



May 14, 2008

D. Rico Munn
Executive Director
Department of Regulatory Agencies
State of Colorado

Hand delivered for Mr. Munn, per direction, to
Tammy Baca
Procurement Officer
Dept. of Regulatory Agencies
1560 Broadway, Suite 1550
Denver, CO 80202

RE: Protest of Pending Award of RFP SJN-0803

Dear Mr. Munn:

The Impaired Professional Diversion Program, d/b/a Colorado Nurse Health Program (CNHP) is one of two vendors that submitted a proposal on RFP SJN 0803, and is hereby protesting the pending award to Peer Assistance Services, Inc. (PAS). The primary focus of this protest is to seek the following relief:

Cancellation of RFP SJN 0803, and reinstatement of RFP SJN 0801 and the award to CNHP for that proposal.

or, in the alternative

Award of RFP SJN 0803 to CNHP after making adjustments to discredit blatant copying of CNHP's confidential bid information by PAS, correcting evaluation omissions, and deleting unmerited bid modifications, *inter alia*, as further addressed herein.

As a brief summary background, C.R.S. 12-38-131 was repealed and re-enacted, effective January 1, 2008 (Exhibit A1), to allow for competitive bid of the program that CNHP has been handling for approximately 15 years. RFP SJN 0801 (Exhibit B1) was issued, and CNHP was issued an award letter on October 22, 2007 (Exhibit A2). PAS received notice that it was unsuccessful on that same date (Exhibit A3).

Subsequent to this award, the undersigned called the contracting officer a number of times to check on the status of the contract, and was given assurance that drafting was taking time, but all was fine. However, in fact, 28 days after the award was made, PAS had sent a letter of protest, drafted by its attorney, Frederick Yu, to its reference in the PAS proposal – Rosemary McCool (one of your directors)(Exhibit A4). There was

D. Rico Munn
Executive Director
Department of Regulatory Agencies
Protest of Award of RFP SJN 0803
Page Two

apparently also a personal meeting with your staff and Mr. Yu on December 20, 2007. CNHP was not apprised of any of this. Then, on January 8, 2007, CNHP first received notice (*after* the beginning of the new contract period and months after the award was made), that its award was to be withdrawn and that Ms. McCool would put the program out to bid again (Exhibit A5). Apparently, Mr. Yu was also sent a personal letter on this same date, apprising him of this fact consequent to his *ex parte* meeting with your staff (Exhibit A6).

CNHP staff then went to the DORA offices to find out what had happened, and saw the letter from Frederick Yu (PAS counsel) in the file, as well as Ms. McCool's e-mail regarding the failure to include the number of new nurse applicants in the overview section of the RFP (Exhibit A7).

The basis articulated for the cancellation of RFP SJN 0801 and issuance of RFP SJN 0803 was as follows:

"A post review of the RFP by the Department of Regulatory Agencies ("DORA") revealed that the RFP failed to include new applicants for registered nursing and practical nursing licenses. . ."

Letter to CNHP first notifying of cancellation of award and pending reissuance of modified RFP, Exhibit A5.

This was also the sole reason stated in Ms. McCool's e-mail to Greg Ferland (also in the DORA file) dated December 27, 2007 (Exhibit A7). That e-mail further outlined the additional numbers of persons that would consequently be paying into the funding source for the program.

Here's the rub – *new applicants don't pay into the program!*

C.R.S. 12-38-131, as repealed and re-enacted, (Exhibit A1) states:

"(1) As a condition of licensure and for the purpose of supporting a nursing peer health assistance program or a nurse alternative to discipline program, every *renewal* applicant shall pay to the administering entity designated pursuant to . . . a fee in an amount set by the board, not to exceed twenty five dollars per year . . ."

New nurse applicants don't pay into the fund; only *renewal* applicants pay. So, there was no valid basis on which to cancel the first RFP and issue a new RFP; in fact, any reliance

D. Rico Munn
Executive Director
Department of Regulatory Agencies
Protest of Award of RFP SJN 0803
Page Three

on fees from new applicants would, under this theory, be a basis to cancel the new RFP – SJN 0803!

So, the first basis for the request that RFP SJN 0803 be cancelled, and the award for RFP SJN 0801 be reinstated, is that

- 1. The stated basis for cancellation of RFP SJN 0801 was false per the statute; and**
- 2. The inclusion of fees from new nurse applicants in RFP SJN 0803 is contrary to statute, justifying the cancellation of that RFP instead!**

In addition, there was also a vague phrase that, “[I]n addition, the final decision of the evaluation committee was based on incomplete information.” Exhibit A5. There has never been any enlightenment as to what that “incomplete information” was. Certainly, there was nothing substantively new requested in RFP SJN 0803 (Exhibit B2). It is now clear, however, that this was a pretext to allow PAS to rebid on substantially the same requirements with CNHP’s confidential bid information which it obtained from DORA.

CNHP’s winning proposal to RFP SJN 0801 (Exhibit B3) required that its financial proposal be sealed, and could be made public *only if* CNHP was the successful bidder, per the RFP rules. In fact, there was a specific section on p. 54 of CNHP’s proposal which also addressed this:

Confidentiality

Pursuant to RFP Section 1.12, CNHP requests that all financials be held confidential, except in the event of a contract award to CNHP (these financials are already physically separated from the technical proposal). Further, CNHP requests that all appendices with copyright designation (which are also separate from the body of the proposal) be held confidential pursuant to (C.R.S. 240720203(4) (Open Records Act).

All other requirements to secure confidentiality were also met (financials were submitted in a separate, sealed envelope, etc.).

PAS went into the DORA offices and obtained a copy of CNHP’s proposal *and financials*. Although we don’t yet know the exact date on which this occurred, we do know that the information was given to them before their attorney, Mr. Yu, wrote his protest letter 28 days after the award was made – since he specifically complains about

D. Rico Munn
Executive Director
Department of Regulatory Agencies
Protest of Award of RFP SJN 0803
Page Four

criticism of CNHP's financials in his letter (Exhibit A4, page 3, paragraph no. 2, where he quotes CNHP's sealed bid figure). We also know this is true because the contracting officer, Ms. Baca, admitted that PAS staff came to her office after the award letters were sent on October 22, 2007 and asked for these documents, and she gave the documents to them. She stated that she'd relied on the RFP SJN 0801 provisions (Exhibit B1, on p. 3: "Any information that will be included in any resulting contract cannot be considered confidential."). Again, this only shows that reliance, even by DORA staff, on the pending contract. There was no valid basis not to award it.

On January 22, 2008, CNHP submitted a detailed response to the Mr. Yu's letter, which it just received notice of subsequent to the cancellation of RFP SJN 0801 (Exhibit A8). The arguments and issues raised in that letter are incorporated herein by reference. This letter was somewhat prescient as well since, in addition to giving reasons that there was no valid basis on which to cancel RFP SJN 0801 and issue RFP SJN 0803, it also predicted that PAS would use CNHP's bid and confidential information in its response to the next RFP. To quote from page 8 of the letter, "PAS seeks an unfair advantage in having the program put out to bid again, with full knowledge of CNHP's confidential financial information and bid proposal which it obtained from DORA under the premise that the award was final." As is clear below, this is exactly what happened.

RFP SJN 0803 Was Fundamentally Tainted and Must be Cancelled

This RFP was fundamentally tainted in a number of respects:

1. Scoring was profoundly flawed.
 - A. Technical Requirements (40%) responses of PAS were copied from CNHP's first confidential bid response
 - B. Management (40%) scoring failed to evaluate three of four sections required.
 - C. Cost (15%) bid by PAS was a ruse to bid lower than CNHP's confidential financial bid on first RFP.
2. RFP sought less substantive information than its predecessor.
3. RFP was drafted to give PAS unfair advantage, and did not address purported basis of including new nurse applicants.
4. PAS did not submit blind copies as required, which is a basis for set aside.

Due to the magnitude of these problems, it would best serve the interest of the state for this RFP to be cancelled, and RFP SJN 0801, and its award to CNHP, reinstated. See C.R.S. 24-103-301.

D. Rico Munn
Executive Director
Department of Regulatory Agencies
Protest of Award of RFP SJN 0803
Page Five

The following exhibits are also included for reference:

Exhibit B1 - RFP SJN 0801
Exhibit B2 - RFP SJN 0803
Exhibit B3 - CNHP's Proposal to RFP SJN 0801
Exhibit B4 - PAS' Proposal to RFP SJN 0801
Exhibit B5 - CNHP's Proposal to RFP SJN 0803
Exhibit B6 - PAS' Proposal to RFP SJN 0803

I. Scoring

The scoring of 95% of RFP SJN 0803 was fundamentally flawed, as will be addressed, by section, below.

A. Technical Component (40%)

Interestingly, the second time around, both PAS and CNHP scored almost equally in this area. However, that's because PAS was given CNHP's bid on RFP SJN 0801 so that PAS could copy it in significant part for the PAS' proposal for RFP SJN 0803.

Exhibit A9 to this protest, incorporated herein by reference, is a non-exclusive list of some significant examples of PAS' use of CNHP's bid on RFP SJN 0801 for unfair advantage in PAS' BID on the same/substantially similar provision in RFP SJN 0803, and that Exhibit also references the parallel provisions and identical language incorporated by PAS in its second bid. In particular, if the scores of these sections (related with specificity in Exhibit A10) were revised to remove the language pirated from the CNHP bid, PAS would have scored substantially lower on Technical Requirements, thus making CNHP the winner of this award as well, since there was blatant copying by PAS of CNHP's bid in the following technical sections:

- 4.1.a (same section number in both RFPs) - Prior Experience
- 4.1.b (same section number in both RFPs) - Staffing (became non-scorable in RFP SJN 0803, as discussed below)
- 4.1.c (same section number in both RFPs) - Availability of Services Statewide
- 4.1.d (same section number in both RFPs) - Coordination of Statewide Treatment Resource Network
- 4.1.i (in SJN 0801)/4.1.f (in SJN 0803) - Testimony
- 4.2.b (in SJN 0801)/4.1.h (in SJN 0803) - Evaluation
- 4.4 & 4.5 (in SJN 0801)/4.1.s (in SJN 0803) - Legal Compliance (by combining these sections in SJN 0803, the new RFP also effectively halved the points previous gained by CNHP by excelling in both)

D. Rico Munn
Executive Director
Department of Regulatory Agencies
Protest of Award of RFP SJN 0803
Page Six

By giving CNHP's bid to PAS, DORA effectively took away CNHP's advantage in all of these areas (as documented in Exhibit A9, which illustrates the active copying of CNHP's information in PAS's second bid). If CNHP's competitive advantage had not been compromised by DORA, CNHP would have had a large point advantage in this section – more than enough for it to win the award of the program again.

B. Management Component (40%)

The rating form for the evaluators of RFP SJN 0803 was set up inappropriately, resulting in a loss of consideration of significant RFP components

Under Section 5.3 of RFP SJN 0803, the Response Format for the Management Component, which comprises 40% of the overall proposal score, is to be as follows:

5.1.1 Management and Experience Component

- A. Describe how you will meet the requirements set forth in Section 4.2.
- B. Describe how your company will manage this project.
- C. Indicate key personnel who will be assigned to the project and describe their experience. Explain how you will ensure that equally qualified persons are assigned to the project if these individuals leave the project. The State expects that the awarded Offeror will continue to make the key project personnel available through the life of the contract as long as they remain in offeror's employ. The State reserves the right to approve any replacement personnel.
- D. Describe your firm's experience with similar projects.

However, when you review the evaluators' rating forms, the Management section is listed as having a through g subcomponents. There should only be A through D. See Exhibit A11.

The problem is that the rating forms actually OMIT Sections 5.1.1 B through D. Section 5.1.1 A asks how the vendor will meet the requirements in Section 4.2. It is Section 4.2 that has subsections a through e. This is verified when you read each subcomponent on the rating sheet – the description corresponds to 4.2 a, b, etc. HOWEVER, Section 4.2 is just the FIRST of the four Management evaluation components; the scoring sheet makes 5.1.1 A the ENTIRE Management score. There is no provision whatsoever on the rating sheet for an evaluator to enter scores for 5.1.1. B through D. And, if scores were somehow entered for these sections under 5.1.1.A, there is still an extra possible four points in the overall scoring, which undermines appropriate weighting of the four sections that were to be evaluated.

D. Rico Munn
Executive Director
Department of Regulatory Agencies
Protest of Award of RFP SJN 0803
Page Seven

Consequently, the entire weighting of this 40% of the scoring is off, the wrong subcomponents of the section were listed, and the evaluations are totally erroneous. CNHP scored only 14 points out of 20, while PAS scored 20 (looking at median scores). BUT, in fact, this should have only been the score on 5.1.1 A – there should have been three additional sections evaluated that weren't.

However, on the Total Weighted Index for Overall Scores, there are a maximum of 16 raw points allocated to this section, which would be correct – except that PAS received 20 points on the individual item score sheet, and CNHP received 30% less (14 points), on only 5.1.1 A.

Even the scoring of the Section 4.2 components is suspect; both vendors give short answers to all sections which include the same basic tenets that both have independent audits and will comply with SBON financial and reporting requirements. It is inconceivable that one vendor could have scored so much higher with the same content, just worded differently.

The bottom line, though, is that the evaluation of this 40% of the proposal is so fundamentally flawed, without even a scoring section for 5.1.1. B through D on the individual evaluators' scoring sheets for each vendor, that this would, in itself, invalidate the evaluation of and proposed award of this RFP as scored.

C. Cost Component (15%)

The cost component was irretrievably tainted by DORA's inappropriate disclosure of CNHP's sealed financials. See Exhibit A12.

For RFP SJN 0801, the Total Program Costs were bid as follows:

CNHP	\$ 677,122
PAS	\$ 680,765

For RFP SJN 0803, the Total Program Costs were bid as follows:

CNHP	\$ 694,300 (This would make sense, as the purported purpose of This bid was to take into account the impact of the new nurse licensees that were not specifically mentioned in RFP SJN 0801)
PAS	\$ 668,047 (What??!! How can the PAS's bid be LESS than it was for RFP SJN 0801 – especially if the purpose of this new RFP was to allow consideration for MORE nurses that would be utilizing, and paying for, program services? And, PAS' second bid isn't just lower than it's own first bid – it's even lower than

D. Rico Munn
Executive Director
Department of Regulatory Agencies
Protest of Award of RFP SJN 0803
Page Eight

CNHP's first bid! But, is that any surprise? PAS knew CNHP's confidential first bid, so used RFP SJN 0803 to make sure they bid lower than CNHP this time. That was the true purpose of RFP SJN 0803 – to allow PAS the opportunity to use CNHP's misappropriated bid information in order to submit a lower bid, regardless of the ridiculous premise stated for the new RFP).

The entire cost bid was a sham. DORA gave PAS the confidential, sealed financial bid from CNHP's proposal in RFP SJN 0801; then DORA gave PAS an opportunity to use this information to bid LOWER than it's own first bid and, most significantly, LOWER than even CNHP's first bid – to ensure that PAS could win on this item.

This entire 15% of the cost component was obviously tainted. It is nonsensical that PAS could, in good faith, bid LESS to service MORE nurses. It is a blatant confiscation of and use of trade secrets.

2. RFP SJN 0803 sought the scoring of less substantive information than RFP SJN 0801

If “the final decision of the evaluation committee was based on incomplete information” (which was the other reason stated for canceling the first RFP, see Exhibit A5), why would LESS information be sought the second time around?

However, not only did DORA give PAS the bid written by CNHP from which it copied sections on which it previously scored lower than CNHP - DORA also modified scoring criteria where it would be unfavorable to PAS.

One example of this is sparked by one of the protest points in the protest letter from PAS' counsel, Mr. Yu, on November 20, 2007. Mr. Yu stated, in his point no. 5 (Exhibit A4, regarding 4.1.b, which addresses staffing): “CNHP's proposal identified staff as available to the program; many of these staff are no longer employed by CNHP.”

However, in the PAS proposal to RFP SJN 0803, there are NO current staff members identified to fill any of the staff positions. The PAS proposal states that it *will* hire staff to mirror the positions that are presently staffed at CNHP.

So, wouldn't one think that this would garner a lower score on this item for PAS relative to CNHP? It did, *but RFP SJN 0803 doesn't score this item!* It requests a response, but by its own terms doesn't include a score it in the technical requirements

D. Rico Munn
Executive Director
Department of Regulatory Agencies
Protest of Award of RFP SJN 0803
Page Nine

score! That's clearly the inspired way to keep CNHP from getting points for a technical requirement on which it excels.

Here's the bigger question – why would this RFP requirement become non-scoreable due to the failure to include “new applicants for registered nursing and licensed practical nursing licenses”? Isn't this the reason that the RFP was reissued? Does the influx of new nurses into the profession suddenly make staffing of the program irrelevant? Of course, this is ludicrous, but addressed only to further substantiate the fact that this RFP change was made by DORA solely to benefit PAS, which could not compete on this point (since, even through copying, it couldn't materialize staff that didn't exist).

The new RFP also combined two legal sections (4.4 and 4.5) to cut the score for excellence in documentation by half. And, it didn't ask for the myriad of documentation provided in the first RFP, since PAS didn't have this to compete with. Again, if “the final decision of the evaluation committee was based on incomplete information” when it cancelled the first RFP, it makes no sense that it seeks less information in the second RFP.

Here are more examples. The PAS response to the second RFP discloses that they don't have staff hired for this program (they're planning to hire staff, and have listed the places they plan to advertise). They don't have a Grand Junction office (but they're planning to look into signing the lease on one). They don't have enough facilitators (but they're planning to hire the CNHP facilitators after CNHP is put out of business when they win the award). Their evaluation team isn't disclosed, and present staff doesn't meet the published SBON credential requirements (Exhibit A13). Further, their transition team includes the CNHP executive director – unbeknownst to her! This second RFP, SJN 0803, allows this puff over substance. It seeks, and allows, less information – not more! And, to the extent the evaluators didn't catch these glaring deficits, their scores should be modified.

3. RFP SJN 0803 modified the previous RFP SJN 0801 in order to give favorable accommodation to PAS.

Another significant change in made in RFP SJN 0803 to favor PAS is the forms requested. Unlike the RFP SJN 0801, this current RFP has been modified to request each report that PAS already reports on to other disciplines! See Exhibit A14. Again, this change has nothing to do with the reason that the RFP was purportedly reissued. Its sole purpose is to give PAS another competitive advantage, by specifically requesting the forms currently used by that program.

D. Rico Munn
Executive Director
Department of Regulatory Agencies
Protest of Award of RFP SJN 0803
Page Ten

4. Non-Submission of Blind Copies Pursuant to RFP SJN 0803, Section 5.1

RFP SJN 0803, Section 5.1, provides, in part, as follows:

Non-submission of "blind" copies of the proposal could result in disqualification of proposal.

The PAS proposal refers to CNHP in a number of places, thus establishing its own identity as the competitor. Per the proposal terms, it is submitted that this should merit disqualification of PAS' proposal, and consequently the pending award to that entity. That would leave CNHP as the sole compliant vendor entitled to the award.

Statutory requirement for cancellation of RFP SJN 0801 was not met

24-103-301. Cancellation of invitations for bids or requests for proposals.

PART 3 CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS

An invitation for bids, a request for proposals, or any other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation *when it is in the best interests of the state* pursuant to rules. The reasons therefor shall be made part of the contract file. (emphasis added).

Clearly, the statutory basis for cancellation of the initial RFP SJN 0801 was not met. The new nurse applicants do NOT pay into the program, so there was no reason to allow for fees contributed from a population that does not, pursuant to C.R.S. 12-38-131, contribute this fee. In addition, even the catch-all phrase that "the final decision of the evaluation committee was based on incomplete information" was not borne out in the new RFP, since less substantive information was sought and evaluated the second time around.

Consequently, as the statutory basis for cancellation of RFP SJN 0801 was not met, it should be reinstated along with the award of that program to CNHP.

Failure of compliance with procurement code requirements

Mr. Yu's letter (Exhibit X) stated that a "competitive bidding process" should be used pursuant to the legislative history of HB 1102 and the new C.R.S. 12-38-131, and he

D. Rico Munn
Executive Director
Department of Regulatory Agencies
Protest of Award of RFP SJN 0803
Page Eleven

posits the applicability of the state procurement code. CNHP would agree with that position, and further state certain provisions from that code:

Purposes (C.R.S. 24-101-102), including: . . .

(b) To provide for increased public confidence in the procedures followed in public procurement;

(c) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the state of Colorado; . . .

(e) To foster effective broad-based competition within the free enterprise system; and

(f) To provide safeguards for the maintenance of a procurement system of quality and integrity. . . .

Clear requirement of good faith (C.R.S. 24-101-104). Requirement of good faith.

This code requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

Competitive Sealed Proposals (C.R.S. 24-103-203).. . .

(4) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with rules and shall be open for public inspection after the contract award subject to the provisions of sections 24-72-203 and 24-72-204.

(5) The request for proposals shall state evaluation factors.

(6) As provided in the request for proposals and pursuant to rules, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for an award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. *Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.* . . .

CNHP should have been included in the December 20, 2007 meeting at DORA, and CNHP's proposal should not have been compromised by DORA.

If DORA personnel needed more information or had questions about new nurse licensees, they should have addressed this with CNHP. Instead, CNHP was continually told that the contract was being drafted, while DORA was meeting with PAS and its counsel, at or after which meeting DORA decided to cancel RFP SJN 0803 without meeting the statutory basis therefor. The procurement code provides for such discussions, and modifications, even after award.

D. Rico Munn
Executive Director
Department of Regulatory Agencies
Protest of Award of RFP SJN 0803
Page Twelve

Trade Secrets

Colorado has codified the Uniform Trade Secrets Act (C.R.S. 7-72-101 *et seq.*). C.R.S. 7-72-104(4) states:

"Trade secret" means the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, improvement, *confidential business or financial information*, listing of names, addresses, or telephone numbers, or *other information relating to any business or profession which is secret and of value*. To be a "trade secret" the owner thereof must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. (emphasis added).

A trade secret may include a bid on a contract. Ovation Plumbing, Inc. v. Furton, 33 P.3d 1221 (Colo. App. 2001).

"Misappropriation" includes, per C.R.S. 7-72-104(2) (b) "Disclosure or use of a trade secret of another without express or implied consent by a person who: . . . (II) At the time of disclosure or use, knew or had reason to know that such person's knowledge of the trade secret was: . . . (B) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (C) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; . . ."

CNHP is entitled to seek injunctive relief pursuant to C.R.S. 7-74-103:

"Temporary and final injunctions including affirmative acts may be granted on such equitable terms as the court deems reasonable to prevent or restrain actual or threatened misappropriation of a trade secret." And, damages are also available under C.R.S. 7-74-104(1) which provides, in part: "Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. . . ." In subsection (2), exemplary damages are also available under certain findings: "If the misappropriation is attended by circumstances of fraud, malice, or a willful and wanton disregard of the injured party's right and feelings, the court or the jury may award exemplary damages in an amount not exceeding the award made under subsection (1) of this section."

Sonoco Prod. Co. v. Johnson, 23 P.3d 1287 (Colo. App. 2001), provides that the Uniform Trade Secrets Act contains no requirement that there be actual use or commercial implementation of a misappropriated trade secret for damages to accrue. It further provides that misappropriation consists only of the improper disclosure or acquisition of a trade secret. However, in the present matter, we have documented use of CNHP's trade secrets due to the disclosure of same by DORA.

D. Rico Munn
Executive Director
Department of Regulatory Agencies
Protest of Award of RFP SJN 0803
Page Thirteen

If this protest is determined adversely to CNHP, then, in order to maintain its corporate viability, CNHP would need to obtain a preliminary injunction to preclude the award of RFP SJN 0803 to PAS. This could be accomplished primarily by using the proposal documentation as outlined above. The standard is:

- (1) A reasonable probability of success on the merits (*established through PAS' use of CNHP's trade secret bid information in its response to RFP SJN 0803 as outlined above*);
 - (2) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief (*The pending dissolution of CNHP as a continuing entity certainly meets this standard!*);
 - (3) that there is no plain, speedy, and adequate remedy at law;
 - (4) that the granting of a preliminary injunction will not disserve the public interest (*that's true, because CNHP can continue to function and protect the public as it always has*);
 - (5) that the balance of equities favors the injunction; and
 - (6) that the injunction will preserve the status quo pending a trial on the merits (*and the status quo is that CNHP is presently handling the program*).
- Rathke v. MacFarlane, 648 P.2d 648 (Colo. 1982); Wakabayashi v. Tooley, 648 P.2d 655 (Colo. 1982); Am. Television & Communications Corp. v. Manning, 651 P.2d 440 (Colo. App. 1982); Iowa Nat. Mut. Ins. Co. v. Cent. Mortg. & Inv., 708 P.2d 480 (Colo. App. 1985); Bloom v. NCAA, 93 P.3d 621 (Colo. App. 2004).

Certainly, it is not in the state's best interests to be the impetus for continued litigation, especially when it was caused by a state agency's disclosure of a vendor's trade secret information to a competitor, and then that competitor was given an opportunity to use that trade secret information, by the same state agency, when the original bid was cancelled and reissued in similar form. What will the Court think, for example, when it sees that PAS' second bid, which was to allow for *more* funds (from new licensees) prompted a *lower* bid from PAS – because PAS had received CNHP's sealed bid information from DORA?

Conversely, it *would* be in the best interests of the state (pursuant to C.R.S. 24-103-301) for DORA to cancel RFP SJN 0803 and reinstate RFP SJN 0801 and the award to CNHP.

D. Rico Munn
Executive Director
Department of Regulatory Agencies
Protest of Award of RFP SJN 0803
Page Fourteen

Conclusion

In conclusion, first an apology – although an extension was requested for the preparation of this protest, and the accompanying support, it was not granted. Consequently, any failure in form, or tone, is due to the short seven-day time frame in which the entire protest had to be prepared and submitted.

That said, the above narrative and supporting documentation clearly supports the cancellation of RFP SJN 0803, and reinstatement of the award of RFP SJN 0801 to CNHP. The drafting and scoring of RFP SJN 0803 was substantially and fundamentally flawed; if appropriately corrected to discredit blatant copying, evaluation omissions, and unmerited bid modifications, then CNHP would have been the successful bidder. However, the taint caused by DORA's disclosure of CNHP's confidential bidding information from RFP SJN 0801 is so profound that the only way to truly evaluate the vendors is on their submissions to the initial RFP. As the statutory criteria in C.R.S. 24-103-301 necessary to cancel RFP SJN 0801 was not met, the best solution would be to cancel RFP SJN 0803 (where the cancellation criteria is met), and reinstate RFP SJN 0801 and its consequent award to CNHP. A host of legal and equitable factors, as outlined above, support the requested relief.

Respectfully submitted,



Leslie J. Ranniger
Counsel for CNHP

encl. – notebooks of exhibits

12-38-131. Nursing peer health assistance or nurse alternative to discipline program - fund - rules.

(1) As a condition of licensure and for the purpose of supporting a nursing peer health assistance program or a nurse alternative to discipline program, every renewal applicant shall pay to the administering entity designated pursuant to paragraph (c) of subsection (3) of this section a fee in an amount set by the board, not to exceed twenty-five dollars per year; except that the board may adjust such amount each January 1 to reflect changes in the United States department of labor's bureau of labor statistics consumer price index, or its successor index, for the Denver-Boulder consolidated metropolitan statistical area for the price of goods paid by urban consumers.

(2) (a) No later than June 30, 2008, the board shall transfer any remaining balance in the impaired professional diversion fund, as such fund existed prior to January 1, 2008, to the administering entity chosen by the board pursuant to paragraph (c) of subsection (3) of this section.

(b) Moneys in the fund shall be used to support a nursing peer health assistance program or nurse alternative to discipline program in providing assistance to licensees needing help in dealing with physical, emotional, psychiatric, psychological, drug abuse, or alcohol abuse problems that may be detrimental to their ability to practice nursing.

(3) (a) The board shall select one or more recognized peer health assistance organizations or nurse alternative to discipline programs as designated providers. For purposes of selecting designated providers, the board shall use a competitive bidding process that encourages participation from interested vendors. To be eligible for designation by the board pursuant to this section, a peer health assistance organization or nurse alternative to discipline program shall:

(I) Offer assistance and education to licensees concerning the recognition, identification, and prevention of physical, emotional, psychiatric, psychological, drug abuse, or alcohol abuse problems and provide for intervention when necessary or under circumstances that may be established in rules promulgated by the board;

(II) Evaluate the extent of physical, emotional, psychiatric, psychological, drug abuse, or alcohol abuse problems and refer the licensee for appropriate treatment;

(III) Monitor the status of a licensee who has been referred for treatment, including assessing continued public protection;

(IV) Provide counseling and support for a licensee and for the family of a licensee referred for treatment;

(V) Receive referrals from the board; and

(VI) Make services available to all licensees statewide.

(b) The board contract with the designated provider or providers selected pursuant to paragraph (a) of this subsection (3) shall include specific deliverables, performance measures, and documentation of results.

(c) The board shall designate an administering entity for a program established pursuant to this section. Such entity shall be a nonprofit private entity that is qualified under 26 U.S.C. sec. 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and shall be dedicated to providing support for charitable, benevolent, educational, or scientific purposes that are related to nursing, nursing education, nursing research and science, and other nursing charitable purposes.

(d) The administering entity shall:

(I) Be responsible for the moneys collected pursuant to subsection (1) of this section;

(II) Distribute the moneys collected, less expenses, to the approved designated provider, as directed by the board;

(III) Provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(IV) Post a surety performance bond in an amount specified by the board to secure performance under this section.

(e) The administering entity may recover from the fee required by subsection (1) of this section the actual administrative costs incurred in performing its duties under this section. Such recovery shall not exceed ten percent of the total amount collected.

(4) Notwithstanding sections 12-38-116.5 and 24-4-104, C.R.S., the board may immediately suspend the license of any licensee who is referred to a peer health assistance program or nurse alternative to discipline program by the board and who fails to attend or to complete the program. If the licensee objects to the suspension, he or she may submit a written request to the board for a formal hearing on the suspension within ten days after receiving notice of the suspension, and the board shall grant the request. In the hearing, the licensee shall bear the burden of proving that his or her license should not be suspended.

(5) The records of a proceeding pertaining to the rehabilitation of a licensee under a program established pursuant to this section shall be confidential and shall not be subject to subpoena unless the licensee has been referred to the board for disciplinary action.

(6) Nothing in this section shall be construed to create any liability of the board, members of the board, or the state of Colorado for the actions of the board in making awards to peer health assistance organizations or nurse alternative to discipline programs or in designating licensees to participate in the programs of such organizations. No civil action may be brought or maintained against the board, its members, or the state for an

injury alleged to have been the result of an act or omission of a licensee participating in or referred to a program provided by a peer health assistance organization or to a nurse alternative to discipline program. However, the state shall remain liable under the provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged to have been the result of an act or omission of a licensee participating in or referred to a peer health assistance diversion program or nurse alternative to discipline program occurred while such licensee was performing duties as an employee of the state.

(7) The board is authorized to promulgate rules necessary to implement this section.

Editor's note: This version of this section is effective January 1, 2008.

Source: L. 89: Entire section added, p. 691, § 1, effective July 1. L. 91: (4)(b) and (6)(a) amended, p. 973, § 1, effective May 6. L. 95: Entire section R&RE, p. 1081, § 9, effective July 1. L. 2002: (1)(b)(II) amended, p. 655, § 1, effective May 28. L. 2003: (2)(a), (2)(b), (2)(c)(I), (2)(c)(IV), and (8)(c) amended, p. 912, § 15, effective August 6. L. 2004: (11) amended, p. 1836, § 79, effective January 1, 2005. L. 2007: Entire section R&RE, p. 729, § 1, effective January 1, 2008.

Editor's note: This section was contained in a 2007 act that was passed without a safety clause. The act establishes an effective date of January 1, 2008, for this provision.

Lawriter Corporation. All rights reserved.

The Casemaker Online database is a compilation exclusively owned by Lawriter Corporation. The database is provided for use under the terms, notices and conditions as expressly stated under the online end user license agreement to which all users assent in order to access the database.

A2

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
Office of the Executive Director

1980 Broadway
Suite 1550
Denver, Colorado 80202
WTDD 711
(303) 894-7833



D. Rico Munn
Executive Director

BW Blair, Jr.
Governor

October 22, 2007

Marjorie Derazier
Executive Director
Colorado Nurse Health Program (CNHP)
44 Union Blvd., Ste. 505
Lakewood, CO 80228

RE: Notice of Intent to Award Contract Pursuant to RFP SJN-0801 – Nursing Peer Health Assistance or Nurse Alternative to Discipline Program

Dear Ms. Derazier:

The evaluation committee has completed the review and recommended award of RFP SJN-0801 to provide a Nursing Peer Health Assistance program. As the Procurement Officer, I have reviewed and concur with the recommendations of the committee.

At this time, you are the apparent successful vendor. You have not yet been awarded a contract. No property interest of any nature should be construed from this notice. No interest will accrue until the contract is signed by all parties and is fully executed.

There is no reason, however, in the interim, why discussion regarding the contract development cannot proceed between you and DORA's Division Staff. Should CNHP be unable to perform any of the requirements per RFP SJN-0801, the State reserves the right to withdraw this intent to award and issue an intent to award to the next qualified vendor that submitted a proposal.

Please note that because this solicitation is exempt from the State of Colorado Procurement Code, there will be no protest period.

DORA Staff look forward to working with you on this new endeavor.

Sincerely,

Tammy Baca
Procurement/Contracts Officer

RECEIVED

OCT 22 2007

COMPETITIVE SEALED PROPOSALS DECISION MEMORANDUM
RFP SJN-0901
Nursing Peer Health Assistance or Alternative to Discipline Program

Colorado Board
of Nursing

It needs to be noted that this solicitation is exempt from procurement code and there will be no protest period after award is made.

The process for award determination is described in section 6.2 of the RFP. "An Evaluation Committee will evaluate the merits of proposals received in accordance with the evaluation factors state in this RFP and identify the proposal that is most advantageous to the state. While numeric evaluations may be used in some aspects of the process to identify strengths and weaknesses of proposals, the final decision will be a business decision and will not be based on a numerical score. A Decision Memorandum will document the basis for award decision."

This memorandum is to serve as a recommendation for award to Colorado Nurse Health Program.

Background

Two (2) proposals were received in response to the RFP:

1. Colorado Nurse Health Program (CNHP)
2. Peer Assistance Services, Inc. (PAS)

The evaluation committee independently reviewed the written proposals. On October 15, 2007, the committee met to discuss the proposal(s) and formulate this award recommendation. It was determined by the committee that the Colorado Nurse Health Program was the most advantageous to the state based upon the evaluation criteria set forth in the RFP.

Rationale for Selection

While both proposals were deemed equal in terms of Management, and budget, the deciding rationale for selection was contained in the responses to the Technical section.

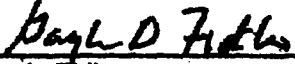
With respect to the technical requirements, the most important factor, the proposal from Peer Assistance Services, Inc. had two areas of concern for the committee. They were sections 4.1.b and 4.1.f.

4.1.b —CNHP has staff that are well credentialed and certified in addition counseling and the experience of those persons is highly in line with the goals of the proposal. PAS has qualified staff with an emphasis on Employee Assistance Programs which is not the goal of the proposal.


4.1.f — CNHP met the standards of reporting and offered solutions to develop weighted guidelines with the Board. PSA agreed to meet the proposal standards, however stated that "regardless of non-compliance, the licensee will continue to be monitored and not terminated from the program." Because of PAS's N.U.R.S.E.S program, this is viewed as an internal conflict of interest and not resolved in the explanation of 4.1.k.

Neither proposal raised any exceptions to contract terms and conditions in the Sample Contract.


Therefore, the proposal from Colorado Nurse Health Program is recommended for award. This memorandum is signed on October 22, 2007.



Gayle Fidler
Program Director, Mental Health Boards



Mark Merrill
Program Director, Board of Nursing



Judith Burke, RN, FNP, MS, CNA
Eastern Colorado Health Care System

The offer from Colorado Nurse Health Program is selected as the most advantageous to the State.



Tammy Baca
Procurement/Contracts Officer

A3

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
Office of the Executive Director

D. Rico Munn
Executive Director

1560 Broadway
Suite 1530
Denver, Colorado 80202
WTDD 711
(303) 894-7655



D. Rico Munn, Jr.
Governor

October 22, 2007

Elizabeth Pace
Chief Executive Officer
Peer Assistance Services, Inc.
2170 South Parker Road, Suite 229
Denver, CO 80231

RE: Notice of Intent to Award Contract Pursuant to RFP SJN-0801 – Nursing Peer Health Assistance or Nurse Alternative to Discipline Program

Dear Ms. Pace,

We want to thank you for the proposal submitted in response to the referenced RFP. We regret to inform you that your proposal was not recommended to receive the award for this contract.

As DORA's Procurement Officer, I have reviewed the work and the recommendation of the RFP evaluation committee, and the intention is to award the contract to the Colorado Nurse Health Program.

Pursuant to Colorado Procurement Rule R-24-101-105-01 (a), this solicitation is exempt from Colorado Procurement Rules. Therefore, there will be no protest period. Nonproprietary records concerning this procurement are available for review and inspection. These records may be reviewed by contacting this office and scheduling an appointment.

Thank you for your proposal. We appreciate your interest in our requirements and hope you will continue to respond to future solicitations.

Sincerely,

A handwritten signature in black ink, appearing to read "Tammy Baca", written over a horizontal line.

Tammy Baca
Procurement/Contracts Officer

A4

Sherman & Howard L.L.C.

ATTORNEYS & COUNSELLORS AT LAW
615 SEVENTH STREET, SUITE 3000
DENVER, COLORADO 80202
TELEPHONE: 303 297-4500
FAC: 303 298-8940
OFFICES IN COLORADO SPRINGS
DENVER • LAS VEGAS • PHOENIX

Frederick Y. Yu
Direct Dial Number: (303) 298-8388
e-mail: FYu@shermanhoward.com

November 20, 2007

BY TELECOPIER/ORIGINAL BY MAIL
303-894-7693

Rosemary McCool
Division Director
Division of Registrations
Colorado Department of Regulatory
Agencies
1560 Broadway, Suite 1350
Denver, CO 80202

Re: Colorado State Board of Nursing
RFP # SJN-0801

Dear Ms. McCool:

We are counsel to Peer Assistance Services, Inc. ("PAS") The purpose of this letter is to call your attention to certain deficiencies and irregularities in the issuance of RFP # SJN-0801 ("RFP"), and to solicit a meeting with you, as the Division Director, to discuss whether a remedy, short of litigation, is available under the circumstances. DORA has determined to award the contract to the Colorado Nurse Health Program ("CNHP"); PAS's proposal was rejected.

The RFP was issued by the DORA Procurement Office, instead of the State Department of Purchasing. The goal of the RFP was to solicit interested proposals to establish a peer assistance programs, pursuant to C.R.S. § 12-38-131, as amended recently by H.B. 1102 (2007).

H.B. 1102 amended the Colorado Nurse Practice Act. C.R.S. § 12-38-131, which had authorized the Board to create a corporate entity for the purposes of administering an Impaired Professional Diversion Program with a Board-appointed committee, was repealed. H.B. 1102 directed the Board to select, using a competitive bidding process, one or more recognized peer health assistance organizations as designated providers of peer assistance services.

Sherman & Howard LLC

Rosemary McCool
November 20, 2007
Page 2

H.B. 1102 also broadened the goals of the nurse peer health assistance program: the prior Impaired Professional Program was to identify licensees with alcohol or drug abuse or psychiatric, psychological or emotional problems, evaluate licensees requesting admittance to the programs, and develop methods to rehabilitate program participants. H.B. 1102 expanded the goals of the peer assistance program to be both broader and more ambitious:

- (1) assistance and education to licensees concerning the recognition, identification and prevention of physical, emotional, psychiatric, psychological, drug abuse or alcohol abuse problems;
- (2) intervention;
- (3) evaluation of problems
- (4) referral of licensees for treatment;
- (5) monitoring licensee status;
- (5) counseling and support for the licensee and the family;
- (6) receive referrals from the Board;
- (7) make services available to all licensees statewide.

The inclusion of prevention and early intervention, in particular, were substantial expansions of service from the prior diversion statute.

H.B. 1102 also directed the Board to use "a competitive bidding process that encourages participation from interested vendors" to select designated providers of peer assistance services.

The phrase "competitive bidding process" indicates that the legislature intended the Board to use the State Procurement Code, C.R.S. § 24-101-101, et seq. . The State Procurement Code applies to "all publicly funded contracts entered into by all governmental bodies of the executive branch of the state . . ." C.R.S. § 24-101-105(1). In this regard, it is noteworthy that PAS, which also has contracts to administer the diversion programs for the Colorado State Board of Dentistry and the Colorado State Board of Pharmacy, was awarded those contracts through a competitive bidding process administered under the Procurement Code.

To the surprise of PAS, RFP #SJN-0801 begins by disavowing the Procurement Code. In the words of the RFP:

Sherman & Howard L.L.C.

Rosemary McCool
November 20, 2007
Page 3

This solicitation is exempt from the State of Colorado Procurement Rules/Code per R-24-101-105(01)(a). On the basis that "no State dollars are expended." [sic]. In summary, this solicitation does not require competition and does not need to be posted on Colorado BIDS or otherwise announced. (emphasis added)

The Board's disavowal of competition in the process of securing contract bids was directly contrary to H.B. 1102 and was certainly not calculated to "encourage participation from interested vendors." C.R.S. § 12-38-131(3)(a), as amended. In addition, it is hard to see how the use of license fee revenues pursuant to legislative direction is not the use of "State dollars." Reliance on this rule is not an adequate legal basis for DORA to depart from the use of the State Procurement Code for this RFP, particularly after the Department has followed the Procurement Code for similar peer assistance contracts and programs for the dental and pharmacy boards.

The process used by the Department to reject PAS and award the contract to the CNHP, the same entity which the Board itself had set up under the prior statute, was riddled with conflict of interest and error:

1. Mr. Mark Merrill participated on the Evaluation Committee which scored and ranked the proposals. Mr. Merrill is the Program Director for the Board of Nursing. As such, he works directly with CNHP. CNHP also listed Mr. Merrill as a reference in its proposal (CNHP Proposal, page 38). To have a professional reference evaluating one of the proposals and working daily with that proponent does not "encourage interested vendors;" it also belies any illusion that a true competitive bid process is under way.

2. CNHP's proposed budget was not submitted as requested by the RFP. CNHP provided two budgets for incorrect fiscal years. The budget proposal for fiscal year 07-08 at \$698,479, exceeded the stated available funds by \$107,784. By contrast, the PAS budget showed total program costs funded by the State Board of Nursing of \$590,695. Thus, on the budget criterion, the PAS proposal was more advantageous.

3. The rationale for the Committee's evaluation decision was also suspect. A copy of the evaluation is attached hereto as Exhibit A. The Evaluation Committee characterized both proposals as "equal in terms of management and budget," but cited two factors which were areas of concern for the Committee. It noted that PAS has qualified staff "with an emphasis on employee assistance programs which is not the goal of the proposal." In fact, the RFP specifically sought assistance and education to recipients concerning the recognition, identification and prevention of physical, emotional, psychiatric, psychological, drug abuse or alcohol abuse problems, and provide intervention when necessary. Section 4.2(a) of the RFP. Since this is exactly what EAPs do, the EAP experience offered by PAS should have been a clear advantage.

Sherman & Howard L.L.C.

Rosemary McCool
November 20, 2007
Page 4

4. The Evaluation Committee asserted that because PAS would continue to monitor nurses regardless of noncompliance and not terminate such persons from the program, this was an "internal conflict of interest." Putting aside the fact that Evaluation Committee could not recognize a true conflict of interest in its own midst, the RFP asked proponents to address a different standard for conflict of interest. Section 4.1(k) of the RFP, "Avoidance of Conflict of Interest," requires that the "[a]warded contractor must ensure that, to the extent practicable, the licensed professionals involved in the evaluation of recipients entering the program shall not also provide treatment of the same recipients. The awarded contractor must also ensure that such professionals hold an unrestricted license from their respective board."

Consistent with the RFP, PAS assured the Board that licensed professionals who are involved in the evaluation of licensees for the new peer assistance program will not also provide treatment to those licensees. PAS's response was clear that program staff would conduct a comprehensive assessment for all licensees seeking services; those licensees would then be referred to other professionals as determined by the case manager.

By contrast, CNHP waffled: "with the exception of customary evaluations in conjunction with f [sic] treatment, CNHP makes every effort to discourage licensees from entering treatment with the same individual who initially evaluated them. This has been challenged throughout the history of CNHP, particularly in rural areas, however those nurses who chose to go to the therapist who evaluated them must provide a written statement regarding the decision to go to the evaluator. Evaluators will sign a conflict of interest statement which discourages/prohibits nurses from pursuing treatment from them." This half-hearted hedge fell well short of the assurance against conflict of interest for which the RFP calls.

PAS believes strongly in the value of continuing to monitor noncompliant licensees as a measure of public safety. PAS would offer nurses who cease to be eligible for services under the Board program an opportunity to continue with PAS services on a fee for service basis, i.e., not funded by the license fee revenue under H.B. 1102. In fact, PAS noted that it provides services to nurses not eligible for the current SBON program, and asked DORA if referral of these nurses to its own program would be permitted. DORA advised that "Referral to the program will be permitted to any eligible licensed nurse who meets the guidelines of the Nursing Peer Health Assistance or Nurse Alternative to Discipline Program (12-38-131)." Not only is the continuation of services to ineligible nurses in the public interest and not a conflict of interest under the RFP, but for the Evaluation Committee to stand the conflict of interest criterion on its head and turn it against PAS in favor of CNHP is perverse indeed.

5. CNHP's proposal identified staff as available to the program; many of these staff are no longer employed by CNHP.

Sherman & Howard LLC

Rosemary McCool
November 20, 2007
Page 5

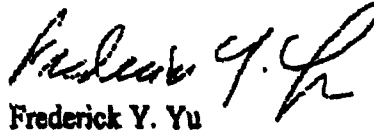
6. CNHP has no proven experience with prevention and intervention. This is because in the current program, neither of these services is called for, and CNHP does not offer them. Certainly, CNHP cannot offer the same level of experience and proven track record of PAS in these areas, which are critical under H.B. 1102.

There are other points of comparison, and PAS would be happy to discuss its proposal and its comparative advantages in greater detail.

In conclusion, the Board of Nursing has ignored key statutory mandates with respect to the scope of services and the use of a truly competitive bidding process; the evaluation process of the proposals has been riddled with conflict of interest and bias, as well as a failure to follow the factors described in the RFP. Finally, the bid which was less advantageous to the State of Colorado and the Board of Nursing was selected.

We would appreciate an opportunity to discuss this state of affairs and how the Division of Registrations might rectify the situation with the least disruption to the Board and to licensed nurses in this state.

Sincerely,



Frederick Y. Yu

FYY:cd

cc: Elizabeth M. Pace, R.N., MSM, CEAP

A5

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
Office of the Executive Director

1380 Broadway
Suite 1530
Denver, Colorado 80202
VTDD 711
(303) 894-7835



D. Rico Munn
Executive Director

Bill Ritter, Jr.
Governor

January 8, 2008

Marjorie Derozier, RN, CACIII, CARN
Executive Director
Colorado Nurse Health Program (CNHP)
44 Union Blvd., Ste. 505
Lakewood, CO 80228

RE: Notice of Intent to Award Contract, dated October 22, 2007 ("Notice of Intent to Award"), pursuant to RFP SJN-0601 – Nursing Peer Health Assistance or Nurse Alternative to Discipline Program ("RFP")

Dear Ms. Derozier:

Please be advised that the above referenced RFP and the subsequent intent to Award Letter which was sent to you has been cancelled. A post review of the RFP by the Department of Regulatory Agencies ("DORA") revealed that the RFP failed to include new applicants for registered nursing and practical nursing licenses. In addition, the final decision of the evaluation committee was based on incomplete information. After consultation with the State Attorney General's office, DORA has decided to modify the RFP and re-post as soon as possible.

The Notice of Intent to Award advised you that the issuance of such Notice by DORA did not create a property right or entitlement. The October 22, 2007 Notice stated: "You have not yet been awarded a contract. No property interest of any nature should be construed from this notice. No interest will accrue until the contract is signed by all parties and is fully executed."

We appreciate the time and effort that CNHP has put toward responding to the above RFP and apologize for any inconvenience caused by its cancellation. We encourage you to resubmit a proposal in response to the modified RFP when it is re-posted. I will let you know when the revised RFP is posted on BIDS.

Regards,

A handwritten signature in black ink, appearing to read "Tammy Baca".

Tammy Baca
Procurement Officer

cc:

Greg Ferland, Deputy Director, DORA
Rosemary McCool, Director, Division of Registrations
Susan Miller, Director, Healthcare Section, Division of Registrations
Mariam Habtemariam, DORA Controller
Linda Shubow, Assistant Attorney General