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May 13, 2016

Via Email [MWitowsky@caunj.org] and USPS Regular Mail

Sidney Blanchard, Executive Director
Community Access Unlimited
80 West Grand Street
Elizabeth, NJ 07202-1447

Re: Protest of Notice of Intent to Award
RFP# 16-X-23964: Fiscal Intermediary and Financial Cash and Counseling Services: DHS

Dear Mr. Blanchard:

This correspondence is in response to your protest letter dated December 8, 2015, and supplemental protest letter dated December 22, 2015, to the Hearing Unit of the Division of Purchase and Property (Division), on behalf of Community Access Unlimited (CAU). CAU protests the November 23, 2015 Notice of Intent to Award (NOI) a contract for Solicitation #16-X-23964: *Fiscal Intermediary and Financial Cash and Counseling Services: DHS*, issued by the Division's Procurement Bureau (Bureau). CAU alleges that the proposal submitted by the intended awardee, PCG Public Partnerships, LLC (PPL) is non-responsive because PPL's proposal failed to comply with numerous terms, conditions, and requirements of the RFP. CAU asserts that PPL's proposal must be rejected. With its protest letters CAU requests the opportunity to make an in-person presentation.

By way of background, the subject Request for Proposals (RFP) was issued on August 4, 2015, by the Bureau on behalf of the Department of Human Services (DHS) to solicit proposals to engage one contractor to provide statewide fiscal management services, administrative services, and financial counseling services to individuals enrolled in DHS programs (Program).¹ (RFP § 1.1 *Purpose and Intent*.)

As noted in the RFP, DHS administers a number of programs that promote and provide participant-directed care to the elderly, individuals with disabilities, the medically needy, and veterans. These programs are based upon the concept of participant direction which allows participants to have choice and control over the selection of their home and community-based services, as well as purchase goods and pay the individuals and entities that provide these services. Participants, or their authorized representatives, function as the employing authority, and in that capacity hire, discharge, train, and supervise their own directly hired workers. The participants have the authority to manage their budgets, determine the type of goods and services to be purchased, and establish their worker's wage rates.

¹ The contract awarded through this solicitation will be used by DHS' Divisions of Disability Services (DDS), Aging Services (DOAS), Developmental Disabilities (DDD), and Medical Assistance and Health Services (DMAHS).

This solicitation is a consolidation of the three current State contracts for similar services in order to provide for efficiencies of operation for DHS and its constituents. (RFP § 1.2 *Background*.) The services provided through the awarded contract will allow DHS program participants to self-direct, manage, and budget for the services in their plan of care. (RFP § 1.1 *Purpose and Intent*.) This RFP specifically sought a contractor with the knowledge, experience, resources, and infrastructure to provide the statewide fiscal management services (FMS) and financial counseling services (FCS) requested. (*Ibid.*) Specifically, to:

- A. Provide the Vendor Fiscal/Employer Agent (VF/EA) model of FMS² services in accordance with Agent Employment Tax Liability...
- B. Provide administrative services to the participants enrolled in DDS, DOAS, and DDD Programs; and provide fiscal conduit functions and financial counseling services to the participants enrolled in DDS and DOAS programs, to include, at a minimum, orientation, explanation, and training about the Program to participants—the DDD-enrolled individuals only require the fiscal conduit function as these individuals receive their financial counseling services separate and apart from the contract resulting from this RFP; and
- C. Have the financial capability to advance funds (i.e., using a Just-in-Time payment processing approach and methodology, or similar approach) to pay participants' workers and vendor.³

[RFP § 1.1 *Purpose and Intent*.]

It is the intent of the State to award one contract to the responsible bidder whose proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered. (RFP § 1.1 *Purpose and Intent*.)

On September 1, 2015, the Bureau issued Addendum #2 responding to bidder questions which had been received prior to the close of the Question and Answer Period. On September 11, 2015, five proposals received by the submission deadline were opened by the Division's Proposal Review Unit. The proposals received were forwarded to the Evaluation Committee (Committee), comprised of members from DHS and the Division for review. The Committee was responsible for performing a technical review of the proposals received. The focus of the Committee's technical review was on the strengths and weaknesses of the proposals, as the proposal conveyed the bidder's approach to successfully completing the work outlined in the RFP. In addition, the Committee ranked the proposals based upon the total proposal price for price lines 1 through 6.

Each proposal was evaluated in accordance with the criteria set forth in RFP § 6.7.1 *Technical Evaluation Criteria*:

- a. Personnel: The qualifications and experience of the bidder's management, supervisory, and key personnel assigned to the contract, including the candidates recommended for each of the positions/roles required.

² The current DHS contracts utilize the "Agency with Choice" model of FMS services, not the VF/EA model which was sought by this RFP.

³ Under the current contracts, the State advances funds to the contractors to provide the services to the enrolled participants. Under this RFP, the contractors are required to advance funds to pay for services and then seek reimbursement from the State.

- b. Experience of firm: The bidder's documented experience in successfully completing contracts of a similar size and scope in relation to the work required by this RFP.
- c. Ability of firm to complete the Scope of Work based on its Technical Proposal: The bidder's demonstration in the proposal that the bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the contract.

Price was not a consideration during the technical evaluation and each proposal was scored by the Committee without knowledge of the proposed pricing.

On November 23, 2015, the Bureau issued its NOI indicating its intent to award a contract to PPL. CAU's protest followed.

In its letter of protest, CAU alleges that

PPL failed to comply with numerous terms, condition and requirements of the RFP, including terms with which the bidder must or shall comply. Indeed, PPL was non-responsive in at least 38 areas which the RFP requires that the bidder shall comply. There were also at least 12 areas where the RFP outlines specific items but PPL's proposal omits all or some of the requirements in a particular section. These failures require rejection of PPL's proposal as non-compliant and non-responsive . . . In fact, in response to several material requirements, PPL specifically states its intention not to comply with the requirement of the RFP.

On December 8, 2015, the Division extended the protest deadline to December 22, 2015. In addition, on December 22, 2015, the Division received CAU's supplemental protest letter, which raised challenges to the specifications and the contract award. PPL, the intended awardee, was provided an opportunity to respond CAU's protest letters and on January 15, 2016, PPL submitted its response to the Division.⁴

First, with respect to CAU's request for an in-person presentation to challenge the intended contract award, I note that pursuant to N.J.A.C. 17:12-3.3(d)(1), "[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." Further, "[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing." N.J.A.C. 17:12-3.3(d). In consideration of CAU's protest, I have reviewed the record of this procurement, including the RFP, the proposals submitted, the Evaluation Committee report, the Bureau's Recommendation Report, and the relevant statutes, regulations, and case law. The issue(s) raised in CAU's protest were sufficiently clear such that a review of the record of this procurement has provided me with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits of the protest submitted by CAU on the written record.

⁴ On February 10, 2016, CAU submitted an unsolicited "Responsive Protest" to the Division responding to the statements submitted by PPL in response to CAU's protest. I note that it is in the Director's discretion to request supplemental information from parties related to the issues raised in a protest. Here, no reply was requested from CAU. That being said, the reply submitted by CAU was reviewed in connection with this protest. Nothing contained in that reply changes the outcome of this protest.

Second, in addressing CAU's protest points, I note that RFP § 3.0 *Scope of Work* (SOW) contained requirements for the Contractor – defined in the RFP as “[t]he bidder awarded a contract resulting from this RFP.” (RFP 2.1 *General Definitions*.) Therefore, the requirements set forth in RFP § 3 are not mandatory requirements of a bidder, but instead are requirements for the Contractor after the contract has been awarded. However, RFP § 4.0 *Proposal Preparation and Submission* required that in completing the technical proposal, “the bidder shall describe its approach clearly and thoroughly and provide detailed plans for accomplishing the work outlined in the Scope of Work section, i.e., Section 3.0 within the time frames specified in the RFP. The bidder must set forth its understanding of the requirements of this RFP and its ability to successfully mobilize its operation and complete the contract.” (RFP § 4.4.4 *Technical Proposal*.)

In connection with this protest, the Division's Hearing Unit conducted an independent review of PPL's proposal and CAU's protest. That review found as follows.

December 8, 2015 Protest Letter – Challenge to NOI

In its December 8, 2015 protest letter, CAU raises 54 separate points for which it states PPL's proposal was non-response to the RFP requirements. The points raised in CAU's December 8, 2015 and December 22, 2016 protest letters are addressed below.

1. RFP § 3.1.1 *Contract Implementation Period*; RFP § 4.4.3.4 *Mobilization and Implementation Plan*; RFP § 6.8 *Negotiation and Best and Final Offer*.⁵

CAU alleges that PPL's proposal is non-responsive because it cannot comply with the 90-day implementation period and commence the contract work by January 1, 2016 as required by the RFP.

RFP § 3.1.1 *Contract Implementation Period* states that “[t]he contractor shall have a ninety (90) calendar day contract implementation period, commencing on the contract's effective date. During this time, the contractor shall perform, but not be limited to, the tasks as set forth in the RFP § 3.1.2 *Project Launch/Orientation*, becoming completely operational, and fully assuming all of the tasks in the entire [Scope of Work] SOW by January 1, 2016.” I note that RFP § 4.4.3.4 *Mobilization and Implementation Plan* indicates a mandatory start date of January 1, 2016. However, RFP § 5.3 *Contract Transition*, stated “[i]n the event that a new contract has not been awarded prior to the contract expiration date, as may be extended herein, it shall be incumbent upon the contractor to continue the contract under the same terms and conditions until a new contract can be completely operational.” Accordingly, while the RFP indicates a start date of January 1, 2016, the RFP also acknowledges that there may be a delay in awarding the contract which will result in an alternate start date. Therefore, the RFP required that “the bidder must include as part of its proposal a mobilization and implementation plan, beginning with the date of notification from the [State Contract Manager] SCM of contract award for a period of ninety (90) calendar days.” (RFP § 4.4.3.4 *Mobilization and Implementation Plan*.)

Prior to the proposal due date, during the Question and Answer Period (Q&A Period), the Division entertained all questions and inquiries from all potential bidders regarding RFP language. (RFP § 1.3.1 *Electronic Question and Answer Period*.) The Q&A Period for this solicitation closed on August 14, 2015, and on September 1, 2015, the Bureau posted Addendum #2 responding to questions received from potential bidders. During the Q&A Period several questions were posed by potential bidders regarding the mandatory contract implementation date. In response to questions posed regarding RFP § 3.1.1, the Bureau stated that the “[e]xact dates for the assumption of specific contract duties will be determined throughout the contract implementation period after the contractor's consultation with, and the receipt of written approval from the SCMs.” (Addendum #2, Q41.) Further, RFP § 5.2 *Contract Term and Extension Option* states that “[t]he term of the contract shall be for a period of five (5) years. The **anticipated** “Contract Effective Date” is provided on the *Signatory Page* accompanying this RFP. If

⁵ Each heading number corresponds to an allegation raised in CAU's December 8, 2015 Protest letter.

delays in the procurement process result in a change to the anticipated Contract Effective Date, the bidder agrees to accept a contract for the full term of the contract.” (*Emphasis added.*)

In its proposal response to RFP § 3.1.1, PPL acknowledged the 90-day implementation period; however, PPL noted that based upon its own experience, a 90-day implementation period is ambitious given the number of program users to be transitioned and therefore recommended that a phased approach be considered. (PPL Proposal p. 1). Conforming to the RFP requirements, in its proposal response to RFP § 4.4.3.4, PPL included a draft of the proposed implementation period Work Plan beginning with the date of notification from the SCM of contract award for a period of 90 calendar days and with a start date of January 1, 2016. PPL’s proposed Work Plan includes 90-day and 180-day timelines for DHS’ consideration. (Appendix M). The Work Plan is organized as follows: 1) Contract; 2) Project Planning; 3) Tax Planning; 4) Communication Planning; 5) Program Materials; 6) Enrollment; 7) Data Exchange; 8) DOAS Operational Requirements; 9) DDS’ Operational Requirements; 10) DDD’s Operational Requirements; 11) Billing; 12) Finance; 13) System Design & Configuration; and 14) Go Live Activities. PPL also provided a detailed breakout of the activities required for the Readiness Review. (PPL Proposal p. 47-48).

CAU’s allegation that the RFP requires a mandatory start date of January 1, 2016 is in error. RFP § 5.2 *Contract Term and Extension Option* specifically states that the RFP sets forth an anticipated start date and that delays in the start date may result in a change to the contract effective date. PPL’s proposal sets forth a timeline for the implementation period starting on the contract effective date. Because there is only an anticipated start date, PPL’s proposal conforms to the RFP requirement for a 90-day implementation period. Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

2. Bifurcation of a tax year.

CAU alleges that PPL cannot be awarded the contract because doing so results in the tax year being bifurcated, would constitute a breach of contract, is contrary to the requirements of the RFP, and will result in chaos for Program participants.

With respect to the bifurcated tax year, the Bureau’s response to the bidder questions indicates that the assumption of the contract duties will be determined throughout the contract implementation period by way of consultation between the contractor and the SCM. Nothing in the RFP precludes the bifurcation of the tax year between contractors and therefore such an action will not result in a breach of contract. As noted supra, the contract required that bidders submit a detailed timetable for the mobilization and implementation period demonstrating how the bidder will have the contract up and operational starting on the date of notification of award. (RFP § 4.4.3.4 *Mobilization and Implementation Plan.*) Specifically, the plan should include the plan for the deployment and use of management, supervisory or other key personnel; the plan for recruitment of staff; the plan for the purchase and distribution of equipment, inventory, supplies, materials; and plan for the use of subcontractor. (*Ibid.*) The transition plan is developed to decrease the likelihood that there will be chaos during the transition period. In its proposal response, PPL submitted a detailed work plan for the contract implementation period.

With its protest, CAU submitted a memorandum prepared by its consultant. In the memorandum, the consultant asserts that certain steps must be taken during the transition from one vendor to another. While CAU’s consultant states that certain tax considerations must be addressed, the consultant does not conclude that the tax year cannot be bifurcated; rather, “when bifurcated federal and state tax year occurs, the current and new Vendor F/EA FMS organizations must work together to make sure the transition

happens in an accurate and timely manner and seem ‘seamless’ to the individual/representative-employer.” (Exhibit 1 to CAU’s December 8, 2015 Protest letter.)⁶

Nothing in the applicable statutes, regulations, or the RFP requires that the contract be awarded to avoid the bifurcation of the tax year. Therefore, the Bureau could properly award a contract to PPL as the responsible bidder whose proposal, conforming to this RFP, was most advantageous to the State, price and other factors considered. (*Ibid.*; N.J.S.A. 52:34-12.) Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

3. RFP § 3.3 *Administrative Requirements for the Contract's Operations.*

CAU alleges that PPL’s proposal is non-responsive because at the time PPL submitted its proposal, PPL did not maintain an office in New Jersey. CAU alleges that RFP § 3.3(A) *Administrative Requirements for the Contract's Operations* requires that the contractor maintain a physical office in the New Jersey at the time of proposal submission. Therefore, CAU states that PPL should have been evaluated as an out-of-state bidder.

RFP § 3.3 states in pertinent part that “[t]he contractor shall, at a minimum, perform the administrative requirements for the contract operations as follows: (A) Maintain a physical site for the managing staff, who have been identified in this RFP to work in New Jersey.” This language of the RFP does not require that the contractor have a physical office in New Jersey. Rather the structure of the sentence requires that the contractor have a physical site from which it can manage those staff who are working in New Jersey. However, even if the RFP were to require a physical office location in New Jersey, RFP § 3.0 *Scope of Work* details the requirements of the contractor, not the bidder. As noted above, “contractor” is defined in the RFP as “[t]he bidder awarded a contract resulting from this RFP.” (RFP 2.1 *General Definitions.*) Thus, at the time of proposal submission, a bidder is not required to demonstrate that it has a physical office in the State of New Jersey. This RFP requirement would come into effect after the contract award. Therefore, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of this section of the RFP and therefore is responsive to this section of the RFP.

With respect to out-of-state bidders, the New Jersey Administrative Code defines an “out-of-state bidder” as “a bidder that does not have regular place of business in New Jersey.” N.J.A.C. 17:12-2.13(a). The regulations go on to state that “pursuant to the provisions of N.J.S.A. 52:32-1.4 et seq., the Director shall apply on a reciprocal basis against an out-of-state bidder any in-state preference that is applied in favor of that bidder by the State or locality in which the bidder maintains its principal place of business.” N.J.A.C. 17:12-2.13(b).⁷ “The Director shall provide notice of the Division’s intent as to in-state preference through appropriate language in the terms, condition, and/or specifications of the RFP.” N.J.A.C. 17:12-2.13(c). RFP § 1.4.9 *Reciprocity for Jurisdictional Bidder Preference* states in pertinent part:

⁶ Here, that requires CAU, the current contractor/protester, to work cooperatively with the intended awardee, PPL.

⁷ N.J.S.A. 52:32-1.4 states “Any bidder with its principal place of business located in another state which has provisions of state law, rules or regulations causing disadvantage to any bidder for a public contract to provide like goods, services or both to that state because the bidder's principal place of business is located outside of that state shall have like conditions applied to it in a manner pursuant to regulations issued by the State Treasurer when bidding for a public contract in this State. The provisions of this act may be waived with respect to a bidder, if the State Treasurer, on the basis of economic or other circumstances, determines it to be in the best interest of the State.”

In accordance with N.J.S.A. 52:32-1.4 and N.J.A.C. 17:12-2.13, the State of New Jersey will invoke reciprocal action against an out-of-State bidder whose state or locality maintains a preference practice for its bidders. For states having preference laws, regulations, or practices, New Jersey will use the annual surveys compiled by the Council of State Governments, National Association of State Purchasing Officials, or the National Institute of Governmental Purchasing to invoke reciprocal actions. The State may obtain additional information as it deems appropriate to supplement the stated survey information.

A review of the information available on the websites of the Council of State Governments, National Association of State Purchasing Officials, and the National Institute of Governmental Purchasing, as well as the relevant Massachusetts statutes and case law does not reveal that Massachusetts has a preference practice for its in-state bidders. Therefore, in reviewing PPL's proposal, the Bureau did not invoke a reciprocal action in its review of PPL's proposal.

Further, in response to the RFP, PPL described its approach to this section with detail and stated that it "understands and agrees to the administrative requirements of this contract. PPL has identified suitable locations in each region of New Jersey that meet the requirements of this RFP. We have included an Office Survey of potential locations in Trenton in Appendix B and discuss New Jersey locations in more detail in sections 3.6.1 and 4.4.4.1. Upon contract award, PPL will lease, furnish, and equip regional offices." (PPL's Proposal p. 3.) Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

4. Applicable Laws - Home Care Rule and Difficulty of Care Income Exclusion.

CAU alleges that PPL does not understand the applicable laws, specifically the "Home Care Rule" and the "Difficulty of Care Exemption" which no longer exist; therefore, it is not qualified to perform the services required by this contract.

In 1938, Congress first enacted the Fair Labor Standards Act (FLSA) which required that employers "pay covered works a minimum wage for all hours worked and overtime wages for hours worked in excess of 40 in a week." Home Care Assoc. v. Weil, 76 F. Supp. 3d 138, 140 (D.D.C 2014) (reversed and remanded by Home Care Assoc. v. Weil, 799 F.3d 1084 (D.C. Cir 2015)). In 1974 Congress amended the FLSA to exempt certain classes of employees from the minimum wage and overtime requirements. Ibid. In part the amendments exempted "any employee employed in the domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves." Ibid., citing 29 U.S.C. § 213(a)(15). In 1975, the Department of Labor promulgated implementing regulations. In part,

the regulations focus on the employees and the nature of the employees' services. The "term 'domestic service employment' refers to services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom he or she is employed." Examples include cooks, housekeepers, caretakers, chauffeurs, and "babysitters employed on other than a casual basis."

"Companionship services" means "those services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs." Services "which require and are performed by trained personnel," such as by nurses, do not qualify as "companionship

services.” Finally, “live-in” workers are described as “[d]omestic service employees who reside in the household where they are employed.”

The regulations further specify that the exemptions cover companions and live-in domestic service workers who are “employed by an employer or agency other than the family or household using their services.” Although the final 1975 regulations acknowledge that the Department contemplated the question of whether employees of third parties should be exempt under the statute, the Secretary “concluded that these exemptions can be available to such third party employers since they apply to ‘any employee’ engaged ‘in’ the enumerated services.” The final regulation elaborated, “This interpretation is more consistent with the statutory language and prior practices concerning other similarly worded exemptions.”

[Home Care Assoc., *supra*, 76 F. Supp. 3d at 141 (internal citations omitted.)]

Those regulations remained substantially unchanged until October 1, 2013, when the Department of Labor (DOL) issued new regulations which removed the exemption granted to third-party employers. Thereafter, the Home Care Association of America commenced an action under the Administrative Procedures Act which resulted in the Court of Appeals for the District of Columbia sustaining the DOL’s 2013 regulations. Home Care Assoc., *supra*, 799 F.3d 1084.

In its proposal response to RFP § 3.3 *Administrative Requirement for the Contract’s Operations*, PPL states that it “takes a proactive approach in identifying and interpreting federal and state laws and regulations that impact participant direction. PPL is well versed on the impact of the United States Department of Labor Home Care Rule as well as IRS Notice 2014-7⁸ Difficulty of Care Income Exclusion affecting live-in providers of Medicaid services.⁹ PPL is fully prepared to help NJDHS implement these and other requirements.” (PPL’s Proposal Response to RFP § 3.3 *Administrative Requirement for the Contract’s Operations*, Vol. 1, Section 2, p. 3.)

Contrary to CAU’s allegation, PPL’s proposal indicates an understanding of the DOL’s regulations regarding domestic service employment or companionship services and its ability to satisfy the requirements. Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

⁸ IRS Notice 2014-7 “provides that certain payments received by an individual care provider under a state Medicaid Home and Community-Based Services Waiver (Medicaid waiver) program, described in this notice, are difficulty of care payments excludable under § 131 of the Internal Revenue Code.” *See*, <https://www.irs.gov/pub/irs-drop/n-14-07.pdf>.

⁹ On January 3, 2014, the Internal Revenue Service issued Notice 2014-7 which provides guidance on the federal income tax treatment of certain payments to individual care providers for the care of eligible individuals under a state Medicaid Home and Community-Based Services waiver program described in section 1915(c) of the Social Security Act (Medicaid Waiver payments). *See*, <https://www.irs.gov/Individuals/Certain-Medicaid-Waiver-Payments-May-Be-Excludable-From-Income>

5. RFP § 3.3.1 *Protections for Participant Information and Subcontractor Utilization Form.*

CAU alleges that PPL “will be subcontracting essential portions of the SOW to unidentified subcontractors;” specifically, CAU claims that PPL’s proposal is non-responsive because “it fails to provide any information regarding the Protections for Participant Information as required by RFP § 3.3.1 and the requirements of the Health Insurance Portability and Accountability Act.” (CAU December 8, 2015 Protest letter p. 4.)

First, RFP § 3.3.1 *Protections for Participant Information* requires that “[t]he contractor shall, at all times, in performance of this contract, provide and maintain compliance with the Health Insurance Portability and Accountability Act (HIPAA).”

In its proposal response to RFP § 3.3.1, PPL states:

PPL is committed to maintaining the strictest security and confidentiality standards. We understand the benchmarks for HIPAA compliance are security, privacy, and stringent transaction standards. Each PPL staff member receives instruction on confidentiality and signs a confidentiality agreement. All staff are required to complete Basic and Advanced Security Awareness Training annually. We have an in-house compliance officer, Stuart Kaufman, Esq., who was the former General Counsel to the Massachusetts Executive Office of Health and Human Services as well as the founding General Counsel of the Massachusetts Ethics Commission. Mr. Kaufman reviews all of our contract and confidentiality obligations and ensures that we establish processes and procedures. Our information technology infrastructure also supports full HIPAA compliance in all areas of our business operations. We have secure email functionality and use secure File Transfer Protocol (FTP) sites. Only designated PPL staff and client-approved individuals are granted access to our systems. The information stored on our secure servers is routinely backed up, ensuring continuity of service and protecting against loss of information due to unforeseen natural events.

[PPL’s Proposal Response to RFP § 3.3.1 *Protections for Participant Information*, Vol. 1, Section 2, p. 3.]

With respect to compliance with HIPAA regulations, PPL’s proposal indicates that it is “committed to maintaining the strictest security and confidentiality standards.” Therefore, PPL’s proposal conforms to and is responsive to the requirements of the RFP and does not contain a deviation related this protest point.

Second, with respect to the use of subcontractors to perform various contract work, RFP § 4.4.1.3 *Subcontractor Utilization Plan* requires “All bidders intending to use a subcontractor must submit a completed Subcontractor Utilization Plan.” With its proposal, PPL included a *Subcontractor Utilization Plan* listing TechnoSphere, Inc. as its sole subcontractor. In addition, PPL provided the following with respect to subcontractors in its proposal:

PPL proposes to use the services of several subcontractors as outlined in 4.4.1.3 Subcontractor Utilization Plan. PPL has already conducted due diligence in an attempt to identify qualified small business subcontractors registered in New Jersey where possible. Also, PPL proposes to use the following subcontractors (resumes included below) which have partnered with PPL successfully for years on multiple projects of similar size and scope.

- Cathedral Corporation - Provides ancillary printing and production services; printed and electronic financial communication programs, direct mail, and e-marketing services.
- JLS Mailing Services, Inc. - Provides ancillary mailing support, including postal automation (presort), data processing, database management, letter shop and inventory management.
- United Business Mail - Provides full range of ancillary printing and production services, including postal automation (presort) mail processing.
- Scan America - Provides document scanning and imaging services on-site at PPL facilities, or at their state-of-the-art conversion centers.
- LiveOps Inc. - With more than 10 years of cloud experience, LiveOps, Inc. is currently the largest US-based cloud customer service center.
- LanguageLine Solutions - Provides document translation and over the phone translation services on behalf of callers who have a preferred language other than English.

CAU alleges that PPL's proposal is non-responsive because PPL did not list all of its intended subcontractors on the form. As noted above, in order for PPL's proposal to be deemed non-responsive, the deficiency at issue must be a material deviation. In other words, the deviation must (1) deprive the State of its assurance that the contract will be entered into performed and guaranteed according to the specifications or (2) that the deviation places the bidder in a position of advantage over other bidders thereby undermining the common standard of competition. See, Twp. of River Vale v. Longo Constr. Co. 127 N.J. Super. 207, 216 (Law Div. 1974)

PPL listed one subcontractor, Technosphere, on the *Subcontractor Utilization Form*. Within PPL's proposal it identified its subcontractors, provided a summary of the work to be performed by the individual subcontractors, and set forth the contact information for each of the subcontractors. (PPL's Proposal RFP § 4.4.4.3 *Resumes*, p. 42.) The additional subcontractors identified within PPL's proposal, but not listed on the *Subcontractor Utilization Form*, will be performing ancillary work (mailing, scanning, print production, etc.), none of them will be performing work identified within the RFP's SOW. While a deviation from the RFP requirement that all subcontractors be listed on the form exists, the deviation is not material.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

6. RFP § 3.4 Customer Service Requirements and RFP § 3.4.6 Coordination of Support Services.

CAU alleges that PPL's proposal is non-responsive because PPL does not specifically address where the call center is located and only indicates in its proposal that it subcontracts some of its call-center services.

RFP sections 3.4 through 3.4.6 required that the contractor provide call center services and provide a certain level of customer service. The RFP sections set forth certain contractor requirements regarding customer service and responsiveness when responding to customer inquiries regardless of whether the inquiry is received by phone call, email, fax or letter.

In its proposal, PPL stated:

PPL employs a sophisticated project management and organizational approach to ensure that the unique requirements of each program are clearly understood and that [the] clients' requirements are fully met. This approach is supported by dedicated national centers of operational excellence, including a full-scale financial operations center, a state-of-the-art customer service center, and an in-house, fully supported and managed information technology center. The personnel, technology resources, and best practice processes available in these collaborative centers provide PPL with the ability to fully meet New Jersey's requirements for both initial project mobilization and implementation, along with ongoing operations.

[PPL's Proposal Response to RFP § 4.4.3.2 *Contract Management*, Vol. 1, Section 2, p.47]

Further, in its proposal PPL stated:

Customer Service, headquartered in Phoenix, Arizona, and managed in multiple locations as well as home offices across the United States, is responsible for communicating with participants, authorized representatives, employees and other service providers, and relevant stakeholders. Customer Service Level I Specialists are trained to handle typical customer service requests. Level II Specialists are trained to handle escalated issues. Over 50% of Customer Service staff members are bilingual, speaking Spanish and English, with ready access to translation services and TTY. PPL has invested in call center technology that supports the requirements of participant direction, including Internet Voice Recognition (IVR) technology to provide access to timesheet status and payment history, outbound calling capability to alert participants and providers to call PPL when there is an issue, and utilization reporting capability that is unparalleled in the industry. Our call center technology solutions are fully integrated with BetterOnline™ to give Customer Service Specialists real-time access to all participant and provider information.

[PPL's Proposal RFP § 4.4.4 *Organizational Support and Experience*, Vol. 1, Section 3, p.6,]

PPL's proposal indicated its intent to comply with the requirements of the RFP regarding customer service and support services. In addition, contrary to CAU's protest, PPL did identify where the call center would be located – "Customer Service, headquartered in Phoenix, Arizona." Nonetheless, these are requirements of the contractor after contract award. They are not requirements of the bidder at the time of proposal submission.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

7. RFP § 3.4.5 Web Site.

CAU alleges that PPL's proposal is non-responsive because it fails to include a toll-free telephone and toll-free fax number with its proposal or PPL's contact information, including hours of operation, web address and email address for each of its operational units.

RFP § 3.4.5 *Web Site* states that a "contractor shall provide and maintain a website for the purpose of providing education regarding the contract's services and displaying contact information for the contractor...." As noted above, RFP § 3.0 *Scope of Work* sets forth requirements for the contractor. At the time of proposal submission, a bidder is not required to provide its toll-free phone and fax numbers or website address. Rather, as required by RFP § 4 *Proposal Preparation and Submission*, in submitting its technical proposal, a bidder is required to "describe its approach clearly and thoroughly and provide detailed plans for accomplishing the work outlined in the Scope of Work section, i.e., Section 3.0 within the time frames specified in the RFP. The bidder must set forth its understanding of the requirements of this RFP and its ability to successfully mobilize its operation and complete the contract." (RFP §4.4.3 *Technical Proposal*.)

In its proposal response to RFP § 3.4.5 *Web Site*, PPL states in part "[t]o meet the growing reliance on web-based information, we ensure that our program websites are truly a "one-stop shop" for programmatic forms and information. We build a comprehensive website that provides easy access to critical contact information... The PPL website provides a hub for program resources..." (PPL's Proposal, Vol. 1, Section 2, p. 6.)

Through its proposal response, PPL described its approach with detail and demonstrated its intent to comply with the requirements of this section of the RFP, specifically to build and maintain a website. Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

8. RFP § 3.4.8.1 Policies and Procedure Manual.

In its protest, CAU alleges PPL's proposal is non-responsive because PPL failed to discuss certain RFP requirements that relate to its Policies and Procedures Manual (P&P Manual), specifically RFP § 3.4.8.1(B), (F) and (G).

RFP § 3.4.8.1 *Policies and Procedure Manual* requires that the contractor take certain steps with respect to the development and maintenance of the P&P Manual. Specifically, RFP § 3.4.8.1(B) states that "[t]he contractor shall review a copy of the existing P&P Manual(s), which will be provided to the contractor by the respective SCMs at the Project Launch meeting." As noted in the RFP language, the current manual will not be provided to the contractor until the Project Launch meeting, which will occur after the contract award; therefore, a bidder is unable to review and revise the manual, and discuss the same in its proposal. Further, RFP § 3.4.8.1(B) states that the revised manual is to be submitted to the SCM 30 days after the contract effective date.

Turning to RFP §§ 3.4.8.1(F) and (G), RFP § 3.4.8.1(F) states that the SCM will review the P&P Manual and may return it to the contractor for modification if necessary. This section of the RFP, requires the SCM to act, it does not require any action or response from the bidder. RFP § 3.4.8.1(G) requires that the contractor review and update the manual annually, within 15 days of the contract anniversary date. This section of the RFP does not require any action or response from the bidder, and does not require any action on behalf of the contractor until the contract anniversary date.

In its proposal, PPL states in part "[d]uring implementation, PPL will develop and maintain a P&P Manual for each program of DHS with the review and approval of the respective SCMs. PPL regularly monitors subcontractors to ensure compliance with P&P Manual. We develop internal controls specific to each subcontractor's task. PPL and subcontractors adhere to these internal controls to ensure

that performance objectives are being met.” (PPL’s Proposal, Vol. 1, Section 2, p. 8.) PPL has acknowledged and stated that it will comply with the RFP requirement to develop and maintain a manual.

Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

9. RFP § 3.4.8.2 Handbook for Participants.

CAU alleges that PPL’s proposal is non-responsive because it did not include information regarding RFP § 3.4.8.2(L) and (M) as it relates to the Handbook for Participants.

RFP § 3.4.8.2(L) sets forth the minimum requirements for the handbook to be prepared by the contractor for use by program participants. In its proposal response, PPL states in part “[w]e intend to reach out to participants, providers, and case managers/care coordinators in addition to DHS staff during drafting of the Handbook. The Handbook will include all the key elements in regard to hiring, firing, workers’ compensation, policies and roles of key service providers, while also containing insightful narrative on what it takes to be successful in self-direction.” PPL has acknowledged the handbook requirements and indicated its intent to draft the handbook in conformance with the RFP requirements.

RFP § 3.4.8.2(M) requires that the contractor provide and maintain up-to-date copies of the handbook in various formats. In its proposal response, PPL described its approach in detail and stated that it “will ensure the Handbook is readily available through various channels and formats in addition to multiple languages as applicable.” PPL’s proposal conforms to this requirement of the RFP.

Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

10. RFP § 3.5 Quality Management Requirements.

CAU alleges that PPL’s proposal is non-responsive because PPL failed to demonstrate the efficacy of its quality management program as required by RFP § 3.5 *Quality Management Requirements*.

RFP § 3.5 states that the “contractor shall provide and maintain a quality assurance monitoring process, specific to FMS services and FCS services, which monitors the contractor’s performance.” This section of the RFP discusses the quality assurance monitoring that will take place during the term of the contract and does not require any action or response by the bidder.

In its proposal response to RFP § 3.5, PPL set forth its approach in detail regarding its Compliance and Quality Assurance program, its Policies and Procedures documents that govern quality control, Quality Assurance Management Lifecycle, and Management Review and Internal Audit.

Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

11. RFP § 3.5.1 Medicaid State Plan Compliance.

CAU alleges that PPL’s proposal is non-responsive because PPL did not describe any elements of the plan that would demonstrate PPL’s actual knowledge or understanding of the NJ Medicaid State Plan.

RFP § 3.5.1 *Medicaid State Plan Compliance* requires that “New Jersey’s Medicaid State Plan contain many quality-related requirements. The contractor shall work with the respective SCM to develop a compliance plan for these requirements that meets with the SCM’s prior approval before implementation.” This RFP section requires that the contractor work with the SCM, after the award of the contract, to develop a compliance plan.

In its proposal response, PPL stated that it “has reviewed the Medicaid State Plan quality related requirements. Upon contract award, PPL will meet with each SCM to review and develop a compliance plan prior to implementation.” In its proposal, PPL has expressed its intent to comply with the requirements of the SOW. Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

12. RFP § 3.5.2.2 Annual Satisfaction Survey.

CAU alleges that PPL’s proposal is non-responsive because it has failed to discuss or reference the submission requirements regarding the Annual Satisfaction Survey.

RFP § 3.5.2.2 *Annual Satisfaction Survey* requires that the contractor disseminate an annual satisfaction survey, to be provided by the SCM, and then collect, analyze and summarize the data in accordance with the SCM’s requirements. This RFP requirement relates to post award activities and does not require any action by the bidder.

In its proposal response, PPL outlines its survey, states that it has a high participant satisfaction, and notes that it will comply with the corrective action plans based upon the survey results. PPL has expressed its intent to comply with the requirements of the SOW.

Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

13. RFP § 3.5.3 Corrective Action Plan.

CAU alleges that PPL’s proposal is non-responsive because PPL failed to acknowledge that DHS will retain funds if a Corrective Action Plan (CAP) is put into place and further alleges that PPL’s proposal fails to address how it will deal with CAP retainage.

RFP § 3.5.3 *Corrective Action Plan* states that in the event that the SCM identifies a contract violation, the SCM will require that the contractor submit a CAP. Specifically RFP § 3.5.3(C) sets forth certain requirements of the contractor with respect to the CAP.

With respect to retainage RFP § 5.15 *Retainage* states:

The amount of retainage is noted on the RFP signatory page accompanying this RFP. The using agency shall retain the stated percentage of each invoice submitted. At the end of each three (3) month period, the using agency shall review the contractor's performance. If performance has been satisfactory, the Using Agency shall release ninety percent (90%) of the retainage for the preceding three (3) month period. Following certification by the State Contract Manager that all services have been satisfactorily performed the balance of the retainage shall be released to the contractor.

In its proposal, PPL states that its primary goal is to perform at the highest level in all areas of service and delivery. However, in the event that a CAP becomes necessary, PPL will “readily comply with the development and delivery of a comprehensive plan of action.” (PPL’s Proposal, Vol. 1, Section 2, p. 13.) In its proposal, PPL has expressed its intent to comply with the requirements of the SOW.

Accordingly, PPL's proposal was not required to address the narrow allegation in the protest and does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

14. RFP § 3.6.1 Contractor's Office Locations.

CAU alleges that PPL's proposal is non-responsive because PPL's proposal does not list office locations in the northern, central and southern regions of the State.

RFP § 3.6.1 *Contractor's Office Locations* states that “[t]he contractor shall provide, equip, maintain, staff and manage three (3) physical offices, dedicated to performing all tasks required of the contractor as set forth in this RFP. The offices must be located in three (3) regions of the State of New Jersey [Northern, Central and Southern] ... The offices must be able to accommodate walk-in clients.”

In its proposal, PPL states it “has located suitable properties in all three regions, close to public transit, available for lease subject to contract award.” (PPL's Proposal, Vol. 1, Section 2, p. 13.) As previously noted, Section 3 of the RFP sets forth contractor requirements. Therefore, PPL was not required to provide the specific information regarding office locations in its proposal. In its proposal, PPL did evidence its intent to comply with the RFP requirement upon award of the contract.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

15. RFP § 3.6.2 Project Staffing.

CAU states that PPL's proposal is non-responsive because PPL did not provide the list of key personnel who will be performing work on the contract with its proposal. CAU claims that this is a material deviation from the requirements of the RFP.

RFP § 3.6.2 *Project Staffing* requires that “[t]he contractor shall provide personnel for the project, who are knowledgeable and experienced in providing” the services required. “The [Account Manager] shall submit a written request to the SCMs for prior approval of proposed key personnel at the Project Launch meeting and throughout the contract term.”

In its proposal, PPL states:

PPL will assign a highly qualified and experienced team of managers and staff to complete the activities and tasks required by this RFP. PPL responsibilities include smooth transfer of existing programs from the incumbent FMS and FCS vendors, launch and configuration of the PPL IT system, and support of the anticipated expansion of participant direction in New Jersey. In addition to the required positions (key personnel) listed in the sections that follow, PPL will assign the following resources (resumes are listed in section 4.4.4.3).

[PPL's Proposal, Vol. 1, Section 2, p. 14.]

Additionally, in its proposal PPL listed five individuals who will hold the key positions. Moreover, in its technical proposal (Section 4) PPL provided organizational charts and resumes for staff that would be assigned to the contract.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

16. RFP § 3.6.2.8.1 *Project Staff-Cash and Counseling Specific Requirements.*

CAU alleges that PPL's proposal is non-responsive because PPL did not provide a response to RFP § 3.6.2.8.1 *Project Staff-Cash and Counseling Specific Requirements*, specifically sub-section (C) dealing with the maximum caseload for consultants. The RFP requires that:

The contractor shall hire a staff of consultants (i.e., fiscal counselors) to be assigned to work with participants. Each full-time consultant shall have a maximum caseload of 110 participants. Each part-time consultant shall have a maximum caseload of 60 participants. Prior permission from the SCM is required to exceed the numbers as set forth in this requirement. These requirements (RFP Section 3.6.2.8.1.C) shall also apply to the VD-HCBS Program. The contractor shall also hire trained fiscal counselors for the VD-HCBS Program. Please refer to RFP Section 3.20.19 for VD-HCBS specific tasks attributed to the VD-HCBS counselors.

[RFP § 3.6.2.8.1 *Project Staff-Cash and Counseling Specific Requirements(C).*]

In its proposal, PPL states that “we understand that all staff and subcontracted staff hired will receive a program overview including the philosophy of self-direction and hands on training related to the completion of all program forms, including the CMP. PPL will hire a staff of trained, qualified consultants with maximum caseloads which meet RFP requirements to work with participants in the applicable programs.” (PPL's Proposal, Vol. 1, Section 2, p. 16.) To the extent that it was necessary that a bidder provide a response to this section of the RFP, PPL's proposal expressly indicated its intent to comply with the RFP requirements regarding staffing.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

17. RFP § 3.6.3.1 *Federal Employer Identification Number (FEIN) For the Contractor.*

CAU alleges that PPL's proposal is non-responsive because “PPL proposes to have separate [FEIN's] for each of the using agencies. However, PPL [did] not explain why this would be considered a best practice.”

RFP § 3.6.3.1 *Federal Employer Identification Number (FEIN) for the Contractor* requires that “[d]uring the contract implementation period, the contractor shall establish a new FEIN for itself during the contract implementation period for the sole purpose of using the new FEIN when acting as fiscal agent for the program participants. The FEIN is necessary for reporting taxes.” In its proposal, PPL states that it will establish separate FEINs for each User Agency Program. Specifically,

As an incumbent VF/EA FMS entity in New Jersey and 24 other states, PPL has an established FEIN for the sole purpose of acting as fiscal agent for program participants. As our best practice, PPL will establish a separate 2678 Agent FEIN for each User Agency program (or group of programs per your recommendation). Separate 2678 Agent FEINs for each program (or group of programs) will strengthen bank account segregation required by Section 3.10.1, and improve transparency of requirements listed in Section 3.12.2. Separate FEINs are severable, another advantage, so if program changes are needed to one program not all User Agencies would face making FEIN changes. PPL has

demonstrated and performed this model in multiple states and it works well and is already part of our solution.

[PPL's Proposal, Vol. 1, Section 2, p. 16.]

The RFP language does not preclude the contractor from establishing multiple FEINs. With respect to CAU's protest, in its proposal, PPL stated that separate FEIN's will strengthen bank account segregation, improve transparency and allow for program changes if needed. Contrary to CAU's protest, PPL did explain why its proposal to use multiple FEIN's is a best practice. PPL's proposal indicates that its best practice is to create multiple FEIN; however, this statement does not preclude PPL from creating only 1 FEIN if this practice is mandated by DHS.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

18. RFP § 3.6.3.2 Contractor Authorizations

CAU alleges that PPL's proposal is non-responsive to the RFP requirements because PPL did not "state that it will do all that is required in this paragraph for each participant/authorized representation-employer (sic) it represents as agent."

RFP § 3.6.3.2 required that a contractor "have federal authority to act as a VF/EA FMS entity for Participant/Authorized Representative-Employers for the sole purpose of acting as fiscal agent for program participants." The RFP also lists certain tasks that must be completed by the contractor before or during the contract implementation period in order for the contractor to receive the federal authority to act as VF/EA FMS entity. In its proposal response, PPL states that:

As an incumbent VF/EA FMS entity in New Jersey and 24 other states, PPL has established Form SS-4, Form 2678 and Form 8821 for the sole purpose of VF/EA services. PPL maintains Form 1997C from the IRS to be the agent for the program and program participants. PPL will renew IRS Form 8821 as required by the IRS and this RFP.

PPL has indicated its intent to comply with the RFP requirements by utilizing its existing federal authority. To the extent that additional federal authority is required to complete the work under this contract, PPL will have an opportunity to complete any necessary action during the contract implementation period.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

19. RFP § 3.6.6 Third-Party Agreements with the State's Managed Care Organizations.

CAU alleges that PPL's proposal is non-responsive because PPL has not specified whether its Managed Care Organizations (MCO) agreements are with New Jersey or National MCOs. CAU further alleges that PPL's response to this section of the RFP demonstrates a lack of understanding of Personal Preference Programs (PPP) and New Jersey's Medicaid program.

RFP § 3.6.6 required that during the contract implementation, the contractor shall establish a third-party agreement with New Jersey's MCOs to facilitate support of those members who wish to self-direct benefits and further sets forth certain requirements of the contractor in dealing with MCOs.

In its proposal response, PPL stated in part that it has "established working relationships and agreements with third-party MCO organizations including AmeriGroup, Horizon, WellCare, and United

Health Care.¹⁰ We have created data exchanges and shared business practices. Additionally, we have extensive Medicaid, MCO, and state claiming experience. Our proprietary Medicaid Billing System streamlined the process of submitting and reconciling claims electronically...PPL expects to work with each MCO directly and not need to compensate a third party clearinghouse to submit, rebill or receive claims and remittances. **We will consult the state on MCO engagement status and obtain the proper prior approvals.**” (PPL’s Proposal, Vol. 1, Section 2, p. 17, *emphasis added*.)

RFP § 3.6.6 requires that the contractor establish third-party agreements with the State’s MCOs. There is no requirement in the RFP that a bidder establish the contracts prior to the contract award. PPL’s proposal response indicates that it has been successful in creating relationships with MCOs and further expresses PPL’s intent to comply with the RFP requirements upon contract award during the implementation period stating “We will consult the state on MCO engagement status and obtain the proper prior approvals.” In its proposal, PPL has expressed its intent to comply with the requirements of the SOW.

Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

20. RFP § 3.7 Meet-and-Greet the Program Participants.

CAU alleges that PPL’s proposal is non-responsive because PPL has proposed a group methodology. CAU alleges that the proposed group meetings would eliminate the one-on-one approach for most program participants.

RFP § 3.7 *Meet-and-Greet the Program Participants* requires that within 60 calendar days of the contract effective date, the contractor shall conduct in-person meet and greets, contact by telephone or send a mailed communication to 100% of program participants in order to identify itself as the new contractor, provide contact information and to explain its role as the FMS and FCS contractor.

PPL’s proposal indicates PPL’s intent to comply with the requirements of the RFP stating:

PPL looks forward to the opportunity to meet-and-greet participants and/or their authorized representatives. Upon receipt of timely and accurate data from the SCMs and/or incumbent contractors, and within sixty (60) days of the contract effective date, PPL will mail a program-specific introductory letter (welcome letter) to 100% of participants. The letter will introduce PPL as the new FMS and FCS contractor, and will provide program-specific contact information, including a toll-free customer service number, PPL’s web site, and e-mail address.

[PPL’s Proposal, Vol. 1, Section 2, p. 17.]

The RFP requires that the contractor conduct in-person meet and greets. The RFP does not require that the contractor conduct one-on-one meetings. Further, though not required by this section of the RFP, PPL states that it will conduct group enrollment sessions and for those participants who are not able to attend the group session, PPL will provide home visits. (PPL’s Proposal, Vol. 1, Section 2, p. 18.) In its proposal, PPL has expressed its intent to comply with the requirements of the SOW.

Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

¹⁰ In its January 15, 2016, response to the protest, PPL states that it “currently has relationships with just four of the five New Jersey MCOs because none of the participants served by PPL have been enrolled with Aetna.”

21. RFP § 3.7.1.1 Orientation.

CAU alleges that PPL's proposal ignores the fact that there will be a need to enroll program participants after the initial transfer is completed. CAU further claims that the orientation and training of new program participants cannot effectively be accomplished through a group setting and that PPL has failed to address any of the items listed in sub-section C. Therefore, CAU states that PPL's proposal is non-responsive.

RFP § 3.7.1.1 *Orientation* requires that a contractor develop an orientation process that uses a standardized curriculum and materials, both of which must be approved by the SCM prior to use. The orientation skills training shall take place at least once per year with each participant. RFP § 3.7.1.1(C) requires that orientation curriculum include, but not be limited to, a list of 40 items identified in the RFP.

This section of the RFP requires that the contractor work with the SCM in developing the orientation process, and specifically lists requirements for the orientation curriculum.

Contrary to CAU's protest, PPL's proposal does not state that it will only conduct group orientation meetings. In its proposal, PPL stated it will work with the SCM to develop an orientation process, curriculum and materials for the SCM's approval. Moreover, PPL's proposal states that "[a]ll pertinent processes and procedures will be addressed." PPL's proposal reveals its intent to comply with the requirements of this section of the RFP.

In its proposal response PPL described its approach to this section with detail demonstrating its understanding of the requirements of this contract. Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

22. RFP § 3.8 Establish Individuals as Participants.

CAU alleges that PPL's proposal is non-responsive because PPL did not list or reference in its proposal all of the information that would be included in the enrollment packet.

RFP § 3.8 *Establish Individuals as Participants* sets forth the criteria for the contractor to establish an individual as a new participant along with their authorized representative as a common law employer. In addition, the section lists items that must be included in the participant enrollment packet.

In its proposal response, PPL stated "PPL will develop a New Jersey-specific Participant/Authorized Representative Enrollment Packet for DHS to approve that will include all the necessary forms. PPL's Enrollment Packets are comprehensive, user-friendly, and include all the information and documentation necessary to establish participants/authorized representatives as employers." (PPL's Proposal, Vol. 1, Section 2, p. 19.)

While PPL did not list each and every form that will be included in the enrollment packet, it did include a sample enrollment packet with its proposal. Further, the RFP identified the mandatory forms and PPL stated that it will include all necessary information in the enrollment packet. In its proposal, PPL has expressed its intent to comply with the requirements of the SOW.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

23. RFP § 3.9 Budget Plans.

CAU alleges that PPL's proposal is non-responsive because PPL has not addressed the steps that it will take to (1) prevent a participant from having a lengthy wait for services while budget plans are being addressed; (2) ensure that enrollment times frames are met; and, (3) that services are not delayed or denied during the transition period.

RFP § 3.9 *Budget Plans* requires that the contractor: (1) obtain from the SCM/MCO the current budget plan; (2) details how a participant's cash grant is to be expended; (3) review the participant's file to ensure that installment payments are properly made; (4) develop a method to provide cash to a participant if included in the budget plan; (5) identify budget plans that were revised in the month prior to the contractor assuming the program to ensure that new plans are immediately put into effect; (6) maintain a file of budget plans for each participant; and (7) allow a participant to adjust budget limitations.

PPL's proposal outlines a transition plan that will allow it to work with DHS to monitor and steer the transition process. PPL states that this is in an effort to minimize any negative impact that a transition may have on participants and providers. Specifically, PPL's proposal stated in part that (1) it has extensive experience managing individual budgets for participant directed services; (2) during the implementation period, PPL will work with DHS to configure the data transfer that will allow PPL to receive the current budget plans for participants; and (3) it will review and monitor participant files regarding installment payments. PPL's proposal evidences its intent to comply with the contractor requirements upon the commencement of the contract.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

24. RFP § 3.9.1 Initial Development of Budget Plans for DDS and DOAS Programs.

CAU alleges that PPL's proposal for this point demonstrates a lack of knowledge and understanding regarding budget plans because contrary to PPL's proposal, program participants are never in charge of budget limitations.

RFP § 3.9.1 *Initial Development of Budget Plans for DDS and DOAS Programs* requires that "[t]he contractor shall assist participants in completing their budget plans." RFP § 3.9.1 (A). Further, the RFP requires that "[f]ollowing the development of the initial budget plan, the contractor shall allow a participant to revise the budget plan as often as they wish." RFP § 3.9.1(C). In addition, RFP § 3.9(C) requires that the contractor "[a]llow participants/authorized representatives to adjust budget limitations, with the SCM's approval."

In its proposal, PPL states in pertinent part that it:

will establish a process to receive and maintain participants' initial and updated budgets from the appropriate using agency...Participants and authorized representatives will have the ability to adjust budget limitations via the BetterOnline™ web portal...Our consultants will meet with participants and assist with the development of an initial plan or any revisions and will be available to answer any questions...PPL will allow the participant to modify their initial plan as often as they wish; so long as approved by the using agency. PPL consultants will assist the participant with any revisions as needed and approved.

PPL's proposal regarding participant budget plans conforms to the requirements of the RFP. Contrary to CAU's allegation, the RFP does permit participants to "adjust budget limitations."

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

25. RFP § 3.10 *Participants' and Contractor's Accounts for DDS and DOAS.*

CAU alleges that PPL's proposal on this point reflects a lack of understanding of PPPs and New Jersey's unique approach to PPPs because PPL's proposal does not "demonstrate management of unspent participant funds." Moreover, CAU alleges that "the needs of PPP participants are greater and the options available to PPP participants are broader than DOAS; the appreciation of these differences is not reflected in PPL's proposal and; therefore, [PPL's Proposal] is non-responsive and non-compliant." (CAU December 7, 2015 Protest letter).

RFP § 3.10 *Participants' and Contractor's Accounts for DDS and DOAS* requires that the contractor establish individual participant accounts for the purpose of receiving each participant's cash grant electronically from the Medicaid fiscal agent and to establish individual enrollee accounts to devise a method for tracking and monitoring, on an individual basis, the cash grant amount in comparison to the authorized plan of care.

In its proposal, PPL states "Our BetterOnline™ web portal will maintain records of all payment history of cash grants for the MCO and state program participants.... PPL will only disburse payments following receipt and validation of the approved purpose. Approved purposes include eligibility status of the consumer, good to go status of the provider or direct care worker, accuracy of prior authorization service, maximum rate data, and US OIG validation..." (PPL's Proposal, Vol. 1, Section 2, p. 21.)

The contract resulting from this RFP requires that the contractor submit an electronic claim to the MCO for reimbursement of both medical services provided and administrative expenses. (RFP § 3.10(G).) This new RFP term differs from the current contract for similar services, under which the State fronts the money to the contractor for medical services provided and administrative expenses. The current contract process can result in unspent participant funds being held by the contractor. However under this RFP, the contractor will have to expend the funds to cover the services being provided and then seek reimbursement from the State. Therefore, the RFP did not require discussion of the management of unspent funds in PPL's proposal. Further, the RFP did not require a bidder to discuss options available to PPP participants.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

26. RFP § 3.10.1 *Funds Management and Accounting.*

CAU claims that PPL's proposal is non-responsive with respect to RFP § 3.10.1 (G) because PPL did not "reference the time limit requirements in responding to the State Contract Manager." (CAU December 7, 2015 Protest letter). CAU further claims that PPL's proposal is non-responsive because PPL has proposed that the State be the account holder for participant funds which is contrary to the RFP which requires that the contractor be the account holder.

By way of summary, RFP § 3.10.1 *Funds Management and Accounting* requires that the contractor: (A) receive, disburse and track Medicaid and State funds in an accurate and timely manner; (B) establish and maintain an accounting and information system for receiving and disbursing Medicaid and other federal funds; (C) establish a separate administrative bank account into which payments from the using agencies shall be deposited; (D) absorb all bank charges; (E) prevent the co-mingling of funds; (F) not utilize funds deposited into the separate administrative account to satisfy any contractor liability; and (G) "[w]ithdraw from the separate administrative bank account all payments made by the Using Agencies for administrative fees within seven (7) business days of receipt."

With respect to CAU's protest points, in its proposal PPL states that it "will withdraw from the administrative bank account all payments made by the using agencies for administrative fees within seven (7) business days of receipt." Accordingly, as to RFP § 3.10.1 (G), PPL's proposal conforms to the requirements of the RFP.

Further, with respect to CAU's allegation that PPL has proposed that the State be the account holder, in its proposal PPL states "[o]ur systems will receive, disburse and track Medicaid and State funds accurately and timely in a controlled environment with a broad array of configurable financial and programmatic controls. We will establish separate interest bearing commercial checking accounts and configure our standard controls to ensure that there is no comingling of funds received from any other source. PPL will establish and evidence segregated bank accounts for the Using Agencies. This is our standard practice and a fundamental financial control...To tailor products we will need additional information about account details, and **whether NJ would entertain being an account holder.**" (PPL's Proposal, Vol. 1, Section 2, p. 22, *emphasis added.*) Further, in its response to the protest, PPL acknowledges that it proposed that the State rather than the contractor be the account holder. As noted in its proposal, if "New Jersey would entertain being an account holder...Government Funds products can be deployed that are designed to maximize interest, protect balances from creditors, and meet risk limits." (PPL's Proposal, Vol. 1, Section 2, p. 22, *emphasis added.*)

PPL's proposal did not mandate that the State become the account holder. Rather, it set forth the advantages of the State being the account holder. However, with respect to the requirements of this section of the RFP, in its proposal, PPL stated that it will establish separate interest bearing accounts. PPL's proposal described its approach to this section with detail demonstrating its understanding of the requirements of this contract. Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

27. RFP § 3.11 Contractor's Cash Flow.

CAU claims that PPL's proposal is non-responsive because, at the time of proposal submission, PPL did not have the required lines of credit and cash reserves established; PPL did not demonstrate that it has experience billing New Jersey MCOs; and that PPL has reserved the right to propose alternate billing methods or to negotiate additional costs.

As to CAU's claims related to lines of credit and cash reserves, RFP § 3.11 *Contractor's Cash Flow*, requires that the contractor establish a \$3 million line of credit and have a \$3 million cash reserve for this contract. In its proposal PPL stated "Upon notification of award, PPL will establish a \$3 million line of credit and have available a \$3 million cash reserve as indicated in the RFP." (PPL's Proposal, Vol. 1, Section 2, p. 23.) Additionally, PPL provided its consolidated financial statements demonstrating its ability to comply with the requirements of the RFP. Further, though not required by the RFP, in its proposal response PPL stated that it "has the financial capabilities to support the requirements of DHS." (PPL's Proposal, Vol. 1, Section 2, p. 23.)

RFP § 4.1 *General* states "[p]roposals including supplemental terms and conditions may be accepted, but supplemental terms or conditions that conflict with those contained in this RFP or the State's NJ Standard Terms and Conditions ("RFP/SSTC"), as may be amended by addenda, or that diminish the State's rights under any contract resulting from the RFP will be considered null and void." Therefore, PPL's proposal response that it has reserved its right to propose alternate billing methods, which is inconsistent with the RFP and the SSTCs, is considered null and void.

Moreover, in its proposal, PPL states that it "will submit timely claims to DHS or the MCOs seeking reimbursement and DHS or the MCOs shall provide timely payment and remittance information to PPL to maintain cash flow within the agreed upon limits." (PPL's Proposal, Vol. 1, Section 2, p. 23.) Further, in its response to the protest, PPL clarified that it is prepared to bill New Jersey's MCOs based

upon its existing relationships in New Jersey and its experience in other states. (PPL's January 15, 2016, Response to the Protest.)

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

28. RFP § 3.12 *Established Payroll and Withholding Records.*

CAU alleges that PPL's proposal is non-responsive because PPL did not outline how the required records will be established and maintained.

RFP § 3.12 *Established Payroll and Withholding Records* requires that "[t]he contractor shall provide and maintain payroll and withholding records for all participants' domestic household employees...During the contract implementation period, obtain from the SCM and the incumbent contractor, and maintain in the file during the contract term."

In its proposal PPL states that it

has designed, implemented, and managed self-directed programs through the use of a fully operational web portal, BetterOnline™ and highly customized Payroll Processing System. Both systems work in harmony to maintain payroll and withhold records for each participants' domestic household workers...During the Implementation Phase, PPL will obtain current payroll and withholding records, as well as files of timekeeping, monthly, quarterly, and annual reports, from each respective SCM and the parting incumbent. PPL will integrate and maintain these files in our system throughout the contract period.

[PPL's Proposal, Vol. 1, Section 2, p. 23.]

This section of the RFP requires that the contractor perform the task identified, it does not require that the bidder submit a plan of how it intends to complete the task, however PPL has indicated it will accomplish this using its BetterOnline™ portal and has expressed its intent to comply with the requirements of the SOW.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

29. RFP § 3.12.1 *Related Federal and New Jersey Taxes.*

CAU states that PPL's proposal is non-responsive because PPL has not performed any payroll services in New Jersey for any self-directed services program. CAU further claims that PPL's lack of experience is evidenced by its failure to acknowledge that the difficulty of care exemption is not applicable to New Jersey taxes.

RFP § 3.12.1 *Related Federal and New Jersey Taxes* stated that "[t]he contractor shall accurately process and distribute workers' payroll and related federal and New Jersey income tax withholding and employment-related taxes in compliance with all federal and State requirements in a timely manner."

In its proposal, PPL states that it "has well established policies, procedures, and internal controls for timely processing and distribution of workers' payroll and related federal and state income tax withholding and employment-related taxes in compliance with all federal and state requirements. Upon contract award, PPL will prepare a P&P Manual detailing these provisions for the review and approval of

the SCMs as required. PPL assumes that the incumbent vendors will furnish all applicable records within specified timelines.”

This section of the RFP requires that the contractor accurately process and distribute federal and state tax withholdings; it does not require that the contractor have prior experience performing the work in the State of New Jersey nor does the RFP ask for details regarding confirmation of any specific tax exemption or law. In its proposal, PPL states that it has established policies and procedures to complete the work required in this section of the RFP and will obtain review and approval of the SCM.

Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

30. RFP § 3.12.2 Process Workers’ Payroll.

CAU alleges that PPL’s proposal is non-responsive because “PPL indicates that it will pend payments for denied claims and pend payments where PPL lacks approval from the MCOs or Medicaid.” CAU claims that this practice “will expose a large number of participants...to both federal and state wage and hour complaints.” Further CAU states that PPL’s proposal is non-responsive because PPL lacks familiarity with requirements of New Jersey tax laws.

RFP § 3.12.2 *Process Workers’ Payroll* requires that “[t]he contractor, as the fiscal agent for the participant, shall perform all employer-related financial, accounting, withholding, filing, and payroll duties for the participant that is required of an employer to provide for employees.” This section of the RFP lists specific duties which are to be completed by the contractor and includes in part:

7. Implement a system for addressing situations when a participant has his/her staff work hours in excess of the approved hours; by signing the timesheet reflecting an overage and notifying the Using Agency. Note: The contractor is required to pay the worker for every hour worked. The FCS function must address the issue by immediately informing the participant of the overage, inform him/her that his/her allowable hours must be reduced by the overage, and adjust the worker’s time accordingly on the next timesheet;
8. Notify the Using Agency and the participant when a worker works in excess of approved hours within one (1) business day of receipt of the involved timesheet;
9. Implement a system for recouping overages when a worker works in excess of approved hours per the Using Agencies requirements;

In its proposal, PPL proposed

...to implement pay controls to prevent workers from billing and/or being paid for hours that exceed the participants’ individual budgets. The BetterOnline™ web portal can be programmed to “pend” payment for services that exceed budgets for the review of participants, representatives, consultants, and/or service coordinators. PPL will pay up to the individual’s budget and services, thereby negating the need to recoup overages from workers. Budgets may be revised as needed where applicable to permit PPL to pay for these services. PPL will provide authorized users with real time access to information via the BetterOnline™ web portal. In addition, PPL can generate “pend reports” that meet this requirement. In the event that a worker is paid in excess of approved hours, PPL has established processes for recouping the overpayment.

[PPL's Proposal, Vol. 1, Section 2, p. 24-25.]

PPL's proposal indicates that it will utilize its BetterOnline™ web portal to implement payment controls and to monitor payments. Further, PPL states that it will assure payment approvals before paying provider claims and states that its payment controls are all compliant with State and Federal laws.

This section of the RFP did not require a bidder to itemize its prior tax reporting experience in New Jersey; therefore, the fact that PPL's proposal does not list in detail this specific experience did not result in the proposal being deemed non-responsive. However, as required by the RFP, PPL did affirmatively state that it will establish all pay controls in accordance with state and federal laws. PPL's proposal to monitor and enact payment controls will serve to avoid wage and hour complaints.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

31. RFP § 3.13.1 *Bill for Services Rendered and Administrative Expenses.*

CAU alleges that PPL's proposal is non-responsive because "PPL indicates that it will rely on the State and MCOs for accurate and timely participant information to claim for participants. PPL does not indicate how it will address and overcome issues with the inaccuracies in State or MCO data."

RFP § 3.13.1 *Bill for Services Rendered and Administrative Expenses* sets forth the procedure though which the eligibility and enrollment exchange should occur and details the method that the contractor shall use to process claim payments. This section of the RFP does not require that a bidder or contractor address discrepancies or inaccuracies in information provided to the contractor from the State or MCO.

PPL's proposal addresses the requirements of the RFP stating that it will adjudicate invoices for goods and services provided by non-Medicaid providers. Related to accurate and timely participant information that, PPL's proposal goes on to indicate:

Most timesheets are valid and free of errors. There are occasions when timesheets are submitted late, and we will need direction from the State about setting date work thresholds. For instance, timesheets submitted to PPL beyond the window of time necessary to allow PPL to submit the claim to the using agency or MCO is 180 days from the date of service. PPL can pay this claim if DHS determines that 180 days is acceptable and agrees to lift any timely filing requirement, and agrees to reimburse PPL for the total amount of the claim via the standard electronic method or other alternative reimbursement processes agreed upon by PPL and DHS. PPL will not issue a denial letter for each time a TS is pended or denied as we have developed a more efficient telephonic solution through our BLAZE technology detailed in our Customer Service response.

PPL has extensive Medicaid, MCO, and state claiming experience. Our proprietary Medicaid Billing System streamlines the process of submitting and reconciling claims electronically. PPL will submit weekly claims to and receive payments from the MMIS in accordance with the requirements of this RFP. PPL understands that services shall only be delivered and billed for as dictated by the budgets and program rules, or timesheets and invoices will not be paid. PPL understands the requirement to bill MCOs based on participant information received

from the MCOs. A file transfer process will be determined during the Project Launch meeting. PPL will submit a monthly invoice to the SCM for counseling services to non-MCO participants.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

32. RFP § 3.14.1 *Payments to Non-Medicaid Providers.*

CAU states that PPL's proposal is non-responsive because "PPL does not discuss or reference RFP § 3.14.1 subsection A which lists examples of non-Medicaid service providers."

RFP § 3.14.1 *Payments to Non-Medicaid Providers* requires:

- A. The contractor shall execute payment for various participant-directed components provided by non-Medicaid providers, including but not limited to the following services:
 1. Individual supports;
 2. Respite services;
 3. Community transition services;
 4. Assistive technology;
 5. Environmental and vehicle modifications;
 6. Use of a Personal Emergency Response System (PERS);
 7. Approved transportation; and
 8. Approved additional goods and services.

In its proposal response to the RFP section, PPL states "[u]pon contract award, PPL will establish a process for invoicing the using agencies for costs accrued from non-Medicaid providers." (PPL's Proposal, Vol. 1, Section 2, p. 27.) PPL has expressed its intent to comply with the requirements of the SOW.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

33. RFP § 3.15 *Electronic Claiming.*

CAU alleges that PPL's proposal is non-responsive because PPL did not offer a mechanism or time frame for the work required by this section of the RFP. CAU states that PPL suggested an alternate approach for MCOs, recommending that the MCOs "learn new business requirements and adapt."

RFP § 3.15 *Electronic Claiming* states that "[t]he contractor shall **develop and maintain** electronic claiming ability for billing through the Fiscal Agent's and MCOs' systems." (*Emphasis added.*)

In its proposal response, PPL states that

PPL is a registered Medicaid provider in NJ and has developed an electronic invoicing process for the purpose of billing the MMIS fiscal agent. Our proprietary Medicaid Billing System meets the specific Companion Guide requirements for delivering the standard 837P Health Care Claim, and for receiving the standard 835 Health Care Claim Payment/Advice file formats. We have in place agreements related to HIPAA with NJ and MCOs. Each MCO will require the selected vendor

to demonstrate different levels of security controls as well which we are prepared to manage. We apply reasonable business judgment working with each MCO as to the scope of special processing requests they may require to support this RFP. In prior engagements we have worked out alternative approaches with MCOs to accommodate complex, large scale and relatively new work in support of MLTSS initiatives in states. The participant direction model described in this RFP is similar to other engagements where the MCOs have had to learn new business requirements and adapt. PPL is well positioned to facilitate this process. Upon award, PPL will validate our approach via the Rules Engine BRD process described earlier and per our response at Sections 3.6.1, 3.6.6, and 3.10 relevant to MCO billing.

[PPL's Proposal, Vol. 1, Section 2, p. 27-28.]

The RFP requires that the contractor develop and maintain an electronic claiming system for billing through the Fiscal Agent's or MCOs' systems, it did not mandate that the contractor use a specific system. Further, as noted above PPL has indicated that, upon award of a contract, PPL will validate its approach for electronic claiming.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

34. RFP § 3.17 Broker Workers' Compensation Insurance for Participant/Representative Employers.

CAU alleges that PPL's proposal is non-responsive because "PPL is attempting to rework New Jersey Systems without understanding them and its response demonstrates PPL's lack of critical knowledge regarding New Jersey requirements." Further, CAU claims that "PPL's approach to the management of workers' compensation itself seeks to limit participant direction and shows a lack of commitment to participant direction in all its responsibilities under the RFP."

RFP § 3.17 *Broker Workers' Compensation Insurance for Participant/Representative Employers* requires that "[t]he contractor shall effectively broker workers' compensation insurance for Participant/Authorized Representative-Employers in accordance with the New Jersey workers' compensation insurance law. Each consumer must have choice in the selection of a workers' compensation policy, and the contractor itself shall not engage a policy for a participant." The RFP continues by listing certain requirements of the contractor with respect to workers' compensation insurance.

In its proposal, PPL stated that it "**is fully able to meet the requirements for brokering workers' compensation insurance as specified in Section 3.17 (A. 1-7).**" However, expecting participants to apply to three insurance carriers and be denied coverage before obtaining mandatory coverage through the assigned risk pool administered by NJ CRIB is an unnecessarily complex and time consuming process. As an alternative, PPL proposes to broker coverage for each participant using a voluntary market approach through carriers willing to write voluntary coverage for household employers in New Jersey." (PPL's Proposal, Vol. 1, Section 2, p. 28, *emphasis added.*) PPL's proposal expressly states PPL's intention to comply with the requirements of the SOW. PPL's commentary regarding the unnecessary complexity of the process, and suggestion of an alternate method, does not negate its agreement to comply with the RFP requirements.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

35. RFP § 3.18 *Enroll Workers, Individual Directed Goods and Services Providers and Vendors.*

CAU alleges that PPL's proposal is non-responsive because "PPL suggested that DHS defer referral of new participants enrolling in the program until PPL gets through its readiness review. This is a direct admission by PPL that it cannot provide services."

RFP § 3.18 *Enroll Workers, Individual Directed Goods and Services Providers and Vendors* sets forth the process through which "the contactor shall process workers' human resource documentation and goods and services providers' and vendors' information and input it into the contractor's payroll and billing invoice payment system in an accurate and complete manner within two (2) weeks of being referred."

In its proposal, PPL set forth details regarding its ability to enroll workers, individual goods and services providers and vendors using its BetterOnline™. Specifically, as to the enrollment of new participants, PPL's proposal states:

During the transition of programs, the transitioning FMS vendor(s) will cease enrollment of participants and workers/providers no later than November 30th 2015. DHS will defer the referral of new participants and workers/providers to PPL until PPL has passed the portions of the readiness review related to serving new referrals. These actions will allow PPL to focus attention on transferring existing participants and workers/providers before PPL is required to process new referrals. This will also prevent the requirement for new participants and workers/providers to enroll with a transitioning FMS, only to be required to re-enroll with PPL. This will also help to eliminate confusion as to which FMS is ultimately responsible for serving these participants and workers/providers.

PPL's proposal does not contradict the requirements of the RFP. RFP § 3.23 states that the contractor must pass the readiness review before it accepts enrollments. Further, pursuant to RFP § 3.1, the SCM must approve the contractor's work plan and approve the readiness review requirements before the contractor will be allowed to assume and perform the SOW tasks. Therefore, PPL's suggestion that DHS defer referrals of new participants until after the completion of the readiness review is consistent with these RFP section requirements.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

36. RFP § 3.18.1 *Dis-enroll Workers, Individual Directed Goods and Services Providers and Vendors.*

CAU alleges that PPL's proposal is non-responsive because this section of the RFP "does not seek information regarding the prospective contractor's process for dis-enrolling participants, but workers, individual directed goods and service providers and vendors. PPL's proposal fails to respond to the requirements of the RFP and instead details a process for dis-enrolling participants."

RFP § 3.18.1 *Dis-enroll Workers, Individual Directed Goods and Services Providers and Vendors*, requires that the contractor shall accurately process a **change** in a participant's enrollment status, including disenrollment. RFP § 3.18.1(A)(1). (*Emphasis added.*)

Contrary to CAU's allegation, the RFP does require that the contractor process dis-enrollments. Indeed, PPL's proposal states that "[u]pon receipt of the formal notification indicating that a person no longer will serve as the common law employer, PPL retires that Individual Employer's FEIN. PPL then

sends a standardized revocation letter to the IRS and attaches the original Form 2678. The letter states that PPL will no longer be representing the individual employer under Section 3504 of the IRS Code. PPL will maintain a copy of the revoked Form 2678 and the IRS revocation letter (LTR 4228C) in the common law employer's archived file." This portion of PPL's proposal relates to service providers and vendors not, as CAU alleges, to individual participants. PPL's proposal, which addresses its approach to process the change in a participant's enrollment status, is responsive to the requirements of the RFP.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

37. RFP § 3.20.4 Notification of Changes.

CAU alleges that PPL's proposal is non-responsive because "PPL fails to reference the elements of RFP § 3.20.4 subsections A-G."

RFP § 3.20.4 *Notification of Changes* requires that:

The contractor shall ascertain service limitations for participants and providers through an interface with the HCBS/ADRC database. DOAS will notify the contractor of changes to the following service limitations for providers:

- A. Units of service;
- B. Units per visit;
- C. Frequency of service;
- D. Total units per week;
- E. Authorized cost per unit;
- F. Authorized cost per week; and
- G. Authorized cost per month.

This section of the RFP requires that the contractor complete the work requested. However, PPL's proposal indicates "PPL is familiar with and will continue to interact with the State's HCBS/ADRC database via nightly uploads in order to maintain and update demographic, authorization, budget, co-payment, notifications of changes, and all other required information." (PPL's Proposal, Vol. 1, Section 2, p. 34.) PPL's proposal goes on to state that PPL will continue to interact with the State's HCBS/ADRC database via nightly uploads in order to maintain and update required information. (PPL's Proposal, Vol. 1, Section 2, p. 35.)

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

38. RFP § 3.20.11 Payment Record Reconciliation.

CAU alleges that PPL's proposal is non-responsive because "PPL fails to reference the requirements in RFP § 3.20.11 sub-section (B) 1 – 7."

RFP § 3.20.11 *Payment Record Reconciliation* states in pertinent part:

- B. The contractor shall develop a monthly report of the results of reconciliation between the two files, and submit the report to the DOAS SCM on a monthly basis. This monthly reconciliation report shall be submitted either as hardcopy, or in Microsoft Word or Excel, and shall include, at a minimum, the following information:

1. Differences in payment amounts;
2. Errors in reporting the claim disposition;
3. Errors in reporting the reasons for payment modifications;
4. Errors in reporting the reasons for claim denials;
5. Errors in reporting the reasons for pended claims;
6. Explanations as to the cause of the errors; and
7. Specific corrective actions taken.

This section of the RFP requires that the contractor complete the work requested. With respect to sub-section B, the RFP requires that the reconciliation report at a minimum include the enumerated sections. In its proposal PPL stated that it “will provide this reconciliation monthly in the agreed upon form.” (PPL’s Proposal, Vol. 1, Section 2, p.38.) I note that PPL was not required to parrot back or reference the minimum reporting requirements in its proposal response.

Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

39. RFP § 3.20.12.1 Co-Payment Billing Information.

CAU alleges that PPL’s proposal is non-responsive because “PPL fails to reference the elements in RFP § 3.20.12.1 sub-section (A) 1 – 9.”

RFP § 3.20.12.1 *Co-Payment Billing Information* states:

- A. The contractor shall develop a pro forma co-payment billing statement subject to prior approval by the DOAS SCM. The billing Statement shall contain the following information:
 1. A clear statement that the bill is assessed on behalf of DOAS and the amount is the co-payment the participant is required to pay as a participant in the JACC program;
 2. The participant’s name and program identification number;
 3. A list of services the participant is authorized to receive and the authorized costs of such services;
 4. The amount of co-payment due through the billing month;
 5. The total of any overdue amounts;
 6. The total amount of co-payment due as of the date of the bill;
 7. A year-to-date history of total co-payment billed and paid as of the billing date;
 8. The name and number of the CM and/ or financial counselor; and
 9. A telephone number the participant may call with questions regarding the bill.

This section of the RFP requires that the contractor complete the work requested. Specifically, the RFP required that the Billing Statement include the enumerated information. PPL was not required to list or parrot back the requirements of the Billing Statement in its proposal response. In its proposal PPL stated that “[w]hile it contains the majority of the requirements listed in this RFP, upon contract award we will update the form to contain the other required information.” (PPL’s Proposal, Vol. 1, Section 2, p. 38.) Thus, PPL has agreed to fulfill the RFP requirements.

Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

40. RFP § 3.20.12.2 Co-Payment Collection Procedures.

CAU alleges that PPL's proposal is non-responsive because "PPL fails to reference the requirements in RFP § 3.20.12.2 sub-section (A) 1 and 2."

RFP § 3.20.12.2 *Co-Payment Collection Procedures* states:

- A. The contractor shall develop a pro forma warning letter, subject to prior approval by the DOAS SCM, that warns participants that their services **MAY** be terminated from the program for non-payment of their co-payment;
 1. If a participant's overdue amount exceeds sixty (60) days past due, the contractor shall issue the first overdue warning letter and send a copy of the first overdue warning letter to the CM;
 2. If the participant's overdue amount exceeds ninety (90) days, the contractor shall:
 - a) Issue a second overdue warning letter to the participant stating that services **WILL** be terminated from the program in thirty (30) days if the co-payment is not paid;
 - b) Send a copy of the second overdue warning letter to the CM and DOAS;
 - c) Send a final notice letter if co-payment has not been received within thirty (30) days;
 - d) Send copy of the final notice letter to the CM and DOAS; and
 - e) The contractor shall maintain records of participants with an overdue co-payment for at least ninety (90) days beyond any termination.

[Emphasis in the original.]

This section of the RFP requires that the contractor complete the work requested. PPL was not required to list or reference the individual requirements of this section in its proposal; however, PPL's proposal stated that it will "work with the SCMs during the business requirements definition period to develop a quarterly report on the status of co-pay payments. This report will include a history of all patient pay amounts covering the enrollment period in the program" and that it will leverage its experience collecting and reporting co-payments in New Jersey and other states when developing this process.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

41. RFP § 3.20.14 Timekeeping for PEP Efforts.

CAU alleges that PPL's proposal is non-responsive because "the automated time tracking system PPL uses does not reflect what is described in DOL's Administrator's interpretation 2014-2. Therefore, DOAS could be at risk of being considered a joint employer with the participant/authorized representative-employer."

RFP § 3.20.14 *Timekeeping for PEP Efforts* states that the “the contractor **may**¹¹ utilize an automated time tracking system that records the clocking in and out of the [Participant-Employed Provider] PEP through use of the participant/employer’s home telephone (i.e., the actual site where the services are being provided) as the primary method of recording the PEP’s work hours.” (*Emphasis added.*) The RFP also lists certain functionality required of the time tracking system.

In its proposal, PPL states:

During our time working with DOAS, PPL has had (sic) processed thousands of timesheets for PEPs. While our original method of receiving faxed or mailed timesheets works, PPL is always working to create efficiencies. Two new ways that PPL offers for PEPs to track their time is using our BetterOnline™ web portal and our BetterOnline mobile application. PPL recommends these as our suggested means of receiving PEP time information. As mentioned earlier, the electronic method for submitting timesheets immediately lets PEPs know that their time is good or if there are any issues. In some states we service, this is the only means to submit time. In addition to these services, PPL currently has a timesheet that we use for our current program with DOAS. This can be updated and provided to PEPs who cannot or chose not to use our Web portal or mobile application. All timesheet information that PPL receives is entered into our FMS system and the records are maintained. This data can be shared with DOAs as required.

[PPL’s Proposal response to RFP § 3.20.14, Vol. 1, Section 2, p. 39.]

Moreover, PPL states

PPL’s BetterOnline™ web portal decreases the opportunity for fraudulent timesheet submission (e.g., forged signature or time). Participants and workers log into the BetterOnline™ web portal using their personal username and password to submit and approve timesheets. The BetterOnline™ web portal’s integration with our financial management system ensures validation in real time to check for common timesheet errors and fraudulent submissions. PPL workers follow the best practices of identifying potential fraud initiated by the Office of Inspector General. This includes, verifying conflicting timesheet submissions (e.g., date of services recorded on the timesheet submitted by the worker matches dates where the employer was receiving inpatient hospital care), confirming workers’ qualifications and credentials as well as mining timesheet discrepancies.

[PPL’s Proposal response to RFP § 3.5.2, Vol. 1, Section 2, p. 11.]

Further, in its response to the protest, PPL states that “all of [its] proposed methods for PEP timekeeping are fully compliant with the United States Department of Labor Administrator’s Interpretation 2014-2.”¹²

¹¹ RFP § 2.1 *General Definitions* defines “May” as that which “denotes that which is permissible, not mandatory.”

¹² In In re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995), the court held that “[t]he RFP specifically approved of bidders’ clarifying or elaborating in their proposals in post-opening proceedings but prohibited supplementation, change or correction. In clarifying or elaborating on a proposal, a bidder explains or

The RFP requests that the contractor have an automated time tracking system and sets forth certain functionality of the system implemented by the contractor. In its proposal, PPL proposes to use its BetterOnline™ web portal and BetterOnline mobile application as the time tracking system.

What the RFP requires is that the contractor develop a manual, hardcopy timesheet process where the automated system cannot be utilized. In its proposal, PPL stated that has a hardcopy a timesheet process

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

42. RFP § 3.20.16.1 Dispute Resolution.

CAU claims that PPL's proposal is non-responsive because although PPL claims to have experience with worker's compensation, it has not had any experience with workers' compensation in New Jersey.

RFP § 3.20.16.1 *Dispute Resolution* requires that "[t]he contractor shall attempt to settle any labor/employer dispute brought to the attention of the contractor, by either the participant/employer or PEP." The RFP further delineates the steps to be taken by the contractor to resolve a dispute.

In proposal, PPL stated "we have experience with and stay current with issues related to worker's compensation...If disputes are brought to PPL, we will work to resolve them as quickly as possible using the steps outlined in the RFP. If we are unable to resolve the dispute we will refer the parties to the appropriate CM and provide all documentation and will not consider the matter finalized until documentation has been received." (PPL's Proposal, Vol. 1, Section 2, p.40.)

PPL's proposal specifically stated that it will use the steps outlined within the RFP for dispute resolution and therefore, with respect to dispute resolution. With respect to New Jersey's workers' compensation laws, PPL's proposal stated that it is aware of the tax laws that affect the state and that it stays current with issues related to worker's compensation.

In its proposal response PPL described its approach to this section with detail demonstrating its understanding of the requirements of this contract. Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

43. RFP § 3.20.17 Contractor Remuneration.

CAU alleges that PPL's proposal is non-responsive because "PPL fails to reference the requirements in subsection A-C."

RFP § 3.20.17 Contractor Remuneration

- A. The contractor shall be reimbursed for payments it makes to providers for JACC and shall be compensated for the services it provides in fulfilling the responsibilities of this RFP;

amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP." PPL's response to the protest is not a supplementation or change, rather it is a permitted clarification of its original proposal submission.

- B. The source for reimbursement is predicated upon whether the contractor is being reimbursed for provider payments or being compensated for the work performed and whether the participant who received the service(s) was participating under the VD-HCBS program or participating under the other JACC program at the time the service was provided; and
- C. The contractor shall develop, implement, and manage a financial system that accounts for all remunerated funds and shall develop the information systems needed to process transactions in the manner prescribed by both MMIS and DOAS.

In its proposal, PPL's proposal indicated that it is familiar with the reimbursement process based upon the many programs it supports and can implement this process "for payments made to JACC and VD-HCBS providers and for the services performed by PPL. Our financial system meets the requirements of MMIS and DOAS."

PPL was not required to list or parrot the individual requirements of this section in its proposal; therefore, PPL's proposal complies with these requirements of the SOW.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

44. RFP § 3.20.19 *Veterans' Self-Directed Home Care Services Operational Requirements.*

CAU alleges that PPL's proposal is non-responsive because "PPL fails to reference the requirements in §3.20.19 subsections A-K."

RFP § 3.20.19 *Veterans' Self-Directed Home Care Services Operational Requirements* sets forth the contractor's requirements for Veterans enrolled in the Veterans' Self-Directed Home Care Services (VD-HCBS) Program. The RFP does not require bidders to reference each of the RFP requirements in its proposal response. Rather, bidders should express their ability to perform the RFP requirements.

In its proposal response, PPL stated that it "has supported the Veteran-Directed HCBS Program since 2010...In these programs, services include managing Veteran and provider enrollment, processing criminal background checks, processing provider payroll and taxes as well as processing payments for goods and services."

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

45. RFP § 3.21 *DDS' Operational Requirements.*

CAU states that PPL's proposal is non-responsive because "PPL generalizes the way in which claims will be submitted to MCOs. PPL simply does not understand the process or the operational requirements as set forth in the RFP."

RFP § 3.21 *DDS' Operational Requirements* sets forth the general procedures for payments and administrative fees for VF/EA FMS services.

In its proposal response, PPL stated that it "has experience working with and processing claims for four New Jersey MCOs. PPL will work with our national debit card providers to provide eligible participants with debit cards for payment of approved services. PPL will invoice at rates approved by DDS for the reimbursement of new participants' PCA benefit payments."

In its proposal response PPL described its approach to this section with detail demonstrating its understanding of the requirements of this contract. Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

46. RFP § 3.21.1 *Providing Counseling Services to Participants/Authorized Representative.*¹³

CAU alleges that PPL's proposal is non-responsive because "PPL provides no detail regarding the process or how these services will be provided as required in RFP § 3.21.1"

RFP § 3.21.1 *Providing Counseling Services to Participants/Authorized Representative* requires that the "contractor's FCS functions must coordinate with its VF/EA FMS functions, as necessary; and the contractor shall perform" the enumerated functions for DDS' participants.

In its proposal response, PPL stated in part that

PPL counselors have extensive experience assisting participants to develop and revise individual budgets, identify needs and preferences, define desired outcomes, identify natural and paid supports, purchase goods and services, and develop risk management plans...Our reporting tools will allow participants and DDS to monitor service delivery and make adjustments as needed. PPL counselors are trained to assist participants with problem-solving, conflict resolution, and incident reporting. We routinely interface with MCO care coordinators and help participants maintain medical and financial eligibility in some programs. All PPL counselors are trained to act as advocates in support of, or on behalf of, participants. Our counselors conduct home visits and monthly calls as required by each program we support.

[PPL's Proposal, Vol. 1, Section 2, p.41.]

This section of the RFP requires that the contractor complete the work requested. PPL was not required to list or reference the individual requirements of the RFP in its proposal response. Rather, PPL was required to demonstrate its ability to perform the work required. In its proposal, PPL states that it "embraces the opportunity to provide counseling services to participants/ authorized representatives in coordination with our VF/EA FMS." (PPL's Proposal, Vol. 1, Section 2, p.41.) PPL's proposal evidences its intent to comply with the requirements of the SOW through a narrative related to this section of the RFP's SOW.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

47. RFP § 3.22 *DDD's Operational Requirements.*

CAU alleges that PPL's proposal is non-responsive because, "PPL states it will work with DDD's iRecords system for no more than six (6) months and states it will use its own system. This is non-compliant with the RFP. In addition, PPL fails to reference all of the RFP requirements listed in subsection A-M."

RFP § 3.22 *DDD's Operational Requirements* sets forth DDD's operational requirements and requires that the contractor establish and maintain a connection with DDD's i-Record system.

¹³ CAU protest erroneously refers to this section as 3.21.0, which is non-existent.

In its proposal response, PPL stated that:

...PPL also believes manual entry of payroll data in the iRecord system is an error prone process that is untenable at large scale. PPL agrees to manually post expenditures to the participants' accounts for a period not to exceed six months (or a mutually agreed upon period) following the start of DDD operations.

PPL understands that it will be required to establish and maintain a connection with the DDD iRecord system. Our systems and processes are designed to fully support the participant as the managing employer...

Moreover, in response to this protest, PPL states that its "intent is to enable the program to benefit from its experience with data exchange and reduce error prone manual entry...."

As previously noted, bidders were not required to reiterate the requirements of the RFP in their proposal response. In its proposal response, PPL evidences its ability to provide manual data entry, as required by the RFP section. In addition to indicating its ability to manually enter data, PPL notes that manual entry allows for errors and proposed a solution to reduce those errors which is in accord with RFP §4.4.3.5 *Potential Problems* which requests that a bidder identify potential problems and provide a proposed solution. Here, PPL did just that. PPL's proposal goes on to indicate that PPL "understands that it will be required to establish and maintain a connection with the DDD iRecord system. Our systems and processes are designed to fully support the participant as the managing employer. PPL will process payments for individual goods and services within individual budgets and service authorizations."

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

48. RFP § 3.26 Security and Confidentiality.

CAU alleges that PPL's proposal is non-responsive because "PPL does not provide a detailed system design document showing its plans for security and disaster recovery. Logical and physical diagrams are required. PPL may not simply state that it will furnish these documents upon award because specific response is a requirement of the RFP."

RFP § 3.26 *Security and Confidentiality* required that "[t]he **contractor(s) shall** provide a detailed system design document showing its plans for security and disaster recovery. Logical and physical diagrams are required." (*Emphasis added.*)

In its proposal response, PPL stated

Upon award of contract PPL will provide a detailed system design document showing our plan for security and disaster recovery. PPL has a Security Plan that details the security measures that PPL has put in place for the following areas: Facilities physical Security, System Security, Systems Data Security, Network Security, and Administrative and Personnel Security. The Security Plan will be reviewed by the respective SCM for approval before being implemented. Because of extensive security trainings that PPL workers receive, we will be able to detect and report any attempted unauthorized entries into the facility and system. Security requirements will apply to development, testing, production, and backup systems. The Security Plan will also identify and define the requirements described in section 5.9.

As a bidder, PPL expressed its intent to comply with the requirement of the RFP by stating in its proposal that “[u]pon award of contract PPL will provide a detailed system design document showing our plan for security and disaster recovery.”

In its proposal response PPL described its approach to this section with detail demonstrating its understanding of the requirements of this contract. Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

49. RFP § 3.26.3 State Technology Requirements and Standards; RFP § 3.26.4 System Design; RFP § 3.26.5 Hosting and Backup Services; RFP § 3.26.6 Extranet Plan; and RFP § 3.26.7 Transmission of Files.

CAU alleges that PPL’s proposal is non-responsive with respect to RFP § 3.26.3 *State Technology Requirements and Standards*; RFP § 3.26.4 *System Design*; RFP § 3.26.5 *Hosting and Backup Services*; RFP § 3.26.6 *Extranet Plan*; and RFP § 3.26.7 *Transmission of Files* because PPL “fails to provide specifics and diagrams with respect to each of these provisions.”

RFP § 3.26.3 *State Technology Requirements and Standards*; RFP § 3.26.4 *System Design*; RFP § 3.26.5 *Hosting and Backup Services*; RFP § 3.26.6 *Extranet Plan*; and RFP § 3.26.7 *Transmission of Files* identify certain requirements of the contractor with respect to technology and system design etc. The RFP did not require that the bidder provide specific details or diagrams regarding how it intends to comply with these RFP sections.

PPL, as a bidder, expressed its intent to comply with these requirements of the RFP if it is awarded a contract. (PPL’s Proposal, Vol. 1, Section 2, p. 45-46.)

Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

50. Use of sub-contractors.

As more fully addressed in point 5 above, PPL listed Technosphere on the *Subcontractor Utilization Form*, but identified other subcontractors in a summary of the work to be performed by the individual subcontractors and set forth the contact information for each of the subcontractors. (PPL’s Proposal RFP § 4.4.4.3 *Resumes*, p. 42.) The additional subcontractors will only be performing ancillary work, not performing work identified within the RFP’s SOW. Not listing these additional subcontractors on the *Subcontractor Utilization Form* does not rise to the level of a material deviation. See, Twp. of River Vale, supra, 127 N.J. Super. at 216.

Accordingly, PPL’s proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

51. RFP § 4.4.4 Organizational Support and Experience.

CAU alleges that PPL’s proposal is non-responsive because PPL’s does not address New Jersey’s operations. CAU states that PPL does not perform any consulting, does not manage any programs where the participant has budget and employer authority, and does not address whether PPL and DOAS are co-employers.

RFP § 4.4.4. *Organizational Support and Experience* requires

The bidder should include information relating to its organization, personnel, and experience, including, but not limited to, references, together with contact names and telephone numbers, evidencing the bidder's qualifications, and capabilities to perform the services required by this RFP. This section of the proposal must minimally contain the information identified in the Section 4.4.4 subsections listed below.

In its proposal response, PPL provided a narrative of its company's history; a summary of its services and the states where it provide services; its organizational approach including program management, counseling, financial operations and business management; internal control principles and information technology; management process; incident management and problem resolution. In addition, as required by the sub-sections of RFP § 4.4.4, PPL provided its office location, organizational charts and resumes, a statement regarding back-up staff, recruitment, and details regarding the company's experience with contracts of a similar size and scope.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

52. RFP § 4.4.4.1 Location.

CAU alleges that PPL's proposal is non-responsive because PPL states that it will "administer" the contract from Boston. CAU states that the proposal does not indicate where payroll will be handled; where the call center will be located or where the records will be maintained. Further CAU claims that PPL's proposal is non-responsive because PPL does not state the name and telephone number of the contact person.

RFP § 4.4.4.1 *Location* requests that the bidder provide "the address of the bidder's office where responsibility for managing the contract will take place. The bidder should include the telephone number and name of the individual to contact."¹⁴

In its proposal response, PPL stated that it "will administer this contract from PPL's headquarters located in Boston, Massachusetts."

PPL has the organizational capability to establish the required offices in New Jersey and we look forward to the opportunity to do so if selected for award of this Contract. Upon notice of contract award, PPL will establish offices in each region in accordance with PCG's¹⁵ existing protocol for acquiring, equipping, and taking occupancy. We have already located suitable properties that meet PCG's standards as well as the specific requirements of DHS in each of the three (3) regions of New Jersey:

PPL proposes to locate the Account Manager (AM) in the Southern Regional Office in Trenton for ease of access to SCMs. We will provide the telephone number and the name of the Account Manager at the Project Launch meeting as required. PPL proposes to locate local Customer Service operations in the Northern Regional Office in Newark based on our research regarding the local labor market.

[PPL's Proposal, Vol. 1, Section 3, p. 6-7.]

¹⁴ Should – Denotes that which is recommended, not mandatory.

¹⁵ PPL is a wholly-owned subsidiary of Public Consulting Group (PCG).

PPL's proposal was responsive to the requirements of the RFP which requested via the use of the word "should" as opposed to required, that a bidder provide the address where it will administer the contract. PPL provided the office location from which it would administer the contract and stated that it would provide the telephone number and name of the account manager at the project launch meeting.

Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive. With respect to other issues related to office location which, see Point 3 above.

53. Contract Performance.

CAU alleges that PPL did not disclose its failure to properly perform its contract with Pennsylvania. In support of this allegation, CAU enclosed copies of postings from the website www.ripoffreport.com; www.poconorecord.com; and www.complaintsboard.com.

With respect to prior contracts, the RFP requests that a bidder "provide a comprehensive listing of contracts of similar size and scope that it has successfully completed." (RFP § 4.4.4.5 Experience with Contracts of Similar Size and Scope.) There is no requirement in the RFP that a bidder list all of its prior contracts or those that it failed to properly perform. Further, I note that there is no indication that PPL failed to perform the contract or that the State of Pennsylvania terminated PPL's contract early. In its response to CAU's protest, PPL states "[i]n 2012, the Pennsylvania Department of Human Services (PA DHS) contracted with PPL to improve the quality and consistency of services for over 16,000 participants enrolled in 6 statewide programs. In the four years since PPL has held this contract, the PA DHS has never found PPL to be in breach of contract." (PPL's January 15, 2016 letter.)

Second, with respect to the alleged participant dissatisfaction, PPL states:

Prior to contracting with PPL, one large FMS provider had closed, leaving participants without FMS, and in some cases, resulting in loss of workers due to nonpayment. PPL overcame challenges such as lack of accurate and timely information from the referring FMS vendors and a delayed and shortened launch timeline due to procurement challenges. In addition, the PA DHS asked PPL to strictly enforce program rules and expenditure limits, many of which had been previously disregarded or unenforced. This resulted in some stakeholder dissatisfaction during the transition.

On September 14, 2013, the Secretary of the PA DHS, Beverly D Mackereth, defended the decision to award the contract to a single statewide FMS vendor (PPL) by issuing a public response to stakeholders. Below are excerpts from the former Secretary's statement:

Prior to this administration, the Commonwealth had an ineffective, outdated financial management system that varied by region and varied widely in quality. We proactively made this transition to ensure the safety of participants and to meet our obligations to taxpayers to create a sustainable system, free of abuse and misuse. Issues resulting from a historical lack of monitoring and oversight of the former FMS providers forced immediate action and left the current administration with few options but to look at a new way of doing business. We recognize and apologize for the hardships that occurred as a result of this transition to some caregivers,

participants and their families. At this time, we are happy to report that the financial management system is running smoothly and that valid time sheets submitted are paid within two weeks of submission. The current oversight and monitoring of PPL has led to major improvements, but as always, we are striving to do better.

Moreover, the Better Business Bureau has awarded PPL an "A+" rating. In the past 12 months, the Better Business Bureau has received seven complaints regarding PPL. This is a very low number of complaints for a business the size of PPL. PPL has responded to all seven complaints timely. The Better Business Bureau has designated all seven complaints as "closed". Since PPL was founded in 1999, only 15 "negative customer reviews" have been posted regarding PPL on the Better Business Bureau website. During that time PPL has served more than 100,000 participants and direct care workers. The Better Business Bureau has given PPL a customer review score of 3 .68 out of 5.

[PPL's January 15, 2016 letter.]

Finally, on this point I note that there are no complaints filed against PPL for New Jersey contracts. Given, the lack of New Jersey contract complaints and as discussed above for other alleged "complaints" there is no reason for the State to reject PPL's proposal. Accordingly, PPL's proposal does not contain a deviation related to this protest point as the proposal conforms to the requirements of the relevant sections of the RFP and therefore is responsive.

54. Procurement Process – Question and Answer Period.

CAU alleges that the procurement process was not conducted in conformance with the applicable laws and regulations. Specifically, CAU alleges that the Division extended the time for prospective bidders to submit questions and then rescinded the extension without notice, leaving some questions unanswered.

As noted above, on September 1, 2015 the Bureau issued Addendum #2 responding to bidder questions. With respect to the Q&A Period,

#	Page #	RFP Section Reference	Question	Answer
284	1	Cover Sheet	Will the due date be extended given that the RFP documents are not available as of 8/7/2015.	Yes, the due date for submitting questions has been extended to September 9, 2015.

The Bureau advises that the answer to question # 284 contained a typographical error. When the error was brought to the attention of the Procurement Specialist Addendum #4 was issued on September 11, 2015 advising prospective bidders that the Q&A Period had not been extended; instead, it was the proposal submission deadline that had been extended.

ADDENDUM #04

The following constitutes Addendum #04 to the above referenced solicitation.

The following is a correction to the Q&A Question #284 that was posted via Addendum #02.

Original:

Question #284, Page #1, RFP Section Reference Cover Sheet

Will the due date be extended given that the RFP documents are not available as of 8/7/2015.

Yes, the due date for submitting questions has been extended to September 9, 2015.

Correction:

Question #284, Page #1, RFP Section Reference Cover Sheet

Will the due date be extended given that the RFP documents are not available as of 8/7/2015.

Yes, the due date for submitting ~~questions~~ **Proposals** has been extended to **September 17, 2015**.

Additional Bid Information: All Questions that were received by the Q&A Due Date of August 18, 2015 (5:00 p.m.) have been answered. The Q&A Due Date remains August 18, 2015 as per Addendum #01. Any question received after the Q&A Due Date of August 18, 2015 will not be answered.

It is the sole responsibility of the bidder to be knowledgeable of all of the additions, deletions, clarifications and modifications to the RFP and/or the New Jersey Standard Terms and Conditions relative to this RFP as set forth in all addenda.

All other instructions, terms and conditions of the RFP shall remain the same.

Contrary to CAU's statement, no supplemental questions were submitted to the Division by any bidder. Rather, on September 9, 2015 at 3:49 pm, CAU contacted eSupport by email:


From: Mercedes Witowsky [<mailto:MWitowsky@caunj.org>]
Sent: Wednesday, September 09, 2015 3:49 PM
To: DPP eSupport
Cc: Mercedes Witowsky
Subject: 16-X-23964-FISCAL INTERMEDIARY AND FINANCIAL CASH

Addendum 2 extended the question period for this Solicitation until today, yet the site is not accepting questions- see statement on the site...
The Q & A Period for Solicitation **16-X-23964-FISCAL INTERMEDIARY AND FINANCIAL CASH A** has ended.

If your question is non-RFP related, email the Division of Purchase & Property's Business Unit at dppbusinessunit@treas.state.nj.us

Please advise. Thank you for your assistance.

Mercedes Witowsky
Associate Executive Director
Community Access Unlimited - Celebrating 36 Years of Excellence
80 West Grand Street
Elizabeth, New Jersey 07202
Business: 908 354-3040, ext. 225
Fax: 908 558-9589
Cellular: 908 413-3896

Helping you achieve independence in your community... that's the  **ADVANTAGE**

On September 10, 2015 DPP eSupport responded:

From:	DPP eSupport
Sent:	Thursday, September 10, 2015 10:28 AM
To:	Mercedes Witowsky
Subject:	RE: 16-X-23964-FISCAL INTERMEDIARY AND FINANCIAL CASH

Dear Ms. Witowsky:

Please forward your questions concerning 16-X-23964 to us at: esupport@treas.nj.gov

We will provide the questions to the procurement specialist for their consideration. Please know the procurement specialist will not be able to respond to questions by email. If a response is provided, it will only be by Addendum and posted to the website.

Thank you for your interest in doing business with the State of New Jersey.

Sincerely,

eSupport Team
BHC

The Division of Revenue and Enterprise Services (DORES) was contacted in connection with the Hearing Unit's review of this protest. DORES confirms that no supplemental questions were received from any bidder. Despite the fact that there was a typographical error in the September 1, 2015 Q&A response, no supplemental questions were received from any bidder, and all questions previously received by the Division related to this RFP were answered. Additionally, I note that even though CAU was provided an opportunity to submit its questions to the Division's eSupport group; DORES confirms that no questions were submitted.

Accordingly, this procurement was conducted in conformance with the applicable laws and regulations.

December 22, 2015 Supplemental Protest Letter – Part I: Specification Challenge

In its December 22, 2015, supplemental protest letter, CAU raises concerns regarding the Bureau's responses to bidder questions and raises additional challenges to the Bureau's NOI. Each of the points in CAU's December 22, 2015, supplemental protest letter are addressed below.

With respect to CAU's supplemental protest points, I state the following:

1. CAU argues that because the Division requested CAU extend its current contract through January 31, 2016, the Division was "acknowledg[ing] that PPL cannot implement the full scope of work ('SOW') on January 1, 2016, as required by the RFP." CAU argues that this request demonstrates that "it is the **only** bidder able to substantially meet the RFP's January 1, 2106 mandatory implementation date" and the Division must rescind its Notice of Intent to Award, which "change[d] a mandatory term of the RFP." See Points #1 & 3 in response to CAU's December 8, 2015 protest letter above.

2. CAU states that because bidders offered pricing premised on a January 1, 2016, commencement date and that it now appears a new contract will not commence until January 1, 2017, the RFP must be rescinded "so that bidders can rebid." CAU alleges that "bidders' pricing was premised upon the presumption that the full scope of work would commence on January 1, 2016." CAU's assumption is in error. Proposal pricing is for the contract term commencing on the contract start date. As previously noted, January 1, 2016, is an anticipated start date and delays in the start date may result in a change to the contract effective date. (RFP § 5.2 *Contract Term and Extension Option*.)

3. CAU submits that the Division's extension and subsequent rescission of the Question and Answer period "was a manifest failure to treat bidders fairly and equitably with respect to receiving complete information regarding the RFP." See Point #54 in response to CAU's December 8, 2015 protest letter above.

4. CAU protests that bidders were not provided any information regarding the defined methodology for scoring proposals. This lack of information "prejudiced bidders, who were left in the dark over which portions of the RFP were of most interest and importance to the evaluation committee" and bidders were not aware of which parts of the proposal deserved the most emphasis and concentration. RFP § 6.7 *Evaluation Criteria* states "[t]he following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate proposals received in response to this RFP. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process." Specifically, the RFP states:

6.7.1 TECHNICAL EVALUATION CRITERIA

a. Personnel: The qualifications and experience of the bidder's management, supervisory, and key personnel assigned to the contract, including the candidates recommended for each of the positions/roles required.

b. Experience of firm: The bidder's documented experience in successfully completing contracts of a similar size and scope in relation to the work required by this RFP.

c. Ability of firm to complete the Scope of Work based on its Technical Proposal: The bidder's demonstration in the proposal that the bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the contract.

Contrary to CAU's protest allegation, bidders were advised of the methodology that would be used to evaluate each proposals received. Therefore, there was no prejudice to the bidders.

5. As noted above, CAU argues that bidders were not advised that "their bids would be weighted" and the failure to disclose this information "prejudiced bidders." Further, CAU challenges the evaluation stating that bidder were unaware that their proposals would be weighted; therefore bidders were prejudiced by not knowing which portions of the RFP were of most importance to the Committee. As noted above, the RFP identified the evaluation criteria that would be used by the Committee to review and evaluate proposals in their entirety. Each of the three evaluation criteria was weighted by the Committee to determine the final technical score for each proposal. All proposals received were evaluated utilizing the same criteria; therefore, there was no prejudice to the bidders.

6. CAU states that bidders were further prejudiced by the late notice, "just one week before the due date," allowing bidders to submit proposals twice as long as the original limit of 25 pages. This late notice did not provide bidders sufficient time to "comprehensively revise a response which had been previously pared down to comply with the initial length restriction."

Bidders were advised that the page limit was increased from 25 to 50 pages in Addendum #2 which was issued on September 1, 2015, more than two weeks before the September 17, 2015 proposal opening date.

#	Page #	RFP Section Reference	Question	Answer
250	96	4.4	Proposal Content Please confirm that the number of pages allowed in Section 2 Technical Proposal is 25. It was 75 pages in the previous RFP.	The 25-page limit is confirmed; however based on this request the bidders will be permitted a 50-page limit. The bidder's exhibits, attachments, and resumes do not count toward the 50-page limit.

RFP § 1.4.2 *Bidder Responsibility* states “[t]he bidder assumes sole responsibility for the complete effort required in submitting a proposal in response to this RFP.” With the issuance of Addendum #2 all potential bidders were put on a level playing field as all were provided the same opportunity to revise their proposals as they felt necessary in order to respond to the RFP requirements. Therefore, there was no prejudice to the bidders.

7. CAU states that in response to an OPRA request it received a redacted evaluation report. Now, “CAU questions whether the evaluation committee and its technical advisors had sufficient knowledge and experience to understand the complexity of the SOW and to properly evaluate the bidders and their bids.” CAU further states that during the protest period it filed OPRA requests seeking the identity of the evaluators and the technical advisors but that it had not received a response prior to the end of the extended protest period.

Procurements made by the State of New Jersey are governed by statutes (N.J.S.A. 52:31-1 et seq.) and regulations (N.J.A.C. 17:12-1.1 et seq.) With respect to the Evaluation Committee, the statute states in pertinent part:

N.J.S.A. 52:34-10.3. Regulations relative to evaluation committee

b. When a State agency is a contracting agency for a contract that includes, but is not limited to, the financing of a capital project, one member of any evaluation committee...shall be a person proficient in the financing of public projects. c. In all cases, persons appointed to an evaluation committee shall have the relevant experience necessary to evaluate the project. When the contract is awarded, the names of the members of any evaluation committee shall be made public and the members' names, educational and professional qualifications, and practical experience, that were the basis for the appointment, shall be reported to the State Treasurer.

Moreover, RFP § 6.5 *Proposal Evaluation Committee* states “[p]roposals may be evaluated by an Evaluation Committee composed of members of affected departments and agencies together with representative(s) from the Division. Representatives from other governmental agencies may also serve on the Evaluation Committee. On occasion, the Evaluation Committee may choose to make use of the expertise of outside consultant(s) in an advisory role.”

As required by statute and the RFP, the members of the Evaluation Committee had the requisite knowledge and experience to conduct an evaluation of the proposals submitted. Under the applicable statute, names of the Committee members are not released to the public until a contract award is made. Here, the contract has not been awarded. Therefore, there is no violation of the state statutes, the RFP specifications or the requirements of OPRA.

8. With respect to points 8, 9, 10 and 11, CAU alleges that the Bureau's answers to questions posed by potential bidders were incomplete, inconsistent and/or incorrect which resulted in bidders being misled and caused information to be withheld from the potential bidders and as such, CAU challenges the RFP

specifications. CAU also alleges that the answers provided demonstrate a lack of understanding with regarding to the specifics of the PPP program.

With respect to challenges to specifications, the applicable regulation states in pertinent part:

§ 17:12-3.2 Protest procedures; challenges to a specification

- (a) A vendor intending to submit a proposal in response to an advertised RFP, pursuant to N.J.S.A. 52:34-6 et seq., and finding cause to challenge a specification contained within the RFP, may submit a written protest to the Director, setting forth, in detail, the grounds for such protest.
- (b) The written protest shall be submitted to the Director only after the Division has formally responded to questions posed during the RFP-established question and answer period and in sufficient time to permit a review of the merits of the protest and to take appropriate action as may be necessary, prior to the scheduled deadline for proposal submission.

...

- 3. In order to provide sufficient time for full assessment of the issue(s) of the challenge and, if merited, to effect changes to the RFP and public notice of such changes, **the Director may disregard any protest of specifications filed fewer than seven business days prior to the scheduled deadline for proposal submission.**

- (c) The Director shall, upon receipt of a timely protest of a specification contained in an advertised RFP, issue a final written decision on the protest prior to the public opening and reading of proposals received in response to that RFP.
- (d) The Director may resolve a protest of a specification by amending the RFP and extending the deadline for proposal submission, by canceling the procurement, or by any other appropriate means.

...

[*Emphasis added.*]

Accordingly, CAU should have raised any challenges to the RFP specifications prior to the proposal opening date. However, for the sake of completeness, I will address each of CAU's specification challenges below. I note that on September 10, 2015, prior to the proposal opening date, CAU was provided opportunity to submit its supplemental questions. CAU did not avail itself of the opportunity.

The standard for awarding State contracts is established by N.J.S.A. 52:34-12, which states in pertinent part that:

- a. Whenever advertising is required: . . . (g) award shall be made with reasonable promptness, after negotiation with bidders where authorized, by written or electronic notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered.

[N.J.S.A. 52:34-12(a)(g).]

This standard is reiterated in RFP § 1.1 *Purpose and Intent*, which provides that “[t]he intent of this RFP is to award a contract to that responsible Bidder whose proposal, conforming to the RFP is most

advantageous to the State, price and other factors considered.” Therefore, the contract to be awarded “shall consist of this RFP, addenda to this RFP, the Contractor’s proposal, any best and final offer and the Division’s Notice of Award.” (RFP§ 5.1 *Precedence of Special Contractual Terms and Conditions.*)

In connection with this protest, the Division’s Hearing Unit conducted an independent review of the questions posed and the answers provided in Addendum #2. With respect to the individual challenges made by CAU, the Hearing Unit determined the following:

- Addendum #2 - Question 15

#	Page #	RFP Section Reference	Question	Answer
15	10	1.2.3	Division of Developmental Disabilities (DDD) Programs What is the current volume of Participants in DDD utilizing self-hires using the Agency with Choice Model? What is the average annual dollar value per Participant using self-hires? Suggestion: Provide the current Volume of Participants using the Agency with Choice Model in the DDD funded Programs and the average annual dollar value of self-hires.	This information is not currently available.

The question posed by the potential bidder sought information regarding the number of participants in a current DDD program. CAU states that the Bureau’s response was “not credible and appears to have been an evasion” alleging that information regarding a current contract should have been available. In response to the protest, the Bureau advises that the information available from the current contractor under the Choice Model is dissimilar to the information related to VF/EA model which will be used in the contract to be awarded pursuant to this RFP. Further, the Bureau advises that under the current contract, the contractor employs the workers whereas under the contract to be awarded pursuant to the current RFP, the participants will employ the workers. Additionally, the current contractor determines the services that are to be provided and in doing so utilizes a number of DDD providers. Under the subject RFP, DDD contracted providers will not be utilized. Moreover, under the current contract the services will be reimbursed based upon a Fee-for-Service and participants will have greater flexibility; however, in the contract to be awarded, the contractor will submit a claim for service to the fiscal agent for reimbursement. Finally, DDD will be adding a new program therefore, currently there is no projection regarding how many individuals will utilize the new programs once in place. Providing information about the existing program usage would not have assisted a potential bidder in preparing a proposal response. Therefore, the Bureau’s response to the question posed was appropriate and ensured that all bidders were on a level playing field.

- Addendum #2 – Question 19

#	Page #	RFP Section Reference	Question	Answer
19	10	1.2.3	We understand that 25,000 adults receive services under DDD programs, and 20% (5,000) of them require a fiscal intermediary. Section 1.2.3.1 states that 11,000 are enrolled in the Community Care Waiver. What is the service breakdown of the 11,000 in CCW?	This information is not currently available.

The question posed by the potential bidder sought a breakdown in the enrollment in a DDD program. CAU alleges that a request for information on a current active contract should have been available and provided. In response to the protest, the Bureau advises that the information available from the current contractor under the Choice Model is dissimilar to the information related to VF/EA model which will be used in the contract to be awarded pursuant to this RFP. Further, the Bureau advises that under the current contract, the contractor employs the workers whereas under the contract to be awarded pursuant to the current RFP, the participants will employ the workers. Additionally, the current contractor determines the services that are to be provided and in doing so utilizes a number of DDD providers. Under the subject RFP, DDD contracted providers will not be utilized. Moreover, in the contract to be awarded, the contractor will submit a claim for service to the fiscal agent for reimbursement. Finally, DDD will be adding a new program therefore, currently there is no projection regarding how many individuals will utilize the new programs. Providing information about the existing program usage would not have assisted a potential bidder in preparing a proposal response. Therefore, the Bureau's response to the question posed was appropriate and ensured that all bidders were on a level playing field.

- Addendum #2 – Question 20

#	Page #	RFP Section Reference	Question	Answer
20	10	1.2.3	Division of Developmental Disabilities (DDD) Programs Question: "In addition, use of the FI to act as a fiscal conduit for payment of approved goods and services for individuals in the Division who are not Medicaid providers is required." What is the current volume of participants' utilizing services from non-Medicaid providers? What dollar value does this utilization represent? What is the current volume of participants using DDD's current Agency-With-Choice Contractor? What is the dollar value of services being funded? Suggestion: Provide the current Volume of Participants and dollar value utilized in the DDD Program for individuals utilizing non- Medicaid providers. Provide the projected dollar value of services to be funded for DDD Program individuals utilizing non- Medicaid providers.	This information is not currently available.

The question posed by the potential bidder sought a breakdown of the dollar value and/or number of participants in DDD programs. CAU alleges that the information regarding current active contracts should have been available. In response to the protest, the Bureau advises that the information available from the current contractor under the Choice model is dissimilar to the information related to VF/EA model which will be used in the contract to be awarded pursuant to this RFP. Further, the Bureau advises that under the current contract, the contractor employs the workers whereas under the contract to be awarded pursuant to the current RFP, the participants will employ the workers. Additionally, the current contractor determines the services that are to be provided and in doing so utilizes a number of DDD providers. Under the subject RFP, DDD contracted providers will not be utilized. Moreover, under the current contract the services will be reimbursed based upon a Fee-for-Service and participants will have greater flexibility; however, in the contract to be awarded, the contractor will submit a claim for service to the fiscal agent for reimbursement. Finally, DDD will be adding a new program therefore, currently there is no projection regarding how many individuals will utilize the new programs once in place. Providing information about the existing program usage would not have assisted a potential bidder in preparing a

proposal response. Therefore, the Bureau’s response to the question posed was appropriate and ensured that all bidders were on a level playing field.

- Addendum #2 – Question 23

#	Page #	RFP Section Reference	Question	Answer
23	11	1.2.4	Section Title: Utilization Summary - All programs- Chart No.1 The DDD population on Chart No. 1 shows 10,796 individuals in CCW. What segment of this population will use VF/EA FMS services under this RFP? Suggestion: Break out the number of DDD participants within the CCW on Chart No. 1 that will use VF/EA FMS services under this RFP.	This information is not currently available.

The question posed by the potential bidder sought a breakdown of the number of participants that will use VF/EA FMS services. CAU alleges that the Bureau’s response lacks credibility and that DDD should know the number of people that will use VF/EA FMS services. In response to the protest, the Bureau advises that the information available from the current contractor under the Choice Model is dissimilar to the information related to VF/EA model which will be used in the contract to be awarded pursuant to this RFP. Further, the Bureau advises that under the current contract, the contractor employs the workers whereas under the contract to be awarded pursuant to the current RFP, the participants will employ the workers. Additionally, the current contractor determines the services that are to be provided and in doing so utilizes a number of DDD providers. Under the subject RFP, DDD contracted providers will not be utilized. Moreover, under the current contract the services will be reimbursed based upon a Fee-for-Service and participants will have greater flexibility; however, in the contract to be awarded, the contractor will submit a claim for service to the fiscal agent for reimbursement. Finally, DDD will be adding a new program therefore, currently there is no projection regarding how many individuals will utilize the new programs once in place. Finally, in response to the protest, the Bureau advises that RFP § Section 1.2.4 *Utilization Summary* includes caveats for the DDD programs’ CCW and Supports and note that there is no guarantee of minimum or maximum numbers. Providing information about the existing program usage would not have assisted a potential bidder in preparing a proposal response. Therefore, the Bureau’s response to the question posed was appropriate and ensured that all bidders were on a level playing field.

- Addendum #2 – Question 33

#	Page #	RFP Section Reference	Question	Answer
33	16	1.4.8	Section Title: Joint Venture In submitting a Joint Venture proposal, must each party maintain an office in the State of NJ? Suggestion: Require that all parties in a joint venture as described in section 1.4.8 be required to maintain separate offices within the State of New Jersey for the purposes of carrying out the requirements of this contract.	The State does not accept this suggestion.

The question posed by the potential bidder asks whether each party to a joint venture must maintain an office in New Jersey. In addition, the potential bidder suggested language to modify the RFP to require that all parties to a joint venture maintain an office in New Jersey. CAU alleges that the

Bureau’s response contradicts the language of RFP § 3.6.1 which states that the “contractor shall provide, equip, maintain, staff, and manage three (3) physical offices dedicated to performing all tasks required of the contractor as set forth in this RFP.” The Bureau did not accept this suggestion and the RFP was not modified as requested.

RFP § 2.1 *General Definitions* defines a joint venture as “a business undertaking by two or more entities to share risk and responsibility for a specific project.” Further, RFP § 1.4.8 *Joint Venture* states that “if a joint venture is submitting a proposal, the agreement between the parties relating to such joint venture should be submitted with the joint venture’s proposal. Authorized signatures from each party comprising the joint venture must sign the proposal.” This RFP does not require that a contractor, or that a potential joint venture, maintain its management office in New Jersey. Rather, RFP § 3.6.1 requires that after the award of the contract, the contractor must have three offices located in New Jersey that can accommodate walk-in clients.

Modifications to the RFP specifications are made at the discretion of the Bureau. The Bureau’s decision not to accept the proposed modification did not prejudice potential bidders as all were on a level playing field at the time that the proposals were submitted. The Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 41

#	Page #	RFP Section Reference	Question	Answer
41	27	3.1.1	Section Title: Contract Implementation Period "The contractor shall have a ninety (90) calendar day contract implementation period, commencing on the contract's effective date". The proposal opening date is 9/9/15. When will the contract be awarded? Since the date for assuming all tasks in the entire SOW is January 1, 2016, how will the contractor be given a 90 day contract implementation period if the contract award occurs after 10/1/2015? If the date for assuming all tasks in the entire SOW takes place after January 1, 2016, how will the bifurcated tax year for the participants in the programs be handled? Suggestion: Amend Contract Implement Period to describe how any delays in bid award will be handled in terms of the Contract Start Date.	Please refer to Section 3.1.4 Assumption of Program in RFP 16-x-23964, “Exact dates for the assumption of specific contract duties will be determined throughout the contract implementation period after the contractor’s consultation with, and the receipt of written approval from, the SCMs.” Thus it is possible that the contractor shall assume certain responsibilities of the program for those SCMs who agree, while working with the respective SCMs to fully assume the remaining responsibilities of the Readiness Review (including preparation of a corrective action plan, if required).

The question posed by the potential bidder sought a clarification regarding the contract start date and the 90-day implementation period. The potential bidder suggested that the contract implementation period be amended to address how delays in the award of the contract would be handled in terms of the contract start date. The Bureau responded to the question stating “exact dates for the assumption of specific contract duties will be determined throughout the contract implementation period.” CAU alleges that the response suggests that all services would not begin on January 1, 2016, which contradicts the RFP’s mandatory requirement. The Bureau’s response to the question posed was appropriate. Further, as noted in point 1 above in response to CAU’s December 8, 2015 protest letter, RFP § 5.2 *Contract Term and Extension Option* states that “[t]he term of the contract shall be for a period of five (5) years. The **anticipated** ‘Contract Effective Date’ is provided on the *Signatory Page* accompanying this RFP. If delays in the procurement process result in a change to the anticipated Contract Effective Date, the bidder

agrees to accept a contract for the full term of the contract.” The Bureau’s response to the question posed was appropriate and responsive, providing potential bidders with information regarding the transition of contract services and the contract commencement date, ensuring that all bidders were on a level playing field.

- Addendum #2 - Question 44

#	Page #	RFP Section Reference	Question	Answer
44	27	3.1.1	Contract Implementation Period Given the fact that the readiness review shall not be conducted until 30 days prior to the end of the contract implementation period, does NJ DHS expect a new contractor if selected to be able to effectively transition an estimated 18,000 members, including distributing and processing employer and employee enrollment packets, conducting home visits, completing orientation and training, and developing cash management/spending plans within 30 days? If not, what provisions has NJ DHS made to extend the contract implementation period? Alternatively, does NJ DHS expect the contractor to initiate contact with the current program participants, authorized representatives, and employees prior to completion and approval of the work plan and/or prior to passing a readiness review?	Please refer to Section 3.1.4 Assumption of Program in RFP 16-x-23964, “Exact dates for the assumption of specific contract duties will be determined throughout the contract implementation period after the contractor’s consultation with, and the receipt of written approval from, the SCMs.” Thus it is possible that the contractor shall assume certain responsibilities of the program for those SCMs who agree, while working with the respective SCMs to fully assume the remaining responsibilities of the Readiness Review (including preparation of a corrective action plan, if required).

The question posed by the potential bidder sought information regarding the transition of participants from the incumbent contractor to the new contractor. The Bureau responded to the question stating “exact dates for the assumption of specific contract duties will be determined throughout the contract implementation period.” Further, the Bureau advised that during the contract implementation period the contractor will work with the SCM to assume responsibilities. CAU alleges that the Bureau’s response suggests that the contract services would not begin on January 1, 2016, which contradicts a mandatory requirement of the RFP. As noted in point 1 above in response to CAU’s December 8, 2015 protest letter, RFP § 5.2 *Contract Term and Extension Option* states that “[t]he term of the contract shall be for a period of five (5) years. The **anticipated** “Contract Effective Date” is provided on the *Signatory Page* accompanying this RFP. If delays in the procurement process result in a change to the anticipated Contract Effective Date, the bidder agrees to accept a contract for the full term of the contract.” The Bureau’s response to the question posed was appropriate and responsive, providing potential bidders with information regarding the transition of contract services and the contract commencement date, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 45

#	Page #	RFP Section Reference	Question	Answer
45	27	3.1.1	Contract Implementation Period What provisions has NJ DHS made to ensure that incumbent vendors transfer participant and employee records to the new contractor in compliance with the	Enrollment will continue as usual. The State will manage the transfer schedule from the incumbent contractor(s) to the contractor awarded a contract resulting from this RFP.

			90-day implementation period rather than the new contractor starting from scratch with all enrollment paperwork? By what date does NJ DHS anticipate imposing a moratorium on enrollment of participants, employees, and agencies/vendors/independent contractors by the incumbents?	
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The question posed by a potential bidder sought information regarding participant enrollment during the vendor transfer. The Bureau responded that “enrollment will continue as usual. The State will manage the transfer schedule from the incumbent contractor(s) to the contract awarded a contract resulting from this RFP.” CAU alleges the response provides no method for the enrollment to continue as usual. However, RFP § 3.1.4 *Assumption of Program* states that “once 100 percent (100%) of the Readiness Review requirements have been approved by the SCMs...the contractor shall assume and perform all tasks of the SOW.” RFP § 3.13.1(A)(2) states “[t]he respective SCM will provide the contractor with the eligibility and enrollment exchange procedure at the Project Launch meeting.” Here, no details were provided in the answer to question #45, as details regarding enrollment would be provided by the SCMs at the project launch. The Bureau’s response to the question posed was appropriate, responsive and consistent with the requirements of the RFP.

- Addendum #2 – Question 52

#	Page #	RFP Section Reference	Question	Answer
52	28	3.1.3	Preliminary Readiness Review Is this in addition to the Readiness Review?	Yes, the Preliminary Readiness Review Section 3.1.3 is in addition to the Conclusion of the Readiness Review Section 3.23. The Preliminary Readiness Review gauges the contractor’s progress toward assuming the services of the contract.

The question posed by the potential bidder inquired whether the Preliminary Readiness Review was in addition to the Readiness Review. The Bureau responded that it was, and referred potential bidders to RFP § 3.1.3 and RFP § 3.23. The Bureau continued stating that the “Preliminary Readiness Review gauges the contractor’s progress toward assuming services of the contract.” In its protest, CAU claims that the “State provides no indication as to how services will continue if the new contractor is not “ready.” The question posed by the potential bidder did not inquire about the process if the contractor is not “ready” after the preliminary readiness review. However, I note that RFP § 3.1.4 *Assumption of Program* indicates that work will not be assumed until the SCMs determine that “the contractor demonstrated to the SCMs its ability to assume all of the tasks detailed in the RFP’s SOW and the pre-approved contract implementation Work Plan.” The Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 53

#	Page #	RFP Section Reference	Question	Answer
53	28	3.1.3	Section Title: Preliminary Readiness Review - Item B "The SCMs will provide the contractor with written approval for when the contractor successfully completes the Readiness Review, and then the Contractor shall fully assume the	Please refer to Section 3.1.4 Assumption of Program in RFP 16-x-23964, “Exact dates for the assumption of specific contract duties will be determined throughout the contract implementation period after the contractor’s consultation with, and

			<p>contract." If three of the SCMs agree that the contractor has successfully passed the Readiness Review but one of the SCMs does not agree, will full assumption of the contract begin for the three SCMs that agree while the contractor works with the fourth SCM to get approval, or must all four SCMs agree that the contractor has successfully passed the Readiness Review before full assumption of the contract may begin? If the contractor does not pass the Readiness Review process for all four SCMs by January 1, 2016, who will provide the services under this contract for those programs that are affected or for all the programs involved in this contract? Suggestion: Clarify the timing of Using Agency 'go- live' and if all Using Agency programs are required to 'go-live' at the same time. If applicable, state the plan for dealing with the eventuality that all the programs do not go live at the same time.</p>	<p>the receipt of written approval from, the SCMs." Thus it is possible that the contractor shall assume certain responsibilities of the program for those SCMs who agree, while working with the respective SCMs to fully assume the remaining responsibilities of the Readiness Review (including preparation of a corrective action plan, if required).</p>
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The question posed by the potential bidder inquired what would happen if the contractor passed the Readiness Review for three of the SCMs, but not the fourth. The Bureau responded that "the contractor shall assume certain responsibilities for those SCMs who agree, while working with the respective SCMs to fully assume the remaining responsibilities of the Readiness Review." CAU alleges that "the response suggest[s] that all services would not begin on January 1, 2016, which contradicts the RFP requirement...the State also does not address how service that are not assumed by the contractor will continue." I note that the question posed by the potential bidder did not inquire about the contract commencement date; however, as previously noted, RFP § 5.2 *Contract Term and Extension Option* states that "[t]he term of the contract shall be for a period of five (5) years. The **anticipated** "Contract Effective Date" is provided on the *Signatory Page* accompanying this RFP. If delays in the procurement process result in a change to the anticipated Contract Effective Date, the bidder agrees to accept a contract for the full term of the contract." Accordingly, the Bureau's response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 83

#	Page #	RFP Section Reference	Question	Answer
83	38	3.5.3	<p>Section Title: Corrective Action Plan (CAP) - Item D "If the contractor fails to meet the standards established in the CAP within the agreed-upon time frame stated in the CAP, the contractor's retainage shall not be released until the condition has been.....". Clarify that the retainage held applies to the Administrative portion only the SCM involved and not retainage that may be set aside within another SCM. Clarify that the retainage held applies only to the Administrative</p>	<p>Please refer to Section 5.15 of the RFP. Retainage applies to all price lines in the RFP.</p>

			<p>portion of the contract and not the funds collected to pay participant payroll and non-payroll expenses. Suggestion: Clarify that the retainage held applies to the SCM involved and not retainage that may be set aside within another SCM. Clarify that the retainage held applies only to the Administrative portion of the contract and not the funds collected to pay participant payroll and non-payroll expenses.</p>	
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The question posed by the potential bidder seeks clarification regarding the CAP and retainage referred to in RFP § 3.5.3 *Corrective Action Plan*. In response, the Bureau referred potential bidders to RFP § 5.15 *Retainage* which states in pertinent part “the using agency shall retain the stated percentage of each invoice submitted.” In its protest letter, CAU states “all price lines include participant related fees. Therefore, the State cannot reasonably withhold a percentage of these price lines” for example, pass through items. In response to CAU’s protest, the Bureau states that retainage applies to all price lines. The Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 86

#	Page #	RFP Section Reference	Question	Answer
86	39	3.6.2	<p>PROJECT STAFFING There are a number of questions concerning the section on Project Staffing. The list is long, but necessary to understand the implications of the RFP’s requirements regarding key administrative staffing.</p> <ul style="list-style-type: none"> • Will SCM’s have the authority to prevent the contractor from immediately removing a key employee, where the contractor determines the individual should be removed from the position (e.g., because of violation of policy, violence, suspected criminal activity etc.)? • If so, will the State indemnify the contractor for any damages or claims resulting from the individual remaining on the job? • Will the SCMs be entitled to know the reasons that a key employee is being removed from his/her position? • If so, what protections will the State have in place to protect the privacy of such employees? • Will the reasons for a key employee’s separation (whether voluntary or involuntary) be public? • Is the State prepared to accept responsibility under the NJ Law 	<p>The response to all of these bulleted questions follows: The State requires no authority over the contractor’s staff; however, the contractor shall provide a succession plan to the respective SCM to include how the contractor’s level of service (LOS) will be maintained and how the contractor expects to fulfill the duties of the contract and ensure uninterrupted service. Employees of the contractor work for the contractor, however, the State will insist the credentials of the contractor’s hires are appropriate for the role being filled.</p>

			<p>Against Discrimination and other employment protection statutes for the decisions made by SCMs regarding hiring and personnel changes pertaining to key employees?</p> <ul style="list-style-type: none"> • Will the State indemnify contractor for employment discrimination or other claims arising from the refusal of the SCMs to approve a proposed hire or personnel change? • Will each SCM provide contractor with a written statement of the reasons for disapproval of a proposed hire or personnel change, so that the contractor may reasonably rely on same in making its employment decision(s)? • Will each SCM provide contractor with a written statement of approval of a proposed hire or personnel change, so that the contractor may reasonably rely on same in making its employment decision(s)? • Must the decisions of the SCMs be unanimous? • How will the employment decisions of the SCMs be communicated to the contractor? • If response to hiring request is not received by the contractor within 45 days, will the request be deemed granted? Denied? • Will the SCM be performing background checks on the key personnel? • If so, what protections and procedures will the State have in place to comply with the Fair Credit Reporting Act? Suggestion: The RFP should request that the Bidder provide the organizational capacity and expertise to accomplish the tasks under this RFP and not comingle state HR practices with the hiring practices of the contractor. 	
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Numerous questions were posed by potential bidders regarding RFP § 3.6.2 *Project Staffing*. In response, the Bureau noted that the State does not require that it have authority over the contractor’s staff. However, the contractor shall provide the SCM with a succession plan stating the level of service that will be maintained and how the contractor expects to fulfill the duties of the contract and ensure uninterrupted service if there is a staffing change. In the protest, CAU alleges that the state did not adequately answer the question about how the State could control hiring in a way that would not impact the ability to perform. A review of the answer provided indicates that the Bureau’s response to the questions posed were appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 87

#	Page #	RFP Section Reference	Question	Answer
87	39	3.6.2	Project Staffing b. "No key personnel change may be made without prior written approval from the SCMs" please elaborate on personnel change	Please refer to the requirements in RFP Section 3.1.2 D. Any substitution or replacement of key personnel requires prior written approval. RFP Section 3.6.2 A and B define key personnel.

The question posed by a potential bidder requested clarification regarding RFP § 3.6.2(B) which states “no key personnel change may be made without prior written approval from the SCMs.” Specifically, the question asked that the Bureau elaborate on personnel change. The Bureau responded referring bidders to RFP § 3.1.2(D). RFP § 3.1.2(D) states in pertinent part that at the Project Launch meeting, the contractor shall provide a Work Plan that includes an organizational change that identifies the key personnel assigned to the contract implementation period. RFP § 3.6.2.1 through RFP § 3.6.2.7 identify the key personnel. A review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field. In addition, a review of the RFP reveals that the information requested in the question, was readily available in the RFP.

- Addendum #2 – Question 104

#	Page #	RFP Section Reference	Question	Answer
104	49	3.6.6	Section Title: Third-party agreements with the State's Managed Care Organizations (MCOS) - Item C How long a period does the state expect contracting between the contractor and the MCOs to take for the purposes of this contract? If the required contracts between the contractor and the MCOs are not in place by January 1, 2016, what recourse will there be to protect participants from interruptions in services? Suggestion: The MCOs accept the rates established in the submission of the bidders State accepted bid and contract award and be required by the state to finalize its Third Party Agreement with the VF/EA within 45 days of award.	The State expects diligence from the contractor awarded a contract resulting from this RFP, as it is part of the operational readiness for the contractor to assume operations; however, each managed care organization has its own process and each its own time frame. As a condition of readiness, the contracts must be in place; the State may intervene in the process to assure this happens timely.

The question posed by a potential bidder asks the State to identify the length of time it should take for the contractor to contract with the MCOs. In response, the Bureau stated that each MCO has its own process and timeframe, therefore the contractor should act with diligence. In addition, the Bureau noted that as a condition of readiness, the MCO contracts must be in place. CAU alleges that the Bureau did not adequately answer the question posed. As noted in the response, each MCO has its own process and timeframe; the State cannot provide potential bidders with information that is not available to it. Accordingly, a review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 105

#	Page #	RFP Section Reference	Question	Answer
105	49	3.6.6	Section Title: Third-party agreements with the State's Managed Care Organizations (MCOS) - Item C After the contractor establishes a Third Party Agreement with the MCO, the contractor will still need to become a Provider with each MCO. What is the anticipated time frame for this to occur? How does the state expect that the contractor will have MCO and MCO provider agreements in place within 90 days? What happens in the event the Contractor and MCO(s) do not have contracts in place within 90 days? Suggestion: The contractor and MCO third party agreements in all likelihood will exceed 90 days for completion. Given the likelihood that the contractor and MCO third party agreements are not in place effective January 1, 2016, the State should include a contingency plan in the RFP to address this issue.	Each managed care organization has its own process with its own time frame for completion. These must be completed as a condition of readiness; the State may intervene in the process to assure this happens timely.

The question posed by the potential bidder states that after the contractor establishes the third party agreement with the MCO, the contractor will still need to become a provider with each MCO. The potential bidder asked the state to provide a timeframe for each contractor to become a provider with each MCO. In response, the Bureau stated that each MCO has its own process and timeframe and that becoming a provider was a condition of readiness. CAU alleges that the Bureau did not adequately answer the question posed. As noted in the response, each MCO has its own process and timeframe; the State cannot provide potential bidders with information that is not available to it. Accordingly, a review of the answer provided indicates that the Bureau's response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 106

#	Page #	RFP Section Reference	Question	Answer
106	49	3.6.6	Section Title: Third-party agreements with the State's Managed Care Organizations (MCOS) - Item C Given the uniqueness of this model, what has the states experience been with the previous FI in contracting with the MCOs? How long did this take? Suggestion: Provide more detail as to the timeframes experienced by the state in setting up the Third Party Contractor/MCO agreements.	This process should take approximately thirty (30) calendar days. The State's prior experience is not an indication of future experience since neither the managed care organizations nor the current fiscal intermediary were previously under contract for the MLTSS services at the inception of the MLTSS services. The time frames varied between each MCO.

The question posed by the potential bidder asked for the State's experience with the previous fiscal intermediary in contracting with the MCOs, in other words, how long did the process take? The Bureau responded that the process should take approximately 30 days; however, the State's prior

experience is not an indication of what could happen in the future and neither the MCOs or the current fiscal intermediary were previously under contract for the MLTSS. CAU alleges that the Bureau's response was misleading. The response provided by the Bureau clearly stated that the prior experiences were not an indicator of what could happen in the future. A review of the answer provided indicates that the Bureau's response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 108

#	Page #	RFP Section Reference	Question	Answer
108	49	3.6.6D	Section Title: Third-party agreements with the State's Managed Care Organizations (MCOS) - Item D “The contractor must obtain the SCMs’ prior approval before utilizing the billing and payment method.” How will the contractor be assured that the MCOs will cooperate with the terms of the contract award? Suggestion: The SCMs should take an authoritative role with the MCOs in establishing third-party agreements in order to protect the integrity of the contracts they will enter into with the contractor.	DOAS communicates regularly with the managed care organizations during weekly meetings. The MCOs are under contract to comply with the terms of their contract with the Division. The State has a contract with the MCOs to provide these services and the State will intervene as necessary and appropriate.

The question posed by the potential bidder asked that the State indicate how the contractor can be assured that the MCOs will cooperate with the terms of the contract. In response, the Bureau stated MCOs are under contract to comply with the contract terms for the Divisions, and that the State will intervene as necessary and appropriate. In the protest, CAU states that the response is a misstatement as the State has never intervened as necessary or appropriate. Here, CAU's own experiences may differ from that of other contractors. Further, even if the State did not previously have cause to intervene, that does not mean that the State would not intervene at a future date if deemed necessary. A review of the answer provided indicates that the Bureau's response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 118

#	Page #	RFP Section Reference	Question	Answer
118	52	3.7.1.1 C 40	Orientation – C 40 Is the contractor expected to inform participants and employees regarding IRS Notice 2014-7 regarding the Difficulty of Care federal income tax exclusion for the applicable Medicaid programs, capture and record the employees’ eligibility, and cease to report payments as federal income where applicable? If not, why not?	Please refer to Part 2 of this document for a change to the RFP.

In raising this question, the potential bidder referenced RFP § 3.7.1.1(C)(40) which states in pertinent part:

RFP § 3.7.1.1 *Orientation*

A. The contractor shall develop an Orientation process that uses a standardized curriculum and materials, to be approved by the SCM prior to use;

B. The contractor shall provide scheduled Orientation skills training with participants to provide and review the information in the Orientation curriculum, at a frequency of at least one Orientation meeting per year per participant; and

C. Please note: the respective SCM will supply the contractor with the following DHS-numbered forms at the Project Launch meeting. The Orientation curriculum shall include, but not be limited to, the following:

...

40. Process explaining the Participant/ Authorized Representative- Employer Satisfaction Surveys.

The question posed by the potential bidder references IRS Notice 2014-7¹⁶ which provides guidance on the federal income tax treatment of certain payments to individual care providers for the care of eligible individuals under a state Medicaid Home and Community-Based Services waiver program described in section 1915(c) of the Social Security Act (Medicaid Waiver payments). Section 1915(c) enables individuals who otherwise would require care in a hospital, nursing facility, or intermediate care facility to receive care in the individual care provider's home. The notice provides that Medicaid waiver payments will be treated as difficulty of care payments excludable from gross income under § 131 of the Internal Revenue Code.

However, the question posed by the potential bidder relates to RFP § 3.12.1 *Related Federal and New Jersey Taxes*, which states "the contractor shall accurately process and distribute workers' payroll and related federal and New Jersey income tax withholding and employment-related taxes in compliance with all federal and State requirements in a timely manner." In addition, I note that RFP § 3.3(F) *Administrative Requirements for the Contract's Operations* states that "the contractor shall, at a minimum, perform the administrative requirements for the contract operations as follows...Proactively assist the respective SCM in identifying and interpreting changes to federal regulations or policies as necessary. Examples include frequent (e.g., quarterly) reporting of any emerging federal law or regulation that potentially impacts the process, or instances where another state's processes produce efficiencies and improved effectiveness, or communicate regional or national events that may be of interest to the State."

Accordingly, as required by the RFP, the contractor is required to comply with applicable federal and State laws related to tax withholdings and is required to identify and interpret changes to federal regulations or policies as necessary. While there was no addition, deletion, clarification or modification to the RFP contained in PART 2 of Addendum #2 related to 3.7.1.1 C 40, such language was not necessary or required to respond to the bidder question. Therefore, the Bureau's response is a clerical mistake which does not result in a deviation from the procurement process. I find that this procurement was conducted in conformance with the applicable laws and regulations.

¹⁶ On January 3, 2014, the Internal Revenue Service issued Notice 2014-7, 2014-4 I.R.B. 445. The notice is effective for payments received on or after January 3, 2014.

- Addendum #2 – Question 119

#	Page #	RFP Section Reference	Question	Answer
119	52	3.8	Section Title: Establish Individuals as Participants - Item A “Establish an individual as a participant and their authorized representative as an authorized representative as set forth in this RFP.” Not all participants will require an authorized representative. Suggestion: Reword this section to read: “Establish an individual as a participant and their authorized representative, where necessary, as an authorized representative as set forth in this RFP.”	This suggestion is not acceptable to the State. The RFP Section 3.8.A clarifies this question.

A potential bidder stated that not all participants require an authorized representative. Therefore, the potential bidder asked that the Bureau modify RFP language. The Bureau responded that the suggestion was not acceptable. CAU alleges that the Bureau’s response is inaccurate because it does not address the scenario posed. In response to the protest, the Bureau advises that the contractor does not make the determination whether a participant requires an authorized representative. Rather, at the time that a participant is being enrolled, he or she will already have an authorized representative who will require registration. Accordingly, review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 121

#	Page #	RFP Section Reference	Question	Answer
121	52	3.8	Section Title: Establish Individuals as Participants - Item C #2 "The contractor shall provide the participants with additional copies of the Enrollment Packet in either paper or electronic form as requested by the participant with the format to be determined by the participant at their request." Why would the participant need or request additional copies of the Enrollment Packet? Once enrolled, the process would not have to be repeated. If the intent of the passage was to indicate that the contractor should provide additional copies of the employee hiring packet upon request of the participant, then we suggest the passage be amended to read,". The contractor shall provide the participants with additional copies of the employee hiring packet...." Suggestion: Restate this sentence to read “The contractor shall provide the participants with additional copies of the employee hiring packet....”	This suggestion is not acceptable to the State. The RFP Section 3.8.C.2 remains unchanged.

The potential bidder stated that once a participant is enrolled there is no need for the participant to receive an additional enrollment packet; therefore, the RFP language stating that “the contractor shall provide the participants with additional copies of Enrollment Packets...as requested by the participant” should be modified. The Bureau did not accept the proposed language and noted that RFP § 3.8 would remain unchanged. CAU alleges that the once the participant is enrolled there is no need for additional enrollment packets; therefore, the Bureau’s response is inaccurate. The enrollment packet provided to participants includes information other than program enrollment forms, for example – a list of fees that may be charged to the participant through their budget plan. Therefore, a participant may require copies of enrollment packets at any time. A review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 122

#	Page #	RFP Section Reference	Question	Answer
122	52	3.8	Section Title: Establish Individuals as Participants - Item C #8 "Note: Should the New Jersey Division of Revenue and Enterprise Services provide alternative procedures on filing the NJ-REG to the contractor, the contractor must implement accordingly within thirty (30) days of notice from the SCM". Is this to indicate that the SCM will bear the responsibility to be aware of changes in the documentation required by the State of New Jersey and the IRS as they occur? If not, is this to indicate that such changes, when they become known to the contractor may not be acted upon until notified to do so by the SCM? Suggestion: Clarify the process by which changes in IRS/NJ state forms or other rules and obligations of program operation will be implemented without undue confusion or delay.	This suggestion is not acceptable to the State.

The potential bidder requested that the Bureau clarify the process for implementing new filing procedures for NJ-REG, which require that the contractor implement the new procedures within 30 days of being notified by the SCM. RFP § 3.8(C)(8) refers only to New Jersey filing procedures; however, the potential bidder requested language modification to include changes to IRS filing procedures. The Bureau did not revise the RFP as requested. CAU alleges that the Bureau’s response was unreasonably vague. A review of the RFP language reveals that the RFP language was clear as the contractor’s requirement to implement new filing procedures for NJ-REG. As the RFP section does not make reference to IRS filing procedures, the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 148

#	Page #	RFP Section Reference	Question	Answer
148	55	3.10.c	What are included as "administrative expenses" for the various programs?	The contractor awarded a contract resulting from this RFP will be provided detailed administrative expenses by each SCM for each program at the Project Launch meeting.

The potential bidders asked the Bureau to advise what is included in “administrative expenses” for the various programs. The Bureau responded that the SCM will provide the administrative expenses for each program at the Program Launch meeting. CAU states that information was unreasonably withheld. DHS as the subject matter expert made a business decision that bidders should come to their own conclusion as to their individual expenses for the new program. The Bureau advises that there was no historical data that could have been provided for this new program as the services sought under this solicitation differ from those provided under the current contract. Therefore, the Bureau’s response to the question posed was appropriate and ensured that all bidders were on a level playing field.

- Addendum #2 – Question 150

#	Page #	RFP Section Reference	Question	Answer
150	55	3.10.1	How are time sheets and payment requests for non-Medicaid providers handled by the contractor for dates of services prior to contract operations start date?	The contractor awarded a contract resulting from this RFP has no responsibility for time sheets and payment requests for non-Medicaid providers prior to assuming those responsibilities during the contract implementation period. However, the new contractor would need to gather all time sheet information from the incumbent contractor(s) and with due diligence ensure continuity of files (in order to support audit documentation if necessary).

The potential bidder asks how time sheets and payments for services completed prior to the contract start date will be handled. The Bureau responded that contractor under this RFP will not have responsibility for services provided prior to the contract implementation period. CAU alleges that the Bureau’s response is incomplete because it does not address the question that there will be expenses from prior to the contract period that will need to be paid by the new contractor. Contrary to CAU’s statement, the Bureau stated that the new contractor will have no responsibility for payment requests made prior to assuming those responsibilities. A review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 159

#	Page #	RFP Section Reference	Question	Answer
159	56	3.11	Process Worker's Payroll Which Programs all family members?	Process workers' payroll for the JACC program and for all DDS programs. For DDD, this only applies to self-directed employees.

CAU alleges that “both the question and the answer are incomprehensible.” RFP § 3.11(A) *Contractor's Cash Flow* states in pertinent part that “[t]he contractor shall have funds available to pay participants’ workers and providers/vendors. The contractor shall be required to make payment for participants’ goods and services, and directly hired workers’ payroll. Depending on the payment schedule and the timing of the debits and credits into and from the contractor’s and participants’ cash accounts, the contractor must be fiscally prepared to accept responsibility for making the payments, while awaiting receipt of the reimbursements.”

In responding to the question posed by the potential bidders, the Bureau interpreted the question as “[w]hich programs are worker’s payroll processed for? Are all family members processed?” Based upon this interpretation, the Bureau responded that “[p]rocess workers’ payroll for the JACC program and for all DDS programs. For DDD, this only applies to self-directed employees.” In response to the protest, the Bureau states that as stated in RFP § 3.11(A) the contractor shall have funds available to pay participants’ workers and providers/vendors. RFP § 2.2 *Contract Specific Definitions* defines Worker as “[d]omestic household employee hired by, and who performs work in and around the home, for DDS’ PPP participant; a participant-employed provider who is hired by and provides home-based supportive care for a MLTSS participant; or an individual provider hired by a DDD participant.”¹⁷ Family members are not included in the definition of worker. Reading the RFP as a whole, the Bureau’s response to the question posed as interpreted, is clear.

- Addendum #2 – Question 160

#	Page #	RFP Section Reference	Question	Answer
160	57	3.12.2	Process Workers’ Payroll – 35 How many employees are currently paid via paper check? How many employees are currently paid via EFT? How many employees are currently paid via debit card?	For DOAS individuals, approximately 75 percent (75%) of payroll is paid electronic transfer funds (ETF), with the remaining 25 percent (25%) paper check, and none are paid with a debit card. For DDS individuals, approximately 50 percent (49%) of payroll is paid electronic transfer funds (ETF), with fifty percent (50%) paid by paper check, and one percent (1%) paid with debit card. The information is not currently available for DDD individuals.

¹⁷ Participant is defined as “[a]n individual enrolled in one of the Programs specified in this RFP. RFP § 2.2 *Contract Specific Definitions*.”

The potential bidder requested that the Bureau provide information regarding how many employees are currently paid by check, EFT and debit card. The Bureau provided the statistics for DOAS and DDS, but stated that the information was not available for DDD. CAU alleges that the information was unreasonably withheld and that the answer was incomplete. Further, the Bureau advises that there was no historical data that could be provided because the program currently runs with the agency choice Model, and the data available is dissimilar to the data requested. Providing information about the existing program would not have assisted a potential bidder in preparing a proposal response. Therefore, the Bureau’s response to the question posed was appropriate and ensured that all bidders were on a level playing field.

- Addendum #2 – Question 167

#	Page #	RFP Section Reference	Question	Answer
167	60	3.13.1 b A	Bill for Services Rendered and Administrative Expenses – B a What is the current process for eligibility and enrollment data exchange with MCOs? How will the contractor be notified when a participant transfers from one MCO to another? What are the limits on participants transferring mid-month, mid-quarter, or mid-year?	Managed care organization eligibility is established on a monthly basis. Participants cannot transfer at any other time of the month. The DOAS data exchange will be via the DOAS’ HCBS/ADRC database. For DDS, the contractor will be notified with a monthly transmittal issued by the State. Participants may not change managed care enrollment mid- month and may only do so at the beginning of the upcoming month.

The potential bidder asked the Bureau to indicate the current process for eligibility and enrollment data exchange with MCOs and how the contractor will be notified of the transfer and whether there was a limit on mid-month transfers. The Bureau responded that participants can only transfer on a monthly basis, not mid-month and that the contractor will be notified of the transfer through a monthly transmittal issued by the State. CAU alleges that the transmittal is often incorrect; therefore, the Bureau’s response is inaccurate and misleading. The transmittals are made by DDS based upon its information available. The Bureau has no knowledge of inaccurate transmittals being made as there is no record of complaints on file with the Division’s Contract Compliance and Audit Unit. A review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 175

#	Page #	RFP Section Reference	Question	Answer
175	60	3.13.1	Section Title: Bill for Services rendered and Administrative Expenses - Item B #d MCO Claiming: “For clean claims submitted, reimbursement will occur approximately within fifteen (15) calendar days of the contractor’s clean claim submission” MCOs are required under their contract with the State to process claims within specified timeframes. However, given the twelve month history of MCOs paying claims under the DDS program, clean claims have not been	The State will intervene to ensure claims are paid within specified time frames.

			<p>paid within specified timeframes. The lack of timely claims payment is not addressed in this RFP. The cash reserves are inadequate as of the release of the RFP. Suggestion: The State should clearly and accurately indicate the claims payment process and include a cash reserve that is adequate or a plan that protects the contractor and the program while ensuring the timely payment of participant worker wages and non-wage expenditures.</p>	
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A potential bidder asked the state to clarify the claims payment process to include a cash reserve or a plan that protects the contractor. In the protest, CAU states that the response is a misstatement as the State has never intervened as necessary or appropriate. Here, CAU’s own experiences may differ from that of other contractors. Further, even if the State did not previously have cause to intervene, that does not mean that the State would not intervene at a future date if deemed necessary. A review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 176

#	Page #	RFP Section Reference	Question	Answer
176	60	3.13.1	<p>Section Title: Bill for Services rendered and Administrative Expenses - Item B #d The RFP references the MCO contract with the State for rendering services to Medicaid recipients. How will the state ensure that MCOs abide by these requirements as it relates to this contract? Suggestion: The State should indicate how discrepancies between the State’s contract with the MCOs and the contract awarded under this RFP will be resolved.</p>	<p>The State routinely monitors contract compliance.</p>

A potential bidder inquired how the State will ensure that MCOs abide by contract requirements and requested that the Bureau revise the RFP to indicate how discrepancies would be resolved. The Bureau responded that the State routinely monitors contract compliance. CAU alleges that the State does not routinely monitor compliance; therefore, the response is erroneous and misleading. The Department of the Treasury – Division of Purchase and Property maintains the Contract Compliance and Audit Unit which has the “responsibility and authority to audit State contract usage to promote compliance with contract provisions and applicable procurement mandates and guidelines...In addition, CCAU monitors using agencies and contracted vendors to ensure their conformance with State procurement statutes, rules, and contractual terms, conditions, and requirements.” N.J.A.C. 17:12-1.3. Therefore, a review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 180

#	Page #	RFP Section Reference	Question	Answer
180	62	3.15	Do each of the MCOs accept an EDI 837P claim transaction and provide an EDI 835 remittance?	Yes, each managed care organization accepts an EDI 837P claim transaction and provides an EDI 835 remittance.

The question posed by the potential bidder asked whether MCOs accept an EDI 837P claim transaction and provide an EDI 835 remittance. The Bureau responded “yes.” CAU alleges that the response is factually incorrect as AETNA has not provided an EDI remittance since January 2015. In response to the protest, the Bureau advises that EDI 837P “SENDS” and an EDI 835 “RECEIVES,” the two-way electronic communication is dependent on both entities’ capabilities for transferring and receiving data. The Bureau is not aware of any issues related to use of this system as no complaints have been filed with the Division’s Contract Compliance and Audit Unit. A review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 185

#	Page #	RFP Section Reference	Question	Answer
185	62	3.15	Do each of the MCOs accept an EDI 837P claim transaction and provide an EDI 835 remittance?	Yes, each managed care organization accepts an EDI 837P claim transaction and provides an EDI 835 remittance.

Please note, that question 185 on Addendum #2, dated September 1, 2015, and its associated answer, are identical to the question 180 and its associated answer. The question posed by the potential bidder asked whether MCOs accept an EDI 837P claim transaction and provide an EDI 835 remittance. The Bureau responded “yes.” CAU alleges that the response is factually incorrect as AETNA has not provided an EDI remittance since January 2015. In response to the protest, the Bureau advises that EDI 837P “SENDS” and an EDI 835 “RECEIVES,” the two-way electronic communication is dependent on both entities’ capabilities for transferring and receiving data. The Bureau is not aware of any issues related to use of this system as no complaint have been filed with the Division’s Contract Compliance and Audit Unit. A review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 233

#	Page #	RFP Section Reference	Question	Answer
233	84	3.23	Conclusion of Readiness Review Does each SCM conduct its own readiness review or will one review be completed?	The contractor will be subject to one Conclusion of Readiness Review, coordinated and mutually agreed upon as to completeness amongst the four (4) SCMs.

The question posed by the potential bidder asks whether each SCM will conduct its own Readiness Review or whether there will be one Readiness Review. The Bureau responded that the contractor will be subject to one Conclusion of Readiness Review, coordinated and agreed upon by the four SCMs. CAU alleges that the response leaves room for speculation as the Bureau’s response to Question #234 indicates that the contractor may assume some duties for those SCMs who agree that the Readiness Review is complete while working with the other SCM(s) to complete the Readiness Review.

- Addendum #2 – Question 234

#	Page #	RFP Section Reference	Question	Answer
234	84	3.23	<p>Section Title: Conclusion of Readiness Review - Item B</p> <p>"The SCMs will notify the contractor when/if the results of the review require a corrective action plan. Should the contractor not meet the readiness requirements, the respective SCM will notify the contractor when/if, based on the results of the review a corrective action plan is required." If three of the SCMs agree that the contractor has successfully passed the Readiness Review and one SCM does not. What will the resulting process be? Will the contractor assume the responsibilities of the program for those SCMs who agree, while working with the remaining SCM to pass the review (including preparation of a corrective action plan, if required)? Or will assumption of the contract only occur once all four SCMs agree that the contractor is ready?</p> <p>Suggestion: Clarify whether the contractor can proceed with a Using Agency/Using Agencies where the contractor has met the readiness review while another Using Agency has not yet cleared the contractor as Ready.</p>	<p>Please refer to Section 3.1.4 Assumption of Program in RFP 16-x-23964, "Exact dates for the assumption of specific contract duties will be determined throughout the contract implementation period after the contractor's consultation with, and the receipt of written approval from, the SCMs." Thus it is possible that the contractor shall assume certain responsibilities of the program for those SCMs who agree, while working with the respective SCMs to fully assume the remaining responsibilities of the Readiness Review (including preparation of a corrective action plan, if required).</p>

The question posed by the potential bidder inquired what would happen if the contractor passed the Readiness Review for three of the SCMs, but not the fourth. The Bureau responded that "the contractor shall assume certain responsibilities for those SCMs who agree, while working with the respective SCMs to fully assume the remaining responsibilities of the Readiness Review. CAU alleges that "the response suggests that all services would not begin on January 1, 2016, which contradicts the RFP requirement...the State also does not address how service that are not assumed by the contractor will continue."

- Addendum #2 – Question 254

#	Page #	RFP Section Reference	Question	Answer
254	109	5.6	<p>Substitution of Staff</p> <p>What level of staff are included here and what about emergencies?</p>	<p>All management, supervisory, and key personnel substitutions require that the contractor shall forward a request to the State Contract Manager for consideration and approval. There is no exception to this requirement for emergencies.</p>

The question posed by the potential bidder asked the Bureau to identify what level of staff are included in RFP § 5.6 *Substitution of Staff*. The Bureau responded that all management, supervisory and key personnel are included. CAU states that the Bureau failed to adequately respond to the question about how it would control hiring in a way that would not affect the contractor's ability to perform. I note

that CAU’s allegation to this question is unrelated to the question posed by the potential bidder. Based upon the question posed, the Bureau would not have provided a response about how it would control the hiring plan. Therefore, a review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field. However, I do note that in response to question 86, the Bureau responded to the challenge raised here by CAU.

- Addendum #2 – Question 255

#	Page #	RFP Section Reference	Question	Answer
255	109	5.7	Substitution or addition of subcontractors What about emergencies?	All substitutions of subcontractors, whether with other subcontractors or contractor staff, and additions of subcontractors require that the contractor shall forward a written request to the State Contract Manager for consideration; and subsequent approval by the Director of Purchase and Property. There is no exception to this requirement for emergencies.

The question posed by the potential bidder asked the Bureau generally about the substitution or addition of subcontractors as referenced in RFP § 5.7 *Substitution or Addition of Subcontractor(s)*. The Bureau responded that the addition of subcontractors requires a written request to be made by the contractor to the SCM for approval. CAU states that the Bureau failed to adequately respond to the question about how it would control hiring in a way that would not affect the contractor’s ability to perform. I note that CAU’s allegation to this question is unrelated to the question posed by the potential bidder. Based upon the question posed, the Bureau would not have provided a response about how it would control the hiring plan. Therefore, a review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field. However, I do note that in response to question 86, the Bureau responded to the challenge raised here by CAU.

- Addendum #2 – Question 258

#	Page #	RFP Section Reference	Question	Answer
258	118	5.15	Section Title: Retainage What is the time frame for release of the final 10% of the retainage? Suggestion: Clarify the time frame for release of the final 10% of the retainage after final certification by the SCM.	The final 10% of retainage will be released to the contractor at the end of the contract term.

The question posed by a potential bidder asks the Bureau to clarify that the “retainage applies only to contractor administrative fees and does not apply to participant claim/participant program funding.” In response to the question, the Bureau stated that the retainage applied to all of the price lines shown in RFP § 9.0 *Price Schedule/Sheet*. CAU alleges that the Bureau did not address the retainage issue. A review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 260

#	Page #	RFP Section Reference	Question	Answer
260	118	5.15	Section Title: Retainage “Following certification by the State Contract Manager that all services have been satisfactorily preformed the balance of the retainage shall be released”. What are the criteria upon which this certification will depend? Will there be a clear list of criteria the State Contract Manager will use to determine when certification may be awarded? Also, which of the SCMs will provide this certification? Will each of the four SCMs act independently in this process? Clarify the exact process and criteria by which the SCM or SCMs will provide certification that all services have been satisfactorily performed.	Please refer to the responses for questions #258 and #259

The question posed by the potential bidder asks that the Bureau elaborate on the criteria that will be used by the SCMs to determine whether the contractor has adequately performed the services in order to release the retainage. In response to the question, the Bureau referred potential bidders to the responses to questions #258 and 259. In response to this protest, the Bureau advises that in this scenario, a corrective action plan pursuant to RFP § 3.5.3 would be implemented. The specific process utilized would be worked out after contract award between the contractor and the using agencies.

- Addendum #2 – Question 261

#	Page #	RFP Section Reference	Question	Answer
261	118	5.16	Section Title: Additional Work and/or Special Projects Please clarify whether the approval of the Director of the Division of Purchase and Property for special projects does not apply to special projects that are requested and approved by the SCM in accordance with the pricing shown on Sheet 2, Price Lines 6-8 in section 9.1 of the RFP--the Price Schedule. Suggestion: Clarify that Additional Work and/or Special Projects does not apply to additional work/special projects that are requested and approved by the SCM in accordance with the pricing shown on Sheet 2, Price Lines 6-8 in section 9.1 of the RFP--the Price Schedule.	Section 5.16 Additional Work and/or Special Projects applies to the pricing shown in Section 9.1 Price Schedule/ Sheet 2 Price Lines 6-8.

A potential bidder asked the Bureau to “clarify whether the approval of the Director of the Division of Purchase and Property for special projects does not apply to special project that are requested and approved by the SCM in accordance with the pricing shown on Sheet 2, Price Lines 6-8. The Bureau responded that “Section 5.16 *Additional Work and/or Special Projects* applies to the pricing shown in Section 9.1 *Price Schedule/Sheet 2 Price Lines 6-8.*” CAU alleges that the Bureau did not answer the

question posed. A review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive as RFP § 5.16 answers the question posed by the potential bidder and ensured that all bidders were on a level playing field.

- Addendum #2 – Question 263

#	Page #	RFP Section Reference	Question	Answer
263	119	5.17.2	Insurance - automobile liability insurance Who is the perceived owner of the vehicle?	The contractor is required to maintain the coverage specified in RFP Section 5.17.2.

A potential bidder asked the Bureau to clarify who is the perceived owner of the vehicle for which the insurance coverage referred to RFP § 5.17.2 applies. The Bureau responded that the contractor is required to maintain the insurance coverage. CAU states that the question was not answered.

RFP § 5.5 *Contractor Responsibilities* states that:

The contractor shall have sole responsibility for the complete effort specified in the contract. Payment will be made only to the contractor. The contractor shall have sole responsibility for all payments due any subcontractor.

The contractor is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under the contract. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this contract shall not in any way relieve the contractor of responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the services shall not be construed as a waiver of any rights that the State may have arising out of the contractor’s performance of this contract.¹⁸

[Emphasis added.]

Further, RFP § 5.17.2 *Insurance – Automobile Liability Insurance* states “Section 4.2 of the State of NJ Standard Terms and Conditions regarding insurance is modified with the following section regarding Automobile Liability Insurance.” SSTC § 4.2 sets forth the standard insurance requirements and states in pertinent part that “the contractor shall secure and maintain in force for the term of the contract insurance as provided herein.” Insurance certificates as provided only to the owner of vehicles. In addition, I note that the State can only impose contract requirements on the contractor. Therefore, it is clear that if the contractor must provide the insurance, it must also be the owner of the vehicle. As such, a review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

¹⁸ RFP § 2.1 *General Definitions* defines Contract as “[t]his RFP, any addendum to this RFP, and the bidder’s proposal submitted in response to this RFP, as accepted by the State” and defines Contractor as “[t]he bidder awarded a contract resulting from this RFP.”

- Addendum #2 – Question 264

#	Page #	RFP Section Reference	Question	Answer
264	119	5.17.2	Insurance - automobile liability insurance is this the Contractor staff or the participant staff?	The contractor is required to maintain the coverage specified in RFP Section 5.17.2.

A potential bidder inquired about who is required to maintain the insurance coverage. The Bureau responded that the contractor is required to maintain the insurance coverage. CAU states that the question was not answered.

As noted above, SSTC § 4.2 sets forth the standard insurance requirements and states in pertinent part that “the contractor shall secure and maintain in force for the term of the contract insurance as provided herein.” In addition, RFP § 5.5 *Contractor Responsibilities* states “[t]he contractor shall have sole responsibility for the complete effort specified in the contract.” A review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive – advising all potential bidder that it was the contractor, not staff, that is required to maintain the required insurance coverages.

- Addendum #2 – Question 269

#	Page #	RFP Section Reference	Question	Answer
269	129	9.0	Section Title: Price Schedule/ Sheet 1 "Instruction: Bidders for RFP 16-x-23984 shall use these Price Schedule Sheets (Sheets #1, #2, #3, #4, and #5) to provide an estimated Firm Fixed Price for all price lines for each year of the contract. Bidders must submit a price for each item". Firm Fixe[d] Price is defined in the General Definitions; however, Estimated Firm Fixed Price is not defined. Suggestion: The State should define “estimated Firm Fixed Price” in the General Definitions or Contract Specific Definitions of the RFP.	The estimated price may be based on historical data, projections, and anticipated need.

A potential bidder asked the Bureau to define “estimated firm fixed price.” In response, the Bureau states that the “estimated price may be based on historical data, projections and anticipated need.” CAU alleges that the Bureau failed to provide an adequate definition. A review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field. Further, with respect to CAU’s allegation that PPL asserted a right to adjust its prices, I note that a review of PPL’s proposal does not reveal such a reservation of rights.

- Addendum #2 – Question 270

#	Page #	RFP Section Reference	Question	Answer
270	129	9.0	Section Title: Price Schedule/ Sheet 1 "Instruction: Bidders for RFP 16-x-23984 shall use these Price Schedule Sheets (Sheets #1, #2, #3, #4, and #5) to provide	Yes, estimated quantities have been provided for bidding and bid evaluation purposes only. The contractor will be paid based

			<p>an estimated Firm Fixed Price for all price lines for each year of the contract. Bidders must submit a price for each item". Is the Estimated Firm Fixed Price only estimated because quantities may vary? Or is the Firm Fixed Price estimated because of the need for the contractor to negotiate prices with the MCOs in separate contracts? How will the state proceed if there is a significant difference between the estimated Firm Fixed Price in the Price Schedule and the actual prices negotiated between the contractor and the MCOs? Suggestion: The State should require the MCOs to abide by the contractors contract with the state, including the Price Sheet submitted by the contractor and included in the contractors proposal. Otherwise a method by which the contractor may negotiate with the MCOs prior to completion of the Price Schedule must be devised.</p>	<p>on actual quantities.</p> <p>The contractor does not negotiate pricing with the managed care organizations.</p>
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A potential bidder asked the Bureau to clarify whether the “estimated firm fixed prices [is] only estimated because quantities may vary? Or is the firm fixed price estimated because of the need of the contractor to negotiate prices with the MCOs?” The Bureau responded that “estimated quantities have been provided for bidding and bid evaluation purposes only. The contractor will be paid based on actual quantities. The contractor does not negotiate pricing with the [MCOs].” CAU alleges that the RFP fails to specify a material provision because proposed prices cannot be established based upon estimated quantities. A review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 271

#	Page #	RFP Section Reference	Question	Answer
271	129	9.0	Section Title: Price Schedule/ Sheet 1 Should the State clarify the Utilization Summary on Chart No. 1 on page 11 of the RFP, the Price Lines should be adjusted accordingly. Suggestion: Adjust Price Line Quantities accordingly with any Utilization Summary changes on Chart No. 1 on Page 11.	There is no question here. Please refer to footnote number 2, RFP page 130, Section 9.1.

A potential bidder suggested that if the Bureau chose to clarify the Utilization Summary, the price lines should be adjusted accordingly. There being no change to the Utilization Summary, there was no change to the price lines. The Bureau responded that there was no question posed. CAU alleges that the Bureau failed to properly respond the question/suggestion. However, a review of question #271 reveals that there was no question posed, therefore, the response provided was appropriate.

- Addendum #2 – Question 278

#	Page #	RFP Section Reference	Question	Answer
278	129	9.1	Section Title: Price Schedule/Sheet 3 Price Lines 09 and 10 This section does not account for the total five year time frame of the contract. How is the bidder to allow for population growth among the programs under this contract in estimating quantities for the five years of its term? Suggestion: Restructure the Price Schedule to allow for program growth throughout the five year term of this contract. Allow bidders to estimate usage taking program growth into account. This is especially important for programs like PPP and DDD Supports, where the change in volume over the five year period may be substantial.	The RFP Section 1.2.4 Utilization Summary includes the projected growth over the next five (5) years.

A noted in the RFP, there is no guarantee as to the minimum or maximum numbers, therefore the five-year estimates would not impact the price sheet as prices are submitted with a unit cost. A review of the answer provided indicates that the Bureau’s response to the question posed was appropriate and responsive, ensuring that all bidders were on a level playing field.

- Addendum #2 – Question 284

#	Page #	RFP Section Reference	Question	Answer
284	1	Cover Sheet	Will the due date be extended given that the RFP documents are not available as of 8/7/2015.	Yes, the due date for submitting questions has been extended to September 9, 2015.

See Point #54 in response to CAU’s December 8, 2015 protest letter above.

December 22, 2015 Supplemental Protest Letter – Part II: Challenge to NOI

In Part II of its December 22, 2015 supplemental protest letter, CAU alleges that PPL’s proposal is non-responsive because PPL knowingly did not comply with the mandatory requirements of the RFP. CAU additionally alleges that the proposal scoring was inconsistent and contrary to the terms of the RFP.

1. CAU challenges the NOI stating that it was unfair that PPL received bonus points for proposing a 180-day implementation plan which is contrary to the RFP requirement for a 90-day implementation plan. The Bureau advises that PPL did not receive bonus points during the evaluation. Compliant with the RFP requirements, PPL proposed a 90-day implementation plan. PPL asked the State to consider a 180-day implementation plan; it did not say it would not comply with the RFP requirement for a 90-day implementation plan. See Point #1 in response to CAU’s December 8, 2015 protest letter above.

2. CAU challenges the NOI stating that the Bureau did not check PPL’s references and that West Virginia’s contract, one of the references provided by PPL, is not similar to the scope of work required by this RFP. CAU argues that effectively, no references listed by PPL were taken into consideration. The Bureau advises that with respect to all proposals received, two attempts were made to contact each of the references listed in the proposal by telephone and then followed up with an email if no

response was received. The information provided by references was included in the scoring for Criteria B – Experience of the Firm.¹⁹

A review of the record of this procurement conducted by the Hearing Unit revealed that, with respect to the CAU’s protest point, the Bureau did make attempts to check the references. I therefore find no reason to disturb the Committee’s evaluation and scoring of Easter Seals’ proposal for Criteria B.

3. CAU challenges the NOI stating “in the review of CAU's bid, there was no mention of the consulting work CAU currently performs with eighty consultants. There was also no mention of CAU's ability to complete the SOW, which shows bias and glosses over PPL's gross deficiency and plain inability to perform this critical portion of the SOW.” The RFP did not require that a bidder list all consulting work that it has performed and therefore, consulting work was not evaluated by the Committee. For Criteria C - Ability of Firm to complete the Scope of Work based on its Technical Proposal²⁰, the Committee report states PPL’s proposal demonstrated that the firm has (1) the financial capacity to manage the fiscal aspects of this contract; (2) the proposal provided an innovative approach by (a) offering both a 90-day and 180-day contract implementation work plan; (b) recognizing the fiscal risks in swipe processing, (c) providing a dedicated Launch Team trained in Project Management disciplines, and (d) use of Business Rules to ensure information technology systems, procedures, and operations comply with the programmatic rules; and (3) the firm will utilize a web-based tracking system. The Committee concluded that the “proposal demonstrated strengths that exceed the criteria requirements of the RFP [and] these factors demonstrated Public Partnerships’ capacity to complete the Scope of Work.” I therefore find no reason to disturb the Committee’s evaluation and scoring of Easter Seals’ proposal for Criteria C.

4. CAU challenges the NOI stating that PPL’s Implementation Plan ignores a critical component of the scope of work, by implying that the home visits will not be completed by the end of the readiness review period. CAU misinterprets the RFP requirement and PPL’s proposal. The RFP requires that the contractor conduct home visits on a quarterly basis: there is no requirement that a home visit be conducted during the readiness review period. RFP § 3.6.2.8.1(B)(3); RFP § 3.21.1(A)(12); and RFP § 3.21.1(A)(16)(a). In its proposal response, PPL stated, “Our counselors conduct home visits and monthly calls as required by each program we support.” (PPL’s proposal response to RFP § 3.21.1.) I note that in its Readiness Review Plan (DPP-1544), PPL notes that there are risks involved in establishing/completing the initial home visits required by RFP § 3.20.19 *Veterans’ Self-Directed Home Care Services* and RFP § 3.21.1 *Providing Counseling Services to Participants/Authorized Representative*. Neither of these RFP sections requires that the home visits be completed during the readiness review period.

5. CAU challenges the NOI stating that PPL received bonus points for utilizing staff from across the country to perform the work required under this contract. CAU further claims that PPL should have been evaluated as an out-of-state bidder because of this. First, in response to this protest, the Bureau confirms that PPL was not awarded extra points for utilizing staff located in other parts of the country to perform the work required by this RFP. Rather, PPL’s proposal was evaluated as a whole and it was awarded points by the Committee based upon the responsiveness of its proposal to the evaluation criteria. Second, as noted in Point #3 in response to CAU’s December 8, 2015 protest letter above, PPL was not required to be evaluated as an out-of-state bidder.

¹⁹ Criteria B - Experience of Firm: The bidders documented experience in successfully completing contracts of a similar size and scope in relation to the work required by this RFP

²⁰ Criteria C - Ability of Firm to Complete the Scope of Work based on its Technical Proposal: The bidder’s demonstration in the proposal that the Bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the contract.

6. CAU challenges the NOI stating that PPL’s proposal “fails to include a huge labor intensive component to the work – specifically counseling by eighty people...PPL’s plan and price excludes as least one-third (1/3) of the scope of work, as it related to counseling.” As required by the RFP, PPL’s proposal encompasses all price lines and work required by the RFP. PPL did not take any exemptions to the RFP requirements when submitting its proposal.

7. CAU challenges the NOI stating that PPL has received the right to adjust its price during the term of the contract. PPL’s proposal for pricing is consistent with the RFP requirements, the Hearing Unit’s independent review of PPL’s proposal revealed nothing that indicated that PPL reserved the right to increase its prices during the contract term. CAU’s allegation is without factual support in PPL’s proposal.

8. See Point #20 RFP § 3.7 *Meet-and-Greet the Program Participants* in response to CAU’s December 8, 2015 protest letter above.

9. See Point #27 RFP § 3.11 *Contractor’s Cash Flow* in response to CAU’s December 8, 2015 protest letter above.

10. CAU alleges that PPL knowingly failed to comply with the requirements of the RFP despite those certain requirements being reiterated in the Q&A responses. Specifically,

- Addendum #2 – Question 45

#	Page #	RFP Section Reference	Question	Answer
45	27	3.1.1	Contract Implementation Period What provisions has NJ DHS made to ensure that incumbent vendors transfer participant and employee records to the new contractor in compliance with the 90-day implementation period rather than the new contractor starting from scratch with all enrollment paperwork? By what date does NJ DHS anticipate imposing a moratorium on enrollment of participants, employees, and agencies/vendors/independent contractors by the incumbents?	Enrollment will continue as usual. The State will manage the transfer schedule from the incumbent contractor(s) to the contractor awarded a contract resulting from this RFP.

CAU alleges that “despite being told that enrollment was to continue as usual, PPL specifically proposed that enrollment should be suspended for an indefinite period of time so that PPL can try to get ready to assume the full scope of work under the contract.” In reviewing PPL’s proposal, the Committee determined that PPL’s proposal was responsive to the requirements of RFP § 3.1.1. In connection with this protest, the Hearing Unit conducted an independent review of PPL’s proposal. In response to RFP § 3.1.1 PPL did not propose that enrollment be suspended. See Points #1, 23 and 25 in response to CAU’s December 8, 2015 protest letter above.

- Addendum #2 – Question 60

#	Page #	RFP Section Reference	Question	Answer
60	31	3.4	Customer Service Requirements If we are maintaining call center (not out-sourcing), must the center be located in one of the 3 locations (3.6.1 Contractor's Office Locations) or can it be in any of our current locations?	Yes, the contractor's Call Center must be located in one of the contractor's three locations set up specifically for the contract resulting from this RFP.

CAU alleges that despite being advised that the call center must be located in one of the Contractor's three New Jersey locations, PPL made no mention in its proposal of its New Jersey call center. While the RFP requires that the contractor have a call center located in New Jersey, the RFP did not require that a bidder identify the specific location of its New Jersey call center with its proposal. As previously noted, Section 3.0 of the RFP are contractor, not bidder requirements. Therefore, PPL's proposal was responsive to the requirements of the RFP. See Points #5 and 6 in response to CAU's December 8, 2015 protest letter above.

- Addendum #2 – Question 75

#	Page #	RFP Section Reference	Question	Answer
75	37	3.5.2.1	Section Title: Processing, Paying, and Tracking Payments Item A "Pay 100 percent (100%) of invoices for participant-directed expenses within thirty (30) calendar days of receipt of the invoice statement." Does this requirement only apply to valid invoices that are authorized for currently active Medicaid participants? Suggestion: Clarify that expenditures that cannot be tied to a Medicaid Authorization can be held until the Authorization is obtained.	Yes, this requirement applies to valid invoices.

CAU alleges that the response to question #75 "states that payment must be made for valid invoice and does not state that the contractor can choose not to pay or to 'pend payment' which is what PPL proposes." See Points #27 and 30 in response to CAU's December 8, 2015 protest letter above.

- Addendum #2 – Question 94

#	Page #	RFP Section Reference	Question	Answer
94	47	3.6.3.1	Section Title: Federal Employer Identification Number (FEIN) for the contractor Will a contractor who already possesses a separate FEIN for the sole purpose or acting as an F/EA FMS for program participants be required to get a new one for the purpose of this contract? Suggestion: Clarify that a contractor may use their current FEIN if the contractor has previously been operating with a separate FEIN as Fiscal Employer Agent.	No, the contractor will not be required to obtain a new Federal Employer Identification Number (FEIN), and the contractor may use its current FEIN if the contractor has previously been operating with a separate FEIN as Fiscal Employer Agent.

CAU alleges that “even after clarification was provided that the contractor will not be required to obtain a new Federal Employer Identification Number (FEIN), PPL states that multiple FEINs is best practice...PPL fails to even provide any explanation as to why it thinks multiple FEINs are best practice.” In reviewing PPL’s proposal, the Committee determined that PPL’s proposal was responsive to the RFP requirements. The RFP did not limit a contractor to only one FEIN number; therefore, the Committee found PPL’s proposal for multiple FEINs acceptable. See Point #17 in response to CAU’s December 8, 2015 protest letter above.

- Addendum #2 – Question 99

#	Page #	RFP Section Reference	Question	Answer
99	48	3.6.4B	Contractor's Records Can all records be housed in an Electronic Health Records System as well as the DDD Web Application?	It is preferred that DDD’s records be housed in the DDD web application.

CAU alleges that despite the Q&A response that it is preferred that DDD’s records be housed in the DDD web application, PPL states that it will use iRecord for a period of six months. In reviewing PPL’s proposal, the Committee determined that PPL’s proposal was responsive to the RFP requirements. RFP § 3.6.4 B states that the contractor shall “maintain electronic records for each program participant and their directly hired workers; except in the case of DDD’s participants and directly hired workers, maintain electronic records only within the DDD web application.” In response to RFP § 3.6.4, PPL stated, “during the implementation period, PPL will meet with DHS and all incumbent contractors in order to organize the transfer of all records.” Rather, in its readiness review timeline, in response to RFP § 3.22 PPL states that it will require six months to establish a working connection with the DDD i-record system. RFP § 3.22 requires that a contractor “establish and maintain connection with the DDD’s i-Record system.” Accordingly, PPL’s proposal conforms to the requirements of the RFP. See Point #47 in response to CAU’s December 8, 2015 protest letter above.

- Addendum #2 – Question 104

#	Page #	RFP Section Reference	Question	Answer
104	49	3.6.6	Section Title: Third-party agreements with the State's Managed Care Organizations (MCOS) - Item C How long a period does the state expect contracting between the contractor and the MCOs to take for the purposes of this contract? If the required contracts between the contractor and the MCOs are not in place by January 1, 2016, what recourse will there be to protect participants from interruptions in services? Suggestion: The MCOs accept the rates established in the submission of the bidders State accepted bid and contract award and be required by the state to finalize its Third Party Agreement with the VF/EA within 45 days of award.	The State expects diligence from the contractor awarded a contract resulting from this RFP, as it is part of the operational readiness for the contractor to assume operations; however, each managed care organization has its own process and each its own time frame. As a condition of readiness, the contracts must be in place; the State may intervene in the process to assure this happens timely.

CAU alleges that the agreements that PPL may already have in place will suffice to operate PPP. RFP §3.6.6 requires that “[d]uring the contract implementation period, the contractor shall establish a third-party agreement with the State’s managed care organizations.” Therefore, PPL was not required to have the contracts in place at the time that its proposal was submitted. Rather, in its proposal PPL stated

that it “has successful, established working relationships and agreements with third-party MCO organizations” which evidence PPL’s ability to work with various MCOs. Therefore, PPL’s proposal was responsive. *See* Point #19 in response to CAU’s December 8, 2015 protest letter above and Addendum #2 – Question 104 in response to CAU’s December 22, 2015 protest letter – part 1 above.

- Addendum #2 – Question 112

#	Page #	RFP Section Reference	Question	Answer
112	50	3.7 B 1	Meet and greet the program participants Is this for all participants or only those utilizing a program that uses financial counseling services?	The contractor shall meet and greet all participants enrolled in a program that includes Financial Counseling Services.

CAU alleges that the Q&A response requires that the contractor meet and greet all participants, but that the RFP requires 1 on 1 meetings, not group meetings as suggested by PPL. *See* Point #47 in response to CAU’s December 8, 2015 protest letter above.

- Addendum #2 – Question 128

#	Page #	RFP Section Reference	Question	Answer
128	53	3.8 C 4	Establish Individuals as Participants – C.4 For each program, what subset of participants will require a new home visit by the contractor? For example: Is a new home visit required for all 1,500 JACC participants or only required for the estimated 115 participants with employer authority, or only required for new enrollees?	Only when a JACC client opts for the cash and counseling model, is a home visit required. For PPP, only the home visits defined by the RFP are required.

CAU alleges that the Q&A response reiterates the RFP requirements for home visits, not group meetings as proposed by PPL. In response to RFP § 3.7, PPL has proposed meet and greets with program participants for the initial introductory meeting. However, PPL has indicated in its proposal that it will conduct the annual one-on-one home visits as required. PPL’s proposal is responsive to the requirements of the RFP.

- Addendum #2 – Question 158

#	Page #	RFP Section Reference	Question	Answer
158	56	3.11	Contractor's Cash Flow Can the line of credit be from the Parent Company? Is the State going reimburse the contractor for interest costs associated with the line of credit.	Yes, the contractor’s line of credit can be from the Parent Company of the contractor. No, the State will not reimburse for interest costs.

CAU alleges that PPL has reserved the right to propose alternate billing methods or negotiate added costs, making its proposal non-responsive. RFP § 3.11 requires that the contractor establish a \$3 million line of credit and have a \$3 million cash reserve for this contract. As previously noted, PPL has demonstrated its ability to comply with this RFP requirement. In addition, in its proposal, PPL states “[i]f an increase in the line of credit or cash reserve is requested, PPL reserves the right to propose alternative billing methods or to negotiate added cost of capital or other credit terms with DHS.” PPL’s proposal

conforms to the requirements of the RFP and the response to Question #158 of Addendum #2. See Point #27 in response to CAU's December 8, 2015 protest letter above.

- Addendum #2 – Question 190

#	Page #	RFP Section Reference	Question	Answer
190	63	3.17	Worker's Compensation Insurance for Participant/Representative-Employers What is the estimated number of individual policies that are purchased on an annual basis? Can NJ DHS provide a sample of a current worker's compensation insurance policy in effect? Can NJ DHS provide data on loss history and experience ratings?	<p>There have been no claims filed for DOAS programs. The DOAS participants include their worker's compensation insurance in their homeowner's insurance policy.</p> <p>For DDS, approximately ninety- five percent (95%) of participants purchase workers' compensation insurance. The remaining are covered under the participants' homeowner's policies.</p> <p>For DDD, this information is not currently available.</p> <p>A current worker's compensation insurance policy is not available, per prohibitions in privacy regulations.</p> <p>Approximately 1% of participants have filed worker's compensation claims.</p>

CAU alleges that PPL "seeks to re-write the process despite having been provided specific information about how workers' compensation is handled." See Point #34 in response to CAU's December 8, 2015 protest letter above.

- Addendum #2 – Question 191

#	Page #	RFP Section Reference	Question	Answer
191	63	3.17 A 1	Broker Workers' Compensation Insurance for Participant/Representative Employers Does this process need to be done for each participant individually or can it be one globally for the whole group?	The brokering of workers' compensation insurance policies shall be performed for each participant individually because each participant is considered a separate business.

CAU alleges that PPL "seeks to re-write the process despite having been provided specific information about how workers' compensation is handled." See Point #34 in response to CAU's December 8, 2015 protest letter above.

- Addendum #2 – Question 192

#	Page #	RFP Section Reference	Question	Answer
192	63	3.17 A 1	Broker Workers' Compensation Insurance for Participant/Representative Employers Can the Contractor consistently apply to the same three insurance companies, or	Yes, the contractor may apply to the same three insurance companies.

			do they need to apply to difference ones?	
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CAU alleges that PPL “seeks to re-write the process despite having been provided specific information about how workers’ compensation is handled.” See Point #34 in response to CAU’s December 8, 2015 protest letter above.

- Addendum #2 – Question 254

#	Page #	RFP Section Reference	Question	Answer
254	109	5.6	Substitution of Staff What level of staff are included here and what about emergencies?	All management, supervisory, and key personnel substitutions require that the contractor shall forward a request to the State Contract Manager for consideration and approval. There is no exception to this requirement for emergencies.

CAU alleges that PPL has failed to address the issue of continuing performance in the event of emergencies. Section 5 of the RFP contains *Special Contractual Terms and Conditions*, which are mandatory terms applicable to the contract. Bidders were not required to provide any proposal response to this section of the RFP. However, I note that in response to RFP §4.6.1 (Appendix M.) PPL stated that it “shall create a Continuity of Operations Plan (COOP) during the contract implementation period and maintain continuity throughout the contract term outside of the operation’s business locations in the event of a man-made or natural disaster emergency, or due to an unforeseen displacement.”

11. See Point #13 RFP § 3.53 *Corrective Action Plan (CAP)* in response to CAU’s December 8, 2015 protest letter above.

12. CAU challenges the NOI stating that PPL’s proposal is non-responsive because at the time of its proposal submission, PPL had not hired its management team or staff from among local employees.

In its proposal cover letter, PPL states in part:

PPL has assembled an industry-leading team for this engagement. The PPL team for this project includes national and local managers and staff with decades of experience supporting state clients in the design and implementation of participant direction. PPL is a matrix-managed organization with dedicated operational centers in Program Management, Financial Operations, Business Services, Information Technology, and Customer Service. PPL will assign experienced PPL resources combined with local managers and staff to be hired, including those from incumbent contractors as available.

The RFP does not require that a bidder have its staff in place at the time of proposal submission. In evaluating the proposal, the Bureau determined that PPL’s response that it “has assembled an industry-leading team” and that it would hire local staff and managers, was acceptable and responsive to the RFP. The Committee Report noted, that PPL’s “staffing structure...indicated a strong capacity for the firm to implement the contract in a timely and effective fashion.” Moreover, the Committee noted that “[e]xperience and expertise was demonstrated throughout all of the resumes contained in the

proposal...the proposed team, including the Project Launch team, provides a well-balanced approach for a managing this contract, exceeding the criteria.”

With respect to PPL’s staffing, the proposal conforms to the requirements of the RFP.

13. CAU challenges the NOI stating that PPL’s “proposed small business set aside is...misleading.” CAU further alleges that PPL’s proposed subcontractor is not qualified to perform the work identified in PPL’s proposal – specifically, as CAU alleges: (1) document scanning; (2) call center operations; (3) document mailing; and, (4) general staffing.

On the *Subcontractor Utilization Plan* form PPL identified TechnoSphere as a Category 3 Small Business and provided documentation from the Department of the Treasury - Division of Revenue & Enterprise Services (DORES) evidencing that TechnoSphere’s is certified as a small business. PPL’s proposal clearly identifies TechnoSphere as a small business under the applicable laws.

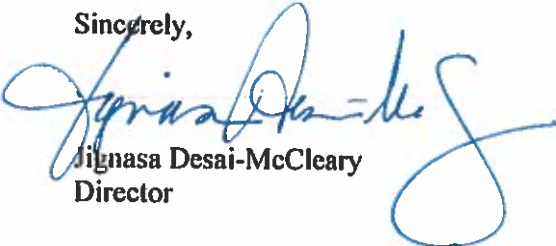
In its proposal response, PPL states that “TechnoSphere specializes in Staffing (contract and perm) and IT Consulting. Since their launching in 1994, their comprehensive searches have saved their clients valuable time and taken the strain out of reviewing resumes and interviewing candidates.” Moreover, on the *Subcontractor Utilization Plan* form PPL states that TechnoSphere will provide staffing services. PPL’s proposal, with respect to the subcontractor utilization plan, is responsive to the requirements of the RFP.

With respect to CAU’s protest points, the information provided in the PPL’s proposal provided a response to the RFP requirements. In addition, I find that the Bureau’s responses to bidder questions were appropriate and responsive, ensuring that all bidders were on a level playing field and that this procurement was conducted in conformance with the applicable laws and regulations.

Based upon the foregoing, I sustain the NOI. This is my final agency decision with respect to the protest submitted by CAU. Nonetheless, in light of the consolidation of services, I do encourage all qualified bidders to discuss legal and cost-effective opportunities that would benefit delivery of these programs by DHS.

Thank you for your company’s interest in doing business with the State of New Jersey. I invite you to register your company with [NJSTART](http://www.njstart.gov) at www.njstart.gov, the State of New Jersey’s new eProcurement system.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M: RUD

c: P. Michaels
L. Spildener
S. Fletcher