally provides:

Any provider, physician or recipient who is dissatisfied with the Offeror's decision shall be entitled to a reconsideration or administrative appeal of the determination. . . . The requirements of the Offeror will vary depending on the subject of the hearing. *The method of participation will vary depending on the subject of the hearing and the Hearing Officer's requirements.*

Record at PRP111 (emphasis added). Further specifications under this general section required offerors to establish "a written protocol" for managing reconsideration requests. *Id.* The written protocol was required to include the following:

Procedures for providing SCDHHS with all relevant information for an administrative appeal/hearing within five (5) business days of the SCDHHS request/notice. . . . Fair hearings are conducted by SCDHHS. The State expects the Offeror *to provide* documentation and *witness testimony* for the hearings. *The method for conducting the hearing will be at the discretion of the SCDHHS Hearing Officer. The subject matter of the hearing will determine whose presence at the hearing will be required.*

Section 3.10.1.2.6, Record at PRP112 (emphasis added). The Panel finds that these two sections of the RFP required offerors to provide documentation and witness testimony at administrative hearings and that these requirements were essential to the performance of the contract. However, the Panel also notes that the specifications of these two sections contemplate that there may be

instances in which a witness's physical presence will not be required. Those instances are apparently dependent upon two factors: the subject matter of the hearing and the discretion of the hearing officer.

Regarding the requirement to provide witness testimony, KePRO's proposal includes the following response to Section 3.10.1.2.6:

KePRO understands and agrees to abide by all requirements in this section.

* * * *

KePRO will support SCDHHS in cases that require administrative State hearings by providing support services, case summaries, clinical information, and testimony regarding the review process. . . .

If requested by SCDHHS, authorization staff in each specialty of the case, our medical director or peer reviewer will be made available for a one-hour period, by phone conferencing, to testify at hearings and legal proceedings. If needed, our peer reviewers will testify regarding the rationale, decisions, and actions as related to the case will be provided.

Record at PRP448 (emphasis added). The Panel finds that KePRO expressly agreed to provide the necessary reviewer testimony by indicating it understood and agreed to the section's requirements and by specifically indicating that it would provide testimony. The Panel does not agree with the CPO that the last quoted paragraph took exception to this section's requirements. Rather, the Panel finds that it provided an example of how KePRO might provide testimony by phone conferencing if the hearing officer requested it to be provided in that manner. The provision of this example in no way negated KePRO's earlier agreement to abide by this section's requirements. On the contrary, the example acknowledged the fact that the hearing officer, at his or her discretion, might seek testimony in some fashion other than actual physical presence. Therefore, the Panel finds that KePRO's proposal was fully responsive to this section of the RFP.

E. Operation of the Call Center

CCME argued and the CPO found that KePRO's proposal with regard to the operation of the call center on State holidays failed to meet the RFP's requirements. KePRO contends that its proposal expressly agreed to operate the call center as required by the RFP in Section 3.8.1.4 of the RFP.

The RFP required offerors to establish and operate a call center "to support all of the services outlined in this RFP." Record at PRP107. Through the call center, offerors were to provide a toll-free telephone processing center to providers and beneficiaries to "[a]ccept requests for prior authorization decisions, reconsiderations and appeals." Record at PRP108. The call center specification relevant to the issue before the Panel is Section 3.8.1.4, which provides that the processing center must:

Be available from at least 8:00AM to 7:00PM Eastern Time, Monday through Friday; however, the Offeror must demonstrate the capacity to handle emergency late night and/or weekend admissions and provider calls. SCDHHS does not require that all calls be answered by a member of the Offeror's staff. It is SCDHHS' expectation that the Offeror establish a process which ensures that requests are reviewed within the required time frames set forth in this RFP.

Record at PRP108. The Panel finds that this section required two things: (1) an offeror must operate the call center during 8:00 a.m. and 7:00 p.m. on weekdays, and (2) an offeror must establish a plan for handling calls after hours and on weekends. The Panel also finds that the last two sentences of this section provide flexibility for both of those requirements: offerors need not have a live person answer all calls as long as their process will ensure that reviews are completed within the time frames set by the RFP.

In its response to Section 3.8.1.4, KePRO first states that it "understands and agrees to abide by all requirements in this section." Record at PRP409. Then KePRO's proposal states:

KePRO service representatives will answer provider requests during normal business hours of 8:00 A.M. to 7:00 P.M. EST, Monday through Friday. Providers who call after hours or on weekends for non-urgent services or inquiries will be prompted to leave a message or call back on the next available business day. Providers with urgent/emergent requests will be given a pager number to reach the on-call nurse reviewer, who will respond to the page within an hour.

Record at PRP409. In this portion of its offer, KePRO explicitly agreed to operate the call center on weekdays as required and to establish a process to handle calls received outside normal business hours. Therefore, the Panel finds that KePRO's offer was fully responsive with regard to the operation of the call center.⁹

II. Remedy Issue Raised by AFMC

Because the Panel has found that KePRO's offer was fully responsive to the RFP, the appeal issue raised by AFMC regarding the remedy ordered by the CPO is rendered moot. Therefore, there is no need for the Panel to address it.

Conclusion

For the reasons discussed above, the Panel finds that KePRO's proposal was responsive regarding all five issues of protest before it. Therefore, the Panel hereby reverses the decision of the CPO and orders the reinstatement of the contract award to the highest-ranked offeror, KePRO.

⁹ The language upon which the CPO relied in finding KePRO's offer non-responsive with regard to the call center appears in its response to a later section of the RFP, Section 3.8.2. In its response to Section 3.8.2, KePRO briefly describes the automated call distribution center it will implement and then states: "Our call/processing center will be available to respond to inquiries and requests. It will be *staffed* from 8:00 a.m. – 7:00 p.m. EST Monday through Friday, *excluding State holidays*; messaging systems will be in place after hours or on recognized holidays." Record at PRP411 (emphasis added). The RFP does not mention holidays at all, but the Panel finds that this language is still responsive to the call center requirements because it ensures that a system for handling calls will be in place even during times the call center is not actually staffed. As noted above, nothing in the RFP required all calls to be answered by a live person.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: *C. Brian McLane, Sr.*

C. BRIAN MCLANE, SR., CHAIRMAN

This 16th day of February, 2012.

Columbia, South Carolina