

Sender's email: twohlford@morrislaing.com
Direct Phone: 785.232.2662
Direct Fax: 785.232.9983

Robert I. Guenther
A.J. Schwartz
William B. Sorensen Jr.
Jeffery L. Carmichael
Robert W. Coykendall
Robert K. Anderson
Karl R. Swartz
Roger L. Theis
Diane H. Sorensen
Janet Huck Ward
Roger N. Walter
James D. Young
Kelly S. Herzik

Kimberly K. Bonifas
Cameron V. Michaud
Ryan M. Peck
Shannon M. Braun
Will B. Wohlford
Danielle J. Carter^{*}
Megan L. Hoffman
Sabrina K. Standifer
Jonathan A. Schlatter
Khari E. Taustin^{*}
Sarah G. Briley
Grant A. Brazill

Of Counsel
John W. Johnson
C. Michael Lennen
Thomas E. Wright
John J. Ambrosio
Kathleen A. Ambrosio
Trevor C. Wohlford

^{*}Resident & Licensed in FL
◊ Licensed only in IL & MI

July 3, 2018

VIA ELECTRONIC MAIL

Kansas Department of Administration
Attn: Tracy Diel, Director of the Office of
Procurement and Contracts
900 SW Jackson St., Room 451
Topeka, KS 66612
Email: tracy.diel@ks.gov

Re: Bid Protest - State of Kansas Request for Proposal EVT0005464 KanCare
2.0 Medicaid & CHIP Capitated Managed Care ("KanCare 2.0 RFP")

Dear Mr. Diel:

This firm, together with Sneed Law Firm, LLC, and Foley & Lardner, LLP, represents Amerigroup Kansas, Inc. ("Amerigroup") in the above-referenced matter. On June 29, 2018, Amerigroup timely and properly submitted a written bid protest, pursuant to the Kansas Department of Administration ("KDOA") Vendor Bid Protest Procedure, seeking administrative review and stay relief from the State's notice of intended awards under the KanCare 2.0 RFP. A copy of Amerigroup's bid protest is attached hereto and incorporated herein as **Exhibit A**.

In its written bid protest Amerigroup expressly requested a stay of "any and all procurement or contract implementation and readiness activity related to the RFP" under Section 3 of the KDOA Vendor Bid Protest Procedure or, in the alternative, K.S.A. 77-528. **Exhibit A**, pp. 1-2. Amerigroup maintains that an immediate stay of the effectiveness of any official actions deriving from or in connection with the KanCare 2.0

July 3, 2018

Page 2

RFP is warranted and that all work on the procurement and performance under, or implementation of, the vendor contracts, including without limitation work in connection with readiness reviews, be suspended pending judicial review. Amerigroup further maintains that the procurement should be restored to the status quo ante the unauthorized actions and omissions of the state officials involved in the process, as articulated in **Exhibit A**. The attendant circumstances do not justify—and in fact militate against—a stay override in this instance.

Amerigroup respectfully requests that KDOA provide a written determination, on or before July 13, 2018, addressing the stay request Amerigroup filed with this agency on June 29, 2018.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Trevor C. Wohlford', with a long horizontal flourish extending to the right.

Trevor C. Wohlford

EXHIBIT “A”

Amerigroup Kansas, Inc.

Bid Protest - State of Kansas Request for Proposal EVT0005464 KanCare 2.0 Medicaid &
CHIP Capitated Managed Care (“KanCare 2.0 RFP”)



LAW OFFICES OF
MORRIS LAING
Evans, Brook & Kennedy, Chtd.

Sender's email: twohlford@morrislaing.com
Direct Phone: 785.232.2662
Direct Fax: 785.232.9983

Robert I. Guenther
A.J. Schwartz
William B. Sorensen Jr.
Jeffery L. Carmichael
Robert W. Coykendall
Robert K. Anderson
Karl R. Swartz
Roger L. Thels
Diane H. Sorensen
Janet Huck Ward
Roger N. Walter
James D. Young
Kelly S. Herzik

Kimberly K. Bonifas
Cameron V. Michaud
Ryan M. Peck
Shannon M. Braun
Will B. Wohlford
Danielle J. Carter
Megan L. Hoffman
Sabrina K. Standifer
Jonathan A. Schlatter
Khari E. Taustin*
Sarah G. Briley
Grant A. Brazill

Of Counsel
John W. Johnson
C. Michael Lennen
Thomas E. Wright
John J. Ambrosio
Kathleen A. Ambrosio
Trevor C. Wohlford

*Resident & Licensed in FL
0 Licensed only in IL & MI

June 29, 2018

Via E-Mail and Hand Delivery

Kansas Department of Administration
Attn: Tracy Diel, Director of the Office of
Procurement and Contracts
900 SW Jackson St., Room 451
Topeka, KS 66612
Email: tracy.diel@ks.gov

Re: Bid Protest - State of Kansas Request for Proposal
EVT0005464 KanCare 2.0 Medicaid & CHIP Capitated
Managed Care

Dear Mr. Diel,

This firm, together with Sneed Law Firm, LLC, and Foley & Lardner, LLP, represents Amerigroup Kansas, Inc., ("Amerigroup"). Amerigroup's address is 9225 Indian Creek Parkway, Building 32, Suite 400, Overland Park, Kansas, 66210. Pursuant to the Kansas Department of Administration's ("Department") Vendor Bid Protest Procedure, Amerigroup respectfully submits this written protest of the Department's June 22, 2018, notice of intended awards to United Healthcare, Sunflower State Health Plan and Aetna Better Health of Kansas under the Request for Proposals identified as EVT0005464, KanCare 2.0 Medicaid & CHIP Capitated Managed Care (the "KanCare 2.0 RFP").

A. Request for Stay Pursuant to Section 3 of the Vendor Bid Protest Procedure

In accordance with Section 3 of the Department's Vendor Bid Protest Procedure, the filing of this written protest precludes the Department from proceeding any further with any contract award or from entering into any contract under the KanCare 2.0 RFP until this protest has been heard by the Department. **Amerigroup expressly requests that any and all procurement or contract implementation and readiness activity related to the RFP immediately be stayed as required by the Department's Vendor Bid Protest**

Procedure. To the degree the Department takes the position that, notwithstanding Section 3 of the Department's Vendor Bid Protest Procedure, the filing of this written protest does not operate as an automatic stay, Amerigroup requests that the Department treat this written protest as encompassing a petition for stay of the Department's procurement actions pursuant to section 77-258, Kansas Statutes.

B. Reservation of Right to Supplement Protest Based on Pending Kansas Open Records Act Request

This Protest is based on the information known and documents available to Amerigroup at this time. Amerigroup has made open records requests to the Department and to the Kansas Department of Health and Environment ("KDHE") related to the KanCare 2.0 RFP pursuant to the Kansas Open Records Act ("KORA"), K.S.A., 45-215, *et. seq.* To date, however, the only production of records by either the Department or KDHE consists of limited records posted to the Department's procurement website in the late afternoon of June 28, 2018, and Amerigroup has been advised that additional public records remain to be produced. True and correct copies of Amerigroup's KORA requests are attached as **Composite Exhibit A**. Amerigroup anticipates that upon having the opportunity to review these documents in detail, and upon the production of the remaining records responsive to Amerigroup's KORA requests, significant additional grounds for Amerigroup to protest will likely be revealed. Amerigroup expressly reserves the right to amend or supplement this protest to assert additional grounds for protest and/or additional support for currently enumerated grounds for protest based on any public records received in response to Amerigroup's KORA requests, review and analysis of relevant documents, or otherwise discovered or revealed during the course of this proceeding.

C. Statement of the Specific Reasons for the Protest

1. The Department's Awards and Any Resulting Contracts Under the KanCare 2.0 RFP are Invalid Because They Would Exceed the Department's Legal Authority

Amerigroup is an incumbent Managed Care Organization (MCO) that has been successfully providing managed care services to the State of Kansas and its Medicaid recipients since 2013 under the State's original Medicaid managed care program known as KanCare pursuant to a contract awarded under a prior KanCare RFP. Amerigroup's current contract with the State to provide Medicaid managed care services under KanCare continues until December 31, 2018.

On November 2, 2017, the Department issued the KanCare 2.0 RFP, seeking vendors to bid on a new version of KanCare, known as KanCare 2.0, which would include significant changes from the State's current version of KanCare ("KanCare 1.0"). These changes included, among many others, a work requirement and lifetime cap on benefits for some recipients. On January 4, 2018, Amerigroup and the other vendors submitted their proposals to the Department in response to the KanCare 2.0 RFP.

However, after the KanCare 2.0 RFP proposals were submitted, and during the course of the 2018 Kansas legislative session, numerous bills were filed to suspend and/or modify the provisions of KanCare 2.0. On January 24, 2018, the Governor of Kansas announced in a press release his plans to "stop KanCare 2.0", and instead "to make improvements to the current KanCare program." A true and correct copy of the January 24, 2018, press release from the Office of the Governor is attached as **Exhibit B**.

Subsequently, on May 4, 2018, the Kansas Legislature passed a budget bill with several provisos affecting the KanCare program. Most importantly, Section 118 of the budget bill that passed included a provision directing that the agencies were only to implement a KanCare program reflective of the program as it existed on January 1, 2018, without any of the KanCare 2.0 provisions that were included as part of the KanCare 2.0 RFP. Section 118 also directed that the KanCare 2.0 RFP be altered to take the Legislature's mandate not to proceed with KanCare 2.0 into account. More specifically, the proviso at Section 118 provided, in relevant part:

During the fiscal years ending June 30, 2018, and June 30, 2019, notwithstanding any other provision of law to the contrary, **no state agency shall expend any moneys appropriated from the state general fund or from any special revenue fund or funds for fiscal year 2018 or 2019 by chapter 104 of the 2017 Session Laws of Kansas, this or any other appropriation act of the 2018 regular session of the legislature to submit or maintain to the United States centers for medicare and medicaid services any request to administer or provide state medicaid services under the Kansas medical assistance program using a capitated managed care delivery system in any manner that is substantially different than the manner in which state medicaid services under the Kansas medical assistance program were provided on January 1, 2018, including, but not limited to, imposing any new eligibility requirements or limitations to receive such services, without express prior authorization by an act or appropriation act of the legislature: *Provided, That* no state agency shall enter into any contract for the administration and provision of state medicaid services using a capitated managed care delivery system in violation of this section without express prior authorization by an act or appropriation act of the legislature: *Provided further, That* the department of health and environment, the Kansas department for aging and disability services and the department of administration shall negotiate for contracts to administer state medicaid services using a capitated managed care delivery system that comply with this section, including altering the request for proposal identified by the department of administration as bid event 0005464, opened on October 27, 2017, and closed on January 5, 2018, limited**

to persons who have submitted a bid in response to bid event 0005464.

2018 Kansas Omnibus Budget, Section 118 (bolding emphasis added), a true and correct copy of which is attached hereto as **Exhibit C**. Other provisos in the 2018 budget bill add additional requirements, including certain allowances for additional behavioral health and telemedicine services. This 2018 budget bill was signed by the Governor and became law on May 16, 2018. The KanCare program, as revised by the 2018 budget, is referred to hereafter as "KanCare 1.x", as it is clearly not the program sought by the KanCare 2.0 RFP, but it is also different than KanCare 1.0.

However, despite the fact that all statutory authority for the Department to proceed with the provisions of KanCare 2.0 was revoked by the 2018 Kansas budget bill provisos, and that the Department was directed to alter the KanCare 2.0 RFP, the Department: (1) never altered any provisions of the KanCare 2.0 RFP; (2) never solicited any revised or updated bids from vendors based on the new requirements; and (3) never even discussed any of the new or revised requirements with vendors during the vendor oral presentations.

Instead, on June 22, 2018, the Department announced intended awards under the terms of the unmodified KanCare 2.0 RFP to United Healthcare, Sunflower State Health Plan and Aetna Better Health of Kansas. However, the Department simply does not have the legal authority to award contracts under the terms of the KanCare 2.0 RFP, because the provisions of the KanCare 2.0 RFP go beyond the limits of the statutory authority provided to the Department in the 2018 Kansas Budget that expressly prevent the Department from proceeding with services sought under the KanCare 2.0 RFP, or awarding contracts under the KanCare 2.0 RFP without "altering" the KanCare 2.0 RFP to address the changed requirements following adoption of the 2018 Kansas Budget. The Department never did this, and instead simply awarded contracts under the un-altered KanCare 2.0 RFP in direct contravention of the express direction of the Legislature and without any statutory authority to take such *ultra vires* actions.

In Kansas, "it has long been the rule that . . . subdivisions of the state have only such powers as are conferred upon by statute, specifically or by clear implication, and that any reasonable doubt as to the existence of such power should be resolved against its existence." *Wichita Pub. Sch. Emp. Union, Local No. 513 v. Smith*, 194 Kan. 2, 4, 397 P.2d 357, 359 (1964). "A contract entered into by a governmental entity which was beyond the scope of the entity's power is unlawful; the actions of an agency in entering into such a contract are void, and the contract is unenforceable as an *ultra vires* act." *Templeton v. Kansas Parole Bd.*, 27 Kan. App. 2d 471, 473-74, 6 P.3d 910, 913 (2000). Moreover, "when a governmental agent or entity acts outside the scope of its authority, or *ultra vires*, no ratification or estoppel can legitimize the exercise of such authority." *Resolution Oversight Corp. v. Kansas Health Care Stabilization Fund*, 38 Kan.App.2d 899, 905, 175 P.3d 268, 273 (2008).

Here, the 2018 Kansas Budget expressly prevented the Department from awarding contracts based on KanCare 2.0, and instead required that KanCare 2.0 RFP be altered in order to effectuate the legislative intent that the Department award contracts based on the KanCare program as it existed on January 1, 2018, as modified by other provisos in the

2018 budget, *i.e.*, KanCare 1.x. The Department failed to do so, and its attempted award of contracts under the un-altered KanCare 2.0 RFP is therefore beyond its statutory authority. Accordingly, the purported notice of award is invalid and is of no legal force and effect, and any contracts issued by the Department from the RFP are *ultra vires*, void and unenforceable. *See Resolution Oversight Corp.*, 38 Kan.App.2d at 905, 175 P.3d at 273 (“[T]o the extent the contract exceeded the scope of the governmental entity’s power, the contract is unlawful, unenforceable and void.”). The Department must therefore rescind its award notice so that it can either issue a new RFP to seek proposals for the statutorily permitted KanCare 1.x services, or, at a minimum, “alter” the provisions of the KanCare 2.0 RFP to comply with the current statutory authority and allow each of the bidders a fair and equal opportunity to submit updated proposals to allow for a fair and open evaluation and award in accordance with the currently applicable KanCare 1.x requirements.

2. The Department’s Failure to Alter the KanCare 2.0 RFP and Offer All Bidders an Opportunity to Submit Revised Bids Was Clearly Erroneous, Arbitrary and Capricious, and Contrary to Competition

Not only did the Department’s award of contracts under the un-altered KanCare 2.0 RFP contradict the express direction of the Legislature and exceed the Department’s legal authority, but it was also clearly erroneous, arbitrary and capricious, and contrary to fair and open competition because the Department failed to alter the KanCare 2.0 RFP to provide an equal and open opportunity for all bidders to adjust their proposals based on the newly mandated requirement that the services sought by the KanCare 2.0 RFP not proceed. Instead, the Department simply evaluated the proposals and awarded new contracts based on proposals submitted in response to the provisions of the KanCare 2.0 RFP, even though the unaltered KanCare 2.0 RFP, and the proposals submitted in response to it, were rendered obsolete by the 2018 Kansas Budget.

In other words, the Department has noticed its intent to award contracts for services that have never been competitively procured as required by Kansas law: the Department never obtained or evaluated proposals based on the *actual* requirements that will apply to the contracts, but is instead purporting to award contracts for one program based upon bids received for another, materially different program. The Department’s failure to solicit or evaluate proposals or pricing for the services that it will actually contract for, and its decision to instead use the obsolete KanCare 2.0 RFP in its unaltered state as the basis for evaluating and awarding a completely different scope of services, prevented the Department from being able to fairly evaluate proposals for the actual services to be provided by the bidders to the State and its Medicaid recipients. Not only was this unfair to the bidders, who never had an opportunity to adjust their KanCare 2.0 proposals to take into account the KanCare 1.x requirements that will actually apply, but it was contrary to the purposes of public competitive bidding requirements and completely frustrates the ability of the Department to obtain the best value based upon informed competition.

The purpose of competitive bidding for government contracts is to protect the public and guard against favoritism, improvidence and corruption. *See Sutter Bros. Const. Co. v. City of Leavenworth*, 238 Kan. 85, 92, 708 P.2d 190, 196 (1985); *Topeka Bridge & Iron Co. v. Bd. of Com’rs of Labette County*, 98 Kan. 292, 158 P. 8, 11-12 (1916) (holding

that purpose of competitive bidding statute was “to secure economy and protect the public from collusive contracts, which would result in favoritism and fraud.”). One of the fundamental tenants of competitive bidding is that the governmental agency must not base its award on factors “that were not disclosed in the bid documents.” *See Ritchie Paving, Inc. v. City of Deerfield*, 275 Kan. 631, 641, 67 P.3d 843, 849 (2003) (holding that City acted improperly when awarding contract based on “intangible factors” that were not disclosed by the City in the bid documents”). Moreover, the bid specifications must be available to the bidders so “that all bidders shall be placed on an equality, and that each shall know exactly what is required” for their bid. *See Topeka Bridge & Iron Co.*, 158 P. at 12.

Where, as in this case, a governmental agency awards a contract for services that are not those outlined in the provisions of the government entity’s request for proposals, the basis for the contract award is not apparent to the bidders or the public, which allows for the appearance of favoritism or improvidence, and fails to protect the public interest in fair and open competition. *See id.* at 13. The Department’s actions were, thus, impermissible. Instead, under long-established principles of open and fair competitive bidding – and as required by the Kansas legislature in the 2018 Kansas Budget – the Department should have altered the KanCare 2.0 RFP by amendment to express to the bidders the then applicable requirements and offer each bidder the opportunity to revise their proposal based on the actual KanCare 1.x services the Department would be contracting for. Doing so would have allowed each bidder to have their proposal fairly evaluated in accordance with factors that were disclosed in the bid documents, and would have allowed the Department to make an informed evaluation of the bidders’ ability to provide the services actually sought by the State. The Department’s failure to do so, and its selection of awardees based on factors not disclosed in the KanCare 2.0 RFP, was arbitrary, capricious and contrary to competitive bidding principles. *See Ritchie Paving, Inc.*, 275 Kan. at 641, 67 P.3d at 849; *Topeka Bridge & Iron Co.*, 158 P. at 11-12.

3. The Department’s Award of Contracts for Services Materially Different From the Services Sought by the Department’s KanCare 2.0 RFP is Clearly Erroneous, Arbitrary and Capricious, and Contrary to Competition

Contrary to legislative direction, the Department never altered the KanCare 2.0 RFP by amendment to address the fact that KanCare 2.0 had been halted by the Kansas Legislature in the 2018 Budget. Instead, the Department simply used the KanCare 2.0 RFP as the basis to evaluate and award contracts for a scope of services that is required by law to materially differ from the services sought by the KanCare 2.0 RFP.

However, Kansas law is clear that a contract cannot be awarded on terms materially different than the terms sought by the government entity’s bid documents. *See Topeka Bridge & Iron Co.*, 158 P. at 12 (holding that “after a contract was awarded to the plaintiff it could not lawfully be changed by the substitution of additional specifications, which made substantial changes in the requirements to the other bidders”). As explained in a Kansas Attorney General opinion, “the purpose of competitive bidding is to avoid fraud, favoritism and impropriety” and therefore, “no material change may be made in any bid after the bids have been received and opened since to permit such would be to open the door to

fraud and collusion.” Kan. Atty. Gen. Op. No. 92-118 (Sept. 4, 1992). For this reason, only modifications that are not material are permitted. *Id.*

This is in line with the majority of jurisdictions, which do not permit a governmental entity to award or enter into a contract on terms that are materially different than the terms sought by the government entity in its bid solicitation documents. *See, e.g., Syringa Networks, LLC v. Idaho Dep’t of Admin.*, 367 P. 3d 208, 224 (Idaho 2016) (adopting the rule that “a public contract will be ‘set aside where specifications are changed after the bidding has been closed.’”) (quoting 10 McQuillin Mun. Corp. § 29:60); *Dep’t of Lottery v. Gtech Corp.*, 816 So. 2d 648, 652-53 (Fla. 1st DCA 2001) (holding that agency cannot “treat the RFP process as little more than a ranking tool to determine a preferred provider and then negotiate a contract with that provider with little or no concern for the original proposal of that preferred provider” because “such a procedure is at odds with the proscriptions of [procurement law] and is not likely to inspire public confidence in the fairness of the process or that the [agency] has entered into the most beneficial agreement.”); *see also CCL, Inc. v. United States*, 39 Fed. Cl. 780, 791 (Fed. Cl. 1997) (“Contract modifications may not materially depart from the scope of the original procurement; otherwise the modification prevents the complaining party (and other potential bidders) from competing for what is, in reality, a new and different contract.”) (citing *GraphicData, LLC v. United States*, 37 Fed. Cl. 771, 781-82 (1997)); *Baxley v. State*, 958 P. 2d 422, 433 (Alaska 1998) (“In general, competitively bid contracts involving state resources cannot be materially amended. The rationale behind this judicially created rule is that the amendment effectively produces a new contract, which the State should award only after a new round of public bidding.”) (internal citations omitted); *Glynn Cty. v. Teal*, 256 Ga. 174 (Ga. 1986) (affirming trial court judgment setting aside a public procurement contract for material change after contract award).

As government procurement law has long recognized, were agencies permitted to enter into contracts on terms or for scopes of services that materially differ from those sought in the procurement, the effect would be to circumvent applicable competitive bidding laws because the contract that would be awarded would be, effectively, a new and different contract from that which was put out to bid, and would have never actually been subject to competition. *See Inge v. Board of Public Works*, 135 Ala. 187, 199-200 (Ala. 1902) (“The basis of the bidding and the contract entered into should be the same, for otherwise the very object and purpose of the law in calling for competitive bidding might be thwarted. ‘To require the bids upon one basis and award the contract upon another would, in practical effect, be an abandonment of all bids.’”) (quoting *Wickwire v. City of Elkhart*, 43 N.E. 216, 218 (Ind. 1896)); *Wickwire*, 43 N.E. at 218 (“[I]t is difficult to see how the contract could be made upon a basis entirely different from that contemplated by the specifications and the form of bid supplied. It is, it seems to us, perfectly clear that all competitors were entitled to place their bids upon the basis upon which the contract was to be awarded and that to require bids upon one basis and award the contract upon another was, in practical effect, but to abandon all bids.”).

In this case, Amerigroup was only provided with copies of the contracts entered into by the Department under the KanCare 2.0 RFP on June 28, 2018. However, even a preliminary review reveals that the contracts contain materially different terms than the terms of the KanCare 2.0 RFP under which they were awarded. The Department cannot,

however, legally enter into a contract with awardees under the KanCare 2.0 RFP on terms and for services that are materially different than the unaltered KanCare 2.0 RFP, and its attempt to do so is unlawful. *See Topeka Bridge & Iron Co.*, 158 P. at 12 (holding that “after contract was awarded to the plaintiff it could not *lawfully* be changed by the substitution of specifications, which made substantial changes in the requirements submitted to the other bidders”) (emphasis added).

4. The Department Acted in a Manner That is Clearly Erroneous, Arbitrary and Capricious, and Contrary to Competition by Failing to Follow the Terms of its Own RFP During the Procurement Process

In addition to the Department’s failure to comply with legislative direction, or to act in compliance with its legal authority with respect to the KanCare 2.0 RFP, the Department also materially failed to follow the terms of its own RFP during the procurement process. It is well-established that, in a government procurement, an agency is bound to follow the processes and procedures set forth in its own procurement documents, and a failure to do renders the process invalid. *See, e.g., Dynonyx, L.P. v. United States*, 83 Fed. Cl. 460, 466 (Fed. Cl. 2008) (“An agency has no discretion regarding which regulation or requirement of a given solicitation is more or less important; the mandatory requirements or procedures in an RFP are strictly binding, ‘regardless of [the agency’s] view of the appropriateness of the standard.’”) (quoting *Alfa Laval Separation, Inc. v. United States*, 175 F.3d 1365, 1367 (Fed. Cir. 1999)); *Afghan Am. Army Servs. Corp. v. United States*, 90 Fed. Cl. 341, 359 (Fed. Cl. 2009) (“The agency did not meaningfully conduct the price realism analysis it committed itself to in the solicitation, and it could not simply choose to ignore that requirement. The procedures called for in the RFP are binding ‘regardless of [the agency’s] view of the appropriateness of the standard.’”) (quoting *Alfa Laval*, 175 F.3d at 1367). Here, the Department wholly failed to comply with the mandatory procedures and requirements of the RFP.

Specifically, the KanCare 2.0 RFP expressly provided at Section 6.6(C)(4) that only “[o]nce a Notice of Intent to Award has been issued, the CONTRACTOR(S) shall execute the final CONTRACT.” Based upon the limited records made available to Amerigroup on June 28, 2018, it is clear that the Department entered into written contracts with these vendors *prior to* announcing the intended awards under the KanCare 2.0 RFP to the public and other vendors. More specifically, the limited records provided to Amerigroup to date show that, on June 19, 2018, the Department sent emails to the vendors it had internally identified as the winning vendors, requesting that such vendors execute and return contract signature pages by June 21, 2018, and in fact entered into contracts with vendors effective June 19, 2018, *prior to* announcing its award decisions publicly on June 22, 2018. *See* email to winning vendors dated June 19, 2018 and contract with United Healthcare, true and correct copies of which are attached hereto as **Composite Exhibit D**.

Based upon the limited records available to Amerigroup to date, the Department’s decision to ignore the terms of its own RFP by executing contracts prior to announcing awards appears to have constituted merely the last in a series of material failures by the Department to comply with the terms of the RFP. By way of example, in response to Question #249 in the first round of vendor Q&A’s, the Department agreed that vendors

"should not submit Attachment H with their proposal responding to this RFP, but that Attachment H will be required of successful bidders after contract award." Notwithstanding this instruction to bidders, when actually evaluating the RFP the Department wholly ignored this direct advice to vendors and scored every vendor other than Aetna with a "No" on Section 5.16 for failing to submit the very same Attachment H that the Department itself had instructed vendors not to submit. This materially altered the results of the technical evaluation, leading Amerigroup to receive 20 Yesses and 2 Nos, rather than the 21 Yesses and 1 No that it would have received had the Department followed the terms of its own specification documents in evaluating the RFP responses. The effect of this error was to falsely inflate the technical score of Aetna, while falsely deflating the technical scores of other vendors, including Amerigroup, who actually followed the Department's own direction regarding what should be included in the proposal.

In short, the Department's failure to follow the requirements and procedures set forth in its own RFP documents was clearly erroneous, arbitrary, capricious, and contrary to the purposes of competitive bidding, and rendered the Department's procurement process and awards invalid.

D. Conclusion and Relief Requested

Amerigroup has been successfully providing managed care services to the State of Kansas and its Medicaid recipients since 2013. Amerigroup submitted a proposal to the KanCare 2.0 RFP in good faith and with the reasonable expectation that its proposal would be fairly evaluated on Amerigroup's ability to provide the services sought by the KanCare 2.0 RFP. When the Kansas Legislature changed the playing field by rejecting KanCare 2.0 after Amerigroup's proposal had already been submitted, it directed that the Department "alter" the KanCare 2.0 RFP in order to evaluate the previous bidders to the KanCare 2.0 RFP for contracts under the new requirements.

However, the Department ignored this legislative directive and simply awarded contracts based on the proposals submitted to the outdated KanCare 2.0 RFP, without in any way amending the RFP or providing the bidders with an opportunity to revise or supplement their bids to address the new requirements. By doing so, and using the KanCare 2.0 RFP as the basis for evaluation and award of a KanCare 1.x contract, the Department exceeded its legislative authority, thereby rendering the resulting contracts *ultra vires*, void and unenforceable. Further, the Department's selection of awardees based on KanCare 1.x factors that were not disclosed in the KanCare 2.0 RFP, and its entering into contracts materially different from the KanCare 2.0 RFP provisions, was arbitrary, capricious and contrary to competitive bidding principles, and should be rejected. Finally, the Department's failure to comply with its own procurement terms was a clearly erroneous action, arbitrary, capricious, and contrary to the fundamental purposes of competitive bidding, rendering the entirety of the procurement process fatally flawed and requiring its rejection.

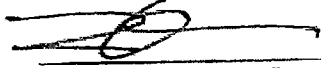
For all of these reasons, Amerigroup requests that the Department: (1) rescind its award notice and any contracts entered thereunder; and either (2) cancel and withdraw the KanCare 2.0 RFP and issue a new RFP to seek proposals for the statutorily permitted KanCare 1.x services or; (3) issue an amendment to the KanCare 2.0 RFP to comply with

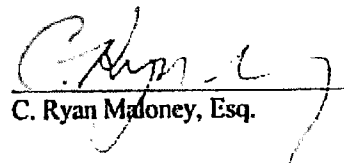
June 29, 2018

Page 10

current statutory authority and allow each of the bidders a fair and equal opportunity to submit updated proposals to allow for a fair and open evaluation and award in accordance with the currently applicable KanCare 1.x requirements.

Law Offices of Morris Laing Evans Brock & Kennedy, Chtd. Foley & Lardner, LLP


Trevor C. Wohlford, Esq.
Kansas Bar No. 19443


C. Ryan Madoney, Esq.

Sneed Law Firm, LLC

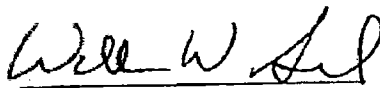

William Sneed, Esq.
Kansas Bar No. 10630

Exhibit A



ATTORNEYS AT LAW
106 EAST COLLEGE AVENUE, SUITE 900
TALLAHASSEE, FL 32301-7732
850.222.6100 TEL
850.581.6475 FAX
WWW.FOLEY.COM

WRITER'S DIRECT LINE
850.513.3382
rhosay@foley.com EMAIL

CLIENT/MATTER NUMBER
092595-0462

June 22, 2018

VIA ELECTRONIC MAIL

Kansas Department of Administration
Office of Chief Counsel
Attn: KORA Request
CSOB, Suite 500, 1000 SW Jackson
Topeka, KS 66612
DOA_KORA@ks.gov
philip.michael@ks.gov

Re: Open Records Request pertaining to State of Kansas Request for Proposal
EVT0005464, KanCare 2.0 Medicaid & CHIP Capitated Managed Care ("RFP")

Dear Mr. Philip:

This firm represents Amerigroup Kansas, Inc. ("Amerigroup"). On behalf of Amerigroup, and pursuant to The Kansas Open Records Act ("KORA"), K.S.A. 45-215, *et. seq.*, we request the opportunity to inspect, examine, and copy all public records, as defined by KORA, that are in the custody of any employees, agents, or other representatives of the Kansas Department of Administration, with regards to the RFP.

Please contact the undersigned as soon as possible regarding this request. As time is of the essence, we request permission to inspect all records that are immediately available while we are awaiting copies in full response to this request. Further, inspection may allow us to narrow this open records request and thus provide for a more efficient and effective handling of this request.

The specific documents requested include, but are not limited to:

1. A complete copy of the procurement file for the RFP;
2. All bids, replies, responses, proposals and/or best and final offers submitted in response to the RFP, including all exhibits and attachments provided with said bids, replies, responses and proposals by any and all prospective responders, bidders and/or vendors;
3. All internal memoranda relating to the RFP;
4. All drafts of the RFP, and any other types of procurement documents that preceded issuance of the RFP;
5. All drafts of addenda or amendments to the RFP;

AUSTIN
BOSTON
CHICAGO
DALLAS
DENVER

DETROIT
HOUSTON
JACKSONVILLE
LOS ANGELES
MADISON

MEXICO CITY
MIAMI
MILWAUKEE
NEW YORK
ORLANDO

SACRAMENTO
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
TALLAHASSEE

TAMPA
WASHINGTON, D.C.
BRUSSELS
TOKYO



FOLEY & LARDNER LLP

June 22, 2018

Page 2

6. All documents demonstrating how the RFP was created;
7. All internal and external correspondence or email regarding or relating to the RFP or the services sought in the RFP that was sent or received by any employees, agents, or other representatives of the Kansas Department of Administration including, but not limited to, all correspondence with any third party including vendors, potential vendors, or persons acting on behalf of vendors;
8. All recommendations, justifications, notes, spreadsheets, and related documents, whether electronic or otherwise, that relate to the RFP;
9. All recordings, transcriptions or meeting minutes of meetings related to the RFP, including, without limitation, meetings of any members of the Procurement Negotiation Committee;
10. All evaluations, score sheets, ranking documents, scoring or evaluation instructions, negotiation documents, recommendations, justifications, agency decision documents, notes, spreadsheets, and related documents, whether electronic or otherwise, that relate to the RFP;
11. All communications, correspondence or email between the Kansas Department of Administration and any actuaries, including without limitation, Optumas, related to the cost evaluation, actuarially sound rate range, actuarial memorandums and any actuarial certifications submitted to the Centers for Medicare & Medicaid Services (CMS) in connection with the RFP or the services sought by the RFP;
12. All work papers, memoranda, notes, charts, evaluation or other documents developed or used by any actuaries, including without limitation Optumas, to support the development of the rate ranges for the RFP;
13. All communications, correspondence or email between any employees, agents, or other representatives of the Kansas Department of Administration, or any members of the Procurement Negotiation Committee or Management Review Team, and any employees, agents, or other representatives of any other Kansas state agency or governmental body, regarding or relating in any way to the RFP or any of the services sought by the RFP, or any of the funding for the services sought by the RFP, from January 1, 2018, to June 22, 2018.
14. All communications, correspondence or email between or among any of the members of the Procurement Negotiating Committee or the Management Review Team regarding the RFP, the evaluation of responses to the RFP, any of the services sought by the RFP, or any of the funding for the services sought by the RFP;
15. All documents produced to any party regarding the RFP, including all documents, records or other materials requested by any legal counsel or representative for any vendor that responded to the RFP, and released by the Kansas Department of Administration to said legal counsel or representative (please include the actual open records request itself).



FOLEY & LARDNER LLP

June 22, 2018

Page 3

We understand that there may be a charge for providing copies of the requested records, and request that you advise of any such charges as soon as possible. Thank you for your assistance in this regard.

Sincerely,

A handwritten signature in cursive script that reads 'Robert H. Hosay'.

Robert H. Hosay

cc: William Sneed (via e-mail)



ATTORNEYS AT LAW
1 INDEPENDENT DRIVE, SUITE 1300
JACKSONVILLE, FL 32202-5017
904.359.2000 TEL
904.359.8700 FAX
WWW.FOLEY.COM

WRITER'S DIRECT LINE
904.633.4713
cmaloney@foley.com EMAIL

CLIENT/MATTER NUMBER
092595-0462

June 25, 2018

VIA ELECTRONIC MAIL

Kansas Department of Administration
Office of Chief Counsel
Attn: KORA Request
CSOB, Suite 500, 1000 SW Jackson
Topeka, KS 66612
DOA_KORA@ks.gov
philip.michael@ks.gov

Kansas Department of Health and Environment
KORA Officer
1000 SW Jackson, Suite 560
Topeka, KS 66612
kdhe.KORAOfficer@ks.gov
kara.titus@ks.gov

Re: Follow-up Open Records Request pertaining to State of Kansas Request for Proposal EVT0005464, KanCare 2.0 Medicaid & CHIP Capitated Managed Care ("RFP")

Dear Mr. Philip and Ms. Titus:

This firm represents Amerigroup Kansas, Inc. ("Amerigroup"). As you know, we have previously submitted a request to the Kansas Department of Administration for records relating to the RFP. On behalf of Amerigroup, and pursuant to The Kansas Open Records Act ("KORA"), K.S.A. 45-215, *et. seq.*, we request the opportunity to inspect, examine, and copy certain additional public records, as defined by KORA, that are in the custody of any employees, agents, or other representatives of the Kansas Department of Administration, with regards to the RFP.

Please contact the undersigned as soon as possible regarding this request. As time is of the essence, we request permission to inspect all records that are immediately available while we are awaiting copies in full response to this request. Further, inspection may allow us to narrow this open records request and thus provide for a more efficient and effective handling of this request.

Specifically, we request the following documents:

1. Any and all contracts executed between any winning vendor under the RFP and the Kansas Department of Health and Environment and/or the Kansas Department of Administration with respect to the RFP; and
2. All documents constituting, reflecting, or relating to the "tremendous feedback" received by the Kansas Department of Health and Environment ("KDHE") during the contract evaluation process, as referenced by KDHE Secretary Jeff Andersen in an article entitled "State selects companies to manage Medicaid," published by The Topeka Capital-Journal on Friday, June 22, 2018 (*see*

AUSTIN
BOSTON
CHICAGO
DALLAS
DENVER

DETROIT
HOUSTON
JACKSONVILLE
LOS ANGELES
MADISON

MEXICO CITY
MIAMI
MILWAUKEE
NEW YORK
ORLANDO

SACRAMENTO
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
TALLAHASSEE

TAMPA
WASHINGTON, D.C.
BRUSSELS
TOKYO



FOLEY & LARDNER LLP

June 25, 2018

Page 2

<http://www.cjonline.com/news/20180622/kansas-signs-three-year-contracts-with-extensions-with-three-companies-to-manage-medicaid-drops-amerigroup>

We understand that there may be a charge for providing copies of the requested records, and request that you advise of any such charges as soon as possible. Thank you for your assistance in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Ryan Maloney', written over the printed name.

C. Ryan Maloney

Exhibit B

IMMEDIATE RELEASE

January 24, 2018

For more information:

Bob Murray
785.368.6628
media@ks.gov

Governor Sam Brownback announces plans to stop KanCare 2.0

TOPEKA-- Governor Sam Brownback and Lt. Governor Jeff Colyer on Wednesday announced plans to stop KanCare 2.0 and address concerns raised by legislators and other stakeholders regarding increased costs and the State's ability to absorb those costs in future budgets.

As a result, they will be seeking to make improvements to the current KanCare program by either extending the contracts of the current three managed care companies for a period of three years or evaluating proposals received in response to the current bid solicitation without the cost increase drivers which have raised these concerns. The Administration will work with the Kansas Legislature to determine the best path forward and provide certainty and improvements to the current program.

In either scenario, the State will seek to implement budget neutral improvements to KanCare such as work requirements, an IMD exclusion waiver, foster care pilots, behavioral health and primary care integration and improved work opportunities.

Additionally, the new Secretary of KDHE, Jeff Andersen will renew the agency's focus on addressing problems with the program's eligibility process. A backlog of applications had slowed down the approval process for participants and reimbursement for providers. The state is in the process of issuing a letter of noncompliance to the contractor in charge of the eligibility clearinghouse where applications are processed.

The plan would call for continued meetings and involvement by the KanCare Process Improvement Working Group. The group will hold quarterly meetings with KDHE where participants and providers can discuss improvements and provide feedback.

"Keeping Kansans healthy continues to be a top priority," said Governor Brownback, "We're going to continue to work hard to make sure we have a program that works for Kansas."

"With improvements to the current system of KanCare I feel we can continue serving Kansans by helping improve their health and well-being. We will continue to listen to participants and providers and work with the legislature to ensure we are increasing the quality of care and outcomes under KanCare," said Lt. Governor Colyer.

Exhibit C

House Substitute for SENATE BILL No. 109

AN ACT making and concerning appropriations for the fiscal years ending June 30, 2018, June 30, 2019, June 30, 2020, June 30, 2021, June 30, 2022, June 30, 2023, and June 30, 2024, for state agencies; authorizing and directing payment of certain claims against the state; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements, procedures and acts incidental to the foregoing, amending K.S.A. 2017 Supp. 75-2263, 75-4909, 75-6706, 79-4904 and 82a-933a and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) For the fiscal years ending June 30, 2018, and June 30, 2019, June 30, 2020, June 30, 2021, June 30, 2022, June 30, 2023, and June 30, 2024, appropriations are hereby made, restrictions and limitations are hereby imposed, and transfers, capital improvement projects, fees, receipts, disbursements, procedures and acts incidental to the foregoing are hereby directed or authorized as provided in this act.

(b) The agencies named in this act are hereby authorized to initiate and complete the capital improvement projects specified and authorized by this act or for which appropriations are made by this act, subject to the restrictions and limitations imposed by this act.

(c) This act shall be known and may be cited as the omnibus appropriation act of 2018 and shall constitute the omnibus reconciliation spending limit bill for the 2018 regular session of the legislature for purposes of K.S.A. 75-6702(a), and amendments thereto.

(d) The appropriations made by this act shall not be subject to the provisions of K.S.A. 46-155, and amendments thereto.

Sec. 2. (a) The department of corrections is hereby authorized and directed to pay the following amounts from the Hutchinson correctional facility — facilities operations account of the state general fund for property lost to the following claimant:

Earl Harris #47043
P.O. Box 311
El Dorado, KS 67042 \$86.90

(b) The department of corrections is hereby authorized and directed to pay the following amounts from the El Dorado correctional facility facilities operations account of the state general fund for property lost to the following claimants:

Donald C. Young #74516
P.O. Box 1569
Hutchinson, KS 67504 \$54.59

(c) The department of corrections is hereby authorized and directed to pay the following amounts from the Lansing correctional facility — facilities operations account of the state general fund for property lost to the following claimants:

Alphonso Briscoe
#66034 P.O. Box 2
Lansing, KS 66043 \$78.13

Joseph Jones #59134
P.O. Box 2
Lansing, KS 66043 \$17.61

Sec. 3. There is hereby appropriated from the state general fund, as reimbursement for legal costs incurred for sexually violent predator proceedings, the following amount to the following claimants:

County Commissioners of Ellis County, KS
c/o Donna Maskus, County Clerk
Ellis County
P.O. Box 720
Hays, KS 67601 \$2,404.50

Johnson County District Court
c/o Andre Tyler, Court Administrator
100 Kansas Ave.
Olathe, KS 66061 \$9,199.16

Sec. 4. The department of revenue is hereby authorized and directed to pay the following amounts from the motor-vehicle fuel tax refund fund, for claims not filed within the statutory filing period prescribed in K.S.A. 79-3458, and amendments thereto, to the following claimants:

Sec. 115. During the fiscal years ending June 30, 2018, and June 30, 2019, notwithstanding any other provision of law to the contrary, no state agency shall expend any moneys appropriated from the state general fund or from any special revenue fund or funds for fiscal year 2018 or 2019 by chapter 104 of the 2017 Session Laws of Kansas, this or any other appropriation act of the 2018 regular session of the legislature to submit or maintain to the United States centers for medicare and medicaid services any request to administer or provide state medicaid services under the Kansas medical assistance program using a capitated managed care delivery system in any manner that is substantially different than the manner in which state medicaid services under the Kansas medical assistance program were provided on January 1, 2018, including, but not limited to, imposing any new eligibility requirements or limitations to receive such services, without express prior authorization by an act or appropriation act of the legislature: *Provided*, That no state agency shall enter into any contract for the administration and provision of state medicaid services using a capitated managed care delivery system in violation of this section without express prior authorization by an act or appropriation act of the legislature: *Provided further*, That the department of health and environment, the Kansas department for aging and disability services and the department of administration shall negotiate for contracts to administer state medicaid services using a capitated managed care delivery system that comply with this section, including altering the request for proposal identified by the department of administration as bid event 0005464, opened on October 27, 2017, and closed on January 5, 2018, limited to persons who have submitted a bid in response to bid event 0005464: *And provided further*, That any such contract shall be for a term of three years commencing on the termination date of contracts for the administration and provision of state medicaid services under the Kansas medical assistance program using a capitated managed care delivery system that were in effect on January 1, 2018, may include two one-year options to renew such contract at the discretion of the department of health and environment and shall not impose any new eligibility requirements or limitations to receive such services that were not in effect on January 1, 2018: *And provided further*, That the department of health and environment and the Kansas department for aging and disability services shall submit to the United States centers for medicare and medicaid services a request to extend for three years any waiver that was in effect on January 1, 2018, authorizing the state of Kansas to administer state medicaid services under the Kansas medical assistance program using a capitated managed care delivery system in accordance with this section: *Provided, however*, That the department of health and environment and the Kansas department for aging and disability services may modify the manner in which state medicaid services were provided on January 1, 2018, by implementing: Any provision of K.S.A. 2017 Supp. 39-709h and 39-709i, and amendments thereto, any policy that expands access to behavioral health services or services delivered through telehealth technology services, if such policy does not impose any new eligibility requirements or limitations to receive state medicaid services that were not in effect on January 1, 2018; and any other action approved by express prior authorization by an act or appropriation act of the legislature: *And provided, however*, That the department of health and environment may negotiate with the United States centers for medicare and medicaid services for the implementation of work requirements to receive state medicaid services, including submitting a waiver request to the United States centers for medicare and medicaid services, but shall not implement such requirements, even if approved by the United States centers for medicare and medicaid services, without prior express authorization by an act or appropriation act of the legislature and shall submit a report of such negotiations to the legislature during the 2018 regular session of the legislature.

Sec. 119. (a) During the fiscal years ending June 30, 2018, and June 30, 2019, no state agency shall expend any moneys appropriated from the state general fund or from any special revenue fund or funds for fiscal year 2018 or 2019 as authorized by chapter 104 of the 2017 Session Laws of Kansas, this or any other appropriation act of the 2018 regular session of the legislature to create, enter into or enforce any nondisclosure agreement or any agreement governing post-employment benefits or other

Exhibit D

From: Gudmunsen, Lisa <lgudmunsen@uhc.com>
Sent: Wednesday, June 20, 2018 10:11 AM
To: Waters, Aubrey [DAFPM]
Cc: Sparks, Kevin P
Subject: RE: Contract 45079 United Healthcare

Hi Aubrey,

I have talked with Kevin Sparks. He has received the email and will be moving forward to meet the June 21 due date. Please let me know if you have any questions. Thank you.

Lisa

Lisa Gudmunsen | Proposal Director | UnitedHealthcare Community & State
O 952.931.4838 | lgudmunsen@uhc.com

From: Waters, Aubrey [DAFPM] [<mailto:Aubrey.Waters@ks.gov>]
Sent: Wednesday, June 20, 2018 8:54 AM
To: Gudmunsen, Lisa
Cc: Sparks, Kevin P
Subject: FW: Contract 45079 United Healthcare

Hi Lisa,

I hadn't gotten a read receipt from Kevin Sparks, and wanted to make sure United Healthcare was aware of this contract award for KanCare.

Attached is contract 45079, along with the Policy on Sexual Harassment, as required by the Governor's executive order 18-04. Attachment D has been revised and is provided. The Office of Procurement and Contracts has been asked to have the signed contract returned by email no later than Thursday, June 21st at 5PM CST.

Since this is still an open procurement, all communication needs to be through the Office of Procurement and Contracts.

Thank you,

Aubrey Waters
Procurement Officer | Procurement & Contracts

Kansas Department of Administration
900 SW Jackson, Suite 451 South | Topeka, KS 66612
Phone: 785-296-2401 | Fax: 785-296-7240
aubrey.waters@ks.gov | www.admin.ks.gov/offices/procurement-and-contacts



CONFIDENTIALITY AND PRIVILEGE NOTICE

This email message including attachments, if any, is intended for the person or entity to which it is addressed and may contain confidential and/or privileged information. Any unauthorized review, use or disclosure is prohibited. If you are not the intended recipient, please contact the sender and destroy the original message, including all copies.

From: Waters, Aubrey [DAFPM]
Sent: Tuesday, June 19, 2018 2:42 PM
To: Sparks, Kevin P <kevin_sparks@uhc.com>
Subject: Contract 45079 United Healthcare

Attached is contract 45079, along with the Policy on Sexual Harassment, as required by the Governor's executive order 18-04. Attachment D has been revised and is provided. The Office of Procurement and Contracts has been asked to have the signed contract returned by email no later than Thursday, June 21st at 5PM CST.

Since this is still an open procurement, all communication needs to be through the Office of Procurement and Contracts.

Thank you,

Aubrey Waters
Procurement Officer | Procurement & Contracts

Kansas Department of Administration
900 SW Jackson, Suite 451 South | Topeka, KS 66612
Phone: 785-296-2401 | Fax: 785-296-7240
aubrey.waters@ks.gov | www.admin.ks.gov/offices/procurement-and-contacts



CONFIDENTIALITY AND PRIVILEGE NOTICE

This email message including attachments, if any, is intended for the person or entity to which it is addressed and may contain confidential and/or privileged information. Any unauthorized review, use or disclosure is prohibited. If you are not the intended recipient, please contact the sender and destroy the original message, including all copies.

This e-mail, including attachments, may include confidential and/or proprietary information, and may be used only by the person or entity to which it is addressed. If the reader of this e-mail is not the intended recipient or his or her authorized agent, the reader is hereby notified that any dissemination, distribution or copying of this e-mail is prohibited. If you have received this e-mail in error, please notify the sender by replying to this message and delete this e-mail immediately.

STATE OF KANSAS

DEPARTMENT OF ADMINISTRATION
OFFICE OF PROCUREMENT AND CONTRACTS
900 S.W. JACKSON ST., ROOM 451 SOUTH
TOPEKA, KS 66612



PHONE: (785) 296-2376
FAX: (785) 296-7240
<http://admrks.gov/offices/procurement-and-contracts>

GOVERNOR JEFF COLYER, M.D.
SARAH SHIPMAN, SECRETARY

CONTRACT AWARD

Date of Award: June 19, 2018
Contract ID: 45079
Event ID: EVT0005464
Replace Contract: 37108, 37109, 37110A

Procurement Officer: Aubrey L Waters
Telephone: 785-296-2401
E-Mail Address: aubrey.waters@ks.gov
Web Address: <http://admin.ks.gov/offices/procurement-and-contracts>

Item: KanCare 2.0 Medicaid & CHIP Capitated Managed Care
Agency/Business Unit: Kansas Department of Health and Environment (KDHE)

Period of Contract: January 01, 2019 through December 31, 2023

Contractor: UNITED HEALTHCARE OF THE MIDWEST INC
9900 BREN RD E STE 300W
MINNETONKA, MN 55343-9693

Vendor ID: 0000382805
FEIN: 43-1361841
Contact Person: Kevin Sparks
E-Mail: kevin_sparks@uhc.com
Local Telephone: 913-333-4068
Fax: 855-718-3770

Payment Terms: Net30

Political Subdivisions: Pricing is not available to the political subdivisions of the State of Kansas.

Procurement Cards: Agencies may not use a P-Card for purchases from this contract.

Administrative Fee: No Administrative Fee will be assessed against purchases from this contract.

The above referenced contract award was recently posted to Procurement and Contracts website. The document can be downloaded by going to the following website: <http://www.da.ks.gov/purch/Contracts/>

1. Terms and Conditions

1.1. Contract Documents

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- Form DA 146a;
- written modifications to the executed contract;
- written contract signed by the parties;
- the Bid Event documents, including any and all amendments; and
- Contractor's written offer submitted in response to the Bid Event as finalized.

1.2. Captions

The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.

1.3. Definitions

A glossary of common procurement terms is available at <http://admin.ks.gov/offices/procurement-and-contracts>, under the "Procurement Forms" link.

1.4. Contract Formation

No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the contractor.

1.5. Notices

All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") that may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:

Kansas Procurement and Contracts
900 SW Jackson, Suite 451-South
Topeka, Kansas 66612-1286
RE: Contract Number 40579

or to any other persons or addresses as may be designated by notice from one party to the other.

1.6. Statutes

Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

1.7. Governing Law

This contract shall be governed by the laws of the State of Kansas and shall be deemed executed in Topeka, Shawnee County, Kansas.

1.8. Jurisdiction

The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas. Contractor waives personal service of process, all defenses of lack of personal jurisdiction and forum non conveniens. The Eleventh Amendment of the United States Constitution is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this Agreement shall be deemed a waiver of the Eleventh Amendment.

1.9. Mandatory Provisions

The provisions found in Contractual Provisions Attachment (DA 146a) are incorporated by reference and made a part of this contract.

1.10. Termination for Cause

The Director of Purchases may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:

- the Contractor fails to make delivery of goods or services as specified in this contract;
- the Contractor provides substandard quality or workmanship;
- the Contractor fails to perform any of the provisions of this contract, or
- the Contractor fails to make progress as to endanger performance of this contract in accordance with its terms.

The Director of Purchases shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as State may authorize in writing), the Director of Purchases shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

1.11. Termination for Convenience

The Director of Purchases may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Purchases shall determine that the termination is in the best interest of the State of Kansas. In the event that the Director of Purchases elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

1.12. Rights and Remedies

If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.

The rights and remedies of the State provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

1.13. Antitrust

If the Contractor elects not to proceed with performance under any such contract with the State, the Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.

1.14. Hold Harmless

The Contractor shall indemnify the State against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and

control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

1.15. Force Majeure

The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes.

1.16. Assignment

The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State. State may reasonably withhold consent for any reason.

This contract may terminate for cause in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.

1.17. Third Party Beneficiaries

This contract shall not be construed as providing an enforceable right to any third party.

1.18. Waiver

Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by State shall not constitute a waiver.

1.19. Injunctions

Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.

1.20. Staff Qualifications

The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the contract specifications may result in termination of this contract or damages.

1.21. Subcontractors

The Contractor shall be the sole source of contact for the contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

1.22. Independent Contractor

Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation, social security, income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

1.23. Worker Misclassification

The Contractor and all lower tiered subcontractors under the Contractor shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.

1.24. Immigration and Reform Control Act of 1986 (IRCA)

All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the Contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) Form.

The Contractor hereby certifies without exception that such Contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination for cause and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce for the State any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like item under the contract.

1.25. Proof of Insurance

Upon request, the Contractor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to Procurement and Contracts.

1.26. Conflict of Interest

The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.

1.27. Nondiscrimination and Workplace Safety

The Contractor agrees to abide by all federal, state and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws or rules or regulations may result in termination of this contract.

1.28. Confidentiality

The Contractor may have access to private or confidential data maintained by State to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 45-215 et seq.) in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor agrees to return any or all data furnished by the State promptly at the request of State in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by State, shall destroy or render it unreadable.

1.29. HIPAA Confidentiality

Per the Health Insurance Portability and Accountability Act (1996) (HIPAA), the agency is a covered entity under the act and therefore Contractor is not permitted to use or disclose health information in ways that the agency could not. This protection continues as long as the data is in the hands of the Contractor.

The Contractor shall establish and maintain procedures and controls acceptable to the agency to protect the privacy of members' information. Unless the Contractor has the member's written consent, the Contractor shall not use any personally identifiable information obtained for any reason other than that mandated by this agreement.

1.30. Environmental Protection

The Contractor shall abide by all federal, state and local laws, and rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws or rule or regulations may result in termination of this contract for cause.

1.31. Care of State Property

The Contractor shall be responsible for the proper care and custody of any state owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract. The Contractor shall reimburse the State for such property's loss or damage caused by the Contractor, except for normal wear and tear.

1.32. Prohibition of Gratuities

Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.

1.33. Retention of Records

Unless the State specifies in writing a different period of time, the Contractor agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post contract period. Delivery of and access to the records shall be within five (5) business days at no cost to the state.

1.34. Off-Shore Sourcing

If, during the term of the contract, the Contractor or subcontractor plans to move work previously performed in the United States to a location outside of the United States, the Contractor shall immediately notify the Procurement and Contracts and the respective agency in writing, indicating the desired new location, the nature of the work to be moved and the percentage of work that would be relocated. The Director of Purchases, with the advice of the respective agency, must approve any changes prior to work being relocated. Failure to obtain the Director's approval may be grounds to terminate the contract for cause.

1.35. On-Site Inspection

Failure to adequately inspect the premises shall not relieve the Contractor from furnishing without additional cost to the State any materials, equipment, supplies or labor that may be required to carry out the intent of this Contract.

1.36. Indefinite Quantity Contract

This is an open-ended contract between the Contractor and the State to furnish an undetermined quantity of a good or service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made. An estimated quantity based on past history or other means may be used as a guide.

1.37. Prices

Prices shall remain firm for the entire contract period and subsequent renewals. Prices shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the State of Kansas. Failure to provide available price reductions may result in termination of the contract for cause.

1.38. Payment

Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires state agencies to pay the full amount due for goods or services on or before the 30th calendar day after the date the agency receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the Contractor and the state agency. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

Payments shall not be made for costs or items not listed in this contract.

Payment schedule shall be on a frequency mutually agreed upon by both the agency and the Contractor.

1.39. Accounts Receivable Set-Off Program

If, during the course of this contract the Contractor is found to owe a debt to the State of Kansas, a state agency, municipality, or the federal government, agency payments to the Contractor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. Pursuant to K.S.A. 75-6201 et seq, Contractor shall have the opportunity to challenge the validity of the debt. The Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes Contractors against debts owed by the Contractors to the State of Kansas, state agencies, municipalities, or the federal government. Payments setoff in this manner constitute lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation is reduced by the amount subject to setoff.

1.40. Federal, State and Local Taxes

Unless otherwise specified, the contracted price shall include all applicable federal, state and local taxes. The Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the contracted price. Upon request, the State shall provide to the Contractor a certificate of tax exemption.

The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

1.41. Debarment of State Contractors

Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, pursuant to K.S.A. 75-37,103, or have its work evaluated for pre-qualification purposes. Contractor shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in the termination of the contract.

1.42. Materials and Workmanship

The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this Contract within the time specified, in accordance with the provisions as specified.

The Contractor shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at the Contractor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of agency and/or Procurement and Contracts said issue is due to imperfection in material, design, workmanship or Contractor fault.

1.43. Industry Standards

If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

1.44. Implied Requirements

All products and services not specifically mentioned in this contract, but which are necessary to provide the functional capabilities described by the specifications, shall be included.

1.45. Inspection

The State reserves the right to reject, on arrival at destination, any items which do not conform with specification of the Contract.

1.46. Acceptance

No contract provision or use of items by the State shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.

1.47. Ownership

All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of the using agency.

1.48. Information/Data

Any and all information/data required to be provided at any time during the contract term shall be made available in a format as requested and/or approved by the State.

1.49. Certification of Materials Submitted

The Bid document, together with the specifications set forth herein and all data submitted by the Contractor to support their response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of the contract between the Contractor and the State of Kansas. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.

1.50. Transition Assistance

In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to State to allow for a functional transition to another vendor.

1.51. Integration

This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This Agreement between the parties shall be independent of and have no effect on any other contracts of either party.

1.52. Modification

This contract shall be modified only by the written agreement and approval of the parties. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

1.53. Severability

If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.

2. Specifications

- 2.1. CONTRACTOR's written proposal submitted in response to the Request for Proposal as finalized, including;
- 1) The bid event documents, including any and all amendments; and
 - 2) Original Technical and final Cost Proposal submitted by Contractor
 - 3) CONTRACTOR's responses to State's questions/assurances
- 2.2. Section 5.1.1 and Section 5.7 items A, B and C of the original bid event document are deleted and replaced with items A, B, C and D listed below:
- A. Value-based models and purchasing strategies will further integrate services and eliminate the current silos between physical health services and behavioral health services, leading to improvements in quality, outcomes, and cost-effectiveness.
 - B. Increasing employment and independent living supports for members who have disabilities or behavioral health conditions, and who are living and working in the community, will increase independence and improve health outcomes.
 - C. The use of telehealth (e.g., telemedicine, telemonitoring, and telementoring) services will enhance access to care for KanCare members living in rural areas. Specifically:
 1. Telemedicine will improve access to services such as speech therapy
 2. Telemonitoring will help members more easily monitor health indicators such as blood pressure or glucose levels, leading to improved outcomes for members who have chronic conditions
 3. Telementoring can pair rural healthcare providers with remote specialists to increase the capacity for treatment of chronic, complex conditions.
 - D. Removing payment barriers for services provided in Institutions for Mental Disease (IMDs) for members who have a primary diagnosis of a substance use disorder or co-occurring substance use disorder will result in improved member access to behavioral health services.
- 2.3. Section 5.1.5 of the original bid event is amended to add "F."
- F. CONTRACTOR shall cooperate with the Department of Children and Families (DCF) in matters relating to youth in foster care who are KanCare members.
- 2.4. Section 5.4.5 of the original bid event letter E is amended as follows:
- ~~Youth in foster care and~~ Members discharged from a long-term stay in a hospital, State hospital, public or private ICF/IDD, psychiatric residential treatment facility (PRTF) or other institutional setting shall be placed in either Level III or Level IV of Service Coordination based on their individual needs.
- 2.5. Section 5.4.8 of the original bid event C is deleted in its entirety.
- 2.6. Section 5.4.11 A of the original bid event is amended as follows:
- A. Delete items 3, 4, and 5.
 - B. Item 6 – "The CONTRACTOR(S) must provide in their Service Coordination model description of how they work with children with complex needs. ~~including, but not limited to, children who have had multiple foster care placements or who are involved with multiple systems of care.~~"
- 2.7. The following sections of the original bid event will not be implemented on January 1, 2019. If at such time the State chooses to implement these sections, a contract amendment will be written.
- A. 5.19.1
 - B. 5.19.2
 - C. 5.19.3
 - D. 5.19.5
- 2.8. Section 5.19.4 of the original bid event will be implemented on or after July 1, 2019 and in accordance with a disability supported employment pilot strategy developed by the State in collaboration with the CONTRACTOR.

- 2.9. Attachment D - Grievance, Reconsideration, Appeal and State Fair Hearing is replaced in full with Attachment D - Grievance, Reconsideration, Appeal and State Fair Hearing dated June 8, 2018.
- 2.10. Attachment L – The population “foster care” is deleted.
- 2.11. The State will develop the following strategies, no later than April 1, 2019, in collaboration with the CONTRACTOR
- A. Service Coordination Strategy
 - B. Value Based Purchasing Strategy
- 2.12. The CONTRACTOR shall develop and submit the CONTRACTOR's member enrollment packet materials for State approval on or before July 10, 2018. The enrollment packet materials are for the enrollment broker mailings to occur on and after October 1, 2018.
- A. These materials are further described in Section 5.2.1.A.3 of the original bid event
 - B. Per CMS direction, all member handbooks must contain the following statements:
 - 1. Kan Be Healthy also covers tests and specialist services to treat conditions found in a checkup.
 - 2. Cleanings, checks-ups, x-rays, fluoride, dental sealants and fillings are all covered.
 - 3. Take your child to the dentist by their first birthday.
- 2.13. The CONTRACTOR shall make available all documents requested by the State's Readiness Review contractor, Mercer, by August 8, 2018.
- 2.14. The CONTRACTOR shall employ, as a Health Screen, the document known as “Attachment F” in the original bid event and use the scoring included in that tool.
- 2.15. The CONTRACTOR shall employ the KanCare Health Risk Assessment as outlined in “Attachment E” of the original bid event whenever a KanCare member triggers one of the thresholds outlined in “Attachment F.”
- 2.16. Quality and Performance Monitoring
- A. The State's monitoring of the contract will use the State's Quality Management Strategy (QMS), upon approval by the Centers for Medicare and Medicaid Services (CMS.) The CONTRACTOR will be held to the required quality and performance measures.
 - B. The CONTRACTOR shall submit annually required data including but not limited to:
 - 1. Healthcare Effectiveness Data and Information Set (HEDIS)
 - 2. Medicaid Child Core Measures sets
 - 3. Consumer Assessment of Healthcare Providers and Systems (CAHPS) i. Adult ii. Child
 - 4. Any other data as directed by the State.
 - C. Other data sources than those from the CONTRACTOR including but not limited to:
 - 1. National Outcome Measures (NOMS)
 - 2. National Core Indicator (NCI)/NCI-Aging and Disabilities (AD)
 - 3. Minimum Data Set
 - 4. Long Term Services and Supports (LTSS) CAHPS
 - 5. State audits
 - D. Further quality and performance measures will be developed with feedback from the CONTRACTOR and documented in a State policy.
- 2.17. COSTS
- The contract will be updated with the final CY19 capitation rates in the latter part of CY18. Per Section 7.H.1 of the original bid event, the State shall determine the final capitation rates paid, such that CONTRACTOR will maintain the same spot in the Final Actuarially Sound Rate Range as in the Initial Actuarially Sound Capitation Rate Range. The Final Actuarially Sound Rate Range will be shifted upward to reflect the portion of the Withhold that is not projected to be earned back by the contracted MCOs. This will be specific to the CY19 Withhold specifications.

The Final Actuarially Sound Rate Range will include the impact of any policies that have been enacted that were not reflected in the cost proposal from the CONTRACTOR. CONTRACTOR is confirming their financial commitment to contract as an MCO under KanCare. Unless otherwise specified in the terms of this agreement the termination of this contract by CONTRACTOR will result in the loss of the performance bond.

- 2.18.** This contract is dependent on the Centers for Medicare and Medicaid Services approval.

State of Kansas Department of Administration
DA-146a (Rev. 06-12)
CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutory required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

Subject to the terms and conditions of the bid specifications and this contract, State hereby accepts the offer of Contractor as expressed by Contractor's bid submitted to Procurement and Contracts on **January 05, 2018** in response to Bid Event Number **EVT0005464**.

It is understood and agreed by the parties that pursuant to the bid, Contractor agrees to furnish **KanCare 2.0 Medicaid & CHIP Capitated Managed Care** for **Kansas Department of Health and Environment (KDHE)** on order of the Agency at the price or prices contained herein.

This contract is entered into this **19th** day of **June, 2018** by and between the State of Kansas (State) and **UNITED HEALTHCARE OF THE MIDWEST INC, MINNETONKA, MN** (Contractor).

Signatures on file.