

**GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE PURCHASING DIVISION**

In the Matter of)
)
PEACH STATE HEALTH PLAN,)
INC.,)
)
Protestor,)
)
)
GEORGIA DEPARTMENT OF)
ADMINISTRATIVE SERVICES,)
)
Agency.)
)
)
)

RFP No. 41900-DCH0000133
DOAS File: _____

Department of Administrative Services
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PROTEST AND NOTICE OF STAY

Peach State Health Plan, Inc. (“Peach State”) has been honored to partner with the Georgia Department of Community Health (“DCH” or the “State Entity”) as a care management organization (“CMO”) for the past 18 years, and today Peach State serves in excess of 45% of the state’s Medicaid population. Peach State desires to continue that partnership and submitted a proposal in response to Request for Proposals No. 41900-DCH0000133 entitled Georgia Families & Georgia Families 360° Care Management Organization (the “eRFP”). On December 2, 2024, the Georgia Department of Administrative Services (“DOAS”) on behalf of DCH (collectively with DOAS, the “State”) issued its Notice of Intent to Award (the “NOIA”) Georgia Families CMO contracts arising out of the eRFP to CareSource Georgia Co. (“CareSource”), Humana Employers Health Plan of Georgia, Inc. (“Humana”), Molina Healthcare of Georgia, Inc. (“Molina”), and UnitedHealthcare of Georgia, Inc. (“United”). Pursuant to Section 2.1.9 of the eRFP and Chapter 6 of the Georgia Procurement Manual (“GPM”), Peach State hereby protests those intended contract awards.

The lives and well-being of more than 1.5 million Medicaid members depend on the healthcare services being procured through this eRFP, and the contracts awarded will involve the expenditure of billions of taxpayer dollars. Notwithstanding the stakes, the State’s procurement

was mismanaged, rife with errors and reckless practices. The end result is a NOIA that would replace two of the State's three existing CMOs, including Peach State, with new entrants having no Medicaid managed care experience in Georgia and no contracted provider networks. The only existing CMO that would remain is CareSource, which has the lowest percentage of Georgia Families members (less than 25%) and is the least experienced of the incumbent plans. Under the NOIA, ***more than 75% of Georgia Families members and all foster care children*** served under Georgia Families 360° ***(a total of more than 1.17 million members)*** ***would be required to change health plans.***

Georgia has never experienced disruption of this magnitude. Likewise, such disruption is unheard of in other states that similarly procure Medicaid managed care services through a competitive process. If implemented, the NOIA will upend the way vulnerable Georgians receive their healthcare, severing relationships between members and their case managers and forcing members to change healthcare providers or limiting their access to care due to gaps in network coverage. Transitioning more than 1.17 million members will also undoubtedly cost millions of taxpayer dollars. All of this will be due to a procurement where the State failed to follow its own procurement manual and eRFP, engaged in arbitrary and capricious conduct, and conducted no quality assurance review.¹

The Georgians who rely on these important programs for their healthcare, and the taxpayers who pay for these programs, deserve better. This mismanaged procurement cannot be salvaged. For the reasons explained below, the NOIA must be rescinded and the eRFP cancelled altogether in favor of a new procurement.

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¹ Adding to the complexity, the State proposes to transfer 332,000 medically fragile Aged, Blind, and Disabled members from Georgia's fee-for-service program to managed care at the same time as the State proposes migrating care for more than 1.17 million members under the NOIA for the State's traditional Medicaid program.

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PROTESTOR'S
INTEREST:

Peach State is an aggrieved Supplier² with standing to challenge the NOIA posted on December 2, 2024, pursuant to which the State announced its intent to award Georgia Families CMO contracts to CareSource, Humana, Molina, and United (collectively, the "Intended Awardees").

Peach State is an actual offeror that has been adversely impacted by the NOIA. Peach State's direct economic interest has been affected by the State's actions as stated herein. Accordingly, Peach State is an aggrieved Supplier/interested party within the meaning of Section 6.5 of the GPM for purposes of this Protest.

TIMELINESS:

On December 9, 2024, the State posted notice on the Georgia Procurement Registry that it was extending the protest filing deadline to December 17, 2024, due to a delay in release of documents included in the register of proposals and administrative review. The State further extended the protest filing deadline by one day, to December 18, 2024. This Protest is being timely filed on December 18, 2024.

RELIEF REQUESTED:

1. Immediate stay of award and execution of the Georgia Families CMO contracts to the Intended Awardees as required by GPM § 6.5.8;
2. Expeditious review of the NOIA by the DOAS State Purchasing Division Deputy Commissioner, pursuant to GPM §§ 6.3.3 and 6.5.9;
3. Cancellation of the NOIA pursuant to GPM § 6.5.9;
and
4. Cancellation and reissuance of the eRFP.

² The term "Supplier" is used herein as defined in Section 1.7 of the eRFP. Other capitalized terms in this Protest are used as defined in the eRFP unless specifically defined in this Protest.

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INTRODUCTION AND SUMMARY

Through the eRFP, the State intends to enter into contracts worth billions of taxpayer dollars with CMOs that will serve some of Georgia's most vulnerable citizens, the members of the Georgia Families and Georgia Families 360° programs. In a procurement of this magnitude, it is crucial that the State get it right. Unfortunately, the State's unduly lengthy, haphazard procurement is replete with errors, involved procedural missteps that allowed undue influence to infect the process, and failed to disqualify numerous of the Intended Awardees who did not meet threshold mandatory criteria. As a result of that flawed process, the State intends to eliminate all but the least experienced of the incumbent CMOs, forcing more than 1.17 million Georgia Families and Georgia Families 360° members to lose their current health plans and associated provider networks.

Peach State, which has extensive experience in the Georgia market and has been an incumbent CMO since Georgia Families' inception in 2006, was left out of the intended contract awards in a procurement that not only failed to account for—*but penalized*—Peach State for its 18 years of experience. All of this renders the NOIA invalid. Peach State's Protest should be granted for numerous reasons.

First, the procurement process lacked adequate supervision or controls and prejudiced Peach State. It was marred by numerous material errors and irregularities, including questionable political agendas, undue influence, evaluations lacking a rational basis, and procurement practices that deviated from the GPM, national norms, and best practices, destroying fairness and the integrity of the procurement. The end result threatens unprecedented disruption to the State's Medicaid program. This defective procurement cannot be salvaged and the NOIA must be cancelled.

Second, the evaluators erred in their evaluation and scoring of Peach State's response to Mandatory Scored Questions GFMS36 and GFMS37, which relate to information management systems. The evaluators mistakenly considered Peach State's response to a pass/fail requirement in evaluating and scoring its responses to these questions, and then misinterpreted information in Peach State's proposal contrary to the eRFP. Peach State's responses fully complied with the eRFP, and the evaluators' scoring of GFMS36 and GFMS37 was arbitrary and capricious, lacked a reasonable basis, and was significantly prejudicial. Had the evaluators correctly and fairly evaluated Peach State's response, Peach State would have a substantial chance at a contract award as the corrected score would have elevated Peach State from fifth to fourth place in the ultimate ranking.

Third, the evaluators failed to document changes from their initial to validated scores as required by the GPM, making it impossible for the public to assess the integrity, accuracy, fairness, and rationality of the procurement and rendering any contract award based on the NOIA void and of no effect.

Fourth, drastic swings from the initial to the validated scores on a per-evaluator and per-question basis demonstrate the arbitrary and capricious nature of the scoring, and that it lacked a reasonable basis. Before the evaluators engaged in the validation process, Peach State was in fourth place (*third* if Kaiser Foundation Health Plan of Georgia, Inc. ("Kaiser"), which withdrew its

proposal, is removed) and eligible for contract award under the eRFP's selection process. But as a result of the significant, unreasonable, unexplained, and prejudicial scoring changes that occurred during validation, Peach State descended to fifth place in the final ranking and was left out of the four Georgia Families CMO contract awards.

Fifth, the evaluators failed to evaluate the proposals on a reasonable and common basis and produced numerous arbitrary and capricious scores that prejudiced Peach State. Peach State was inexplicably penalized for providing more than three letters of support from community-based organizations—exceeding the relevant eRFP requirement—while CareSource and Molina were rewarded with higher scores for the very same response. Peach State's confirmation that its established provider network exceeds the State's network adequacy requirements was ignored, while United was rewarded with higher points based on misapprehension of United's proposal and its mere promise to meet adequacy standards in the future. The evaluators appear to have been unduly influenced by a single evaluator to drastically reduce Peach State's score on another question. The many scoring errors in this procurement prejudiced Peach State. If the evaluators had fairly and accurately scored the proposals in accordance with the eRFP, Peach State would have been in line for a contract award, as its total score would have been at least 604.25, placing it ahead of both United and Humana in the final if flawed ranking.

Sixth, the State failed to adequately guard against conflicts of interest because numerous procurement participants did not complete required conflict of interest forms, and, in some cases, disclosed conflicts went uninvestigated and unmitigated.

Seventh, three of the Intended Awardees—Molina, United, and Humana—should have been disqualified for failure to demonstrate progress toward developing provider networks capable of providing critical, statewide care to members. The provider letters of intent these three Intended Awardees submitted with their proposals demonstrate significant gaps in coverage, particularly in rural and historically underserved areas of the state. As a result, their proposals should have been rejected as nonresponsive. If any of these proposals had been disqualified, Peach State would have been in fourth place (if not higher) under the final albeit flawed ranking and would have had a substantial chance of receiving a contract. This was an improper deviation from the solicitation and caused prejudice to Peach State.

Eighth, CareSource's proposal should have been disqualified from the procurement because CareSource communicated with a state employee in violation of the eRFP's strict communications ban. Specifically, CareSource hired the Governor's former health policy advisor after the eRFP was issued and within a month of when the proposals were due. This violation of the eRFP's communications ban calls into question the integrity of the procurement. Had CareSource been disqualified for this violation, Peach State would have had a substantial chance at a contract award as it would have been in fourth place under the existing (yet inaccurate) scoring.

Ninth, CareSource's proposal should have been disqualified due to its failure to meet a mandatory eRFP requirement: to provide the State with three different client references who have agreed to give a reference for CareSource. CareSource instead identified three clients all of which refused to give CareSource a reference. This foreclosed the State from considering and evaluating CareSource's past performance with Medicaid entities in other states, and the State's apparent

unjustified waiver of this requirement for CareSource lacked a reasonable basis and prejudiced Peach State.

Tenth, United’s proposal should have been disqualified for failure to disclose enforcement actions as required by the eRFP. Based on the evaluators’ own comments, United failed to provide the information required by the eRFP regarding enforcement actions and investigations by state Medicaid agencies or other state or federal entities. Inexplicably, however, United was deemed responsive and awarded a score other than Poor for this question, which was an improper deviation from the solicitation and lacked a reasonable basis. Had United been disqualified—as it should have been—Peach State would have been eligible for contract award as the fourth-ranked proposer even under the State’s flawed scoring.

Eleventh, CareSource materially misrepresented its status as the “#1 Chosen CMO by Members (3 years running)” in its proposal. Peach State knows this is a misrepresentation because Peach State is in fact the most-chosen CMO by members for the past three years. Accepting this significant misrepresentation without consequence lacked a reasonable basis, caused prejudice to Peach State, and undermines the fairness and integrity of the procurement. CareSource’s significant and material misrepresentation should have rendered its proposal nonresponsive.

For all these reasons as described in detail below, this Protest should be granted, the NOIA and the eRFP should be canceled, and the procurement should be re-solicited. The current contracts set to expire on July 1, 2025, should be extended if necessary to conduct the new solicitation.

The Protest grounds raised herein are based on the information that Peach State has as of the date of filing this Protest. Peach State submitted a Georgia Open Records Act (“GORA”) request on December 3, 2024, but the State has only begun producing responsive records, and production of all responsive records is far from complete. Peach State reserves the right to amend or supplement its Protest after additional records have been produced and Peach State has a reasonable period of time to review such records.

BACKGROUND

A. Peach State Is an Experienced CMO of Choice in Georgia

Peach State has served Georgia in partnership with DCH since 2006, delivering high-quality, value-driven care to Georgia Families members. Today, Peach State serves more than 700,000 Georgians in all 159 counties, including 142,422 of the more than 301,000 Georgia Families members in rural Georgia. Peach State is routinely recognized as the CMO of choice by Georgia Families members.

Peach State benefits from the resources and backing of its parent company, Centene Corporation (“Centene”). Centene is the largest Medicaid managed care organization in the United States, serving more than 13 million Medicaid members across 30 states. Centene’s core philosophy is that quality healthcare is best delivered locally—with local brands and local teams—to provide fully integrated, high-quality, and cost-effective services. In Georgia, Peach State has coupled its local roots and expertise with national best practices and innovation to deliver collaborative, member-centered care to help transform healthcare and improve the health of the communities it serves, one individual at a time.

Peach State’s unwavering commitment to serve Georgians is underscored by the substantial investments it has made to improve healthcare access across the state, particularly by strengthening the healthcare workforce in rural and historically underserved areas. For instance, in 2020, Peach State along with the Centene Foundation partnered with the Medical College of Georgia at Augusta and provided \$5.2 million to jumpstart the MCG3+ Primary Care Pathway program. Students who commit to the MCG3+ Program (“Peach State Scholars”) agree to practice in rural or underserved areas of Georgia, and in turn, have the opportunity to graduate in three years (rather than four) and receive a full-tuition scholarship for the second and third years of medical school. In 2021 and 2022, the Georgia General Assembly matched Peach State’s initial investment with appropriations of \$5.2 million and \$8.7 million, respectively. Peach State’s partnership and financial support will continue through 2025 with an additional \$2.2 million in funding that allows for the long-term expansion of the MCG3+ Program to combat the looming healthcare shortage in rural, underserved areas of Georgia. Peach State has also been instrumental in supporting similar healthcare programs at Georgia Southern University and Morehouse School of Medicine.

B. The State’s Solicitation of CMOs through the Procurement

Georgia Families is Georgia’s Medicaid managed care program, which currently serves more than 1.5 million members, comprising not only traditional Medicaid members but also members of PeachCare for Kids (the state’s Children’s Health Insurance Program (“CHIP”)) and Planning for Healthy Babies (“P4HB”). Georgia Families 360° serves children, youth, and young adults in foster care and receiving adoption assistance, as well as select youth involved with the Department of Juvenile Justice. [See eRFP Addendum 4, Attachment A Revised (“eRFP Rev. Attachment A”) § 1.1].

On September 22, 2023, the State issued the eRFP to establish contracts with up to four qualified CMOs that will provide Medicaid managed healthcare services to populations in Georgia Families and Georgia Families 360°. [eRFP Rev. Attachment A § 1.1]. The objective of the evaluation process outlined in the eRFP was “to identify the proposal which represents the best value to the State Entity based on technical factors.” [*Id.* § 6]. The eRFP described a multistage evaluation process.

First, in the Administrative/Preliminary Review, the Issuing Officer would review each proposal to confirm its timeliness and completeness. [eRFP Rev. Attachment A § 6.1]. If the Supplier’s proposal passed the Administrative/Preliminary Review, an evaluation committee would evaluate the Supplier’s responses to: Attachment C – Mandatory Response Worksheet, Attachment D - Mandatory Scored Response Document, Georgia Families, and Attachment E - Mandatory Scored Response Document, Georgia Families 360°. [*Id.* § 4].³ On the Mandatory

³ The eRFP form generally organizes the solicitation requirements and questions into one of three categories: mandatory requirements, mandatory scored requirements, and additional scored requirements:

- A *mandatory requirement* is a requirement that the supplier must meet to be eligible for contract award. A mandatory requirement can be a qualification or performance requirement.
- A *mandatory scored requirement* requires the supplier to meet a requirement but also to provide a response which is then graded. For example, a mandatory question may require the supplier to agree to meet a critical project deadline and also describe its plan to accomplish the necessary tasks within that timeframe.

See GPM §§ 3.5.5.2 & 3.5.8.3. The eRFP’s Mandatory Response Worksheet fell within the former category, while the Mandatory Scored Responses fell within the latter.

Response Worksheet, the Supplier was required to indicate whether its proposal met the individual requirements by answering either “YES” or “NO” in the applicable column. [*Id.* § 4.3]. In the Mandatory Scored Response Documents, the Supplier was required to indicate whether it would meet the individual requirement (if any) and provide a narrative in support. [*Id.* § 4.4]. A Supplier had to meet all requirements in the Mandatory Scored Response Worksheet to be considered responsive, responsible, and eligible for award. [*Id.*]. A Supplier’s failure to meet any mandatory scored requirement could result in disqualification of its proposal. [*Id.*]. The narrative description, along with any required supporting materials, would be evaluated and awarded points in accordance with the scoring criteria. [*Id.*].

An evaluation committee would first review each proposal’s Attachment C – Mandatory Response Worksheet to “determine its compliance with the eRFP requirements” on a pass/fail basis. [eRFP Rev. Attachment A § 6.2.1]. If a proposal failed to meet a mandatory requirement, the State would determine if that deviation was material; importantly, a material deviation “*will* be cause for rejection of the proposal.” [*Id.* (emphasis added)]. All proposals meeting the requirements of Attachment C would proceed to evaluation on the scored components.

Next, the evaluation committee would review each Supplier’s response to Attachment D – Mandatory Scored Response Document, Georgia Families (the “Mandatory Scored Questions”). [eRFP Rev. Attachment A § 6.2.2.]. If a proposal failed to meet an Attachment D mandatory requirement, the State would determine if that deviation was material, with any material deviation providing cause for rejection of the proposal. [*Id.*]. All proposals meeting the requirements of Attachment D would then be scored in accordance with the eRFP’s scoring criteria for the Georgia Families category; those criteria stated only that a total of 1,000 technical points would be available for the Mandatory Scored Questions specific to the Georgia Families category. [*Id.* §§ 6.2.2, 6.3].

Following clarifications (if any) and technical negotiations (if any), Suppliers would be ranked within the Georgia Families category based solely on the technical points earned. [eRFP Rev. Attachment A § 6.2.2].

Those Suppliers deemed responsive under the above evaluation process that proposed to provide Georgia Families 360° services would next be considered for contract award in the Georgia Families 360° category. The State would first rank Suppliers based on each Supplier’s total technical score for Georgia Families and advance the top three-ranked Suppliers to the evaluation team for review. Responses to Attachment E - Mandatory Scored Response Document, Georgia Families 360° would then be considered for compliance with mandatory requirements and scored in accordance with the eRFP’s scoring criteria. [eRFP Rev. Attachment A § 6.2.3].

Contract awards would be made per category—Georgia Families and Georgia Families 360°—based solely on the technical points earned within that category. [eRFP Rev. Attachment A § 6.3]. More specifically for Georgia Families, the State would “award up to four (4) top-ranked, responsive and responsible suppliers based on each supplier’s Georgia Families technical score and with whom the State Entity is able to reach agreement as to contract terms.” [*Id.* § 6.6.1].

Proposals were due to submitted by December 1, 2023, at 3:00 p.m. ET. Peach State timely submitted a comprehensive and competitive proposal to serve as a Georgia Families CMO; nine other Suppliers also submitted proposals.

It appears that all proposals submitted in response to the eRFP passed the Administrative/Preliminary Review as well as review of the Mandatory Response items, except for Sentara Health Insurance Plans, Corp. (“Sentara”) which received a “Conditional” rating for one item, Supplier Work History Form. [See NOIA, p. 3].

The State assigned 14 DCH employees to review and evaluate the Mandatory Scored Question responses of the proposals for the Georgia Families CMO portion of the procurement. [See GF_MasterTechnicalEvaluation_Final 07052024 (“the Evaluation Spreadsheet”), attached as **Exhibit 1**]. A subset of these 14 evaluators evaluated each of the Mandatory Scored Questions.⁴ A majority of the evaluators directly or indirectly report to another evaluator, Lynnette Rhodes, DCH’s Chief Health Policy Officer. Notably too, a few months into the evaluation, the State replaced evaluator Michael Young with Chad Purcell after Mr. Young completed the evaluation of at least four Suppliers including Peach State.

Significantly, the Evaluation Spreadsheet—which the State produced as evidence of the final scoring of the Georgia Families CMO portion of the eRFP—contains numerous errors, as explained below. These errors are compounded when the Evaluation Spreadsheet is considered against the minutes of meetings where the evaluators discussed and “validated” their ratings and comments.

Each evaluator assigned an initial rating for each Supplier for each of the Mandatory Scored Questions the evaluator was assigned to review. [See Ex. 1]. Based on the evaluators’ initial ratings, Peach State ranked fourth (third if you remove Kaiser which ultimately withdrew from consideration), meaning that it would have been entitled to a Georgia Families CMO contract award had the ranking stood:

Supplier	Ranking	Initial Score
CareSource	1	615.79
Molina	2	602.07
Kaiser Foundation	3	593.78
Peach State	4	590.7
Humana	5	585.09
Aetna	6	584.75
United	7	580.75
Amerigroup	8	567.69
AmeriHealth	9	507.78
Sentara	10	440.19

However, once the evaluators met to discuss and validate their scores using a “rolling evaluation” process that substantially deviated from the normal procurement process under the GPM, the scores significantly changed—to Peach State’s detriment and to the clear benefit of all

⁴ GPM § 5.6.2.1 permits evaluation committee members to be organized based on subject matter expertise in very complex RFPs. Although this eRFP is complex, there does not appear to be any rhyme or reason to which evaluators scored which Mandatory Scored Questions, and the grouping of evaluators does not appear to be based on subject matter expertise in violation of the GPM.

of the Intended Awardees. The final, validated scores, and the changes from the initial scores to the validated scores, were as follows:

Supplier	Ranking	Final Validated Score	Difference between Initial and Validated Score
Molina	1	650	+47.97
CareSource	2	631	+14.79
Humana	3	601	+16.03
United	4	596	+15.67
Peach State	5	586	-4.21
Kaiser Foundation ⁵	6	585	-8.4
Aetna Better Health	7	569	-15.89
Amerigroup	8	551	-16.48
AmeriHealth	9	479	-28.85
Sentara Healthcare	10	387	-53.02

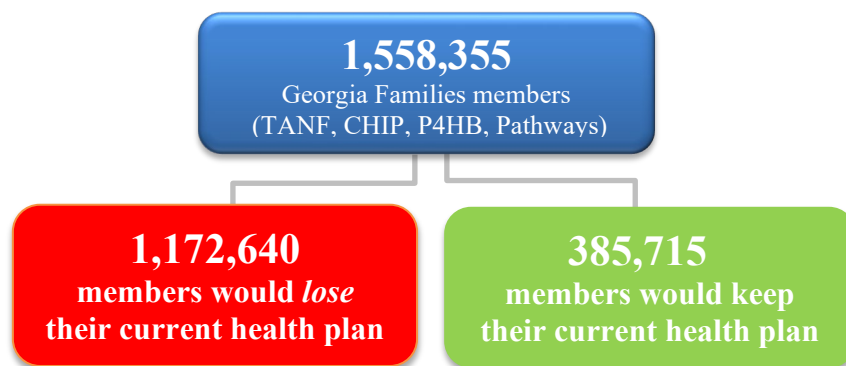
C. The NOIA and the Massive Disruption that Would Follow Execution of the Intended Contract Awards

The eRFP anticipated that the State would complete its evaluation process, conduct any negotiations, and issue a NOIA within five to six months after receipt of proposals—the typical evaluation period in other Medicaid managed care procurements. [RFP Rev. Attachment A § 1.5]. That did not occur. To Peach State’s knowledge, the State did not entertain any oral presentations or conduct any negotiations, nor has the State offered any explanation publicly for the undue delay. Instead, it was not until *one year* after the State received proposals in response to the eRFP on December 1, 2023, that the State issued the NOIA on December 2, 2024. The NOIA is attached as **Exhibit 2**.

Through the NOIA, the State has announced its intent to award Georgia Families CMO contracts to CareSource, Humana, Molina, and United based upon their final, validated technical scores. As reflected in the NOIA, Peach State’s final technical score put it in fifth place and outside of the contract awards by only *10 points out of the 1,000 available points*.

If the State moves forward with the intended contract awards, *more than 75% of all Georgia Families members, and all of the state’s foster children and those with adoption assistance, will lose their current plan*:

⁵ As reflected in the NOIA, Kaiser elected to withdraw from consideration on November 8, 2024.



Right now, Peach State serves in excess of 45% of Georgia Families’ total membership (more than 700,000 members), and AMGP Georgia Managed Care Company, Inc. (“Amerigroup”) serves approximately 30% of Medicaid members and all children in Georgia Families 360°. Peach State and Amerigroup have been CMOs since the inception of the Georgia Families program. Combined, Peach State and Amerigroup provided care for 76% of the close to 30,000 Georgia Families members that delivered babies in the last 12 months. The only returning incumbent Georgia Families CMO would be CareSource, which serves a little over 20% of the existing membership and is the smallest and least experienced of the current CMOs. Under the intended contract awards, all Georgia Families members not currently served by CareSource and all Georgia Families 360° members will be forced to change health plans. **Exhibit 3** shows the anticipated disruption on a region-by-region basis, with 75% or more members in most regions being compelled to change CMOs under the intended contract awards. In addition to network disruption, the near wholesale change in CMOs will lead to disruption in case management, as members will lose not only their plan but also their case manager and care team who, in many cases, have helped guide the member’s care for years.

The Georgia Families and Georgia Families 360° members who rely in these programs for their healthcare, as well as taxpayers who pay for these services, deserve to know that a procurement that will involve the expenditure of billions of taxpayer dollars and affect the lives of millions was conducted carefully, accurately, and in accordance with all applicable laws. This one was not. Accordingly, the NOIA cannot stand.

STANDARD OF REVIEW

The purposes and policies of Georgia’s procurement laws are clear: to “ensure openness and accessibility by all qualified vendors to the state’s purchasing processes,” to “ensure the fair and equitable treatment of all persons who deal with the procurement system of the state,” to “provide for increased public confidence in the procedures followed in public procurement,” and to “provide safeguards for the maintenance of a procurement system of quality and integrity.” O.C.G.A. § 50-5-50(3), (5), & (7). These mandates are not mere aspirations but binding principles that demand strict adherence to ensure fairness and public trust in the procurement process.

To sustain a protest, a challenger must demonstrate that but for significant errors in the procurement process, the challenger would have had a substantial chance of receiving an award.

GPM § 6.5. This threshold burden underscores the importance of maintaining fairness and integrity in the procurement process. It is not a bar to challenges, but rather an acknowledgment of the critical role of accountability in government contracting.

The State is also bound to the terms of its own solicitations and must operate within those parameters. GPM § 5.6 (“The state entity is bound by the terms of the solicitation as well as the established evaluation criteria. No changes to either the solicitation or the evaluation criteria may be made after the closing date and time of the solicitation.”); *Amdahl Corp. v. Dep’t of Admin. Servs.*, 260 Ga. 690, 696, 398 S.E.2d 540 (1990). An agency cannot rewrite or ignore its own rules, nor can it selectively apply them to justify the outcome it prefers. *See George Kabeller, Inc. v. Busey*, 999 F.2d 1417, 1420 (11th Cir. 1993) (“It is well-established that when an agency establishes rules to govern its proceedings, these rules must be scrupulously observed.”).⁶

In *Amdahl*, the Supreme Court of Georgia stated, in reference to O.C.G.A. § 50-5-50, that, “[b]ased on the[] policy statements by our General Assembly, we conclude that, even in competitive sealed proposals under [O.C.G.A.] § 50-5-67(a), a rejected bidder who alleged the proposal was conducted in an arbitrary and unfair manner falls within the zone of interest to be protected by our procurement laws.” 260 Ga. at 697; *see also Pataula Elec. Membership Corp. v. Whitworth*, 951 F.2d 1238 (11th Cir. 1992) (stating that “[o]ne of the express purposes of Georgia’s State Purchasing Act . . . is to ‘ensure openness and accessibility by all qualified vendors to the state’s purchasing processes so as to achieve the lowest possible costs to the state through effective competition among such vendors’” (quoting O.C.G.A. § 50-5-50(3))). The Court concluded that, “to hold otherwise would discourage bidders such as [the appellant] from submitting proposals in the future, and would deprive state taxpayers of having the advantage of competition in awarding contracts.” *Amdahl*, 260 Ga. at 697.

Even though a procuring agency is afforded deference, that deference is not a shield for unreasonable, arbitrary, or unlawful actions. Rules must be followed, and decisions must be grounded in fairness, transparency, and competitive integrity. *See* GPM § I.1.1. Deference to agency decisions does not mean those decisions are beyond scrutiny; rather, it means they are subject to review to ensure compliance with the law and the solicitation’s terms. GPM § 6.5. Where there are material errors or procedural violations, or where improper conduct such as bias or bad faith skews the process, deference cannot save the decision. *See, e.g., Latecore Int’l, Inc. v. U.S. Dep’t of Navy*, 19 F.3d 1342, 1364 (11th Cir. 1994) (refusing to defer to agency decision where evidence demonstrated bias in contract award and procedural irregularities in procurement process).

Similarly, procedural deviations may be excused only if they are immaterial and do not impact the fairness of the competition. *R.D. Brown Contractors v. Bd. of Educ. of Columbia Cnty.*, 280 Ga. 210, 213, 626 S.E.2d 471 (2006). The State cannot dismiss serious procedural errors as “immaterial” simply because it prefers to move forward with a flawed process. Indeed, procedural safeguards exist to ensure not just the appearance of fairness but its actual practice. A decision that violates those safeguards undermines the very purposes of Georgia’s procurement laws.

⁶ Georgia authorities may look to decisions by federal courts as persuasive authority. *Smith v. Stewart*, 291 Ga. App. 86, 92 & n.7, 660 S.E.2d 822 (2008).

While the evaluative judgment of procurement officials may be partially subjective, that does not mean such judgment is immune to challenge. Courts and reviewing bodies have recognized that subjective evaluations must still be reasonable, consistent, and supported by evidence. *See, e.g., CAS, Inc.*, B-260934.2, 95-2 CPD ¶ 239, at *4 (Comp. Gen. September 12, 1995) (evaluators’ review is subject to objection when a clear showing of unreasonableness is made); *see also Freealliance.com, LLC*, B-419201.3, 2021 CPD ¶ 56, at *5 (Comp. Gen. Jan. 19, 2021) (sustaining protest where procuring agency failed to substantiate bases for adjectival ratings). Discrepancies in scoring, unexplained variances, or the use of inappropriate criteria cannot be dismissed as mere judgment calls; they are evidence of a flawed process requiring correction or cancellation.

Ultimately, the reviewing authority must determine whether the procuring agency acted outside its authority, acted arbitrarily or capriciously in its decision-making, or rendered a decision that is clearly erroneous. *Int’l Bus. Machs. Corp. v. Evans*, 265 Ga. 215, 217, 453 S.E.2d 706, 709 (1995), *overruled on other grounds by Ga. Dep’t of Nat. Res. v. Ctr. for a Sustainable Coast, Inc.*, 294 Ga. 593, 755 S.E.2d 184 (2014). If a challenger demonstrates that errors in the process materially or unreasonably impacted the award decision or deprived the challenger of a fair opportunity to compete, the procurement result must be overturned. This is not just a legal principle but a necessary step to preserve the public’s confidence in the procurement process. *See* GPM §§ I.1.1, 6.5.

REASONS FOR PROTEST

A. This Unsupervised, Failed Procurement Will Have Catastrophic Consequences for Georgia’s Most Vulnerable Citizens

When procuring contracts for the healthcare services of more than 1.5 million vulnerable Georgians, the State is obligated to do everything in its power to ensure a process that is appropriately supervised, free of undue influence, devoid of controversial political agendas, and conducted pursuant to best practices. Unfortunately, that is far from what occurred in this procurement run amok. Here, the State’s recent Medicaid procurement lacked accountability and appropriate controls, failed to follow best practices, suggested an unelected political agenda, and utilized a “rolling evaluation” process that invited favoritism. If the NOIA is allowed to stand, the casualties of this botched procurement are the 1.17 million Georgia Families members who will be severed from their current care teams and transferred en masse to inexperienced health plans with yet-to-be-contracted physician and hospital networks.

The state must withdraw the NOIA for the sake of the State’s Medicaid members, Georgia’s taxpayers, and the future of the Georgia Families program.

1. The Intended Contract Awards Will Cause Unprecedented Disruption

Neither Georgia nor any other state in the country has ever experienced the level of healthcare disruption that will result from this NOIA. ***Under the intended contract awards, more than 75%*** of today’s Georgia Families population and ***all*** foster care children served under Georgia Families 360° (***more than 1.17 million of the State’s citizens***) will soon lose their care management teams and be forced to select new health plans—the majority of which have no

experience working in Georgia’s Medicaid system. Adding to this impending debacle is the fact that Georgia seeks to migrate these 1.17+ million members as it simultaneously transitions the State’s Aged, Blind, and Disabled (“ABD”) population (*an additional 332,000 medically fragile citizens*) to new care teams through its Medicaid expansion program.

Georgia Families members currently served by Peach State or Amerigroup will be forced to choose from plans that lack a single day of experience serving Georgia Families members, including plans with wholly inadequate provider networks. Many members will be forced to find new doctors and other health care providers or may even be left without access to care if they live in certain rural areas of the state. These members will forever lose critical relationships with their current case managers. And Georgia’s taxpayers will be saddled with the enormous and unnecessary expense of administering that transition.

In conducting this procurement, the State failed to consider the devastating impact a transition of this magnitude will have on members. Evaluators failed to recognize or reward the past experience of incumbent health plans and, instead, penalized incumbents like Peach State for their decades of experience. The State also failed to consider Intended Awardees’ proposed provider networks, which are not yet under contract, and have known gaps that risk leaving members without adequate care, especially in rural and other underserved areas.

The State was well-aware of this unprecedented level of disruption prior to publishing the NOIA, yet it chose to proceed with the NOIA anyway. An October 23, 2024 internal slide deck acknowledges that “[t]he membership of *two unsuccessful* Incumbent CMOs *must transition to a different Supplier*”—specifically, 1,173,929 members (including 718,329 Peach State members) must transfer. [See Oct. 23, 2024 PowerPoint, CMO Procurement GF and GF360, attached as **Exhibit 4**, p. 22 (emphasis in original)].

Change is expected following any competitive procurement. But change of this scale is dangerous and reflects a breakdown of normal procurement processes.

2. Scoring Scenarios Injected a Political Agenda Into the Process

It is not uncommon for evaluation questions in a Medicaid managed care procurement to include hypothetical scenarios to which the proposer is asked to respond. But the number of extreme scenarios presented in this procurement is atypical from national norms and suggests an underlying agenda that has no place in a competitive procurement for taxpayer-funded healthcare services.

At least one evaluation question appears politically motivated and designed to draw responses to “test” the Supplier’s progressive leanings. This question (GFMS26) asks Suppliers to respond to a scenario involving a transgender minor. The question extraneously asks Suppliers to consider “[a] 14-year old, transgender White female (assigned male sex at birth but identifies as a female) . . . and [who] shares a bedroom with her younger brother.” This question appears to intentionally advance a controversial political agenda that has no place in a competitive procurement involving the expenditure of billions of dollars of public funds.

Further, of the RFP's 65 scored evaluation questions, 19 (almost 30%) involve hypothetical scenarios and four of those (21%) disproportionately feature children described as being at risk of self-harm or harming others. Note the ages of the children in the following questions: [eRFP Addendum 4, Attachment D Revised ("eRFP Rev. Attachment D") GFMS23 (12-year-old with suicidal ideation); GFMS25 (6-year-old with autism engaging in self-harm), GFMS27 (13-year-old hospitalized due to behavioral health issues and concerns about harming others in the home), GFMS28 (12-year-old with autism exhibiting behaviors of self-harm and harm to others)]. Although behavioral health services are provided under the contracts being procured, the inordinate number of extreme scenarios is concerning in a section intended to evaluate a Supplier's general approach to care management.

3. A Single Evaluator Hijacked the Procurement

The State fatally compromised the integrity of this procurement when it selected an evaluation committee that included Lynnette Rhodes, DCH's Chief Health Policy Officer—***an individual who supervises (directly or indirectly) almost all of the other evaluation committee members***. Ms. Rhodes' undue influence in this procurement is palpable from the documents produced to date by the State.

The Attestation Form for Participation on a Requirements Team completed by evaluators and others participating in the process identifies Ms. Rhodes as the "DCH Employee Heading the Requirement Team." [See, e.g., **Exhibit 5**, Lynnette Rhodes Policy No. 402 Form]. As described in more detail below, the GPM requires each evaluation committee member to independently review and score each Supplier's proposal followed by a validation meeting where the evaluators discuss the proposals and can adjust their scores. GPM § 5.6.3.2.1, Table 5.6. But Ms. Rhodes appears to have hijacked this procurement by exercising undue influence over the scoring of other evaluators, as evidenced by the Evaluation Spreadsheet and the notes from the evaluation committee's validation meetings. Not only do these records show Ms. Rhodes' subordinates often falling in line with her ratings, but the validation comments in some instances blatantly reflect that evaluators who report to Ms. Rhodes changed their ratings to align with "Lynnette's currently provided comments" or copied the exact language (typos and all) that Ms. Rhodes used in her own comments. [See, e.g., **Exhibit 6**, Peach State Validation Comments, pp. 3-4; see also Ex. 1, Evaluation Spreadsheet, Peach State Tab, GFMS13]. Indeed, a statistical analysis of the evaluators' ratings of the proposals shows that on average, 52.6% of the evaluators other than Ms. Rhodes assigned the same ***initial*** rating as she did, and 65.3% of the evaluators other than Ms. Rhodes assigned the same ***validated*** rating as she did. Thus, the average share of evaluators other than Ms. Rhodes who later provided the same rating as Ms. Rhodes increased by 12.8% between ***initial*** and ***validated*** ratings. Moreover, when looking at four of the evaluators who directly report to Ms. Rhodes, there was a significantly ***greater*** increase in the average share of evaluators providing the same ratings as Ms. Rhodes—15.1%—as compared to the other nine evaluators at 6.4%. [**Exhibit 7**, Declaration of Josephine Duh, Ph.D. ¶ 15]. Thus demonstrating the undue influence that Ms. Rhodes had on this procurement.

The purpose of having an evaluation committee comprised of multiple members is to obtain a fair, impartial, and balanced evaluation of proposals, not to follow the result dictated by a single individual. But here, it appears that a single evaluator was allowed to steer the procurement result.

And although there is a reference to “undue influence” in the evaluator training slide deck, without further explanation [See Jan. 8, 2024 PowerPoint, Evaluation Committee Orientation, attached as **Exhibit 8**, p. 17], the record thus far reveals no guardrails preventing Ms. Rhodes from unduly influencing the scoring decisions of her direct and indirect subordinates. This violates one of the fundamental purposes of the State’s procurement regulations, which is to “[p]rovide safeguards for the . . . quality and integrity of the procurement system.” GPM § I.1.1.

4. The Procurement Involved an Unusually Prolonged Evaluation Period

The evaluation period for a Medicaid managed care procurement of this type typically lasts six months or less. Here, the State took double the normal amount of time to complete the procurement process. It was almost one year to the date of proposal submission (December 1, 2023) that the State issued its NOIA (December 2, 2024). Moreover, as described below, the State deviated from the GPM in a way that allowed evaluators to reconsider and amend *certain scores* for proposals they *initially reviewed and evaluated* more than four months prior. It is no wonder that the scoring is inconsistent and incorrect. The prolonged evaluation period is yet another irregularity in this mismanaged procurement.

5. The Procurement Deviated from the GPM and Best Practices Resulting in Inconsistent Scores and Inviting Favoritism

State entities may only deviate from the technical evaluation process in the GPM with prior approval of the State Purchasing Division (“SPD”). GPM § 5.6.3.2.1. In this procurement, SPD approved a deviation requested by DCH that allowed the evaluators to conduct what is known as a “rolling evaluation of proposals.” [See **Exhibit 9**, Email from Rebecca Krystopa to Carrie Steele & Matthew Carter (Jan. 8, 2024)]. Under this rolling evaluation process, rather than evaluators independently scoring *all* proposals and then meeting to validate their scores for *all* proposals, the proposals were separated into batches. The evaluators reviewed and scored only certain proposals, validating their scores for just those proposals before moving on to the next batch.

There are at least two significant problems with this scoring methodology. First, the evaluators did not score the same sections of each proposal near-in-time to each other. Second, the evaluators conducted final validation meetings many months after they scored the initial batches of proposals. Evaluating the proposals in this manner allowed the process to fall victim to fading memories and inconsistencies among how the evaluators treated the different Suppliers. It also impacted the fairness of the evaluation. This evaluation process not only deviated from the GPM but contradicted procurement best practices, resulting in a process that fostered inconsistent scoring and promoted opportunities for favoritism.

The evaluators held their meeting to consider and “validate” their scores on Peach State’s proposal on February 8, 2024; this appears to have been one of the earliest validation meetings. Validation meetings for other Suppliers may have occurred as late as May 31, 2024 (CareSource). The purported “final” validation meetings occurred in the last weeks of June 2024 and early July 2024. This was *more than four months* following the Peach State validation meeting, but within only a matter of weeks of the CareSource validation meeting. It is difficult to conceive how at the final validation meetings the evaluators could remember what was in proposals they scored and evaluated months prior, and what was the basis and reasons for their previous scores. This is

exactly why “rolling evaluations” are disfavored as an inferior practice. It is not surprising then that the scores and comments reflecting the purported bases for the scores are inconsistent across Suppliers.

More troubling is the fact that in the final validation meetings the evaluators did not just review proposals against the evaluation criteria, **but against each other**. This appears to violate the intent of the GPM requirement that “[e]ach supplier’s response must be evaluated against the solicitation/scoring criteria and not against another supplier’s response.” GPM § 5.6, Table 5.6, Step 2. Final validation scoring does not appear to specifically permit evaluation scoring against another supplier’s response. Such process provided opportunities for unfairness, prejudice, and favoritism by allowing the evaluators to adjust their scores after knowing and comparing the scores of all of the Suppliers. This flawed process cannot possibly provide public confidence that the procedures in this procurement ensured fair and equitable treatment of all Suppliers, was conducted with the utmost integrity, and that the intended contract awards represent the best value to the State. *See* GPM § I.1.1.

6. The Procurement Scoring Contains Numerous Errors Reflecting a Break Down in Quality Control

The State has presented the Evaluation Spreadsheet as the document establishing the scores and rationale that led to the intended contract awards. That spreadsheet does anything but assure the participants and the people of Georgia that the procurement was conducted in a manner that was fair, reasonable, careful, and without error. There are numerous inaccuracies in the Evaluation Spreadsheet including: initial scores that do not match the rating scale,⁷ ratings changing during the validation process but the score remaining the same,⁸ and at least one situation where ratings were assigned but no scores whatsoever were entered on the Evaluation Spreadsheet.⁹

Other examples of errors and inaccuracies include a note under Marvis Butler’s validated comments for GFMS31 for Aetna, stating: “Please correct rating to Adequate,” and a note under James Peoples’ validated comments for GFMS33 for Amerigroup, stating “Rating entered incorrectly as Adequate.” It is apparent from the Evaluation Spreadsheet that no one checked the scoring documents for accuracy and that the procurement process as a whole demonstrated an absence of quality control. Equally troubling are the numerous instances where the records of the discussions during the validation meeting do not align with the ratings and scores on the Evaluation Spreadsheet.

In a procurement of this magnitude and importance, errors in recording and calculating scores should not, and cannot, be tolerated. The people of Georgia deserve better—especially where that procurement now threatens to significantly disrupt the way in which the majority of the state’s Medicaid members (***more than 1.17 million vulnerable Georgia citizens***) currently receive healthcare services.

⁷ [See Ex. 1, Evaluation Spreadsheet, Humana Tab, GFMS11 (James Peoples), Peach State Tab, GFMS21 (Gloria Beecher), and GFMS48 (Michael Smith), United Tab, GFMS59 (Gloria Beecher)].

⁸ [See Ex. 1, Evaluation Spreadsheet, United Tab, GFMS8 (Michael Smith)].

⁹ [See Ex. 1, Evaluation Spreadsheet, United Tab, GFMS4 (Kathrina Biassou)].

B. The Evaluators Erroneously Evaluated Peach State’s Responses to GFMS36 and GFMS37

The evaluators engaged in a misguided discussion during their validation meetings resulting in the erroneous evaluation and scoring of Peach State’s responses to two Mandatory Scored Questions—GFMS36 and GFMS27. These errors were prejudicial and detrimental to Peach State and changed the outcome of the intended contract awards.

GFMS36 and GFMS37 are Mandatory Scored Questions relating to information management and systems. GFMS36 required a Supplier to “use concise narratives along with supplemental material . . . where relevant, to describe its Information Systems,” with numerous sub-requirements. [eRFP Rev. Attachment D GFMS36]. GFMS37 asked a Supplier to “demonstrate how its systems, databases, and analytical capabilities will support effective program administration through reporting and insights,” and also specified that the Supplier “shall demonstrate capabilities to collect risk-stratified population health data and provide actionable insights and analyses in the priority areas” identified in the question. [*Id.* GFMS37]. Both of these questions refer to the Georgia Families Model Contract in Attachment F to the eRFP (the “Model Contract”).

The validated comments for Peach State’s responses to GFMS36 and GFMS37 show that the evaluators relied on improper and irrelevant information, leading to factually indefensible scores for these questions. Numerous evaluators scored Peach State based on the Data Elements Availability Workbook (Attachment S) (the “Data Elements Workbook”) which was part of the response to Attachment C - Mandatory Response Worksheet, and *not* part of the evaluation criteria for GFMS36 and GFMS37, which were Mandatory Scored Questions. Further, and although irrelevant to the evaluation of GFMS36 and GFMS37, the validated comments indicate that the evaluators misunderstood Peach State’s Data Elements Workbook and what the Model Contract and the eRFP require.

The Data Elements Workbook, as part of the Mandatory Responses, was evaluated on a pass/fail basis. [eRFP Rev. Attachment A § 6.2.1]. The Data Elements Workbook was provided in response to Question #M11 in the Mandatory Response Worksheet, which states:

The Supplier hereby attests to its capability to meet the Data Availability requirements stipulated in this eRFP *within the specified timeframe*. Data Availability pertains to ensuring the accessibility and operational readiness of critical Data and Information. The Supplier must meet the requirements for each Data Element as prescribed in the Contract, Attachment L - TOP Priority Data Elements and Quality Thresholds, and eRFP Attachment S - Data Elements Availability Table and as listed below:

- The Supplier must have 100% of the Data Elements available and meet the associating quality thresholds, as identified in the Contract, Attachment L - TOP Priority Data Elements and Quality Thresholds by the date the Supplier’s eRFP Proposals are due.

- The Supplier must meet the requirements for each Data Element listed within eRFP Attachment S - Data Elements Availability Table as prescribed below:

- The Contractor must have the mandatory Data Elements, as identified in Column C of eRFP Attachment S - Data Elements Availability Table available as prescribed below:

- 1) 80% at **90 days prior to Operational Start Date (OSD)**;
- 2) 90% at **60 days prior to OSD**;
- 3) 95% at **30 days prior to OSD**; and
- 4) 98% **at OSD**.

- The Contractor must have seventy percent (**70% of conditional data elements**), as identified in Column C of eRFP Attachment S - Data Elements Availability Workbook, **available by the date of Contract Execution**.

The Supplier must answer “Yes” in the adjacent Column-C to attest that it will meet the above Data requirements. By selecting “Yes” in the adjacent Column-C, the Contractor, if Awarded the Managed Care Services Contract, acknowledges that failure to meet these Data Element Availability requirements may result in Liquidated Damages or Contract termination.

[eRFP Addendum 3, Attachment C Revised (“eRFP Rev. Attachment C”) (emphasis added)].

Peach State selected “Yes” in Column C for Question #M11. Thus, Peach State attested that it would meet the stated data requirements, satisfying this mandatory pass/fail requirement.

Question #M11 specifies timeframes within which certain data elements must be available. These timeframes are consistent with the Model Contract which require certain percentages of mandatory data elements be available at specified timeframes before or at the Operational Start Date, and the Contractor to have 70% of conditional data elements available by contract execution. [eRFP Attachment F §§ 22.5.6, 22.5.7]. The Model Contract also states that “[t]he Contractor must have 100% of the TOP Data Elements as listed in **Attachment L – TOP Priority Data Elements and Quality Thresholds** and meet the associating quality thresholds within thirty (30) Calendar Days of Contract Execution.” [eRFP Attachment F § 22.5.5 (emphasis in original)].

The Data Elements Workbook includes a column for the Supplier to respond “Yes/No/NA” regarding whether a particular data element is currently available. If the Supplier responds “No,” the Data Elements Workbook includes a column for the Supplier to indicate the date of availability. If the Supplier responds “N/A,” there is a column for the Supplier to provide an explanation. Thus, the form itself contemplates that a data element may not be currently available.

As required by the eRFP, Peach State submitted a completed Data Elements Workbook indicating that the vast majority of the data elements are currently available. For several data elements, Peach State responded “N/A” with the explanation that there is a “need to further clarify

understanding of this data element with DCH.” For the instances where Peach State indicated a data element is not currently available, it noted that the data element would be available on March 31, 2025—well within the timeframes required by the eRFP and Model Contract. The Data Elements Workbook also included a tab where a supplier could identify additional data elements. Peach State identified more than 1,200 additional data elements in this tab. And, as noted above, Peach State attested that it would meet the Data Element Availability requirements which was all that was required to pass Question #M11 of the Mandatory Response Worksheet.¹⁰

Peach State responded to GFMS36 and GFMS37 in narrative format as part of its response to Attachment D – Mandatory Scored Questions as required by the eRFP and included a number of attachments, although none were the Data Elements Workbook.

Neither GFMS36 nor GFMS37 mentions data elements or the Data Elements Workbook. Nonetheless, for reasons unknown to Peach State, the evaluators discussed Peach State’s Data Elements Workbook in scoring Peach State’s responses to GFMS36 and GFMS37 during the validation process. And it is apparent from the Evaluation Spreadsheet that this arbitrary and inexplicable discussion negatively influenced the validated scores for Peach State’s proposal on these questions:

- Lynnette Rhodes changed her initial rating of Adequate on GFMS36 to Marginal, stating, among other things: “Supplier indicated that it could not provide several data elements and/or needed clarification on the required data elements. . . . In several instances, supplier did not indicate a date on which data elements could be provided (no firm commitment).”
- Marvis Butler changed her initial rating of Adequate on GFMS36 to Marginal, stating that Supplier was “unable to provide data elements requested.”
- Kathrina Biassou likewise changed her initial rating of Adequate on GFMS36 to Marginal, stating that Peach State “did not have several data elements available . . . nor did they indicate when these elements would be available which raises concerns about the Supplier’s ability to address these requirements.”
- Peter D’Alba also changed his initial rating of Adequate to Marginal on GFMS36, stating Peach State “did not have all the data elements.”

[Ex. 1, Evaluation Spreadsheet, Peach State Tab, GFMS36].

It is striking that nine out of ten evaluators initially *agreed* on an Adequate rating for Peach State’s response to GFMS36. But when the evaluators met to validate those ratings, the ratings diverged and shifted downward based on three evaluators—all of whom are supervised by Ms.

¹⁰ Among the many irregularities in this procurement is the fact that Sentara did not submit Attachment S with its proposal by the December 1, 2023 deadline. Instead, the State allowed Sentara to supplement its proposal by submitting Attachment S more than three months later in response to a “clarification” request sent on March 18, 2024.

Rhodes. These evaluators changed their ratings to Marginal to match Ms. Rhodes' rating, again suggesting undue influence by their supervisor. [See Ex. 7, Duh Decl. ¶¶ 17-18].¹¹

Not only was it inappropriate for the evaluators to discuss the Data Elements Workbook in evaluating GFMS36, but the discussion the evaluators had based on the Evaluation Spreadsheet is inaccurate. Peach State's Data Elements Workbook did not indicate that it was unable to provide the data elements requested. It simply responded, as permitted by the eRFP and Model Contract, that certain data elements are not currently available, and provided a date by which those would be available (March 31, 2025). Ms. Rhodes' comment that Peach State did not indicate a date on which certain data elements could be provided is inconsistent with the eRFP because the form Data Elements Workbook did not require a Supplier to provide a date where its response was N/A; instead, the Supplier was required to provide an explanation as Peach State did. Moreover, by responding "Yes" to Question #M11, Peach State attested that it would meet all of the Data Elements Availability requirements.

The inappropriate and inaccurate discussion regarding the Data Elements Workbook further infected the evaluation and scoring of GFMS37:

- Ms. Butler changed her initial rating of Adequate to a validated rating of Marginal, stating: "Supplier's response does not show evidence of understanding required data elements."
- Mr. D'Alba changed his initial rating of Adequate to a validated rating of Marginal, stating: "Supplier did not demonstrate clear understanding of federally required data elements, supplier did not have several data elements available."
- Gloria Beecher changed her initial rating of Excellent to Adequate noting that she changed her score to "adequate related to data gaps-(per attachment S)."
- Chad Purcell—who did not participate in the initial meeting to validate Peach State's scores on February 9, 2024, and who apparently replaced evaluator Michael Young—changed his initial rating of Adequate to a validated rating of Marginal, stating: "Supplier is only able to supply 2/3 of the data elements requested in the Data Elements Availability workbook."

[Ex. 1, Evaluation Spreadsheet, Peach State Tab, GFMS37; *see also* Ex. 6, Validation Comments Peach State]. Again, these comments are not only unrelated to applicable evaluation criteria, but they are also factually wrong. Peach State never indicated that it could not supply any of the data elements, it just indicated that some of them are not currently available—and those number far fewer than 1/3 of the total number of data elements in the Data Elements Workbook. And the eRFP and Model Contract do not require all data elements to be available until sometime in the future.

Additionally, the alarming trend continued on GFMS37 where instead of more of the evaluators reaching consensus on Peach State's rating, there was increased divergence among the

¹¹ In contrast, as Dr. Duh notes, the evaluators' scores converged—i.e., a greater percentage moved their ratings to match the most frequent rating selected for that question—for eight of the other nine CMOs. [Ex. 7, Duh Decl. ¶¶ 9, 19].

evaluators following validation. [Ex. 7, Duh Decl. ¶ 20].¹² Moreover, Chad Purcell’s replacement of Michael Young as an evaluator was consequential on this question. Based on the comments he made at the first meeting at which Peach State’s scores were validated, Mr. Young “validated” his rating of Adequate for Peach State on GFMS37. [See Ex. 6, Validation Comments Peach State, p. 7; **Exhibit 10**, Michael Young’s Evaluation Spreadsheet for Peach State]. But Mr. Purcell—who again did not participate in the initial validation meeting on Peach State’s scores with all the other evaluators—flipped his rating to Marginal in the “final” validation meeting. [Ex. 1, Evaluation Spreadsheet, Peach State Tab, GFMS37]. Had Mr. Young’s validated score not been replaced by Mr. Purcell’s, it would have boosted Peach State’s score on this significant question worth up to 25 points.¹³

The evaluators also treated Peach State differently from other Suppliers in scoring GFMS36¹⁴ and GFMS37. Like Peach State, Molina and CareSource each submitted a Data Elements Workbook showing certain data elements not currently available. There is *no discussion*, however, of this aspect of the Data Elements Workbook in any of the comments for Molina or CareSource on GFMS36, and neither CareSource nor Molina received a rating lower than Adequate on these questions (and Molina received a number of Excellent ratings). On GFMS37, Kathrina Biassou and Daphanie Keit noted that CareSource offered data elements beyond what was required; Peach State offered more than 1,200 data elements beyond what is required yet received no credit for these additional data elements.¹⁵

	Provided Data Elements Workbook Indicating that Not All Data Elements Were Available	Workbook Referenced in Validated Comments for GFMS36	Workbook Referenced in Validated Comments for GFMS37	Proposed Additional Data Elements in Workbook	Additional Data Elements Credited in Validated Comments
Peach State	X	X	X	X	
CareSource	X		X	X	X
Molina	X				
Humana					
United	Unknown (entire workbook redacted as purported trade secret)			Unknown (entire workbook redacted as purported trade secret)	

¹² Again, this is in contrast to the evaluators’ treatment of all the other Suppliers save one, as the evaluators’ ratings converged on this question for all but Peach State and Sentara. [Ex. 7, Duh Decl. ¶ 21].

¹³ As noted by expert Josephine Duh, Mr. Young’s replacement on the evaluation committee was detrimental to Peach State, as Mr. Young’s validated scores for Peach State were generally higher than Mr. Purcell’s. [Ex. 7, Duh Decl. ¶¶ 25-26].

¹⁴ The State issued a request for clarification to Humana regarding its response to GFMS36, but did not request clarification from any other Supplier on this question. Moreover, Humana’s response to this question indicated that its replacement of Oracle E-Business Suite with Oracle Cloud Systems may not be complete until the end of 2026. [See Humana’s April 4, 2024 response to April 2, 2024 Request for Clarification].

¹⁵ Peach State also did not appear to receive any credit for being the only Supplier to name a specific solution for providing DCH query and table-level access to its data elements (Peach State’s Core Analytics Tables solution).

The wrongful evaluation of Peach State’s proposal on GFMS36 and GFMS37 was material. GFMS36 had the highest possible point value out of all the Mandatory Scored Questions (55), while GFMS37 was worth a total of 25 points. Together, these questions were worth 8% of the total points available for a proposal. If the initial scores had not been altered during the validation process, Peach State would have received 6.88 more points on GFMS36 and 3.75 more points on GFMS37—for a total of an additional 10.63 points just on these two questions. These points would have increased Peach State’s overall total to 597.12, putting Peach State in fourth place and eligible for a contract award. The erroneous and prejudicial scoring of these two questions alone renders the entire procurement and resulting NOIA invalid.

C. The Evaluators Failed to Document Scoring Changes in Violation of the GPM

The GPM requires independent review and scoring of each Supplier’s technical proposal by the evaluation committee members. GPM § 5.6.3.2.1, Table 5.6, Step 2. After completion of this initial evaluation, the evaluation committee member is required to submit his or her evaluation documents to the Issuing Officer who assembles all of the documents from the evaluation committee and schedules a validation meeting. *Id.*, Step 3. During the validation meeting, the evaluation committee convenes to discuss the results of the independent scoring. *Id.*, Step 5. As a result of this discussion, a committee member may modify his or her scoring, but the committee members need not agree on a score for a particular question. *Id.* “Any changes to scoring based on discussions, and additional comments must be documented in SPD-EP013 Master Technical Evaluation Template” (the “Template”). *Id.* The evaluation committee members’ scores for each question are added together and averaged by the Issuing Officer to determine the Supplier’s score for a particular question. *Id.*

As noted above, the SPD approved a deviation from the GPM guidelines, allowing the evaluators to conduct a “rolling evaluation” of proposals, which proved problematic for numerous reasons. [See Ex. 9, Email from Rebecca Krystopa to Carrie Steele & Matthew Carter]. In addition to the above-described problems with the “rolling evaluation” used in this procurement, the procurement record lacks required documentation of scoring changes, and the “minutes” of the validation meetings do not match the ratings and scores on the Evaluation Spreadsheet.

It is not entirely clear when and how many validation sessions were held. Based on documents produced by the State, it appears that the State held individual sessions per Supplier to validate the evaluators’ scores on each proposal spanning from February 2024 to June 2024, and then held a series of “final” validation meetings, at which all proposals were discussed, over a number of days between June 17, 2024, through July 3, 2024. [See Ex. 6, Validation Comments Peach State; **Exhibit 11**, Final Validation Comments]. This “rolling evaluation” process undoubtedly contributed to the inconsistencies in scoring apparent from the Evaluation Spreadsheet and the records of validation meetings.

Following the validation process, the Issuing Officer is required to finalize the Template. GPM § 5.6.3.2.1, Table 5.6, Step 6.¹⁶ The NOIA reflects that the intended contract awards were

¹⁶ Once this step is complete, the Issuing Officer may share the consolidated evaluation results with the evaluation committee to discuss whether negotiations are recommended. *Id.*, Step 7. Peach State is not aware of any negotiations being conducted in this procurement, nor is Peach State aware of any discussion by the Issuing Officer with the evaluation committee regarding whether to conduct negotiations.

based entirely on the sum of the averages of the validated scores on the Mandatory Scored Questions. Thus, the validated scores determined the outcome.

As previously noted, the GPM allows an evaluation committee member to modify his or her scoring as a result of the validation discussion with the other evaluation committee members. GPM § 5.6.3.2.1, Table 5.6, Step 5. However, “[a]ny changes to scoring based on discussions, and additional comments *must be documented* in SPD-EP013 Master Technical Evaluation Template.” *Id.* (emphasis added). The Template includes columns for the evaluator to record their validated rating and validated comments and for their validated score to be entered.

Not only does the Evaluation Spreadsheet fail to document any “final validation” process, but the Evaluation Spreadsheet includes many instances where an evaluator changed their score without adequately documenting the change as required by the GPM. As just one example, evaluator Kathrina Biassou changed her score of Excellent to Adequate for Peach State on GFMS16, simply stating that “[u]pon further review, Supplier provided an adequate response to the RFP question.” [Ex. 1, Evaluation Spreadsheet, Peach State Tab, GFMS16]. Similarly, Gloria Beecher reduced Peach State’s initial rating of Excellent to Good on GFMS22, only stating that “[i]nitial comments align with a rating of Good.” [*Id.*, GFMS22]. There are numerous other comparable examples of insufficient documentation of the reason for the change in a score throughout the scoring of Peach State’s proposal as well as the scoring of the proposals of other Suppliers.

In all, it appears that evaluators changed their validated score from their initial score without sufficient documentation 250 times. Thirty-four of those insufficiently documented scoring changes relate to scores awarded to Peach State, and 76% of those adjustments were *downward* adjustments in score, higher than the average downward adjustment (62%) for all Suppliers and higher than the percentage of downward adjustments for three of the four Intended Awardees.

	Score adjusted down without sufficient explanation	Score adjusted up without sufficient explanation	Total by CMO	Share that was downward adjustment
Aetna	19	11	30	63%
Amerigroup	24	15	39	62%
AmeriHealth	10	4	14	71%
CareSource	9	10	19	47%
Humana	17	2	19	89%
Kaiser	14	9	23	61%
Molina	9	13	22	41%
Peach State	26	8	34	76%
Sentara	19	8	27	70%
United	7	16	23	30%
	154	96	250	62%

The Template’s validated comments section has a purpose—to provide transparency into the reason for a change in the evaluator’s initial score following the validation discussion with the other evaluators. This helps ensure that changes to scores are fair and reasonable, and not based on whim, arbitrary or capricious, without rational basis, or the result of bias or favoritism.

Adequately describing and documenting ratings in a procurement is a fundamental aspect of competitive procurement. *See Freealliance.com, LLC*, B-419201.3, at *5 (An agency must do more than merely restate the rating given, it must “explain why the strengths and weaknesses for each quotation merited the assignment of a particular adjectival rating.”). But the comments described above are entirely meaningless as they do not provide any insight into the reason for the change in the evaluator’s score, and do not comply with GPM § 5.6.3.2.1, Table 5.6, Step 5. This is the complete antithesis of transparency in a procurement for contracts involving the expenditure of billions of taxpayer dollars and affecting the healthcare and lives of Georgia’s most vulnerable citizens.¹⁷

A comparison between the “minutes” of the validation meetings and the Evaluation Spreadsheet further calls into doubt the accuracy of the Evaluation Spreadsheet and the State’s records of what transpired in this procurement. As just examples, at the initial meeting where the evaluators validated their ratings of Peach State’s proposal, evaluators Melinda Ford-Williams and Lynnette Rhodes changed their ratings on GFMS43 to Excellent. [*See* Ex. 6, Validation Comments Peach State, pp. 14-15]. There is no indication that these evaluators further adjusted their ratings in the final round of validation meetings held in June and July 2024, meaning that these evaluators’ ratings of Excellent should have been their final validated ratings. [*See* Ex. 11, Final Validation Comments, p. 102 (reflecting only evaluators D’Alba, Biassou, and Butler changing their ratings for GFMS43 for Peach State)]. Yet the Evaluation Spreadsheet incorrectly reflects that the validated ratings by Ms. Rhodes and Ms. Ford-Williams were Good and not Excellent, contrary to the State’s own records of the validation meetings.

As more examples, there are instances where the Evaluation Spreadsheet reflects changes in ratings that are *not* found in any of the records the State has produced as purported evidence of the validation process. The Evaluation Spreadsheet indicates that for Peach State, evaluator Kathrina Biassou changed her rating of Excellent on GFMS33 to Adequate with the conclusory, insufficient note that “[u]pon further review, Supplier’s response adequately addressed the RFP question.” [Ex. 1, Evaluation Spreadsheet, Peach State Tab, GFMS33]. This apparent change to Peach State’s rating by Ms. Biassou—which cut in half the points Ms. Biassou awarded to Peach State on this question—is documented nowhere in the validation meeting minutes produced by the

¹⁷ Numerous of the evaluators’ “validated comments” are also readily proven wrong, instilling further doubt into the integrity and accuracy of the procurement. For example, evaluator Lynnette Rhodes references “[i]ssues related to encounter claims” to justify her Adequate score for Peach State’s response to Mandatory Scored Question GFMS5, based apparently on her own perception of those issues as this was not part of Peach State’s response to GFMS5. [Ex. 1, Evaluation Spreadsheet, Peach State Tab, GFMS5]. In any event, her concern is unfounded, as DCH’s own consultant found that Peach State’s encounter data meets DCH’s 99% minimum completeness requirement. *See* Myers & Stauffer, LC, *Comparison of Georgia Care Management Organization Encounter Data to Cash Disbursements for Peach State Health Plan*, p. 4 Nov. 16, 2023 (available at <https://dch.georgia.gov/document/document/ga-cmo-encounter-report-peach-state-october-2021-thru-september-2023-finalized/download>); *see also* [Peach State Proposal, Attachment D, GFMS36 (reporting same)]. As another example, several of the evaluators indicated that CareSource failed to provide any attachment as part of its response to GFMS53 in their rationale for CareSource’s validated score. [Ex. 1, Evaluation Spreadsheet, CareSource Tab, GFMS53]. Yet, at least based on the records the State has disclosed thus far, CareSource provided the attachment the evaluators claim is missing. Further, if the evaluators truly believed that CareSource had entirely failed to comply with a “minimum” requirement of this Mandatory Scored Question [*see* eRFP Rev. Attachment D GFMS46 (requiring that the response include “at minimum . . . an attachment [describing] any enforcement actions or investigations”)], their validated score of CareSource’s proposal as anything but Poor or Marginal is irrational and violates the GPM’s scoring guidelines. *See* GPM, [Microsoft Word - SPD-EP023EvaluationCommitteeGuidelines.doc](#) (“DOAS Evaluation Committee Guidelines”).

State. Similarly, the Evaluation Spreadsheet reflects that Ms. Rhodes and Ms. Biassou downgraded their ratings of Peach State's response to GFMS51 from Good to Adequate [Ex. 1, Evaluation Spreadsheet, Peach State Tab, GFMS51], but these changes are nowhere to be found in the State's purported recordkeeping of the validation meetings [*see, e.g.*, Ex. 1, Validation Comments Peach State, p. 17 (reflecting only Dr. Beecher's change in rating to Adequate for GFMS51)]. Further examples of the blatant discrepancies between the State's purported recordkeeping of the validation meetings and the Evaluation Spreadsheet are logged in **Exhibit 12**.

The State's lack of documentation of scoring changes violated the GPM. The GPM is "the official source of all administrative rules issued by [DOAS] through its [SPD] to govern purchases made by certain state government entities." GPM § I.1. "A purchase that is contrary to the rules and regulations established by SPD *shall be void and of no effect*." GPM § I.5.7 (emphasis added). If the intended contract awards become final, which they should not, purchases made pursuant to those contracts will be void and of no effect. The NOIA must be withdrawn for this additional reason.

D. Anomalies in the Individual to Validated Scores Render the Scoring Arbitrary and Capricious

Although evaluators can change their initial scores during the validation process, they may not do so in a manner that is unreasonable, unfair, arbitrary, or capricious, or reflects bias toward or against a particular Supplier or Suppliers. There are multiple anomalies in the changes from the evaluators' initial to validated scores in this procurement which evidence unreasonable, arbitrary, and capricious scoring that unduly favored the Intended Awardees.

The Evaluation Spreadsheet shows a dramatic and irrational shift in the scoring and ranking of proposals that was unjustifiably favorable to the Intended Awardees and detrimental to all other Suppliers, including Peach State. [*See* Ex. 1, Evaluation Spreadsheet]. As previously noted, the Evaluation Spreadsheet shows that based on the initial scores, Peach State was ranked fourth with 590.7 points, behind CareSource, Molina, and Kaiser (which later withdrew from the procurement). Humana was ranked fifth and United was ranked seventh of the 10 Suppliers that responded to the eRFP. Following the validation process, however, United rocketed from seventh to fourth place and Humana moved up from fifth to third place. The only Suppliers to receive a net increase in their validated scores as compared to the initial scores were the four Intended Awardees. And all of those increases were significant, ranging from an additional 14.79 points for CareSource to a whopping 47.97 points for Molina. Meanwhile, all of the other Suppliers experienced a net reduction in their scores.

A review of the changes from the initial scores to the validated scores on a per-evaluator basis and by question further highlights the unreasonable, arbitrary, and capricious nature of the scoring. One evaluator increased Molina's score by 103 points and another evaluator decreased Amerigroup's score by 133 points. [*See* **Exhibit 13**, Point Change Tab]. In either case, this represented a variance of more than 10% of the total points available and an even more significant variance when compared to the total points actually awarded to any Supplier responding to the eRFP. With respect to Peach State, one evaluator reduced the total points awarded to Peach State by 53 points and another decreased Peach State's total points by 68.

There are also wide disparities in the number of times an evaluator changed their initial score during the validation process. At 119, Peach State had the highest number of scoring changes during the validation process. [See Ex. 13, Summary Table]. When looking at the instances of scoring changes on a per-evaluator basis, two evaluators stand out as having an inordinate number of instances where they changed the initial scores they awarded to Peach State. [See *id.*, Instances of Score Change]. One evaluator changed 24 of the initial scores she awarded to Peach State with 22 of those being decreases, and the other changed 23 of the initial scores she awarded to Peach State with 11 of those instances reducing Peach State’s score. While most of the evaluators’ changes to Peach State’s scores were contained to a one-notch adjustment (e.g., moving from an initial rating of Good to Adequate would be a downward adjustment of one notch), the two evaluators previously mentioned decreased their ratings for Peach State by multiple notches a total of eight times. Out of the top six ranked Suppliers, Peach State had the highest number of scoring decreases that were two or more notches. [Ex. 7, Duh Decl. ¶¶ 22-24].

The substantial number of scoring changes during the validation process and the magnitude of those changes call into question the fairness, reasonableness, validity, and integrity of the entire procurement. All of this taken together, along with the additional irregularities described in this Protest, evidences an evaluation that was unreasonable, unfair, arbitrary, and capricious and involved material errors that significantly prejudiced Peach State. Thus, the intended contract awards cannot stand.

E. Numerous Scoring Disparities Infected the Procurement and Prejudiced Peach State

It is a fundamental principle of procurement law in Georgia and elsewhere that a procuring agency must treat all proposers fairly and equitably, evaluating proposals evenhandedly against common requirements and evaluation criteria. *See, e.g.*, GPM § 1.1; *see also, e.g.*, *Freealliance.com, LLC*, B-419201.3, at *6 (observing that “agencies may not generally engage in conduct that amounts to unfair or disparate treatment of competing vendors” and granting protest where protestor showed that evaluators gave different scores to proposals illustrating similar strengths and failed to explain the differential treatment). Yet the State’s evaluators failed to evaluate proposals on a common basis and arbitrarily assigned scores on numerous questions, prejudicing Peach State and often appearing to penalize it based on the evaluators’ perceptions of Peach State outside of its response to the eRFP.

GFMS56

Mandatory Scored Question GFMS56 required each Supplier to “[p]rovide *at least* three (3) letters of support from community-based organizations and other [Managed Long Term Services and Supports (‘MLTSS’)] stakeholders from within the last 12 months, either in Georgia or in another state, confirming Supplier’s competency and capabilities to administer high quality MLTSS services.” [RFP Rev. Attachment D GFMS56 (emphasis added)]. The letters of support could be provided as attachments and did not count toward the proposal’s page limitation. [*Id.*].

Peach State provided seven letters of support from community-based organizations and other stakeholders attesting to Peach State’s competency and capabilities to administer high-quality MLTSS services. [See **Exhibit 14**, Peach State Proposal, Attachment D: GFMS56,

Qualifications and Experience MLTSS Letters of Support]. Despite Peach State exceeding the eRFP requirement, the evaluators ultimately gave Peach State a score of only Adequate, worth 10 points, and appear to have *penalized* Peach State for going above and beyond the specification. [Ex. 1, Evaluation Spreadsheet, Peach State Tab, GFMS56].

Evaluator Kathrina Biassou initially gave Peach State a score of Good or 15 points for GFMS56, noting specifically in her initial comments that Peach State provided more than three letters of recommendation. [*Id.*] Yet, in validation, she downgraded her rating to match her colleagues' ranking of Adequate, reasoning: "Supplier was *only required* to provide at least three (3) letters of support from community-based organizations and other MLTSS stakeholders from within the last 12 months." [*Id.* (emphasis added)].

This is arbitrary and does not meet the evaluation committee guidelines incorporated by reference in the GPM. A rating of Adequate means that a proposal "adequately meets the minimum requirements, specification, or provision of the specific item, and is generally capable of meeting the state's needs for specific criteria." [DOAS Evaluation Committee Guidelines ¶ 6]. Peach State's response was deserving of at least a Good rating, as it "more than adequately me[t] the minimum requirements, specification or provision of the specific criteria, and exceeds those requirements in some aspects for the specific criteria." [*Id.*].

Moreover, the evaluators applied a different standard to Molina and CareSource, boosting their scores on this question despite their providing the same information as Peach State. Molina received a total, average validated score of 11 for providing a *similar number of letters of support*—8—because one evaluator (Marvis Butler) gave Molina 15 points for providing more letters of support than the minimum required by the eRFP, just like Peach State. [Ex. 1, Evaluation Spreadsheet, Molina Tab, GFMS56 (emphasis added)]. Ms. Butler commented that "Molina *provided eight letters of support* from stakeholders in Texas, Ohio, Illinois, Iowa and Georgia." [*Id.* (emphasis added)]. Ms. Butler did the same for CareSource, awarding it a validated score of Good worth 15 points because "CareSource provided *several letters of support*." [*Id.*, Evaluation Spreadsheet, CareSource Tab, GFMS56 (emphasis added)]. As a consequence, CareSource also received a score of 11 on this question.

Because *all* of the evaluators other than Ms. Biassou and Ms. Butler rated Peach State, CareSource, and Molina as Adequate in response to GFMS56, this differential treatment by Ms. Biassou and Ms. Butler was prejudicial and consequential and resulted in Peach State receiving a reduced score despite exceeding the eRFP requirement just like CareSource and Molina:

Evaluator Kathrina Biassou's Score on GFMS56				
	Initial Score	Initial Comments	Validated Score	Validated Comments
Peach State	15.00/ Good	Supplier was only required to provide at least three (3) letters of support from community-based organizations and other MLTSS stakeholders from within the last 12 months, however, Supplier provider 6 [sic] ¹⁸ MLTSS letters of recommendation.	10.00/Adequate	Supplier was <i>only required</i> to provide at least three (3) letters of support from community-based organizations and other MLTSS stakeholders from within the last 12 months.
Evaluator Marvis Butler's Scores on GFMS56				
Molina	15.00/ Good	Molina provided eight letters of support from stakeholders in Texas, Ohio, Illinois, Iowa and Georgia	15.00/Good	
CareSource	15.00/ Good	CareSource provided several letters of support from CBOs as noted in the response document.	15.00/Good	

The evaluators' scoring of Peach State's response to GFMS56 as compared to the scoring of Molina and CareSource's responses for the same question is erroneous, arbitrary, and capricious and violates the evaluation committee guidelines incorporated into the GPM. But for this error, Peach State would have received the same score as Molina and CareSource, boosting its overall point total.

GFMS46

In response to Mandatory Scored Question GFMS46, each Supplier was required to explain its "plan to develop and maintain a comprehensive Provider network to ensure it meets DCH access and availability requirements for all Covered Services." [RFP Rev. Attachment D GFMS46].

Peach State's proposal described its established network as an incumbent Georgia Families CMO, comprising "a fully contracted provider network with over 44,000 providers and **97% overall adequacy** to support members." [See Ex. 14, Peach State Proposal, Attachment D: GFMS46, p. 261 (some emphasis omitted)].

In contrast, United's proposal spoke to it having "achieved **88% of network adequacy**" with the mere goal of "exceed[ing] network adequacy requirements (90%) **by program go-live on July 1, 2025.**" [See Exhibit 15, United Proposal, Attachment D: GFMS46, p. 272 (some emphasis omitted)].

Notwithstanding Peach State's superior network adequacy, the evaluators unreasonably and nonsensically awarded Peach State a validated score of **16.66** and awarded United a validated score of **19.79**. While network adequacy was only one component of GFMS46, it is clear from the evaluators' comments that their scores largely depended upon those adequacy metrics.

¹⁸ Ms. Biassou's statement is incorrect. Peach State provided seven letters of support. [See Ex. 14, Peach State Proposal, Attachment D: GFMS56, Qualifications and Experience MLTSS Letters of Support].

Consequently, their scoring of Peach State's and United's proposals is arbitrary and capricious and prejudiced Peach State.

For example, evaluator Marvis Butler claims that United deserved a validated score of Excellent because United “*has established network adequacy threshold for multiple provider types*” [Ex. 1, Evaluation Spreadsheet, United Tab, GFMS46 (emphasis added)]; this is incorrect based on what United provided, which indicated that it would only meet those thresholds after the program's go-live date [see Ex. 15, United Proposal, Attachment D: GFMS46, p. 272]. Evaluators Peter D'Alba, Kathrina Biassou, and James Peoples rated United's response as Good, again citing United's mere promise to achieve adequacy thresholds by July 1, 2025. [Ex. 1, Evaluation Spreadsheet, United Tab, GFMS46].

In contrast, the evaluators erroneously failed to credit Peach State at all for its existing contracted network which already exceeds the network adequacy requirements. Indeed, Ms. Biassou downgraded her initial rating of Excellent all the way to Adequate with the insufficient statement that “[u]pon further review, Supplier's response aligns more with an Adequate rating.” [Ex. 1, Evaluation Spreadsheet, Peach State Tab, GFMS46]. This is irrational particularly in light of Ms. Biassou's initial glowing comments:

Supplier's response included not only short term solutions but also long-term solutions for Strategies for Specialties and Areas Where Access Is Limited to include contracting with out of network (OON) providers using Single Case Agreements (SCAs); incentivizing PCPs to open panels, expand their scope of services (e.g., include BH screening and/or treatment), or serve more members; and engaging in targeted recruitment efforts, as well as implementing workforce development initiatives to address long-term challenges, i.e.. sponsorship of a 3-year curriculum for Augusta University medical students interested in becoming PCPs, OB/GYNs, psychiatrists, or pediatricians in rural areas.

[*Id.*, Evaluation Spreadsheet, Peach State Tab, GFMS46].

Likewise, evaluator Clarissa Lewis initially rated Peach State's response to GFMS46 as Excellent, in part because Peach State offered “a Fully-Contracted Network” and was “ready to deliver services on day one of the new contract.” [*Id.*, Evaluation Spreadsheet, Peach State Tab, GFMS46]. But after meeting with the other evaluators to validate scores, Ms. Lewis reduced her score to Good, summarily and insufficiently stating that her “[i]nitial comments align with a rating of Good” while at the same time providing an additional compliment of Peach State for its use of certain technology. [*Id.*].

Notwithstanding the superiority of Peach State's response, Peach State's average score fell from 17.71 to 16.66 in validation, while United's inexplicably rose more than three points from 16.67 to 19.79. At a minimum, Peach State warranted the same score as United, 19.79, given Peach State's fully contracted and proven network that already exceeds the network adequacy standard.

GFMS13

The scoring of Mandatory Scored Question GFMS13, relating to addressing provider inquiries and complaints, further demonstrates Ms. Rhodes' apparent undue influence over the

other evaluators in their scoring of the Peach State, CareSource, and United proposals. As noted above, upon information and belief, Ms. Rhodes directly or indirectly supervises many of the evaluators, including all of the other evaluators assigned to evaluate responses to GFMS13: James Peoples, Marvis Butler, Kathrina Biassou, and Peter D’Alba.

In the initial scoring of GFMS13, Peach State received an average score of 7.5. The only evaluator to score Peach State lower was Ms. Rhodes, who gave Peach State a rating of Marginal, worth 3.75 points, because she claimed “Supplier did not provide sufficient detail on tracking and monitoring of provider complaints and inquiries[.]” [Ex. 1, Evaluation Spreadsheet, Peach State Tab, GFMS13]. The four other evaluators for this Mandatory Scored Question gave Peach State an initial rating of Adequate or Good. [*Id.*].

In validation, it is clear that Mr. Rhodes influenced the other evaluators to reduce their scores based on her estimation that Peach State provided insufficient detail in its response. Despite some initial favorable comments, the four other evaluators *all* reduced their scores, and three of them even copied and pasted Ms. Rhodes’ rationale for the score (including the typographical error) into their Validated Comments: “Supplier did not provide sufficient detail on tracking and monitoring of provider complaints and inquiries, [sic].” [Ex. 1, Evaluation Spreadsheet, Peach State Tab, GFMS13]. This ultimately resulted in Peach State’s score for GFMS13 dropping *three points* from the initial score to the validated score, from 7.5 to 4.5.

	Initial Rating	Initial Comments	Validated Rating	Validated Comments
Peoples	Good/11.25	Supplier demonstrates a comprehensive complaint and grievance process. Supplier’s automated system’s process for complaints, acknowledges, tracks, resolves, and report complaints and grievances through what appears to be a seamless coordinated approach. Supplier understands the importance of quickly resolving issues within its provider network.	Adequate/ 7.50	Based on discussion. Supplier was not very detailed in their response.
Butler	Adequate/7.5	None.	Marginal/ 3.75	Supplier did not provide sufficient detail on tracking and monitoring of provider complaints and inquiries,
Biassou	Adequate/7.5	None.	Marginal/ 3.75	Supplier did not provide sufficient detail on tracking and monitoring of provider complaints and inquiries,
D’Alba	Adequate/7.5	None.	Marginal/ 3.75	Supplier did not provide sufficient detail on tracking and monitoring of provider complaints and inquiries,

* * *

Together, these unreasonable scoring deficiencies (in addition to the other errors identified herein) unfairly and significantly prejudiced Peach State. But for these errors, Peach State’s total score would have been 604.25, placing it above both United and Humana and slotted for a Georgia Families CMO contract award.

Mandatory Scoring Question	Peach State			United ¹⁹		
	Validated Score	Corrected Score	Difference in Score	Validated Score	Corrected Score	Difference in Score
GFMS5				5.25	0	-5.25
GFMS13	4.5	7.5	+3			
GFMS36	22	28.88	+6.88			
GFMS37	10	13.75	+3.75			
GFMS46	16.66	19.79	+3.13			
GFMS56	10	11	+1			
	586.49	604.25	+17.76	596.42	591.17	-5.25

F. The State Failed to Insulate the Procurement from Conflicts of Interest

A fair and impartial procurement process demands unwavering adherence to conflict-of-interest policies to uphold transparency, eliminate bias, and sustain public trust. The State employs two primary conflict disclosure mechanisms to safeguard these principles: the Georgia Department of Community Health Ethics in Procurement Policy (“Policy No. 402”) and the DOAS Evaluation Committee Member Participation Form (“DOAS Participation Form”). Together, these measures are designed to expose and address potential conflicts of interest, ensuring decisions are driven by merit and not compromised by undisclosed biases.

Policy No. 402 sets forth stringent ethical standards for procurement through a series of mandatory disclosures: the Attestation Form for Participation on a Requirements Team (Exhibit A), the Attestation Form for Participation on an Evaluation Team (Exhibit B), and the Attestation Form for Staffing Recruitment (Exhibit C). These forms require participants to acknowledge compliance with the policy, disclose any potential conflicts—such as financial ties, past or present employment with bidders, and personal relationships—and provide extensive information about themselves and their family members. Crucially, Policy No. 402 mandates that any disclosed conflicts be reviewed and resolved by the Ethics Officer or Inspector General *before* a participant’s involvement can proceed. This mandate is not merely procedural but a foundational safeguard that ensures impartiality and bolsters public confidence in the procurement process. *See* GPM §§ I.4.4, I.4.4.1, I.4.4.5.

The DOAS Participation Form complements these requirements by emphasizing impartiality and requiring evaluators to confirm the absence of personal interests in the solicitation or its outcomes. Together, these forms are indispensable tools for maintaining the integrity of procurement decisions and ensuring fair competition.

Despite these intended safeguards, the records that the State has disclosed thus far reveal significant lapses in compliance that have undermined the integrity of the procurement process:

¹⁹ As discussed below, United’s response to Mandatory Scored Question GFMS5 rendered it nonresponsive and subject to disqualification; at a minimum it should have resulted in United receiving a Rating of Poor, worth zero points, on this question.

- Matthew Carter, the eRFP Issuing Officer, failed to complete the required Policy No. 402 form.
- Evaluator Marvis Butler completed the form but neglected to disclose her previous employment with United, where she served as Compliance Officer (as confirmed by her publicly available LinkedIn profile). [See **Exhibit 16**, Marvis Butler Policy No. 402 Form; **Exhibit 17**, Marvis Butler LinkedIn Resume].
- Erica Turner submitted an incomplete Exhibit A, failing to disclose a financial interest, past employment, or personal relationship with an anticipated vendor. [See **Exhibit 18**, Erica Turner Policy No. 402 Form].

Further, the participation of third-party, external consultants compounded these irregularities. More than a dozen Deloitte Consulting LLP consultants bypassed Policy No. 402 and the DOAS Participation Form's stringent disclosure requirements and signed only a Consultant Confidentiality and Disclosure Agreement, which falls short of the mandated conflict disclosure standards and directly violates GPM § 3.2. This deviation sets a dangerous precedent for circumventing critical safeguards. The State's failure to enforce its own standards under the GPM undermines the public's trust, renders the process arbitrary and unreliable, and highlights significant procedural deficiencies that cannot be dismissed as immaterial.

Even when disclosures were made, they appear to have gone unreviewed, directly contravening Policy No. 402's explicit mandate. For instance, evaluator Kathrina Biassou disclosed stock ownership in United and past insurance with Humana, while evaluator Gloria Beecher reported employment ties to United and Kaiser and identified her grandson's healthcare provider as CareSource. [See **Exhibit 19**, Kathrina Biassou Policy No. 402 Form; **Exhibit 20**, Gloria Beecher Policy No. 402 Form]. ***The records produced by DOAS fail to evidence any review of these disclosures by the Ethics Officer or Inspector General.*** This systemic oversight failure violates the core principles of the GPM, which demands that all procurement actions be properly documented and reviewed to ensure fairness.

In addition to incomplete reviews, there were instances of unsigned or incomplete forms. At least five team members did not fill out Policy No. 402 forms, and at least two evaluators failed to fill out the DOAS Participation Form. These lapses signal systemic failures to enforce conflict-of-interest policies and demonstrate a troubling pattern of neglect that threatens the fairness and transparency of the procurement process. Under the GPM's standard of review, such failures constitute material procedural violations that prejudice the outcomes and undermine the credibility of the procurement. See GPM §§ I.4.4, I.4.4.1, I.4.4.4, & I.4.4.5.

G. Three of the Intended Awardees Should Have Been Disqualified Due to Significant Gaps in Their Provider Networks

A robust statewide provider network is essential to members being able to access care. If a plan has gaps in its provider network, a member may not be able to access the type of provider

they need or seek care from a provider in a location close to their home.²⁰ Had the State conducted any analysis of the provider networks proposed by Molina, United, and Humana, the State would have identified significant gaps in coverage and found that these Suppliers failed to demonstrate statewide access in their proposals as required by the eRFP.

The eRFP’s Mandatory Questions required a Supplier to “demonstrate progress toward developing network capabilities for *statewide access* by having signed Letters of Intent (LOIs)” with providers. [eRFP Rev. Attachment C, Question #M3 (emphasis added)]. These LOIs were to be used to “demonstrate the *statewide access* within the eRFP response.” [*Id.* (emphasis added)]. It appears the State simply passed any Supplier submitting LOIs in response to this Mandatory Question without determining whether those LOIs demonstrate statewide access.²¹

Georgia Families CMOs are required to develop and maintain a provider network that ensures the adequate and appropriate provision of services to members. To demonstrate that this requirement is met, CMOs must conduct a geographic access analysis of their networks using standards articulated by DCH. The standard for hospitals in urban areas is one within 30 minutes or 30 miles; the standard for hospitals in rural areas is one within 45 minutes or 45 miles. *See* Geographic Access Standards and Reports (available at <https://dch.georgia.gov/medicaid-managed-care/network-adequacy>). Georgia requires at least 90% of members to have access when these access standards are applied.

If the State had applied a geographic access analysis to the LOIs submitted by Molina, United, and Humana, that analysis would have shown substantial network deficiencies, particularly in rural areas of the state where healthcare is already challenging for members. Because Molina, United, and Humana did not demonstrate statewide access, the State should not have passed them on Mandatory Question #M3; they should have been disqualified.

Molina’s Network Deficiencies

The LOIs in Molina’s proposal show substantial network deficiencies in the Southwest, Southeast, and North regions of the state.

Southwest Region. Instead of meeting 90% adequacy, the hospitals in Molina’s network in the Southwest region show adequacy of only 53% in urban areas and 87% in rural areas. These network deficiencies appear to be driven by the absence of the following providers:

- South Georgia Medical Center (“SGMC”) – This hospital provider has four facilities, is a large employer of specialists in the region, and has Centers of Excellence in women’s health, heart and vascular, cancer, and orthopedics. Additionally, SGMC offers behavioral health services.

²⁰ DCH advises members to consider the provider network when choosing a plan. *See* Choosing your Health Plan available at <https://medicaid.georgia.gov/>. (“Do you want to keep seeing your current doctor? Is there a hospital or clinic where you often go for care? Are there specialists, counselors, or special services that you want to keep using? Find out which Health Plans they accept.”).

²¹ Moreover, the LOIs are just that—non-binding letters of intent. They do not provide any contractual assurance that the provider will be in the Supplier’s network and accessible to members. Those contracts, including rates and terms, must still be negotiated.

- Archbold – This leading healthcare system in southwest Georgia includes Archbold Mitchell, Archbold Brooks, Archbold Grady, and Archbold Memorial hospitals. None of these facilities are in Molina’s network. Archbold Mitchell and Archbold Grady have swing beds which are used to provide skilled nursing facility care in rural areas where skilled nursing facilities are not available. Additionally, the Archbold system offers inpatient and outpatient professional behavioral health services and has a large multispecialty medical group with satellite location in rural areas (Brooks, Mitchell, and Grady counties).
- Southwell – This health system serving south central Georgia includes Tift Regional Medical Center (“TRMC”) which has a facility along I-75 near Abraham Baldwin Agricultural College. Many of the specialists in the area are associated with TRMC. Southwell also owns Southwell Medical, a rural hospital in Cook County. Without Southwell, Molina has 0% adequacy in Lowndes County where there are currently 20,000 Medicaid members.

Southeast Region. The hospitals in Molina’s network in the Southeast region show only 69% adequacy in urban areas. This appears to be driven by the absence of the following providers:

- St. Joseph’s/Candler – This is the leading health system in Savannah which includes Candler Hospital. This hospital has a women’s and children’s center and a large cancer center, is the region’s leader in cardiovascular diagnosis and treatment, and provides access to orthopedics and the treatment of neurological disorders.
- East Georgia Regional Medical Center (“EGRMC”) – This is the largest facility between Savannah and Macon off I-16. EGRMC features a 24-hour, physician-staffed emergency department, Level II neonatal center, minimally invasive robotic-assisted surgical services, round-the-clock hospitalist care, same-day surgery and ambulatory care, sleep lab, pain management clinic, wound healing center, endoscopy center, cardiac rehabilitation program, cardiac catheterization lab, inpatient and outpatient rehabilitation (physical therapy, occupational therapy and speech therapy), in-house dialysis, laboratory services, interventional radiology, tele-neurology, tele-stroke and tele-infectious disease services, and a wide spectrum of diagnostic imaging equipment.

North Region. Molina’s network in the North region shows only 65% hospital adequacy in urban areas and 83% adequacy in rural areas. The network deficiencies appear to be driven by the absence of:

- Northeast Georgia Health System (“NGHS”) – This health system in northeast Georgia includes five hospitals: Northeast Georgia Medical Center (“NGMC”) Gainesville, NGMC Braselton, NGMC Barrow, and NGMC Lumpkin. Emergency/trauma patients in rural areas of northeast Georgia are transferred to NGHS facilities. The system also includes a freestanding psychiatric hospital, Laurelwood.

- AdventHealth – This health system has three facilities in northwest Georgia (AdventHealth Gordon, AdventHealth Murray, and AdventHealth Redmond). It also includes urgent care facilities and has a large physician group.
- Fannin Regional Hospital – This is a facility in the Blue Ridge Mountains serving primarily rural areas.

If the intended contract awards become final, and they should not, a large number of Medicaid members who currently receive services from incumbents Peach State and Amerigroup would be required to change to new plans including Molina. The number of members that would be affected in the areas where Molina’s network is inadequate is considerable, totaling close to 150,000 members.²²

County	Peach State Membership	Amerigroup Membership
Gordon	3,667	3,060
Floyd	5,979	5,457
Murray	2,681	2,551
Hall	11,194	11,001
Barrow	5,448	4,300
Lumpkin	1,077	1,085
Habersham	2,375	2,085
Fannin	902	1,161
Mitchell	2,927	610
Brooks	1,701	562
Grady	2,977	899
Thomas	4,736	1,193
Tift	5,013	1,533
Cook	2,219	693
Turner (contiguous to Tift)	1,011	374
Lowndes	12,289	4,216
Lanier	1,074	663
Berrien	2,059	732
Atkinson (contiguous)	988	354
Bulloch	4,233	3,902
Chatham	16,613	10,840
TOTAL	91,163	57,271

²² Furthermore, it appears that Molina may have violated the eRFP’s mandatory requirement to submit three years of audited financial statements. [eRFP Rev. Attachment A § 4.3; eRFP Rev. Attachment C #M4]. If Molina failed to submit audited financial statements, this is a material deviation that gave Molina a competitive advantage. Despite Molina’s representation that it submitted audited financial statements, and the State’s apparent notation that they were received, these financial statements have not been produced by the State as part of the register of proposals or administrative review, nor has Peach State received them in response to its pending GORA request. Molina did not mark these financial statements as trade secret either, and thus they should be publicly available. Peach State is entitled to review Molina’s audited financial records if included in Molina’s proposal and requests that these records be produced. Peach State reserves the right to file an amended Protest or to supplement its Protest upon production of Molina’s audited financial records if they in fact were submitted by Molina in its proposal. If they were not, Molina’s proposal should have been disqualified at the outset and prior to scoring of the Mandatory Scored Questions.

United's Network Deficiencies

A geographic access analysis of United's network based on the LOIs in its proposal reveals substantial network deficiencies in the Central, Southeast, and North regions of the state.

Central Region. The hospital²³ adequacy of United's network in urban areas of the Central region is only 49.4% compared to the 90% required adequacy. This inadequacy appears to be driven by the absence of Atrium Health Navicent which includes The Medical Center, Navicent Health which is located in Macon (Bibb County) and is the second largest hospital in Georgia. Atrium Health Navicent also includes a hospital in rural Baldwin County. Atrium Health Navicent offers 53 specialties including pediatric specialties, such as neurology, gastroenterology, endocrinology, and orthopedics, among others.

Southeast Region. United's network in the Southeast region shows only 53% hospital adequacy in urban areas and 87% hospital adequacy in rural areas. Like Molina's network, United's network appears to lack EGRMC which, as described above, is the largest facility between Savannah and Macon off I-16.

North Region. United's network in the North region has hospital adequacy of 80% in urban areas and 0% adequacy in rural areas in the north part of the state. Like Molina, United's network does not include AdventHealth. United also did not submit a LOI for Erlanger, a health system which offers a plethora of services in the northwest area of the state, including urgent care, maternal, and behavioral health services. Erlanger offers the only children's hospital in the area, offering 23 pediatric specialties, and also has a free-standing psychiatric unit. United's network further lacks Atrium Health Floyd, which is a leading medical provider in northwest Georgia and includes Floyd Medical Center, a 304-bed full-service, acute care hospital and regional referral center in Rome, Georgia. Atrium Health Floyd also includes Floyd Polk Medical Center in Cedartown, Georgia; Floyd Behavioral Health Center, a freestanding 53-bed behavioral health facility, also in Rome; and a primary care and urgent care network with locations throughout the northwest Georgia service area—again, all facilities entirely absent from United's proposed network.

Under the NOIA, close to 97,000 members would need to change health plans in the areas where United's network is inadequate.

²³ In addition to hospital inadequacies in its network, United has significant gaps in behavioral health coverage. Of the six psychiatric residential treatment facilities ("PRTFs") in the state, United submitted an LOI for only one—Youth Villages. And although there are approximately 250 Community Behavioral Health and Rehabilitation Services ("CBHRS") providers in Georgia, United submitted LOIs for only 25 (about 10%).

County	Peach State Membership	Amerigroup Membership
Gordon	3,667	3,060
Floyd	5,979	5,457
Murray	2,681	2,551
Dade (contiguous northwest Georgia (“NWGA”) county - Erlanger)	652	585
Walker (contiguous NWGA county- Erlanger)	3,884	3,135
Whitfield (contiguous NWGA county- Erlanger)	6,628	7,170
Catoosa (contiguous NWGA county- Erlanger)	3,008	2,398
Chatooga (contiguous - AdventHealth)	1,524	1,478
Gilmer (contiguous - AdventHealth)	1,502	1,581
Pickens (contiguous- AdventHealth)	1,642	1,107
Fannin (contiguous- AdventHealth)	886	1,138
Bibb	16,782	6,247
Baldwin	2,753	1,348
Bulloch	4,233	3,902
TOTAL	55,821	41,157

Source: 11/1/2024 Georgia Families Eligible by Region by County

Humana’s Network Deficiencies

Humana’s reported network of hospitals (based on its LOIs) reveals substantial network deficiencies in the Central, Southeast, and Southwest regions.

Central Region. Humana’s network in the Central region has hospital adequacy of 87.1% in urban areas, but only 48.9% in rural areas. The deficiencies appear to be due to the absence of Upson Regional Medical Center which is a hospital system in central Georgia with a small medical group and psychiatric inpatient unit. This hospital is located west of Macon and east of Lagrange in a rural agricultural area where the availability of healthcare is limited.

Southeast Region. Humana’s network in the Southeast region shows 87% hospital adequacy in rural areas, but only 53% adequacy in urban areas. Like Molina and United, Humana did not submit a LOI for EGRMC. This appears to be driving the deficiency of Humana’s network in the southeast urban areas.

Southwest Region. Humana’s network in the Southwest region shows hospital adequacy of only 53% in urban areas and 87% in rural areas. Humana, like Molina, did not submit a LOI for Archbold which appears to account for Humana’s deficient network in the southwest portion of the state.

More than 48,000 members would need to change health plans under the NOIA in the areas where Humana’s network is deficient.

County	Peach State Membership	Amerigroup Membership
Mitchell	2,927	610
Brooks	1,701	562
Grady	2,977	899
Thomas	4,736	1,193
Bulloch	4,233	3,902
Upton	2,858	966
Pike (contiguous to Upton)	1,197	398
Meriwether (contiguous to Upton)	1,851	723
Talbot (contiguous to Upton)	479	177
Crawford (contiguous to Upton)	927	324
Monroe (contiguous to Upton)	1,528	714
Lamar (contiguous to Upton)	1,703	743
TOTAL	34,184	13,926

Source: 11/1/2024 Georgia Families Eligible by Region by County

By comparison to the networks reflected in the Molina, United, and Humana proposals, Peach State’s most recent geographic access report showed no deficiencies for these same geographic areas. And Peach State’s network is a mature, robust, and contracted network that is not based on LOIs that may or may not be formalized into contracts in the future. Peach State’s network improves access to care for Georgians living in all areas of the state, especially those living in rural underserved regions.

These members would have reduced access to services if their plan is Molina, United, or Humana. They would have fewer options for care and in many cases would have to travel farther to receive care, if it is available at all. Nonetheless, the State unreasonable and arbitrarily passed all three of these Suppliers on the eRFP’s mandatory requirement to demonstrate a statewide provider network. Because Molina, United, and Humana did not submit LOIs demonstrating the required statewide provider network, they should have been disqualified as not satisfying this material mandatory requirement, and thus ineligible for contract award.²⁴ The State has an obligation to ensure that its Georgia Families members have options for health plans that will provide them with adequate provider availability and access throughout the state. The State has not done so through its intended contract award decisions in this procurement.

²⁴ For those Suppliers passing the mandatory requirements, the Mandatory Scored Questions included a question about the Supplier’s plan to develop and maintain a comprehensive provider network in the future. [eRFP Rev. Attachment D GFMS46]. Molina, United, and Humana should never have passed the mandatory requirements, and their proposals should not have been scored. GPM §§ 3.5.5.2, 5.6.2.1 It is important to note, however, that the scoring of Molina’s response to that scored question (GFMS46) contains an error and irregularity—specifically a comment by Marvis Butler that she changed her initial rating of Adequate to Good “[b]ased on SME feedback, specifically Supplier’s planned efforts for provider outreach.” [See Ex. 1, Evaluator Spreadsheet, Molina Tab, GFMS46]. This appears to be a reference to an improper use of a subject matter expert (“SME”) during the validation process. Section 3.2 of the GPM only contemplates use of third-party consultants as SMEs based on highly technical or complex knowledge. [GPM § 3.2]. Molina’s planned efforts for provider outreach would not be something within the technical knowledge of a third-party consultant used properly in the eRFP process as authorized by the GPM.

In accordance with GPM § 3.5.5.2 RFP Technical Requirements and Questions, the evaluators were required to review each proposal in detail to determine its compliance with the mandatory eRFP requirements, including this one; if a proposal fails to meet a mandatory eRFP requirement, the State was to determine if the deviation was material, which would be cause to reject a proposal. Here, there is no record in the documents produced to date that shows this detailed review occurred or that the State determined that the deviations were immaterial. For this procurement, it is clearly a material deviation that these Suppliers did not submit LOIs demonstrating the required statewide provider network, and therefore they should have been disqualified.

H. CareSource Should Have Been Disqualified for Engaging in Prohibited Communications in Violation of the eRFP

Fairness is essential in any government procurement process and, as result, the State must take measures to prevent undue influence on decision-makers in order to protect the integrity of the selection process. *See, e.g.*, GPM § I.1.1. In this case, the eRFP broadly restricted contacts by prospective Suppliers with the State during the procurement. More specifically, the eRFP stated:

From the issue date of this eRFP until the final award is announced (or the eRFP is officially cancelled), ***suppliers are not allowed to communicate for any reason with any State staff except through the Issuing Officer named herein, or during the bidders/offerors' conference (if any), or as defined in this eRFP or as provided by existing work agreement(s).*** Prohibited communication includes all contact or interaction, including but not limited to telephonic communications, emails, faxes, letters, or personal meetings, such as lunch, entertainment, or otherwise. The State Entity reserves the right to reject the response of any supplier violating this provision.

[eRFP Rev. Attachment A § 2.1.2 (emphasis added)].

Importantly, the broad restriction above is not limited to communications with the State regarding the eRFP or the selection process. Instead, this cone of silence bars ***all*** communications for ***any*** reason with ***any*** State staff—not limited to either DOAS or DCH—and exempts only communications through the Issuing Officer or as provided by “existing work agreement(s).” This issue is so important to the integrity of the eRFP process that DOAS notified Suppliers that prohibited communications could affect their eligibility to be awarded a contract resulting from the procurement. [*Id.*]. Per the eRFP, such communications have been restricted since September 22, 2023, when the eRFP was issued.

CareSource hired Governor Kemp’s Special Projects Coordinator and Policy Advisor of the Office of Health Strategy and Coordination, Gus Youmans, during the restricted period. According to Mr. Youmans’ LinkedIn profile, he worked in Governor Kemp’s office from September 2021 to December 2023 until becoming the State Government Relations Director for CareSource in December 2023, within the applicable restrictions period. [**Exhibit 21**, Gus Youmans LinkedIn Resume]. Indeed, it appears that Mr. Youmans went to work for CareSource the same month that proposals were due under the eRFP. ***Thus, all communications that***

CareSource had with Mr. Youmans while he was employed with the Governor's Office regarding his future employment with CareSource after the eRFP was issued violated the eRFP's established cone of silence.

The eRFP clearly warned Suppliers regarding the consequences of engaging in prohibited communications. CareSource blatantly disregarded the eRFP's prohibitions. It is not reasonable for the State to strictly bar communications with prospective Suppliers, only to ignore the multiple communications CareSource necessarily had with a State staff member that was responsible for health policy issues for the Governor's Office while the eRFP was pending and apparently during the period leading up to the submission of proposals. CareSource's proposal must be disqualified. Otherwise, any award to CareSource is an abuse of discretion and arbitrary and capricious.

I. CareSource Should Have Been Disqualified for Failure to Supply the Required Client References

It is essential for the State to have confidence that a contracted provider can provide the healthcare services being procured through the eRFP. The GPM recognizes that reference checks—"the process of contacting a supplier's current or previous client to solicit information regarding that client's business experience with the supplier"—is a best practice, noting that "[a] supplier's client references can provide insight into the supplier's level of work experience as well as quality of past performance." GPM § 5.6.5.1. Indeed, the Issuing Officer has discretion to ask Suppliers to provide client references even if the solicitation does not require client references to be submitted. The GPM further states that, to the extent feasible, "all provided client references should be contacted . . . and verified as part of the evaluation process." *Id.*

Here, the Mandatory Response Worksheet required Suppliers to "provide three (3) different client references (*for those who have agreed to give a reference*) for the Supplier, for which Supplier has successfully provided services under capitated risk-based contracts with Medicaid agencies within the last five (5) consecutive calendar years (2018-present)." [eRFP Rev. Attachment C, Question #M9 (emphasis added)]. While a Supplier was not required to actually supply a reference—instead, the State would formally seek the reference from the client identified—each Supplier was required to identify three client references who "have agreed to give a reference" for that Supplier. [See *id.*]. A Supplier that fails to meet all material requirements in the Mandatory Response Worksheet should have been disqualified. [eRFP Rev. Attachment A §§ 4.3, 6.2.1].

CareSource's proposal should have been disqualified for its failure to satisfy the material and mandatory reference requirement as *none of the client references identified by CareSource agreed to give CareSource a reference*. CareSource identified the following Medicaid agencies as references: (1) the Arkansas Department of Human Services ("Arkansas DHS"); (2) the Indiana Office of Medicaid Policy & Planning ("Indiana OMPP"); and (3) the Ohio Department of Medicaid ("ODM") which was listed for two separate programs. Not one of these government agencies agreed to provide a reference for CareSource. In each reference questionnaire form, the first question is as follows: "[i]f you decline to provide a reference, please indicate that below and provide any comments you would be willing to share regarding the reason." All three of CareSource's client references expressly declined to provide a reference. Arkansas DHS only confirmed the existence and length of its relationship with CareSource and did not provide a

qualitative assessment of CareSource’s performance. Similarly, Indiana OMPP simply confirmed the length of its relationship with CareSource, but refused to provide any details regarding CareSource’s performance since Indiana OMPP was conducting an open procurement. Finally, ODM stated it was important to maintain its neutrality and, as a result, it categorically refuses to provide references for Medicaid contractors, including for CareSource.²⁵ A compilation of CareSource’s client reference questionnaires is attached as **Exhibit 22**.

In contrast, Peach State provided three client references in compliance with the eRFP, all which were willing to provide an actual reference and qualitative assessment of Peach State’s performance. A compilation of Peach State’s client reference questionnaires is attached as **Exhibit 23**.

The eRFP made clear that Suppliers were to provide three client references who have ***agreed to give a reference***. Peach State did just that, ensuring all the entities it identified as client references would actually provide references. Indeed, it is telling that, despite the many years CareSource has been an MCO, it did not identify a single client that was willing to provide a reference. There are numerous cases where a reviewing authority overturned a contract award and sustained an appeal or protest based upon an agency failing to perform a complete and thorough responsibility evaluation. *See, e.g., DRS C3 Sys., LLC*, B-310825.2, 2008 CPD ¶ 103, at *21 (Comp. Gen. Feb. 26, 2008) (sustaining a protest where “the record indicates that the [agency] failed to give meaningful consideration to all the relevant past performance information that it possessed regarding [awardee]”); *Fam. Ent. Servs., Inc.*, B-298047.3, 2007 CPD ¶ 59, at *5 (Comp. Gen. Sept. 20, 2006) (sustaining protest where the record did not provide a reasonable explanation for the agency’s conclusions regarding the protester’s past performance). CareSource’s lack of any references robbed the State of the ability to assess CareSource’s past performance for similar state entities. The State should have disqualified CareSource as nonresponsive due to its failure to meet this mandatory requirement pertaining to its past performance. *See* GPM §§ 5.6.2.1, 5.6.2.3, 5.6.5.1, 6.4 & Tables 5.5 & 6.7.

J. United Should Have Been Disqualified for Failure to Meet a Mandatory Disclosure Requirement

Only 10 points separate Peach State from fourth place in the technical scoring and being in line to receive a Georgia Families CMO contract award. Based on the information that the State has disclosed to date, the State should have rejected fourth-ranked United’s proposal as nonresponsive, or, at the very least, reduced its technical score, because it failed to satisfy a mandatory requirement to disclose enforcement actions and investigations. Had the State done so, Peach State would have a substantial chance of receiving a contract award under the eRFP.

As noted above, the eRFP included both mandatory responses and mandatory scored components. [eRFP Rev. Attachment A § 6.2.2; GPM § 3.5.5.2]. A material deviation from the mandatory requirements even in the scored portions “***will*** be cause for rejection of the proposal.” [*Id.* § 6.2.2; *see also id.* § 2.1.7 (“A supplier’s response ***will*** be rejected if the response contains any defect or irregularity and such defect or irregularity ***constitutes a material deviation from the***

²⁵ ODM did direct DOAS to a link with a variety of metrics, but none of the information indicated whether or not ODM was satisfied with CareSource’s performance

eRFP requirements, which determination will be made by the State Entity on a case-by-case basis.” (emphasis added)); GPM § 3.5.5.2].

Mandatory Scored Question GFMS5 required each Supplier to “[p]rovide an overview of all enforcement actions and investigations into the Supplier or the Supplier’s Parent Company or subsidiaries . . . by state Medicaid agencies or other state or federal entities, over the past five (5) years.” [eRFP Rev. Attachment D GFMS5]. For each disclosed action or deficiency finding, the eRFP required the Supplier to describe “at a minimum, the reason each action was taken, who took the action, the final disposition of the action, and what the Supplier did to improve performance in response to the action.” [*Id.*].

Per the Evaluation Spreadsheet, evaluator Marvis Butler rated United’s response as Poor, awarding it *zero points*, because United “*did not provide as requested* information related to the enforcement actions and deficiencies assessed by ‘state Medicaid agencies or other state or federal entities over the past 5 years.’” [Ex. 1, Evaluation Spreadsheet, United Health Tab, GFMS5 (emphasis added)].²⁶ Critically, even after meeting with the other evaluators to discuss and validate scores, Ms. Butler’s score of zero did not change. Evaluator Lynnette Rhodes further noted that United’s description of its enforcement actions and deficiencies lacked detail—for instance, she said, *all* of United’s responses weakly indicated that there was “[a] penalty assessed for compliance in UM’ without any indication of the penalty amount, whether or not it was reduced, waived, etc[.],” which fails to comply with the eRFP. [*Id.*].

Notwithstanding United’s apparent failure to meet a mandatory requirement, the evaluators gave United a validated score of 5.25 for GFMS5. This was erroneous, unreasonable, irrational, and arbitrary. The evaluators do not appear to have either (a) determined whether this was a material deviation justifying rejection of United’s proposal—which it was—nor did they, at the very least, (b) reduce their scores to reflect United’s failure to respond to this question as required, the only exception being Ms. Butler. In doing so, the evaluators failed to comply with the scoring rubric in the Evaluation Committee Guidelines. [DOAS Evaluation Committee Guidelines ¶ 6]. United’s proposal should have been rejected as nonresponsive for failing to provide a materially complete response. *See* GPM §§ 5.6.2.1, 5.6.2.3, 6.4, & Tables 5.5 & 6.7; *see also id.* § 3.5.5.2.

This error significantly prejudiced Peach State. Had United’s proposal been rejected outright, Peach State would have been next in line for one of the four Georgia Families CMO contracts in the NOIA as the fourth highest scoring proposal. Even if the State did not reject United’s proposal entirely for this material deviation, the evaluators acted unreasonably, arbitrarily, and capriciously by not awarding United’s response a validated score of zero or Poor for this question, reducing United’s total score by 5.25 points. The reduction of United’s score by this amount, in addition to the other errors identified herein with respect to scoring, would have resulted in Peach State being at least the fourth highest ranked Supplier and selected for contract award.

²⁶ Peach State cannot confirm Ms. Butler’s finding as United redacted the entire attachment disclosing enforcement actions on the basis that it contained trade secrets. [*See* United Proposal, Attachment Q, Trade Secret Affidavit, p. 35; United Proposal, Attachment GFMS5.a. Enforcement Actions or Deficiency Findings]. Thus, Peach State has only the redacted version of the relevant attachment.

K. CareSource’s Proposal Contains a Substantial Misrepresentation

In response to Mandatory Scored Question GFMS1, CareSource prominently touts its purported status as “#1 Chosen CMO by Members (3 years running).” [Exhibit 24, CareSource Proposal, Attachment D GFMS1, p. 2]. CareSource repeats this claim in its response to GFMS3 and GFMS34, stating that it is the “#1 Member selected plan in GA” and “the Member plan of choice in GA Medicaid.” [*Id.* GFMS3, p. 21 & GFMS34, p. 188].

This claim is demonstrably false. Publicly available information from the DCH website regarding the number of members who choose their CMO shows that it is Peach State, not CareSource, which has been recognized most often as the CMO of choice over the three years predating proposal submission:

	2019	2020	2021	2022	2023	Total Number of Months Top Choice CMO
Amerigroup	0	2	0	0	0	2
CareSource	0	0	4	3	2	9
Peach State	0	6	8	9	10	33
WellCare	12	4	0	0	0	16

At least one of the evaluators was misled by CareSource’s false and deceptive statement: evaluator James Peoples specifically called out CareSource’s statement that it was “number 1 as the most chosen CMO for three years” in awarding CareSource a validated score of Excellent on GFMS1. [Ex. 1, Evaluation Spreadsheet, CareSource Tab, GFMS1].

Such false statements in proposals are significant and render a proposal nonresponsive. Courts have recognized that a contract award based on known misrepresentations by a vendor could constitute arbitrary and capricious action by the awarding agency and subject the relevant proposer to penalties. *See, e.g., Acad. Express, LLC v. Broward Cnty.*, 53 So. 3d 1188, 1190 (Fla. 4th Dist. Ct. App. 2011) (“A contract award based on known misrepresentations by a vendor could constitute arbitrary and capricious action.”); *see also CenturyLink Pub. Commc’ns, Inc. v. Dep’t of Corrs.*, 109 A.3d 820, 823 n.4 (Pa. Commw. Ct. 2015) (noting that submission of false statements in a proposal under a public solicitation is punishable under state law forbidding the submission of false statements to government officials).

Here, had CareSource not misrepresented its status as the purported “CMO of choice,” Mr. Peoples and the other evaluators would not have been deceived on this important fact. Permitting this type of material misrepresentation to occur without consequence will encourage other Suppliers to mislead the State in the hopes of obtaining a contract award. CareSource should be deemed nonresponsive for making a material misrepresentation in its proposal, and its proposal rejected. GPM §§ 5.6.2.1, 6.4 & Tables 5.5 & 6.7.²⁷

* * *

²⁷ Furthermore, it appears that CareSource may have also misrepresented that it has achieved “100% quality withhold dollars cumulatively across our markets.” [Ex. 24, CareSource Proposal, GFMS3, p. 21]. Based on publicly-available information, this is unlikely to be true, particularly in markets like Indiana.

These significant, unreasonable, material, arbitrary, and prejudicial errors resulted in Peach State being unfairly omitted from the contract awards notwithstanding its longstanding and exceptional service to the Georgia Families program, and its extensive, proven, and contracted provider network. Because of the State's errors, the Georgians whose lives depend on these important programs and the taxpayers who pay for them cannot be assured that the best plans were chosen to serve as CMOs.

For all these reasons, and based on just those records produced to date regarding this eRFP and procurement process, the NOIA should be withdrawn and the eRFP cancelled.

NOTICE OF STAY

Pursuant to GPM § 6.5.8, because this Protest is timely filed, the State cannot proceed to award the Georgia Families CMO contracts to the Intended Awardees, unless the State obtains a written determination from the SPD Deputy Commissioner that the closing of the solicitation without delay is necessary to protect the interests of the state. The State has not yet announced the operational start date for the contracts arising out of the eRFP. Proceeding to contract award with the Intended Awardees while this Protest is pending is unnecessary and would be detrimental to the state and the more than 1.17 million Medicaid members who will be negatively impacted by the intended contract awards.

RESERVATION OF RIGHTS

Peach State submitted a request for records under GORA on December 3, 2024. As of the time of this Protest's filing, DOAS has provided access to those records it indicates comprise the register of proposals and administrative review and has only just begun producing responsive records on a rolling basis in response to Peach State's GORA request. Thus, the State's response to Peach State's GORA request remains incomplete. Notably, DOAS did not complete production of the records it indicates comprise the register of proposals and administrative review within one business day of the NOIA as required by GPM § I.6. Despite production of the register of proposals and administrative review not being complete until five business days after the NOIA, DOAS refused to extend the protest deadline proportionally based on its delay in producing these records, providing only an extension to December 18, 2024. Pursuant to GPM § 6.5.7, Peach State hereby reserves any and all of its rights to file an amended Protest or to supplement its Protest upon production of the requested records.²⁸

CONCLUSION

Peach State asks that you grant this Protest and the following relief:

- Immediate stay of award and execution of the Georgia Families CMO contracts to the Intended Awardees as required by GPM § 6.5.8;

²⁸ Late in the day on December 16, 2024—two days before the extended protest deadline—the State uploaded a substantial number of emails to the DOAS Reading Room. Further, on the morning of the protest deadline, the State uploaded text messages to the Reading Room. Peach State reserves all rights to supplement or amend this Protest based on information found within these emails and text messages once it has had a reasonable period of time to review them.

- Expeditious review of the NOIA by the DOAS State Purchasing Division Deputy Commissioner, pursuant to GPM §§ 6.3.3 and 6.5.9;
- Cancellation of the NOIA pursuant to GPM § 6.5.9; and
- Cancellation and reissuance of the eRFP.

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*Counsel and Representatives for Peach State Health
Plan, Inc.*

The undersigned, as an officer authorized to sign contracts on behalf of Peach State Health Plan, Inc., has reviewed the foregoing Protest with supporting exhibits and authorizes its filing.



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