

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Contracting and Procurement



Public Oversight Roundtable on the

Procurement Process for the Medicaid Managed Care Organization Contracts

Testimony of
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Before the
Committee on Government Operations and Facilities
Council of the District of Columbia
The Honorable Robert C. White, Jr., Chairman

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Virtual Meeting Platform
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Good morning, Chairman White and members of the Committee on Government Operations and Facilities. I am George Schutter, Chief Procurement Officer of the District of Columbia and the Director of the Office of Contracting and Procurement (OCP). First, I would like to thank you for allowing me the opportunity to provide testimony on the procurement of the Medicaid Managed Care Organization (MCO) contracts and answer any questions you may have.

As you are aware, the MCO contracts represent some of the most significant contracts solicited and executed by the Office of Contracting and Procurement and the Government of the District of Columbia. These contracts impact the well-being of some of our most vulnerable residents. As the CPO of the District, I am deeply aware of the significance of OCP's role in completing a seamless, timely, and legally sound procurement of the MCO contracts. OCP has always worked closely with the Council, the Mayor, and the Attorney General in following regulations and best practices during the approval process of MCO contracts.

My testimony today before the Committee will detail the chronology of the procurement of the MCO contracts as well as steps OCP is taking — now and in the future — to ensure these vital healthcare services for our residents continue uninterrupted. Before I begin, it is important to remind Council that one of the procurements discussed today is the subject of ongoing litigation. Thus, I am limited in what I may speak to. Likewise, because it has been determined that a new solicitation of the MCOs is required due to the recent addition of behavioral health care services, I am unable to speak in detail on the new solicitation as it is an active procurement.

Chronology

Solicitation

On behalf of the Department of Health Care Finance (DHCF), on January 10, 2020 OCP issued a Request for Proposals (RFP) in the open market seeking up to three contractors to provide healthcare and pharmacy services for the District's managed care program.¹ When the solicitation closed on February 20, 2020, OCP received seven timely proposals. Accordingly, OCP organized and convened a technical evaluation panel (TEP) to evaluate the timely proposals. As with all TEPs, members received instruction on how the evaluation process is conducted and

¹ Request for Proposals Doc490243.

were advised that all evaluations must be completed individually without the help of other TEP members or outside persons. Individual evaluations were completed by TEP members who then met and provided a consensus report to the Contracting Officer (CO). After reviewing the TEP consensus report, the CO independently evaluated the technical and price proposals and documented her findings in a pre-negotiation business clearance memorandum.

On May 19, 2020, the CO executed a determination and findings for the proposals in the competitive range, finding four offerors to be in the competitive range. The CO issued requests for best and final offer (BAFO) letters to those four offerors, which were Amerigroup District of Columbia, Inc (“Amerigroup”), AmeriHealth Caritas District of Columbia, Inc. (“AmeriHealth”), Trusted Health Plan (District of Columbia), Inc., d/b/a CareFirst BlueCross BlueShield Community Health Plan District of Columbia (“Trusted CareFirst”), and MedStar Family Choice, Inc. (“MedStar”). OCP received all BAFO responses from the offerors in the competitive range by May 20, 2020. The same day, the CO convened the TEP to evaluate the BAFOs. OCP required BAFOs so that the CO would have the opportunity to negotiate with each of the offerors to improve their proposals and seek a comprehensive and valuable solution for the District and its residents. The CO conducted her final review and determined to award three contracts to AmeriHealth, Trusted CareFirst, and MedStar.

Initial Contract Award, Council Disapproval Resolution, and CAB Decision

On June 1, 2020, the CO sent the three proposed contracts to the projected awardees for signature before sending the Council package for approval. On July 9, 2020, the CO issued a letter to Amerigroup indicating they were an unsuccessful offeror.

DHCF posted an announcement on its website on July 16, 2020, stating the District's intent to award the Medicaid managed care contracts to AmeriHealth, Trusted CareFirst, and MedStar. On the same day, Amerigroup filed a protest with the Contract Appeals Board (CAB). At the request of Amerigroup, OCP held a post-award debriefing on July 17, 2020. Additionally on July 17, 2020, the Executive branch transmitted the packages for the proposed contracts to the Council for review and approval. On July 29, 2020, Chairman Mendelson, along with Councilmembers R. White and McDuffie, filed a notice of intent to disapprove resolution extending the Council's

review of the proposed contracts to 35 days of the initial submission of the contracts to Council. The Council deemed approved the transmitted contracts on September 3, 2020.

Meanwhile, on August 20, 2020, the CAB issued its decision in the *Protest of Conduent State Healthcare, LLC (“Conduent”)*², citing the Small and Certified Business Enterprise Development and Assistance Act of 2005 (SCBED Act)³ as requiring all proposals to contain a compliant subcontracting plan upon submission to the District in order to be found responsive. While the District can award procurements based on initial proposals, the negotiation component of the RFP process gives the CO the ability to advise offerors on the shortcomings of their proposals and for these offerors to improve their proposals through a BAFO process allowing an updated proposal to be submitted based on the shortcomings. Prior to the *Conduent* ruling, this included remedying deficiencies and errors in the subcontracting plan. The District utilized this negotiation process in competitive sealed proposals for over fifteen years, and the negotiation factor is standard practice as referenced in the American Bar Association’s *2000 Model Procurement Code*. The *Conduent* ruling changed the negotiation process in the District so that no matter the prime contractor, CBE or otherwise, any deficiencies or errors in the subcontracting plan upon submission would disqualify their proposal from review, thus completely removing the prime contractor and its subcontractors from the competition. The District filed a Motion for Reconsideration to Clarify the Opinion and for Limited Stay on September 4, 2020, requesting clarification of which solicitations the *Conduent* decision applied to and a limited stay of the Opinion until January 15, 2021 in order to maintain continuity in procurement practices while having an opportunity to seek legislative clarity on the issues presented. The CAB denied this motion on October 5, 2020.

On December 1, 2020, the CAB sustained Amerigroup's protest, ordering the District to reevaluate the competitive range offerors’ proposals before any options years of the existing contracts could be exercised. The CAB issued its opinion, citing OCP’s evaluation of the offeror’s proposals as unreasonable while noting that it would be prudent for the District to be mindful of protestor’s allegations that were not addressed by the opinion. The District thereafter

² Contract Appeals Board P-1120.

³ D.C. CODE §§ 2-218.01 to .82 (2020)

filed a Motion for Reconsideration to Clarify the Board's December 1, 2020 Opinion, requesting specification of the remaining allegations the District must consider in reevaluating the competitive range offerors' proposals.

Reevaluation and Legislative Actions

OCP moved to reassess the proposals within the competitive range in alignment with the CAB's December 1, 2020 decision. Despite implications stemming from the CAB's ruling in *Conduent*, OCP reevaluated all four proposals in the competitive range, including the proposal submitted by MedStar, as there were ongoing legislative efforts by both the Council and Executive branches that may have impacted the reevaluation. OCP began this process in earnest on March 3, 2021. OCP employed a commercial source selection facilitation tool to assist the TEP members in completing a cohesive uniform evaluation of each proposal. AmeriHealth's proposal was the first to be reevaluated. The TEP subsequently evaluated CareFirst's proposal on May 13, 2021, and Amerigroup and MedStar's proposals on June 25, 2021. On May 28, 2021, Chairman Mendelson, Councilmembers R. White and McDuffie introduced Bill 24-0263, the "Fidelity in Compliance of Contracting and Procurement Emergency Amendment Act of 2021" requiring OCP to complete the reevaluation of proposals in the competitive range by June 30, 2021, and requiring the District to procure services from no fewer than three MCOs. The Council passed the bill; however, the Mayor vetoed it on July 29, 2021.

The CO completed her independent assessment on July 8, 2021, following the final TEP consensus meeting. Upon completion of the reevaluation as instructed by the CAB, it was found that there was no change in the ultimate ranking of offerors in the competitive range. A Procurement Review Committee (PRC) meeting was held on July 19, 2021, to review the CO's independent assessment, including a discussion of final items that should be requested of the offerors through an anticipated final BAFO. One example of final items to be requested was clarification, as needed, whether the organizational structure and staffing plans remained valid for offerors. The PRC reviewed and concurred with the CO's decision. The CO therefore requested BAFO's from AmeriHealth, Trusted CareFirst, and Amerigroup on August 11, 2021. That same day, MedStar was issued a letter notifying them that they were found non-responsive as their submission contained a non-compliant subcontracting plan based on the CAB's ruling in

Conduent. OCP received all three BAFOs from the remaining offerors by August 18, 2021. The CO did not award to Amerigroup and based her decision on factors we are unable to disclose due to ongoing litigation.

On August 20, 2021, DHCF notified members of the Council that MedStar planned to end its preferential pricing agreements with Trusted CareFirst and AmeriHealth. DHCF noted that such a move would result in the loss of healthcare services to many District residents relying on the District's Medicaid program.

On September 1, 2021, the Mayor issued Mayor's Order 2021-105 declaring a public emergency, allowing the District to enter into necessary contracts for the provision of health care services for residents participating in the Medicaid and DC Health Care Alliance programs. The same day, the Executive submitted partial options exercises pursuant to the emergency declaration and Mayor's Order 2021-105. On September 10, 2021, Chairman Mendelson and Councilmembers McDuffie, Silverman, and R. White signed a notice of intent of disapproval and extended the process for approving these contracts for 45 days. To prevent a disruption in healthcare services, OCP executed three contracts with AmeriHealth, Trusted CareFirst, and MedStar on September 16, 2021. In discussions with the Executive branch, the Legislative branch recommended a different vehicle for the MedStar contract. On October 1, the District submitted to the Council a new contract for MedStar and a letter describing the actions the Executive had taken.

In a memo to the Council dated September 30, 2021, Chairman Mendelson requested consideration of emergency legislation that would provide a nine-month stopgap for the current MCO procurement to proceed by retaining the two executed contracts with AmeriHealth and Trusted CareFirst and executing a contract (not governed by the PPRA) with MedStar, avoiding a disruption in critical health care services for the District's most vulnerable residents. Chairman Mendelson asserted that a period of nine months would provide a solid foundation for agreements to be finalized and provide adequate time for a new solicitation to be completed.

The Council passed emergency legislation approving the contracts per the "Contracts with Managed Care Organizations for the Provision of Health Care Services to District Residents

Approval and Authorization Emergency Act of 2021," effective October 1, 2021. This legislation was approved by the Council on October 5, 2021, and signed by the Mayor on October 6, 2021.

Moving Forward

Looking ahead, the District is taking a new whole-health approach in providing critical healthcare services to the residents who depend on the District's Medicaid program. Beginning with a forthcoming solicitation, the District seeks to incorporate a full suite of behavioral health services into the program. As this will result in a material change to the scope of work, the District must create a new solicitation, which is standard practice. In the meantime, the District will continue to utilize the executed contracts to provide health services to District residents.

Again, while I am limited on what I can share regarding the new solicitation, I would like to share the multitude of steps OCP is taking to ensure that the crucial delivery of health care services to District residents is not delayed by any interruptions in the procurement process. The new solicitation process will feature increased monitoring and oversight. OCP has selected a contracting officer and has convened an integrated procurement team (IPT) that meets weekly. Additionally, the procurement team is doing all they can to prevent any issues that may cause delays, such as working with our colleagues at the Department of Small and Local Business Development (DSLBD) to ensure CBE participation. This new approach, including the formation of the IPT, is supported by DHCF, the Department of Behavioral Health, and the Office of the City Administrator. The IPT will engage with these respective agencies, the City Administrator, and myself as the solicitation, evaluation, and award processes progress. Further, to ensure that behavioral health care capabilities are fully encompassed in the MCO solicitation, OCP teams that are working on the new solicitation will receive support from behavioral health subject matter experts.

OCP is also taking new steps to increase awareness of the procurement and inform would-be offerors of the requirements of the upcoming solicitation, as law and regulations permit. One such example is our Medicaid Managed Care Organization industry day, which we held yesterday on Thursday, October 28 and where we discussed the solicitation with our industry

partners. This event further provided an opportunity for prime contractors, subcontractors, and providers to network before the solicitation is released.

As you may be aware, the procurement timeline for the new solicitation is condensed. The District aims to have the solicitation out before Thanksgiving with the intention of sending a negotiated contract to Council for approval by June 2022. This timeline will provide adequate time for review by the Centers for Medicare & Medicaid Services as necessary, followed by a three-month implementation period ending in October 2022.

Conclusion

I hope my testimony today has demonstrated the diligent work of OCP and our team of procurement professionals to ensure that the services provided by the District's Medicaid program continue uninterrupted. In all MCO procurements, past and present, my objective has been to make certain they fall in line with the law, including OCP's mission to purchase quality goods and services fairly, impartially, and transparently in a timely manner and at a reasonable cost. Because of the significant impact the Medicaid program has on the health and well-being of District residents, I have always been acutely aware of the tremendous responsibility OCP carries in seeing that the MCO contracts are approved and implemented in a manner rooted in the law and best practices. I remain committed to working closely with the Council, the Mayor, and the Attorney General at every step of the MCO contract approval process to ensure the new contracts are executed with integrity and transparency.

I want to thank Mayor Bowser, City Administrator Donahue, and Assistant City Administrator Parker for their continued leadership and support through this procurement process. I thank you, Chairman White and the members of the Committee on Government Operations and Facilities, for the opportunity to testify and your ongoing support and oversight. This concludes my prepared testimony. I am happy to answer any questions you may have.