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July 19, 2018

***Via Email and Hand Delivery***

Tracy Diel, Director  
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900 SW Jackson Street, Room 451  
Topeka, Kansas 66612

**Stay Requested Pursuant to Section 3  
of the Department's Vendor Bid Protest Procedure**

Re: Bid Protest—State of Kansas Request for Proposals  
No. EVT0005464 KanCare 2.0 Medicaid & CHIP Capitated  
Managed Care

Dear Mr. Diel:

The undersigned counsel represent AmeriHealth Caritas Kansas, Inc. (“AmeriHealth Caritas”). Pursuant to the Kansas Department of Administration’s Vendor Bid Protest Procedure, AmeriHealth Caritas hereby files this bid protest action concerning the June 19, 2018 awards of three Medicaid and Children’s Health Insurance Program (“CHIP”) capitated managed care contracts for the Kansas Department of Health and Environment (“Department,” “State,” or “KDHE”). The challenged awards were made under the Kansas Medicaid and CHIP program, also known as “KanCare,” pursuant to State of Kansas Request for Proposals No. EVT0005464 KanCare 2.0 Medicaid & CHIP Capitated Managed Care (“RFP” or “Solicitation”).

AmeriHealth Caritas is a disappointed offeror in the KanCare 2.0 procurement and challenges the Department’s awards to Aetna Better Health of Kansas, Inc. (“Aetna”), United Healthcare of the Midwest, Inc. (“United Healthcare”), and Sunflower State Health Plan, Inc. (“Sunflower”). For the reasons demonstrated below, the State conducted this procurement in a manner that was arbitrary and capricious, and not in accordance with applicable law. The protest should be sustained.

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## **I. Timeliness**

By letter dated June 22, 2018, the Department notified AmeriHealth Caritas that it had awarded contracts in response to the RFP to Aetna, United Healthcare, and Sunflower—and *not* to AmeriHealth Caritas. The contracts awarded by the Department indicate that the “Date of Award” for each of them was June 19, 2018. *See* Kansas Dep’t of Administration website ([hyperlinked here](#)).

Section 1 of the Department’s Vendor Bid Procedure states that a protest of a procurement decision must be “received by . . . the Director of Purchases within **thirty (30) calendar days** after the date of the event which gives rise to the vendor’s protest” and further asserts that “[t]he Division of Purchases shall not accept any protest more than thirty (30) days after the date of the contract award or renewal.” This protest is being filed within the applicable period and is thus timely filed.

AmeriHealth Caritas submitted a compliant proposal in response to the RFP. AmeriHealth Caritas’ direct economic interest was prejudiced by the awards. Absent the deficiencies in the evaluation and award decision explained below, AmeriHealth Caritas would have had a substantial chance of being selected for an award.

## **II. Stay Request**

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 RFP until this protest has been heard by the Department. Notwithstanding that the Department purports to have awarded contracts under the RFP, AmeriHealth Caritas requests that any and all procurement or contract implementation related to the RFP immediately be stayed as required by the Department’s Vendor Bid Protest Procedure.

## **III. Reservation of Rights Regarding Supplemental Protest**

This Protest is based on the information known and documents available to AmeriHealth Caritas at this time. AmeriHealth Caritas 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.* A copy of AmeriHealth Caritas KORA requests are attached as Exhibit 1.

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AmeriHealth Caritas anticipates that upon production of the records responsive to AmeriHealth Caritas' KORA requests, and having the opportunity to review these documents in detail, additional protest grounds for AmeriHealth Caritas likely will be revealed. AmeriHealth Caritas 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 AmeriHealth Caritas' KORA requests, review and analysis of relevant documents, or otherwise discovered or revealed during the course of this proceeding.

#### **IV. Grounds of Protest**

##### **A. The Department's Awards Are Invalid Because The Provisions of the RFP Upon Which the Award Was Based Exceeded Department's Authority Under Applicable Law**

AmeriHealth Caritas Kansas, Inc. was established as a Kansas corporation on November 6, 2017, in order to compete for the opportunity to serve KanCare Members. The AmeriHealth Caritas Family of Companies has provided Medicaid managed care services for more than 30 years. The AmeriHealth Caritas Family of Companies currently operates in 16 states and in the District of Columbia and serves approximately 5.6 million Medicaid, Medicare, CHIP, and long-term services and supports Members through an integrated model of physical health, behavioral health and pharmacy services.

The State of Kansas transitioned from a fee-for-service model for providing health services to a managed care model with the "KanCare" managed care program, which launched in January 2013. The current KanCare program ("KanCare 1.0") is set to expire on December 31, 2018. Accordingly, on November 2, 2017, the Department issued the RFP, which sought vendors for a new version of KanCare, known as KanCare 2.0, which included significant changes from KanCare 1.0. Among other things, these changes included a work requirement and lifetime cap on benefits for some recipients. On January 4, 2018, AmeriHealth Caritas and five other vendors submitted their proposals to the Department in response to the 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 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

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KanCare program.” A copy of the January 24, 2018, press release from the Office of the Governor is attached as Exhibit 2.

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 to block KanCare 2.0 by directing the agencies 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*. Additionally, Section 118 required that the KanCare 2.0 RFP be altered to take into account the Legislature’s mandate not to proceed with KanCare 2.0. More specifically, Section 118 provides, 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.**

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Exhibit 3, 2018 Kansas Omnibus Budget, Section 118 (emphasis added).

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.

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).

However, despite the fact that ***all statutory authority*** for the Department to proceed with the provisions of ***KanCare 2.0 was revoked*** by Section 118 of 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 face-to-face meetings (to the best of AmeriHealth Caritas’ knowledge, based on the documents posted on the Department’s website).<sup>1</sup> AmeriHealth Caritas received no information regarding revised requirements. 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.

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<sup>1</sup> The Department held face-to-face meetings with four (of six) vendors in mid-May 2018; AmeriHealth Caritas was not included among the vendors invited to participate in those meetings. *See* Exhibit 5 at 12.

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The 2018 Kansas Budget expressly prohibited the Department from awarding contracts based on KanCare 2.0. Instead, it required that the KanCare 2.0 RFP be altered to effectuate the legislative intent that the Department award contracts based on the KanCare program as it existed on January 1, 2018, as modified under the 2018 budget. The Department failed to do so, and its award of contracts under the unaltered 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” (by amendment) 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.

**B. The Department’s Contract Awards Were Erroneously Based on An RFP That Was Not Amended To Allow Offerors To Bid on Legally Permissible Requirements**

The Department’s award of contracts under the un-altered KanCare 2.0 RFP is not only contrary to law but is 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 new requirement that the services sought by the KanCare 2.0 RFP not proceed. Instead, the Department conducted its evaluation and awarded new contracts based on proposals submitted in response to the provisions of the KanCare 2.0 RFP and, after-the-fact, excised some of the KanCare 2.0 requirements—in what can only be described as a belated attempt to comply with the 2018 Kansas Budget.

In other words, the Department failed to obtain and evaluate proposals based on the actual requirements that must apply to the contracts, as required under Kansas law, but rather awarded contracts for one program (KanCare 1.x) based on bids received for another different program (KanCare 2.0), which features a materially different scope of services. Not only is this conduct 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, but it is also contrary to the

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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. Coast. Co. v. City of Leavenworth*, 238 Kan. 85, 92, 708 P.2d 190, 196 (1985); *Topeka Bridge & Iron Co. v. Board of Commissioners*, 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 tenets 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*, 158 P. at 12.

When, as in this case, a governmental agency awards a contract for services that are not those outlined in the RFP, the agency inherently awards a contract on terms not disclosed to the bidders or the public. Such conduct creates the possibility for favoritism or improvidence or the appearance thereof, runs counter to the public’s interest in fair and open competition, and is contrary to law. *See id* at 13. Instead of ignoring the statutory requirement, the Department—under long-established principles of open and fair competitive bidding—was required to amend the RFP and invite each offeror to revise its proposal based on the actual KanCare 1.x services the Department would actually be contracting for. This adjustment would have allowed each bidder to have its 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*, 275 Kan. at 641, 67 P.3d at 849; *Topeka Bridge*, 158 P. at 11-12.

**C. The Awarded Contracts Contain Terms That Vary Materially from the Solicitation and are Improper under State Law and Basic Competitive Principles Applicable to Public Procurement**

Longstanding public procurement principles applicable in Kansas require that contracts must be awarded based on solicitations made available to potential offerors (vendors). To the



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extent public procurements are made based on factors not known to all potential offerors, the government is not obtaining best value and risks various negative outcomes. *See Sutter Bros. Constr. v City of Leavenworth*, 238 Kan. 85, 92, 708 P.2d 190, 196 (1985). As the Kansas Supreme Court recognized more than 100 years ago, the purpose of competitive bidding statute implemented here is “to secure economy and protect the public from collusive contracts, which would result in favoritism and fraud.” *Topeka Bridge*, 158 P. at 11-12.

Contract awards cannot be based on factors that “were not disclosed in the [agency’s] bid documents,” *Richie Paving*, 275 Kan. at 641, 67 P.3d at 849, and the relevant parts of RFPs must be made available to potential bidders so they “shall be placed on an equality, and that each shall know exactly what is required” for their bid. *Topeka Bridge*, 158 P. at 12. These legal requirements were not followed here.

Without placing potential offerors on an equal playing field and providing the information required to formulate proposals responsive to all requirements, the Department did not have access to the offerors’ most competitive proposals. What is more, the Department denied offerors the opportunity to have their proposals fairly and equally evaluated in accordance with factors known to them in advance. The Department’s failure to conduct the procurement by neutral, previously announced criteria is arbitrary and capricious—and contrary to basic public procurement principles. *See Richie Paving*, 67 p.3d at 67.

**1. The Awarded Contracts’ Section 2.2 Dramatically Changes the Requirements Announced to Vendors in RFP Section 5.1.1—and Is Improper**

As one of the subparts of the general “RFP Background and Scope of Services” section of the Solicitation, the Statement of Work (“SOW”) announced that the “goal for KanCare 2.0 is to help Kansans achieve healthier, more independent lives by providing services and supports for Social Determinants of Health and Independence, in addition to traditional Medicaid and CHIP benefits.” SOW ¶ 5.1.1. In the SOW, the Department further made clear its intention to “test [the] hypotheses [on which] KanCare 2.0 [was based] through this RFP and through the Section 1115 Medicaid Demonstration Waiver.” *Id.* The Department intended to achieve its goals by:

- A. Expanding Service Coordination to include assisting Members with accessing affordable housing, food security, employment, and other Social Determinants of Health and Independence will increase independence and stability and improve health Outcomes.



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- B. Increasing employment and independent living supports for Members with Behavioral Health needs, or who have intellectual, developmental or physical disabilities or traumatic brain injuries will increase independence and improve health Outcomes.
- C. Providing Service Coordination for all youth in foster care will decrease the number of placements, reduce psychotropic medication use, and improve health Outcomes for these youth.

SOW ¶ 5.1.1, at 10-11; *see* SOW ¶ 5.7 (identical language).

Section 2.2 of the contracts awarded by the Department to Aetna, Sunflower, and United Healthcare begins by “delet[ing]” the language quoted above from “Section 5.1.1 and Section 5.7” of the SOW.”<sup>2</sup> Exhibit 4 at 10. The contracts then “replace[]” the SOW language “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

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<sup>2</sup> Section 5.7 of the SOW concerns the contractors’ “Proposals for Value Based Models and Purchasing Strategies” and contains identical language as SOW ¶ 5.1.1.

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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.

The provisions of the contracts quoted above constitute material modifications to the SOW that was considered by vendors and was the subject of their proposals. Among other things, the awarded contracts make clear that the Department now intends to focus the use of value-based models and purchasing strategies to eliminate perceived silos between physical health services and behavioral health.

The contract language also adds substantial “specification” language to telehealth. Although aspects of “telehealth” (*i.e.*, telemedicine, telemonitoring, and telementoring) are addressed with respect to various aspects of the SOW (*e.g.*, ¶ 5.5.2(F)(5)), the contract includes language directed by the Budget Bill. *See* Section IV.A (above). An agency may reasonably conclude that material modifications of a solicitation are required following enactment of a new statute, but there is no basis in procurement law for adding them (after-the-fact) to a contract that has already been awarded, based on an RFP that did not include provision based on the new statutory language. The Department’s attempt to do so here violates basic procurement law principles that a contract cannot be awarded on terms materially different than those sought by the RFP (or bid) documents issued by the agency. *See Topeka Bridge*, 158 P. at 12. These fundamental rules are applicable in jurisdictions across the country—including Kansas—and preclude the Department’s award.

## **2. The Awarded Contracts Improperly Removed Additional Material Provisions of the RFP Without Providing Proper Notice**

The Department also improperly removed from the awarded contracts the provisions ultimately struck by the legislature in the 2018 Budget Bill. In short, the Department attempted to implement the directions given in Section 118 of the Budget Bill by removing numerous SOW provisions from the awarded contracts. The removed provisions included:

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- 5.19.1. KanCare 2.0 Work Requirement Initiative
- 5.19.2. MediKan Employment Opportunity Initiative
- 5.19.3. TransMed Employment Opportunity Initiative
- 5.19.5. Member-Driven Health Care

Exhibit 4 at 10.

It is clear from the contract’s language that these SOW requirements are not part of the obligations of awardees. Not only does the agreement make clear that they “will not be implemented” on the effective date of the agreement (January 1, 2019), but if “the State chooses to implement these sections” at some later time, “a contract amendment will have to be written” to require their implementation. In other words, the Department expressly removed these activities from the scope of the awarded contract—relaxing the requirements on the contractor—without an amendment to the RFP (while asserting that the provisions can only be implemented by means of an amendment to the contract).

Given the Kansas legislature’s focus on these provisions, the Department cannot credibly assert that they are immaterial to the SOW (and RFP). Indeed, obtaining a waiver and implementing a work requirement on Medicaid recipients would require substantial effort and would clearly be material to a vendor’s performance. Removal of these provisions materially alters the scope of the work at issue. Doing so without a revision to the RFP is improper under *Topeka Bridge* and basic procurement principles.

Because the RFP does not reflect the Department’s actual needs as implemented through the awarded contracts, the Department should revise the RFP to enable a competition on the basis of its actual, current requirements. The RFP requirements that the Department excised from the contracts materially impacted AmeriHealth Caritas’ proposed pricing. AmeriHealth Caritas would offer materially different pricing if it does not have to comply with such requirements at this juncture. To permit a full and fair competition, the Department must permit all contractor to revise their proposals, *including their cost proposals*, in accordance with the actual requirements to be implemented in the contracts.

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**D. The Department Erroneously Applied Its RFP and/or Miscalculated Important Parts of AmeriHealth Caritas' Proposal**

When evaluating proposals, agencies are required to follow the provisions of the RFP. *See, e.g., Blue & Gold Fleet, L.P. v. United States*, 492 F.3d 1308, 1313 (Fed. Cir. 2007) (“The terms of the solicitation prospectus did not include any requirement that the bidders consider the Service Contract Act, and thus, the Park Service could not decide at the time of the evaluation to apply the Act.”); *FirstLine Transp. Sec., Inc. v. United States*, 100 Fed. Cl. 359, 382 (2011) (“The government must evaluate all proposals only in accordance with the factors and significant subfactors set forth in the RFP”). Additionally, agencies are required to act in accordance with the answers provided to offerors during the solicitation process. *Meridian Mgmt. Corp.*, B-271557, *et al.*, July 29, 1996, 96-2 CPD ¶ 64 at 5 (“[W]here, as here, an agency disseminates written responses to offerors’ questions during the course of a procurement, even where the questions and answers are not expressly incorporated into the RFP, the agency is bound by its responses, where they are not inconsistent with the RFP and one or more of the offerors would be prejudiced if the agency does not adhere to its statements.”).

Although agencies have “broad discretion” in applying the RFP’s requirements and evaluating proposals, that discretion is not unbounded: “Agencies do not . . . have the discretion to announce in the solicitation that they will use one evaluation plan and then follow another; once offerors are informed of the criteria against which their proposals will be evaluated and the source selection decision made, the agency must adhere to those criteria or inform all offerors of significant changes.” *Special Operations Grp., Inc.*, B-287013, March 30, 2001, 2001 CPD ¶ 73 at 5. Agency officials must make reasonable judgments when evaluating proposals, and they must create materials that reveal the work for which deference is sought. *World Airways, Inc.*, B-402674, June 25, 2010, 2010 CPD ¶ 284 at 12 (although the agency has “broad discretion” in considering the relative value of cost and technical performance, “[w]here a price/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made”). The Department’s evaluations here fail to satisfy these requirements.

**1. The Department Erroneously Assessed a “Weakness” and a “No” Rating With Respect to Submission of Attachment H**

In Attachment H to the KanCare 2.0 RFP, the Department explained that the State intends to “implement[] a new reporting and data collection strategy that collects, integrates, and analyzes data from a variety of sources, including required CONTRACTOR(S) self-reporting across the full continuum of care.” Attachment H included a 22-page spreadsheet with 101 rows

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describing various reports and descriptions (of reports) and seeking several data points regarding each row. For example:

Report Name	Reporting Description	Frequency	Report Available Y/N/P	Data Available Y/N/P	Data Dictionary Y/N	Data Details - key elements, system description, submission format, etc.
5. Step Therapy Savings Report	Utilization savings per month for Step Therapy.	Monthly				

During the questions and answers addressed with respect to Amendment No. 4 of the RFP, an offeror specifically asked to clarify that Attachment H was not required to be filed with the proposal. Instead, the Attachment appeared to be a requirement that would be addressed during contract administration. Specifically, Question No. 249 asked for clarification as follows:

249	Section 5.16	We assume that bidders must respond to Section 5.16 in their proposal with their experience and expertise related to items 5.16.J.1 through J.7. We assume that bidders 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. Are we correct in our assumption? If we are incorrect, please clarify.
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RFP Attachment 4, KanCare 2.0 Questions and Answers Round 1.

The Department responded “Yes,” meaning that the Attachment “will be required of successful bidders after contract award.” In accordance with the Department’s answer, AmeriHealth Caritas did not submit Attachment H with its proposal.

In its evaluation, the Department assessed a weakness to AmeriHealth Caritas with respect to its purported “[f]ail[ure] to respond to the reporting requirements under Data Collection and Reporting—Attachment H.” Exhibit 5 at 8. AmeriHealth Caritas was also rated with a “No” regarding Section 5.16 “Reporting and Data Collection” in the evaluation, and the only indication of an issue with this “area” relates to the missing Attachment H. It is grossly misleading—and arbitrary and unreasonable—for an agency to state that a specific solicitation attachment is not required for a proposal, then to rate an offeror poorly because it complied with the agency’s answer (and RFP clarification) by not submitting the attachment. *See Meridian Mgmt.*, B-271557, 96-2 CPD ¶ 64 at 5. There is no basis for AmeriHealth Caritas’ poor rating in this area (or conversely Aetna’s positive rating)—which materially affected the relative technical ratings.

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**2. There Is No Basis for the Department's Determination that AmeriHealth Caritas Fails To Understand the Difference Between a Grievance and an Appeal**

The Department assessed a weakness against the AmeriHealth proposal for a purported lack of understanding of the grievance and appeal process, stating:

Failed to understand the difference between a grievance and an appeal and did not describe policies and procedures for the grievance and appeals process.

Exhibit 5, Technical and Cost Evaluation, at 8. That conclusion is mistaken.

The AmeriHealth Caritas proposal accurately distinguished (and described) grievances and appeals, as well as addressed relevant policies and procedures. Section 5.11 of the AmeriHealth Caritas proposal addressed grievances and appeals. AmeriHealth Caritas expressly adopted the definitions set forth in the RFP, stating that “[a]ll terms used in this response conform to the definitions in **Attachment D, Section 2.0.**” AmeriHealth Caritas Proposal at 719. AmeriHealth Caritas separately and accurately described grievances and appeals, as well as the related processes for Members and Providers to follow in pursuing grievances and appeals. *See id.* at 719-25. The assessed weakness summarily asserts that the proposal failed to “understand the difference” between grievances and appeals, but did not list a single example in which the proposal purportedly failed to do so.

Section 5.11 of the AmeriHealth Caritas proposal explained how, in addition to following the requirements of applicable law, AmeriHealth Caritas will develop and provide Member and Provider Handbooks during contract performance that discuss the relevant policies and procedures in detail. The proposal provided a description of the matters that would be addressed in the Handbooks, but not the detailed policies and procedures for each step. The Solicitation did not require that such complete handbooks actually be submitted with the proposal. It was unreasonable, therefore, for the Department to assess a weakness for something the Solicitation did not require.

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### **3. The Department Unreasonably Evaluated Service Coordination**

A review of the proposals submitted and the Department's evaluation reveals that AmeriHealth Caritas' and Aetna's proposals were not evaluated on a fair and equal basis. For example, the Department assessed the following weakness to the AmeriHealth Caritas proposal related to Service Coordination:

Lacked understanding of referral processes for conflict-free entities to perform determinations for HCBS enrollment and conflict of interest requirements for Service Coordination.

Exhibit 5 at 8.

A review of the Aetna proposal reveals that although Aetna failed to address numerous Service Coordination requirements, it was not assessed a weakness in this regard, but instead was rated "Yes" to reflect a favorable evaluation. *See* Exhibit 5 at 4-6. Specifically, the Aetna proposal failed to address the relevant requirements in the discussion of Service Coordination:

B.6. Increases access to community-based LTSS.

C.11. A process to assure referrals for medically necessary, specialty, secondary, and tertiary care and a person designated as primarily responsible for coordinating the health care services furnished to the Member.

C.12. A process to assure the provision of care in emergency situations, including an educational process to help assure that Members know where and how to obtain medically necessary care in emergency situations.

E.2. How it will engage Members to participate in the Service Coordination program, including any incentives it would propose utilizing, and why it believes those incentives will be effective.

E.9. How it will engage Members in order to obtain consent to share PHI across physical health, Behavioral Health, HCBS, and LTSS care Providers, when such consent is required, and its previous experience in obtaining Member consent, particularly as it relates to 42 CFR § Part 2 for SUD care.



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Because Aetna failed to address these requirements *at all* in the relevant proposal section, the Department could not reasonably conclude that Aetna's proposal was satisfactory in its response for these areas as there was no factual basis to support any such conclusion.

Likewise, the Department demanded that AmeriHealth Caritas provide a higher level of detail than Aetna with respect to several other Service Coordination factors. Under the standards that the Department applied to the AmeriHealth Caritas proposal, Aetna's proposal should have received one or more weaknesses for Service Coordination and been rated "No" in regard to a recommendation for this area of its proposal.

**4. The Department Erroneously Assessed a Weakness with Respect to AmeriHealth Caritas' Proposal Concerning Culturally Competent Care**

The Department assessed the following weakness to the AmeriHealth Caritas proposal:

Concerned that the description of culturally competent care focused on individuals with physical disabilities.

Exhibit 5 at 8. The Department's assessment of that weakness was erroneous and arbitrary.

In fact, the AmeriHealth Caritas proposal addressed culturally competent care throughout the proposal, including but not limited to area 5.5 (Provider Network). This discussion was far more expansive than, and not focused on, individuals with physical disabilities as the Department assumed in its evaluation. *See, e.g.* AmeriHealth Caritas Proposal at 345. The AmeriHealth Caritas cultural competency plan addressed language barriers, health literacy, social determinants, and increasing access to additional doctors and services. *See id.*

As a further example, the proposal states:

AmeriHealth Caritas Kansas will foster cultural awareness, sensitivity, and competency in both our staff and the Provider community across Kansas. We will ensure every Member receives culturally and linguistically appropriate care and services, by:

- Recruiting additional PCPs that reflect the cultural make-up of the communities they serve.

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- Hiring staff that mirror the population that we serve.
- Assessing and documenting each Member's culture, linguistic preferences, and expressed needs.
- Communicating in the Member's preferred language or method of communication, including sign language, to assure that the Member understands all clinical and administrative information.
- Ensuring that non-English speaking Members and those with Limited English Proficiency (LEP) have access to free professional interpreters.
- Providing free translation of written materials to those Members who request instructions in their primary language.
- Confirming that our network Providers understand and are respectful of health-related beliefs, cultural values, communication styles, attitudes, and behaviors of the cultures represented in the Member population. This includes mandatory, comprehensive cultural, linguistic, and disability training for all Providers upon initial credentialing and during re-credentialing.
- Continuing to forge strong partnerships with community service organizations that serve under represented populations.
- Publishing the reported languages spoken by Providers and clinical staff in the online Provider directory.
- Annually assessing whether populations speaking one of the prevalent non-English languages spoken in the State have adequate access to Providers speaking those languages.
- Annually assessing Member satisfaction with cultural competency of Providers through the CAHPS® survey.
- Collaborating with our subcontractors to provide culturally competent services. For example, PerformRx delivers a quarterly newsletter to pharmacies to educate Providers regarding cultural competence. Past topics have included the importance of effective communication with Members who have LEP and pharmacies' responsibility to remove linguistic, physical, and sensory barriers that could exclude, deny, delay, or prevent timely delivery of health care or social services.

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*Id.* at 333-34. AmeriHealth Caritas separately addressed care for Members with disabilities. *See, e.g., id.* at 334. The Department plainly misread (or failed to read) the proposal.

A fair and equal evaluation would have resulted in AmeriHealth Caritas receiving a comparable number of strengths and weaknesses to the Aetna proposal. As a result, AmeriHealth Caritas would have been included in the face-to-face discussions; had it been given the opportunity, AmeriHealth Caritas would have negotiated its proposed cost; and it would have had a substantial chance of being awarded a contract by the Department.

Compounding the prejudice suffered by AmeriHealth Caritas is the fact that the Department assigned Aetna a strength for its proposed Spanish speaking advisory committee (*see* Exhibit 5 at 6), while disregarding AmeriHealth Caritas' proposed efforts to address language barriers. Although AmeriHealth Caritas did not propose the same type of committee, its proposal set forth a detailed approach to addressing linguistic barriers that may impede or inhibit care, but did not receive comparable credit from the Department. Disparate treatment is not fair and equal; it is arbitrary. If Aetna deserved a strength for its proposed committee, AmeriHealth Caritas likewise should have received a strength for its comprehensive approach to addressing language barriers, rather than a weakness for the Department's erroneous conclusion as to AmeriHealth Caritas' approach to cultural competency.

**V. Request for a Hearing**

AmeriHealth Caritas reserves the right to request a hearing.

**VI. Relief Requested**

AmeriHealth Caritas requests that the Division of Purchases:

1. Terminate the contracts with the awardees;
2. Reopen the procurement, cancel or amend the RFP to comply with applicable law, solicit new or revised proposals (Technical and Cost), conduct meetings or discussions as appropriate with the contractors, and award the contracts consistent with the RFP; and
3. Award such further relief as is just and appropriate, including an award of AmeriHealth Caritas' costs of pursuing this protest, including its reasonable attorneys fees, to the extent permitted by law.

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**VII. Conclusion**

For the reasons set forth above, AmeriHealth Caritas' protest should be sustained.

Of counsel:

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David F. Dowd  
Luke Levasseur  
Roger V. Abbott  
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P: (202) 263-3000



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Direct line: 816-627-0240

*Counsel for AmeriHealth Caritas Kansas, Inc.*

AmeriHealth Caritas Kansas, Inc.

Bid Protest—State of Kansas Request for Proposals  
No. EVT0005464 KanCare 2.0 Medicaid & CHIP Capitated Managed Care

**Exhibit List**

<i><b>Exhibit No</b></i>	<i><b>Description</b></i>
1	AmeriHealth Caritas' Open Records Request (July 18, 2018)
2	Press Release from Kansas Governor's Office Regarding Plans to Stop KanCare 2.0
3	Excerpt of 2018 Kansas Omnibus Budget Act, Section 118
4	Contract Award, KanCare 2.0, Department of Health and Environment and Aetna Better Health of Kansas, Inc.
5	Department's Technical and Cost Evaluation (May 16, 2018)

# Bid Protest Exhibit 1

AmeriHealth Caritas Kansas, Inc.

Bid Protest—State of Kansas Request for Proposals  
No. EVT0005464 KanCare 2.0 Medicaid & CHIP Capitated Managed Care

Stephen M. Bledsoe  
sbledsoe@berkowitzoliver.com  
DD: (816) 627-0240

July 18, 2018

**VIA EMAIL AND REGULAR MAIL**

Kansas Department of Administration  
Office of Chief Counsel  
Attn: KORA Request  
CSOB, Suite 500, 1000 SW Jackson  
Topeka, Kansas 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: Open Records Request pertaining to State of  
Kansas Request for Proposals EVT0005464,  
KanCare 2.0 Medicaid & CHIP Capitated  
Managed Care**

Dear Mr. Philip and Ms. Titus:

Undersigned counsel represent AmeriHealth Caritas Kansas, Inc. (“AmeriHealth Caritas”). Pursuant to the Kansas Open Records Act (“KORA”), K.S.A. 45-215, *et seq.*, we respectfully request the opportunity to inspect, examine, and copy all public records, that are in the custody of any employees, agents, or other representatives of the Kansas Department of Administration, with regards to the Request for Proposals EVT0005464, KanCare 2.0 Medicaid & CHIP Capitated Managed Care (“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



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this open records request and thus provide for a more efficient and effective handling of this request.

The requested documents include, but are not limited to, the following:

1. The complete RFP and contract award documentation, including drafts or amendments to the RFP, and any proposed amendments or revisions to the RFP.
2. The evaluation and source selection evaluation plan, if any.
3. The complete proposals (or bids) of all offerors, including all exhibits and attachments, and any and all clarifications and revisions to these proposals.
4. Any and all contracts executed between any winning vendor under the RFP and the Kansas Department of Health and Environment or the Kansas Department of Administration (or both) (including any amendments, attachments, etc. thereto).
5. All recommendations, justifications, notes, spreadsheets, and any other documents that relate to the RFP.
6. All recordings, transcriptions, or meeting minutes of meetings relating to the RFP, including, without limitation, meetings of any members of the Procurement Negotiation Committee.
7. All documents relating to the evaluation of the proposals offered in response to the RFP, including all evaluators' notes, emails, memoranda, ranking documents, and other documents prepared for purposes of the evaluation, as well as any documents or analyses provided by any consultant or advisor.
8. 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.
9. 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 or the services sought by the RFP, from January 1, 2018, to June 22, 2018.

July 18, 2018

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10. All communications, correspondence or email 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.
11. 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).
12. Any documents constituting, reflecting, or relating to the “tremendous feedback” received by the Kansas Department of Health and Environment during the contract evaluation process, as referenced in the “State selects companies to manage Medicaid” in *The Topeka Capital-Journal* (dated February 22, 2018).

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.

Of counsel:

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David F. Dowd  
Luke Levasseur  
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*Counsel for AmeriHealth Caritas Kansas, Inc.*

# Bid Protest Exhibit 2

AmeriHealth Caritas Kansas, Inc.

Bid Protest—State of Kansas Request for Proposals  
No. EVT0005464 KanCare 2.0 Medicaid & CHIP Capitated Managed Care

**IMMEDIATE RELEASE**  
January 24, 2018

**For more information:**  
Bob Murray  
785.368.6628  
[media@ks.gov](mailto: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.

# Bid Protest Exhibit 3

AmeriHealth Caritas Kansas, Inc.

Bid Protest—State of Kansas Request for Proposals  
No. EVT0005464 KanCare 2.0 Medicaid & CHIP Capitated Managed Care

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, 75-4209, 75-6706, 79-4804 and 82a-953a 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 1568  
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..... \$2,404.80  
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. 118. 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 2019 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



# Bid Protest Exhibit 4

AmeriHealth Caritas Kansas, Inc.

Bid Protest—State of Kansas Request for Proposals  
No. EVT0005464 KanCare 2.0 Medicaid & CHIP Capitated Managed Care

# 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://admin.ks.gov/offices/procurement-and-contracts>

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

## CONTRACT AWARD

**Date of Award:** June 19, 2018  
**Contract ID:** 45081  
**Event ID:** EVT0005464  
**Replace Contract:** 37108, 37109, 37110A

**Procurement Officer:** Aubrey L Waters  
**Telephone:** 785-296-2401  
**E-Mail Address:** [aubrey.waters@ks.gov](mailto: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:** AETNA BETTER HEALTH OF KANSAS INC  
4500 EAST COTTON CENTER BOULEVARD  
PHOENIX, AZ 85040-8840

**Vendor ID:** 0000540432  
**FEIN:** 81-3370401  
**Contact Person:** Janet Grant  
**E-Mail:** [grantj4@aetna.com](mailto:grantj4@aetna.com)  
**Local Telephone:** 314-444-7226  
**Cell Phone Number:** 602-686-6189

**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.

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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 45081

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 statutorily 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 **AETNA BETTER HEALTH OF KANSAS INC, PHOENIX, AZ** (Contractor).

Signatures on file.

# Bid Protest Exhibit 5

AmeriHealth Caritas Kansas, Inc.

Bid Protest—State of Kansas Request for Proposals  
No. EVT0005464 KanCare 2.0 Medicaid & CHIP Capitated Managed Care

**EVT 5464 - KanCare 2.0 Medicaid & CHIP Capitated  
Managed Care**

Technical and Cost Evaluation

May 16, 2018

## **INTRODUCTION**

The Kansas Department of Health and Environment (KDHE) and the Kansas Department of Aging and Disability Services (KDADS) issued on November 3, 2017 a Request for Proposal for KanCare 2.0, Medicaid & CHIP Capitated Managed Care. The goal of KanCare 2.0 is to help eligible Kansans achieve healthier, more independent lives by providing services and supports for Social Determinants of Health and Independence, in addition to traditional Medicaid and CHIP benefits. Kansas will test the below hypotheses in KanCare 2.0 through the managed care contracts as a result from this RFP and through the Section 1115 Medicaid Demonstration Waiver (the federal authority to operate KanCare 2.0):

- A. Expanding Service Coordination to assist members with accessing affordable housing, food security, employment, and other Social Determinants of Health and Independence will increase independence and stability and improve health outcomes.
- B. Increasing employment and independent living supports for Members with Behavioral Health needs, or who have intellectual, developmental or physical disabilities or traumatic brain injuries, will increase independence and improve health outcomes.
- C. Providing Service Coordination for all youth in foster care will decrease the number of placements, reduce psychotropic medication use, and improve health outcomes for these youth.

Another primary aim of KanCare 2.0 is to improve integration and coordination of care for eligible Kansans, which includes individuals with multiple chronic conditions. The State requires the Contractors selected to utilize existing service coordination and case management structures at the local level, to achieve desired outcomes and to contract with local providers for outcomes based Service Coordination services.

Bidders were required to bid for all populations, services, and regions of the State and submit proposals that adequately demonstrate how they will perform each of the functions required as detailed in the RFP in Section 5.2 through Section 8.

## **OVERVIEW OF KANCARE 2.0 EVALUATION PROCESS**

Twelve evaluation teams comprised of staff from both KDHE and KDADS were responsible for reviewing various sections of the bids based on their expertise and participation in the applicable RFP writing workgroups. After individual evaluations were completed, evaluation teams convened for a consensus meeting. The outcome of these consensus meetings was a single evaluation tool per team with questions and comments for each Bidder. Team evaluation tools were sent to the Management Review Team (MRT). Individual evaluation tools were destroyed.

## **MANAGEMENT REVIEW TEAM**

Upon completion of the evaluation team consensus meetings, a single comprehensive evaluation tool for each Bidder (six tools in total prepared) were sent to the MRT for their review and consideration. The MRT reviewed the evaluation tool for each of the six Bidders. The Bidders' RFP responses were referenced as necessary to address questions and validate the evaluation team recommendations. The MRT consensus meetings focused on:

- A. The priority areas of KanCare 2.0 (RFP sections Service Coordination, Provider Network, Value Based Purchasing, Grievances and Appeals, Reporting and Data Collection and Member Independence);
- B. Those sections of the RFP where an evaluation team provided a "No" recommendation; and
- C. Any other areas of concern noted by a member of the MRT.

## **RESULTS FOR ALL BIDDERS**

The following table shows per Bidder:

- 1. The evaluation team recommendations for each section of the RFP and
- 2. The MRT recommendations of Bidders for consideration by the Leadership Team.

SECTION	AREA	AETNA	AMERIGROUP	AMERIHEALTH	SUNFLOWER	UNITED	WELLCARE
Section 5.1	Background	Yes	Yes	Yes	Yes	Yes	Yes
Section 5.2	Enrollment, Disenrollment and Marketing	Yes	Yes	Yes	Yes	Yes	Yes
Section 5.3	Covered Services	Yes	Yes	Yes	Yes	Yes	No
Section 5.3.2	Value-Added Benefits	Yes	Yes	Yes	Yes	Yes	Yes
Section 5.4	Service Coordination	Yes	Yes	No	Yes	Yes	Yes
Section 5.5	Provider Network	No	Yes	Yes	No	Yes	Yes
Section 5.6	Provider Services	Yes	Yes	Yes	Yes	Yes	Yes
Section 5.7	Value-Based Purchasing	No	Yes	No	Yes	Yes	No
Section 5.8	Utilization Management	Yes	Yes	No	Yes	Yes	Yes
Section 5.9	Quality and Performance Improvement	No	Yes	Yes	Yes	Yes	No
Section 5.10	Member Services	Yes	Yes	Yes	Yes	Yes	Yes
Section 5.11	Grievances and Appeals	No	Yes	No	Yes	Yes	No
Section 5.12	Program Integrity	Yes	Yes	Yes	Yes	No	Yes
Section 5.13	Financial Management	Yes	Yes	Yes	Yes	Yes	Yes
Section 5.14	Claims Management	Yes	Yes	Yes	Yes	Yes	Yes
Section 5.15	Information Systems	Yes	Yes	Yes	Yes	Yes	Yes
Section 5.16	Reporting and Data Collection	Yes	No	No	No	No	No
Section 5.17	Staffing	Yes	Yes	Yes	Yes	Yes	Yes

SECTION	AREA	AETNA	AMERIGROUP	AMERIHEALTH	SUNFLOWER	UNITED	WELLCARE
Section 5.18	WORK	Yes	Yes	Yes	Yes	Yes	Yes
Section 5.19	Member Independence	Yes	No	No	Yes	Yes	Yes
Section 5.20	Additional Terms & Conditions	Yes	Yes	Yes	Yes	Yes	Yes
Section 6.0	RFP Purpose, Duties, etc.	Yes	Yes	Yes	Yes	Yes	Yes
<b>Summary</b>		<b>18 – Yes 4 – No</b>	<b>20 – Yes 2 – No</b>	<b>16 – Yes 6 – No</b>	<b>20 – Yes 2 – No</b>	<b>20 – Yes 2 – Yes</b>	<b>17 – Yes 5 – No</b>
<b>MRT Recommendation</b>		<b>Yes</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>

## **AETNA BETTER HEALTH (AETNA)**

The KanCare 2.0 evaluation teams recommended Aetna in eighteen (18) out of twenty-two (22) sections based upon their responses to the RFP requirements. Aetna demonstrated experience in other markets that mirrored many requirements of the RFP. Aetna was not recommended by the evaluation teams in some of the priority areas for KanCare 2.0 (i.e., Provider Network and Value Based Purchasing) and the responses overall were not tailored specifically to Kansas. Aetna was the only Bidder to provide a complete response to Section 5.16 – Data Collection and Reporting by also submitting responses to Attachment H. As a non-incumbent, the MRT determined Aetna provided a solid response.

### **STRENGTHS**

- Detailed their extensive experience in other states serving similar populations as those enrolled in KanCare.
- Offered Value-Added Benefits such as \$500 dental benefit for adults, graduate education (GED) program, additional transportation services, podiatry, and use of text messages for health promotions/stages of life reminders.
- Included LTSS and behavioral health performance measures as part of its quality and performance improvement activities.
- Proposed that Spanish speaking member advisory committees would be hosted in different regions of the State.
- Demonstrated understanding of the Kansas workforce system and MediKan program.

### **WEAKNESSES**

- Reiterated RFP requirements in many instances while not providing the level of detail expected in a response to demonstrate understanding of the Kansas-specific requirements.
- Failed to describe processes for submitting to the State for review and prior written approval all materials meant for distribution to providers.
- Failed to describe how compliance with credentialing/re-credentialing processes under the Provider Network requirements would be ensured.
- Failed to address all aspects of the request for proposals on Telehealth strategies under the Value-Based Purchasing section, which was a required element of the RFP, and overall provided vague performance and outcome metrics for the Value-Based Purchasing strategies that were addressed.
- Failed to demonstrate an understanding that the member grievance and appeals requirements also apply to providers under KanCare.

### **MRT RECOMMENDATION**

The MRT recommended Aetna as a Bidder for face to face meetings.



## **AMERIGROUP KANSAS, INC. (AMERIGROUP)**

The KanCare 2.0 evaluation teams recommended Amerigroup in twenty (20) out of twenty-two (22) sections based upon their responses to the RFP requirements. Overall, Amerigroup offered desirable approaches that support the goals of KanCare 2.0 in areas such as Social Determinants of Health and Independence, Value-Added Benefits, and LTSS provider network development and monitoring. However, evaluation teams did not recommend Amerigroup in the areas of Data Collection and Reporting and Member Independence.

### **STRENGTHS**

- Offered linkages to the Boys and Girls Club program and the provision of a smartphone in their response to Value-Added Benefits.
- Provided a detailed training plan for service coordination efforts and proposed an innovative pilot for community-based post-hospital service coordination that partnered with community health providers.
- Provided a comprehensive and detailed response for statewide Value-Based Purchasing strategies.
- Indicated that it would provide a fact sheet on Advance Directives to all Members in addition to information included in the Member Handbook.
- Addressed home and community-based settings requirements and the importance of a transition plan.

### **WEAKNESSES**

- Failed to provide sufficient detail and address all elements of the Service Coordination requirements in regard to the use of psychotropic medications for nursing home residents, integration of community-based care coordinators in the service coordination model, or the use of best practices with integrating physical, behavioral, LTSS and HCBS services.
- Failed to demonstrate understanding of the new financial management services (FMS) requirements in the RFP.
- Provided no evidence of policy and procedures for Data Collection and Reporting and failed to respond to the reporting requirements under Attachment H.
- Failed to offer state-of the-art approaches or innovative solutions to the Member Independence requirements.

### **MRT RECOMMENDATION**

The MRT recommended Amerigroup as a Bidder for face to face meetings.

## **AMERIHEALTH CARITAS (AMERIHEALTH)**

The KanCare 2.0 evaluation teams recommended AmeriHealth in sixteen (16) out of twenty-two (22) sections based upon their responses to the RFP requirements. Overall, AmeriHealth's response acknowledged the requirements outlined in the RFP, but the response in many areas was not tailored to KanCare 2.0 or Kansas-specific challenges. AmeriHealth was not recommended by the evaluation teams in many of the priority areas including: Service Coordination, Value-Based Purchasing, Member Independence, Data Collection and Reporting and Grievances and Appeals. Many evaluation teams felt the response for their particular section was poorly organized which made it difficult to evaluate the responses to the specific RFP requirements.

### **STRENGTHS**

- Provided for the use of a 24-hour nurse line service for its members.
- Offered a robust staffing plan under Data Collection and Reporting.
- Provided general acknowledgements of the RFP requirements.

### **WEAKNESSES**

- Lacked understanding of referral processes for conflict-free entities to perform determinations for HCBS enrollment and conflict of interest requirements for Service Coordination.
- Provided only general strategies/approaches to the Value-Based Purchasing section that was not tailored to Kansas (more of a national strategy approach).
- Concerned that the description of culturally competent care focused on individuals with physical disabilities.
- Failed to understand the difference between a grievance and an appeal and did not describe policies and procedures for the grievance and appeals process.
- Failed to respond to the reporting requirements under Data Collection and Reporting - Attachment H.
- Failed to address vocational aspects of the Member Independence programs or provide sufficient responses to the scenarios as required in this section of the RFP.

### **MRT RECOMMENDATION**

The MRT did not recommend AmeriHealth as a Bidder for face to face meetings.

## **SUNFLOWER STATE HEALTH PLAN (SUNFLOWER)**

The KanCare 2.0 evaluation teams recommended Sunflower in twenty (20) out of twenty-two (22) sections based upon their responses to the RFP requirements. Sunflower provided strong responses in a number of key areas that support the priorities for KanCare 2.0, especially in Service Coordination and Value-Based Purchasing. However, evaluation teams did not recommend Centene in either Provider Network or Data Collection and Reporting.

### **STRENGTHS**

- Provided for the use of community members and community health workers and the use of such tools as Life Course and Centelligence Framework in meeting the needs of Members in their Service Coordination response.
- Provided multiple Value-Based Purchasing Strategies across each of the six topic areas that were in alignment with the goals of the KanCare 2.0 program.
- Demonstrated specific Kansas employment opportunities for populations as required by the Member Independence section of the RFP.
- Demonstrated throughout their proposal a robust understanding of the needs of disability populations as evidenced by grants to providers to remove accessibility barriers, a Disability Advisory Committee, and LifeShare training to improve disability sensitivity.

### **WEAKNESSES**

- Provided a disorganized, general and incomplete response to the Provider Network requirements of the RFP. Response did not address plans for monitoring network compliance generally and LTSS network development.
- Failed to respond to the reporting requirements under Data Collection and Reporting - Attachment H.

### **MRT RECOMMENDATION**

The MRT recommended Sunflower as a Bidder for face to face meetings.

## **UNITED HEALTHCARE OF THE MIDWEST, INC. (UNITED)**

The KanCare 2.0 evaluation teams recommended United in twenty (20) out of twenty-two (22) sections based upon their responses to the RFP requirements. United provided strong responses to many priority areas for KanCare 2.0 such as Social Determinants of Health and Independence and LTSS Value-Based Purchasing strategies but failed to respond to the requirements in Data Collection and Reporting – Attachment H. United's response was organized and demonstrated its ability to meet the requirements of the KanCare 2.0 program.

### **STRENGTHS**

- Addressed the RFP requirement that all populations would receive a person-centered service plan as part of their program.
- Provided approaches to Service Coordination that met the requirements in the RFP, especially the approach for Foster Care populations.
- Understood the differences between Telemedicine, Telemonitoring and Telementoring and provided unique strategies for each in response to the Value-Based Purchasing section of the RFP.
- Identified its own ideas regarding Member Independence initiatives and demonstrated an understanding of the MediKan, WORK, TransMed and 1915(i) programs.

### **WEAKNESSES**

- Failed to provide details on monitoring and oversight of community-based service coordinators and failed to provide details on transition plans for members in the community.
- Failed to coherently address the Program Integrity requirements and did not demonstrate familiarity with the expectations of the RFP, which are modeled on federal requirements.
- Provided a disorganized and difficult to follow response to the Data Collection and Reporting requirements and failed to respond to the reporting requirements under Attachment H.

### **MRT RECOMMENDATION**

The MRT recommended United HealthCare as a Bidder for face to face meetings

## **WELLCARE**

The KanCare 2.0 evaluation teams recommended WellCare in seventeen (17) out of twenty-two (22) sections based upon their responses to the RFP requirements. WellCare offered good ideas in several priority areas such as Service Coordination, Value-Added Benefits as well as demonstrated experience with treating people with Opioid interventions. WellCare's proposal was disorganized; responses were not tailored to KanCare 2.0 or Kansas-specific challenges, and failed to provide sufficient detail regarding how many of their proposals would be implemented.

### **STRENGTHS**

- Provided innovative Value-Added Benefits such as art, equine therapy, smoking cessation classes, hospital companionship program, and linkages to Boys and Girls Clubs.
- Offered a commitment to keeping behavioral health services internal (i.e., not subcontracted) and demonstrated a commitment to behavioral health integration.
- Provided strong responses to the Service Coordination requirements that supported the KanCare 2.0's goals, such as processes for transitioning members across settings of care and engagement strategies for providers.
- Detailed experience with Opioid and addiction programs that could benefit the KanCare population.

### **WEAKNESSES**

- Failed to demonstrate an understanding of the Covered Services requirements as outlined in the RFP and did not demonstrate experience in other states, specifically for LTSS.
- Failed to tailor proposals under Value-Based Purchasing strategies to KanCare 2.0 or address Kansas-specific challenges. Response failed to address strategies for physical health and behavioral health integration.
- Failed to address in the description of the Quality Assurance and Performance Improvement system how it was used to drive continual improvement and the proposal was not tailored to KanCare 2.0.
- Failed to demonstrate an understanding that the member grievance and appeals requirements also apply to providers under KanCare.
- Failed to respond to the reporting requirements under Data Collection and Reporting - Attachment H.

### **MRT RECOMMENDATION**

The MRT did not recommend WellCare as a Bidder for face to face meetings.

## MRT RECOMMENDATIONS

As stated in each KanCare 2.0 Bidder section, the MRT offered the following recommendation to the Leadership Team:

RECOMMENDS	DOES NOT RECOMMEND
Aetna	AmeriHealth
Amerigroup	WellCare
Sunflower	
United	

## FACE TO FACE

Aetna, Amerigroup, Sunflower and United were scheduled for face-to-face meetings. Questions identified by the evaluation teams for Bidders to address at the face-to-face meetings were sent by the Procurement Officer to the bidders.

Bidders were scheduled for face to face meetings. These meetings occurred at the Eisenhower State Office Building on May 10 and May 11. Bidders responded to the received questions in writing and were given the opportunity to engage in discussion with KDHE and KDADS Leadership.

Aetna, Sunflower, and United all expressed willingness to be flexible in their approach to service coordination to meet the state's needs. Amerigroup verbalized inflexibility in this area.

At the conclusion of the meetings, KDHE and KDADS Leadership were unanimous in the decision to not continue bid award discussions with Amerigroup. This decision was further supported by Amerigroup's submission of the highest cost bid and the lowest value for managed care/efficiency impact.

## COST PROPOSALS

Among the 4 bidders, participating in the face to face, 2 of the bidders are the lowest of the six bids submitted. These bidders are United Healthcare and Sunflower. Aetna's cost proposal was lower than 2 other bidders, including Amerigroup's. The cost proposals, in keeping with the technical response, demonstrated the efficient and effective provision of Covered Services provided to the populations currently covered by Medicaid and the Children's Health Insurance Program (CHIP), as well as ensure coordination of care and integration of physical and behavioral health services and expand access to home and community-based services (HCBS). Amerigroup had the highest bid and the lowest value for managed care/efficiency impact.

## CONCLUSION

As a result of the technical proposal evaluation, follow-up responses to questions posed by the twelve evaluation teams and the cost proposals, KDHE-KDADS Leadership is supportive of the Procurement Negotiating Committee's (PNC) recommendation for award to the following bidders whose proposal provides the best value to the State of Kansas. The PNC recommends

for award of this contract to United Healthcare of the Midwest Inc., Sunflower State Health Plan Inc., and Aetna Better Health.