

A5

# STATE OF COLORADO

**DEPARTMENT OF REGULATORY AGENCIES**  
**Office of the Executive Director**

1500 Broadway  
Suite 1500  
Denver, Colorado 80202  
VTDD 711  
(303) 864-7835



**D. Rico Munn**  
**Executive Director**

**Bill Witt, 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-0801 – 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,

**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**

AG

# STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES  
Office of the Executive Director

D. Rico Munn  
Executive Director

1369 Broadway  
Suite 1300  
Denver, Colorado 80202  
WTDD 711  
(303) 894-7833



Bill Ritter, Jr.  
Governor

January 8, 2008

Mr. Frederick Yu, Esq.  
Sherman & Howard  
633 Seventh Street, Suite 3000  
Denver, Colorado 80202

Re: Request for Proposal # RFP SJN-0801 - Nursing Peer Health Assistance or Nurse Alternative to Discipline Program ("RFP")

Dear Mr. Yu:

This letter is in follow up to your letter of November 20, 2007 and our meeting on December 20, 2007. After careful consideration of this matter, the Department of Regulatory Agencies ("DORA") has decided to cancel the above RFP and withdraw the "Intent to Award" issued to Colorado Nurse Health Program. This decision was based upon the failure of the RFP to include new applicants for registered nursing and practical licensed nursing licenses as a part of the RFP and the determination that the final decision of the evaluation committee was based on incomplete information.

DORA has decided to modify the RFP to include new applicants and re-post it as soon as possible. As discussed at the December 20<sup>th</sup> meeting, since this procurement is exempt from the State Procurement Code, the State Purchasing Office will not handle the solicitation. The DORA Procurement Office will publish and administer the new RFP.

DORA will continue to monitor its processes and procedures to ensure that the RFP process is fair to all vendors who submit proposals. Please note that the underlying protocol of the DORA RFP process is based upon that used by the State Purchasing Office.

We encourage PAS to resubmit a proposal in response to the modified RFP when it is re-posted. I will let PAS know when the revised RFP is posted on BIDS.

Regards,

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

A7

**Baca, Tammy**

---

**From:** McCool, Rose  
**Sent:** Thursday, December 27, 2007 4:15 PM  
**To:** Ferland, Gregory; Baca, Tammy  
**Cc:** Miller, Susan; Habtemariam, Mariam W; McCool, Rose  
**Subject:** Review of Board of Nursing RFP for Peer Program

Greg,

Pursuant to your request, I reviewed the RFP for the Board of Nursing's peer assistance program. In reviewing the RFP, I noticed in the Overview Section 3.1 on page 8 of the RFP, we failed to include new applicants for registered nursing and licensed practical nursing licenses. In FY 07 this totaled 6,300 persons who would have paid \$18.00 into the Peer assistance fund = \$113,400. This group should have been included in the RFP as persons eligible for the program and as a funding source for the program

It is important to note that we expect the number of new applicants to decrease this current FY as a result of Colorado entering the Nurse Compact in the fall of 07. Susan is looking into this to see what we estimated in our fiscal note.

Please let me know if you have any questions regarding this information.

Rose

*Rosemary McCool*  
Division Director  
1560 Broadway, Ste 1350  
Denver, CO 80202  
Phone 303-894-7711  
Fax 303-894-7693  
[www.dora.state.co.us/registrations](http://www.dora.state.co.us/registrations)

A8



January 22, 2008

D. Rico Munn  
Executive Director  
Department of Regulatory Agencies  
1560 Broadway, Suite 1550  
Denver, CO 80202

Sent via mail and e-mail attachment  
[Rico.Munn@dora.state.co.us](mailto:Rico.Munn@dora.state.co.us)

**RE: Inappropriate Withdrawal of Award of RFP SJN-0801 and Compromise of Process**

Dear Mr. Munn:

I am writing to you on behalf of the Colorado Nurse Health Program (CNHP) to enlist your help in remedying a gross impropriety within DORA, and in reinstating a valid RFP award.

You may recall that, last year, representatives of the Colorado Nurse Health Program (CNHP) met with you, shortly after your appointment, and asked that DORA not support pending legislation that would put the diversion program for nurses out to competitive bid. You chose to support that legislation, which did pass and became law on January 1, 2008. CNHP bid on the program, *and won*. A copy of the award letter and Decision Memorandum is attached as Exhibit A. So, you're probably wondering why we're contacting you yet again.

After a three-person evaluation panel picked CNHP's proposal as the winner on October 22, 2007 and issued an award letter to CNHP (and also posted the award on the Colorado BIDS website), the unsuccessful bidder, Peer Assistance Services (PAS), received a notice as well (also on October 22, 2007) (Exhibit B), which provided that there would be no protest period (which would have run for seven days after award pursuant to Section 1.14 Protest, State of Colorado Solicitation Terms and Conditions).

~~CNHP's winning proposal required that its financial proposal be sealed, and could be made public *only if* CNHP was the successful bidder, per the RFP rules. After CNHP won the bid, the unsuccessful bidder, PAS, went into the DORA offices and obtained a copy of CNHP's proposal *and financials*. Then, 28 days after the award was made, PAS sent a letter of protest to its proponent, a person listed as a reference in the PAS proposal – Rosemary McCool, one of your directors. The reference list submitted by PAS in its proposal is attached as Exhibit C, and the PAS Protest Letter is attached as Exhibit D.~~

D. Rico Munn  
Executive Director  
Department of Regulatory Agencies  
January 22, 2008  
Page Three

Consequently, five major reasons that the failure to include new applicant numbers is not a legitimate basis on which to withdraw the award to CNHP include the following:

- a. The new statute, C.R.S. 12-38-131, makes no mention of collecting fees from new applicants.
- b. Cost was the *least* important evaluation factor under the terms of this RFP.
- c. The cost bid was not set up to be based on the dollars available; this undermines the basis of competitive bidding. No total dollar amount available was even articulated in the RFP. If a bidder wanted to guesstimate dollars available, it could do so, but those numbers would obviously fluctuate from year to year, in any event. And, again, the RFP sought a price to provide defined services, and not a just-below-the-ceiling bid. Clearly, that's why no price ceiling was included.
- d. The number of new applicants is uncertain and expected to decline, per Ms. McCool's own e-mail, and new nurses would presumably be balanced in some significant part by nurses leaving the profession.
- e. If anyone was prejudiced by the failure to include general numbers for an additional population to be served, it is the successful bidder, whose bid was based on a lower disclosed number of nurses. However, CNHP is happy to honor its proposal, without raising its price, and will continue to provide its services to new licensees.

#### B. Vague Reference to Incomplete Information

The second articulated basis ("a determination that the final decision of the evaluation committee was based on incomplete information") is a vague pretext to attempt to set aside the award in order to give Ms. McCool's protégé (PAS) an unfair opportunity and advantage in rebidding, now that PAS has been given CNHP's proposal and all of its confidential information. It would be foolhardy to pretend that this "determination" was not based on the letter from PAS' counsel, Frederick Yu, dated November 20, 2007 (almost a month after the award was made, and far in excess of the seven day protest period, had it even been allowed). In fact, the notice that the award would be withdrawn and the RFP re-submitted was sent directly to Mr. Yu (see Exhibit E), and not PAS. Consequently, an analysis of that protest letter (PAS Protest Letter) would be productive to establish that it also does not provide a basis on which to set aside the award.

#### II. The PAS Protest Letter Submitted 28 Days After the Award

The PAS Protest Letter makes a vague threat of litigation if relief is not granted; however, there is a wealth of case law in Colorado which holds that the unsuccessful bidder does

D. Rico Munn  
Executive Director  
Department of Regulatory Agencies  
January 22, 2008  
Page Four

not have standing to bring suit. In Intermountain Systems, Inc. v. Gore Valley/Big Horn Water Districts, 654 P.2d 872 (Colo. App. 1982), the Court of Appeals upheld a trial court's dismissal of the suit of an unsuccessful bidder that asserted it was the lowest bidder and that defendants acted negligently and unlawfully in awarding the contract to a contractor whose bid was higher. Regardless of the merits of these allegations, the Court found that the unsuccessful bidder has no standing to dispute the award of a public contract. See also L. & M Enterprises v. City of Golden, 852 P.2d 1337 (1993); Jackson v. Metro Denver Sewage Disposal Dist. No. 1, 687 P.2d 494 (Colo. App. 1984)(cert. denied Sept. 4, 1984); Colorado Paving Co. v. Murphy, 78 F. 28 (8th Cir.1897) (cited in Intermountain Systems, Inc., supra).

It may seem hard to believe that DORA would have capitulated to this threat. However, remember, Ms. McCool was a listed reference in the PAS proposal, and Ms. McCool was the individual to whom PAS sent their protest. This is the ultimate conflict of interest.

On the other hand, CNHP and its personnel have made commitments and otherwise justifiably relied on the award; there have been myriad meetings with Board of Nursing (BON) personnel, and CNHP is continuing to protect the public by monitoring impaired nurses into the new contract period. CNHP has hired new staff, made lease commitments, changed policies and bylaws as required by the new legislation, and otherwise proceeded in good faith in the months since the award was posted on the Colorado BIDS website. Further, CNHP's bid and confidential financial information has been compromised by DORA personnel – this information has been already been handed over to PAS (since DORA personnel also apparently relied on the award). By putting the RFP out to bid again, Ms. McCool has completely undermined the ability of CNHP to rebid, and given PAS an unfair advantage. CNHP will have no choice but to seek recompense for its damages in light of Ms. McCool's actions. But, again, if you will objectively evaluate this matter, we believe you will uphold the award and put a stop to this mess.

The PAS Protest Letter includes a litany of perceived grievances but, upon analysis, that there is not one assertion that would justify the withdrawal of this award. To establish this fact, each point raised in the PAS Protest Letter will be addressed in turn.

#### A. Competitive Bidding Process

The PAS letter expresses "surprise" that the RFP had prefatory language that, in its words, "disavows" competition. However, although the RFP states that it isn't required to follow the procurement code, it then goes on to do so. The RFP was posted on BIDS. The procurement code was followed, voluntarily.

In fact, this is the *only* diversion program RFP that *has* had competition – the other RFPs for the diversion programs for the dental, pharmacy, and medical programs had only one bidder.

D. Rico Munn  
Executive Director  
Department of Regulatory Agencies  
January 22, 2008  
Page Five

And, for the dental and pharmacy programs, that sole bidder was PAS. For RFPs which PAS won, it had no such concerns, even though they were handled in the same manner.

And, for the subject RFP SJN-0801, PAS also had no such concern – until it lost. PAS submitted many written questions on this RFP while it was pending. These questions are documented in DORA's RFP file. There was a time frame, clearly stated, for all questions. However, no question about "disavowing competition" was timely raised. In truth, it wasn't a concern – until PAS lost. It's too late to raise the issue now, and certainly it's ridiculous to assign such importance to a phrase after the fact.

The reality here is that there was competition. PAS submitted a bid. There's no injury. There's no issue. And, if there was one, it's time-barred.

Also, as an aside, it's interesting that PAS would argue now that there were "state dollars" involved. In order to get the legislation passed, PAS and other bill proponents argued that there was NO fiscal impact. The legislation has no fiscal note, as a result. Apparently, PAS has forgotten that all those legislative hearings were recorded.

The RFP was handled appropriately. It was handled the same as the two diversion program RFPs that PAS won – the dental and the pharmacy programs. PAS didn't timely question this while the RFP was active, because it isn't an issue. PAS was able to compete, and did so, by submitting a proposal. The fact that PAS lost doesn't mean there wasn't competition – it means there WAS competition, for the first time, on a diversion program.

**B. PAS Letter Point #1 – Asserted Conflict of Interest Because Ultimate Customer was on Panel**

First, it is wholly appropriate, and necessary, for the ultimate customer to be represented as one person on the three-person evaluation panel for its own solicitation for services. In fact, the executive director of the board of pharmacy was on the evaluation committee when its diversion program was put out to bid, and ultimately awarded to PAS. PAS had no concerns about that award. And, the executive director of the board of dentistry was also on the evaluation committee when its diversion program was put out to bid, and ultimately awarded to PAS. ~~Again, PAS had no concerns about that award.~~

So, clearly, it IS appropriate for the executive director of the ultimate customer to be on the evaluation committee.

What, then, is PAS arguing as the conflict? Apparently, PAS argues that the conflict is that CNHP listed the executive director of the Board of Nursing as a reference in its proposal.



D. Rico Munn  
Executive Director  
Department of Regulatory Agencies  
January 22, 2008  
Page Six

However, since CNHP felt it had been doing a great job as the previous provider of similar services, it makes sense that it felt this could be considered. Certainly, if CNHP had done an abysmal job, this would be considered whether or not the executive director was listed as a reference.

The only conflict, in fact, is that PAS listed Rosemary McCool, Division Director of the Division of Regulations of DORA, as a reference, then sent this protest letter to Ms. McCool after losing the bid, to request that the award be set aside! The words used in the PAS letter, "could not recognize a true conflict of interest in its own midst," would certainly seem to apply here. This is the only conflict of interest – the personal appeal of the unsuccessful bidder to its proposal reference, Ms. McCool, to use her position at DORA to set the award aside. And to then get the relief sought, without legal basis therefor!

Conflict of interest is not a basis for setting aside this award. It is a basis for setting aside DORA's decision to rebid this contract, however.

#### C. PAS Letter Point #2 – Takes Issue with CNHP's Budget

It's hard to imagine anything more inappropriate than PAS illicitly obtaining CNHP's confidential budget, then complaining about it in its protest.

However, the RFP clearly states that cost was the *least* important factor in the RFP evaluation. CNHP scored more highly than PAS on the criteria that were valued more highly. These criteria were clearly stated in the RFP, including order of importance.

Competition can happen on factors other than cost, and that was the case in this RFP. Again, the case law in this state has myriad examples where an unsuccessful bidder complained because its proposal cost less – and those cases were dismissed for lack of standing. In dicta, it is reiterated that cost is not always the determining factor. Clearly, by the express terms of this RFP, it was not to be the determining factor in this RFP, either.

#### D. PAS Letter Point #3 – EAP Experience

---

Now, the PAS letter digresses to dispute the three-person evaluation panel's assessment on one item – EAP experience. Does this mean that it agrees with the assessment on 27 other items that were evaluated?

It's important to understand that the evaluation was not just one person's decision. Three independent members evaluated the proposals separately, then met to discuss their assessments.

D. Rico Munn  
Executive Director  
Department of Regulatory Agencies  
January 22, 2008  
Page Seven

When there was disparity in assessments, the panel discussed the bases for their individual determinations, before making final assignments.

But, again, the unsuccessful bidder does not have standing to go through the successful bidder's proposal and take issue with individual items. The panel addressed the basis for its decision on this item, and PAS disagrees – no surprise there. That's certainly no reason to set aside the award.

E. PAS Letter Point #4 – CNHP's Conflict of Interest Response to 4.1(k)

The PAS proposal said, too simply, that it would not allow internal conflicts of interest. It did not address the manner in which this practical concern would be addressed in rural communities with limited providers from which to choose. The CNHP proposal went further in discussing this concern.

The entity with the shortest answer doesn't win. In fact, giving short shrift to an important concern begs the question of how seriously that entity considers the problem. The panel clearly looked at the PAS practices, and found that its short answer didn't hold true in light of the way that entity undisputedly operated.

The writer of the PAS letter also doesn't understand the referral process, and articulates a concern that is "perverse indeed," from that uninformed perspective. To try to put it simply, the legislators found public safety to be important. If a nurse is non-compliant, public protection is compromised. If a nurse has relapsed, or is not participating in required testing, or is not going to required therapy – that nurse may be dangerous. It will not help to keep monitoring that nurse's noncompliance. Something needs to happen. What happens is that the nurse is referred for discipline. The new statute even seeks to streamline this process (see C.R.S. 12-38-131(4)). PAS prefers to keep the "ineligible" nurse in its program and advocate for them. CNHP sees the need to protect the public and refer the nurse for discipline. The fact that the panel didn't agree with the PAS philosophy only evidences the fact that PAS doesn't see the conflict "in its own midst," to coin its own phrase.

F. PAS Letter Point #5 – CNHP has New Staff

Yes, in reliance on this contract award in October, CNHP did hire new staff. It justifiably relied on the award and its subsequent discussions with the BON, its client, in order to provide even more than required. The staff identified in CNHP's proposal were employed with CNHP at the time the proposal was made, and core staff has remained the same. And, there was turnover subsequent to the proposal submission, since CNHP would cease to exist if it did not win this

D. Rico Munn  
Executive Director  
Department of Regulatory Agencies  
January 22, 2008  
Page Eight

award. While waiting for the award decision, some staff left CNHP for alternate employment, unwilling to wait to hear of the company's future viability. When CNHP won the award, it hired more staff, some of whom have left long-term employment elsewhere. Those individuals are now wondering what their future will be, due to the baseless withdrawal of this award. That, in fact, is just one component of CNHP's damages should this withdrawal stand, and it may also be a basis for individual actions by CNHP employees.

#### G. PAS Letter Point #6 – CNHP's Experience with Prevention and Intervention

This is the most ludicrous point of all in the protest letter. CNHP has handled this program for a decade. How could PAS possibly have more experience in these areas?

Maybe some vendors do only the line items required in their statute. Maybe this is the way that PAS handles its contracts. However, CNHP has always provided services far in excess of what is specifically required. This is clearly established by its history of external reviews by varied independent, out-of-state reviewers, which have always been glowing. PAS has no such review history; the same in-state person has always evaluated its program.

Education and face-to-face contact are key aspects of CNHP's success in these areas. CNHP has statewide visibility, with staff on the Western Slope as well. CNHP is involved in the nursing schools, prior to licensure, and gives presentations at myriad medical facilities, informing nurses on how to help themselves and their peers. The scope of CNHP's experience in this area is too vast to relate in this missive; suffice it to say that CNHP's success is well documented. PAS has not had the experience, or objective documentation of success – but it doesn't have standing to argue, anyway.

#### H. Overall PAS Protest Letter Summation

In all, a baseless threat of litigation should not have resulted in a withdrawal of a legitimate award. The fact that the protest was entertained at all, when specifically prohibited, is suspect. If a protest had been allowed, it would have had to have been submitted within seven days; instead, this protest was lodged a month after the award. ~~DORA staff relied on the award when giving CNHP's confidential information to the unsuccessful bidder, PAS. Then, PAS inappropriately sent its protest to its own reference, Ms. McCool, for relief, which has been inexplicably granted – so far. 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.~~

D. Rico Munn  
Executive Director  
Department of Regulatory Agencies  
January 22, 2008  
Page Nine

### III. Conclusion

Mr. Munn, we hope you will look to the core of this matter. The failure to include one number in an RFP overview is no reason to overturn an award on which there has been justifiable reliance. The new statute took effect on January 1, 2008, and a provider is needed – and has been legitimately selected – for this program. A vague assertion of “incomplete information” is no reason to put this RFP out to bid again – especially when the successful bidder’s confidential information has already been compromised by your office. Please investigate, and rectify this impropriety.

The legislation passed. The program was put out to bid. Both PAS and CNHP bid on the program. CNHP won. Isn’t this enough?

We look forward to your intervention and objectivity. And, in the interim, CNHP will continue to protect the public while providing quality monitoring of impaired nurses. We’ve been working under the award. We’ve hired staff under the award. We’ve made commitments in order to fulfill our obligations under the award. We’re expecting funding under C.R.S. 12-38-131(2) - our funding terminates on December 31, 2007 under the previous statute, so if this RFP is rebid, then who pays? What would be the effective date of the new contract and, if it is after January 1, 2008, how would this be reconciled under the new legislation? None of the present problems have been created by CNHP, yet CNHP will be shouldering the burden if DORA inappropriately reneges on its obligation. We trust you will see to it that the October 22, 2007 award is honored.

Sincerely,



Leslie J. Ranniger  
Counsel for CNHP

---

encl. – Exhibits A-G

cc: Tammy Baca  
DORA Procurement/Contracts Officer  
[Tammy.Baca@dora.state.co.us](mailto:Tammy.Baca@dora.state.co.us)

**RFP SJN 0803 Protest Exhibit No. A9**

***EXAMPLES OF PAS' USE OF CNHP'S BID TO RFP SJN 0801  
FOR UNFAIR ADVANTAGE IN PAS' BID ON  
SAME PROVISIONS IN RFP SJN 0803***

**OVERVIEW**

Both PAS and CNHP bid on RFP SJN 0801. PAS was given a copy of CNHP's bid by DORA even though, according to DORA, the award on RFP SJN 0801 was never made final. Then, RFP SJN 0801 was rescinded on a pretext, articulated as the failure to include the number of new nurse applicants, which number had no effect on anything substantive in the bid. Subsequently, RFP SJN 0803 was issued, with almost identical, and parallel, requirements as the initial RFP SJN 0801. Consequently, it was straightforward to go through each section in RFP SJN 0801 (First Proposal), compare what was written by PAS and what was written by CNHP, and then to look at the way in which PAS incorporated, wholesale, CNHP's confidential bid information when PAS responded to the same/parallel sections in RFP SJN 0803 (SECOND Proposal).

Following are examples of some of the more blatant copying by PAS, by RFP section (referencing both the RFP SJN 0801 and RFP SJN 0803 section numbers). Emphasis has been added with bold italics.

**EXAMPLES OF UNFAIR ADVANTAGE**

***First lines of PAS' First Proposal.*** The beginning of the PAS' executive summary in its first proposal is related so that the complete change in focus and content is even more obvious after a review of CNHP's language in the same section. Here's PAS' first executive summary paragraph:

***Peer Assistance Services, Inc. is pleased to have the opportunity to submit this proposal for the nursing Peer Health Assistance Program or Nurse Alternative to Discipline Program to provide assistance to registered nurses and licensed practical nurses 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. The passage of House Bill 07-1102 provided for a competitive bidding process for the program, as well as for a broader scope of services. The program proposed includes the alternative to discipline option for licensees and also provides for prevention and intervention services often described as "peer assistance." [Rest of page discusses legislative history over the past 25 years and different philosophical approaches in other states' programs].***

Now, compare this to:



***Certifications of contract professionals***  
***Scope of mental health assessment***  
***Monitoring contract elements***  
***Evaluator site visit documentation***  
***Efficiency recommendations***

And, after reviewing the first CNHP proposal,  
**PAS' SECOND Proposal** now contains:

***Bullet-point break out of:***  
***Assessment process***  
***Assessment components***  
***Assessment screening tools***  
***Monitoring contract elements***  
***Certifications of contract professionals***  
***Protocol for contact***  
***Protocol for relapse***  
***Support services***

**SPRING 1987 PROPOSALS**

**PAS' First Proposal:**

General discussion that professionals have "qualifications necessary to provide comprehensive peer health assistance program services." Generally discuss some qualifications included in this scope, but *no break out of each staff member's credentials for the program being bid upon* (the table of personnel lists personnel on other programs in other functions, and no case managers or program director qualifications are listed for the program being bid upon).  
Bullet point of PAS employees' benefit plan (health care, etc.)  
Bullet point of PAS hiring procedure  
Organization Chart  
*No list of nurse/peer support group facilitators, or credentials, or locations* (the sole reference is the statement "Facilitators for groups in addition to those already in existence will be hired and trained as needed."  
*No inclusion of board of directors in staff description*  
*No listing of contracted services*

**CNHP's First Proposal:**

***Paragraph description of each staff member's credentials***

***Addresses board of directors (Committee) with a list of each director by name, profession, and credentials, and a paragraph on the background of each***

***Listing of nurse/peer support group facilitators including  
Name  
Credentials  
Locations***

**And, after reviewing the first CNHP proposal,  
PAS' SECOND Proposal now contains:**

***Paragraph description of each staff member's credentials (whenever hired)***

***Addresses eighteen member board of directors, including an attachment with a list of  
each director by name, profession, and credentials***

---

***Listing of nurse/peer support group facilitators including  
Name  
Credentials  
Locations***

**PAS' First Proposal:**

**Devotes two pages to Peer Support Groups**

**CNHP's First Proposal:**

**CNHP addressed its Peer Support Groups under Section 4.1.b – Staffing.**

**And, after reviewing the first CNHP proposal,  
PAS' SECOND Proposal now:**

**Deletes the two pages of Peer Support Groups information from this section, and moves it to 4.1.b – Staffing, to parallel CNHP's First Proposal. Instead, PAS states that it will "happily" take over CNHP Peer Support Groups statewide. Again, it's aware of the extent of the CNHP Peer Support Groups from CNHP's First Proposal.**

**PAS' First Proposal**

**In body of proposal, PAS lists 3 ½ pages of treatment providers that PAS may work with throughout the state.**



CNHP's First Proposal

CNHP does not put this information in the body of the proposal, but instead includes a map of the treatment resource network as an appendix/attachment.

And, after reviewing the first CNHP proposal,  
PAS' SECOND Proposal

Moves its treatment provider list to appendix/attachment.

**TESTIMONY**

PAS' First Proposal

PAS entire section response is just this one sentence: "Peer Assistance Services, Inc. agrees to provide testimony by appropriate staff in contested cases as requested by the State Board of Nursing."

CNHP's First Proposal

CNHP's first bid response to this section is much more specific:

***CNHP is prepared to provide fact testimony regarding CNHP referrals should the Board of Nursing require it. Should a former participant contest the referral, the most appropriate person to testify would be the person who provided supervision of the case. In most cases, the executive director or program chairperson would testify. CNHP has a history of providing testimony and support in contested cases when requested by the BON. The fee for testimony would be consistent with the Board's policies.***

And, after reviewing the first CNHP proposal,  
PAS' SECOND Proposal was revised to state:

***PAS agrees to provide factual testimony by appropriate staff supported by client records in contested cases as requested by the State Board of Nursing. PAS has experience with providing testimony for nursing, pharmacy, and dental boards in complex cases of clients who were noncompliant or unable to practice with reasonable skill and safety.***

**TESTIMONY**

PAS' First Proposal

PAS rambles on with two pages of evaluation procedures, and does not address, anywhere, the manner in which payment is made for this service (participant or program).

### CNHP's First Proposal

CNHP responded with three short paragraphs, including a sentence that provided: "Licensees will be required to arrange for payment of the evaluation on their own."

And, after reviewing the first CNHP proposal, PAS' SECOND Proposal was also shortened to three paragraphs!

And, as PAS has CNHP's first bid response on this section, PAS is able to go so far as to refute what it now knows to be CNHP's position on payment! It states: "There is no fee for these services."

And, PAS even preempts the evaluators' criticism made on its first bid response on this section, by stating: "PAS assures the SBON that licensed professionals, who are involved in the evaluation, case management or support services of licensees for the Nursing Peer Health Assistance Program/Nurse Alternative to Discipline Program, will not also provide treatment to those licensees."

### LEGAL REPLICATION

PAS blatantly copied two legal forms from CNHP's First Proposal (both with copyright designation in its appendices) and included them in PAS's Second Proposal (see PAS' Attachment 5 in its second proposal).

These forms were:

Notice of Federal Requirements Regarding Confidentiality of Drug and Alcohol Abuse Records (in Attachment 5)

Consent for Release of Confidential Information (in Attachment 5)

CNHP specifically required, in a separate section entitled "Confidentiality" (as provided for in Section 1.12 of RFP SJN 0801) that all financials be held confidential, except in the event of a contract award to CNHP (and these financials were physically separated from the technical proposal as required). Further, CNHP's proposal expressly required that all appendices with copyright designation (which were also separated from the body of the proposal) be held confidential pursuant to C.R.S. 24-72-203(4)(Open Records Act).

### CONCLUSION

In conclusion, this non-exclusive list is intended to be illustrative of the shameless incorporation of CNHP's proprietary bid information into PAS's second RFP bid, due to the inappropriate compromise of CNHP's trade secret information by DORA. From the very first line of the Executive Summary, through the financials at the end, it's obvious that PAS has copied the CNHP bid. The wholesale handing over of CNHP's bid is, in itself, contrary to law, but the compromise of its sealed financial information and

copyrighted forms also designed as confidential is completely incomprehensible. DORA then afforded PAS the opportunity to utilize this confidential information, by rescinding the initial RFP award and issuing an almost-identical RFP, for which PAS was then able to utilize CNHP's information to significantly improve its submission, create (copy) new forms, and even refute cost items proactively, as is illustrated above. This is the antithesis of competition.







**RFP-S-JN-0603**  
**TOTAL WEIGHTED INDEX for INDIVIDUAL ITEMS**

VENDOR #	MGMT (40%)	MGMT Equal SDs	TECH (40%)	TECH Equal SDs	COST (15%)	COST Equal SDs	CONTRACT (5%)	CONTRACT Equal SDs	TOTAL WEIGHTED INDEX
1	3.25	4.06	226.96	1.14	5.09	1.14	0.00	3.40	232.68
2	3.25	5.47	226.40	2.56	5.09	2.56	0.00	3.40	232.68
Standard Deviation (SD)		1.00	1.00	1.00	1.00	1.00	0.00	0.00	
Weighting Factor	1.00		1.00		0.375		0.125		
* = Maximum UNWEIGHTED Points Possible									
Weighting Factor Determination:									
40/40 = 1.0	MGMT								
40/40 = 1.0	TECH								
15/40 = .375	COST								
05/40 = .125	CONTRACT								

Vendor #1

RFP-SJN-0803  
INDIVIDUAL ITEM SCORE SHEET

Rater	1	2	3	4	5	Mean	SD	Median
a	2.00	4.00	4.00	3.00	4.00	3.40	0.89	4.00
	0.00	3.00	0.00	2.00	3.00	1.80	1.52	2.00
	4.00	3.00	4.00	3.00	3.00	3.40	0.55	3.00
	4.00	4.00	4.00	3.00	4.00	3.80	0.45	4.00
	4.00	2.00	4.00	3.00	3.00	3.20	0.84	3.00
	4.00	4.00	4.00	3.00	2.00	3.40	0.89	4.00
	4.00	4.00	4.00	4.00	2.00	3.60	0.89	4.00
	4.00	4.00	4.00	4.00	2.00	3.60	0.89	4.00
	2.00	3.00	4.00	2.00	3.00	2.80	0.84	3.00
	2.00	4.00	4.00	3.00	4.00	3.40	0.89	4.00
b	3.00	4.00	3.00	3.00	2.00	3.00	0.71	3.00
	4.00	4.00	4.00	2.00	3.00	3.40	0.89	4.00
	2.00	3.00	3.00	2.00	3.00	2.80	0.55	3.00
	2.00	3.00	4.00	3.00	3.00	3.00	0.71	3.00
	2.00	4.00	4.00	4.00	3.00	3.40	0.89	4.00
	4.00	4.00	4.00	3.00	2.00	3.40	0.89	4.00
	0.00	0.00	0.00	0.00	2.00	0.40	0.89	0.00
	4.00	4.00	4.00	4.00	2.00	3.60	0.89	4.00
	2.00	4.00	3.00	3.00	2.00	2.80	0.84	3.00
	4.00	3.00	4.00	3.00	2.00	3.20	0.84	3.00
not in overall score								
contract	3.00	4.00	4.00	3.00	2.00	3.20	0.84	3.00
contract	2.00	4.00	4.00	3.00	2.00	3.00	1.00	3.00
contract	4.00	4.00	4.00	2.00	2.00	3.20	1.10	4.00
contract	3.00	2.00	3.00	2.00	2.00	2.40	0.55	2.00
contract	2.00	0.00	3.00	0.00	2.00	1.40	1.34	2.00
contract	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
contract	0.00	4.00	3.00	3.00	2.00	2.40	1.52	3.00
contract	0.00	2.00	2.00	2.00	0.00	1.20	1.10	2.00
contract	0.00	4.00	3.00	2.00	2.00	2.20	1.48	2.00
contract	4.00	4.00	4.00	3.00	2.00	3.40	0.89	4.00
contract	3.00	4.00	4.00	3.00	2.00	3.20	0.84	3.00
<b>OVERALL</b>	<b>Rater 1</b>	<b>Rater 2</b>	<b>Rater 3</b>	<b>Rater 4</b>	<b>Rater 5</b>	<b>Sum of Mean Scores</b>	<b>Median Standard Deviation</b>	<b>Sum of Median Scores</b>



RFP-SJN-0803  
INDIVIDUAL ITEM SCORESHEET

Rater	1	2	3	4	5	Mean	SD	Median
a b c d e f g h i j k l m n o	4.00	4.00	3.00	4.00	3.00	3.60	0.55	4.00
	0.00	0.00	0.00	0.00	2.00	0.40	0.89	0.00
	4.00	2.00	3.00	3.00	2.00	2.80	0.84	3.00
	4.00	3.00	3.00	4.00	2.00	3.20	0.84	3.00
	4.00	4.00	4.00	4.00	2.00	3.80	0.89	4.00
	4.00	4.00	4.00	3.00	3.00	3.60	0.55	4.00
	4.00	4.00	4.00	4.00	2.00	3.60	0.89	4.00
	4.00	4.00	4.00	3.00	2.00	3.40	0.89	4.00
	4.00	4.00	3.00	4.00	2.00	3.40	0.89	4.00
	3.00	4.00	4.00	4.00	3.00	3.60	0.55	4.00
	4.00	4.00	3.00	3.00	2.00	3.20	0.84	3.00
	4.00	4.00	4.00	3.00	2.00	3.40	0.89	4.00
	4.00	3.00	4.00	3.00	2.00	3.00	0.71	3.00
	4.00	4.00	4.00	4.00	2.00	3.60	0.89	4.00
	0.00	0.00	0.00	0.00	2.00	0.40	0.89	0.00
4.00	4.00	4.00	3.00	2.00	3.40	0.89	4.00	
3.00	4.00	3.00	3.00	2.00	3.00	0.71	3.00	
4.00	3.00	4.00	3.00	2.00	3.20	0.84	3.00	
4.00	3.00	4.00	4.00	2.00	3.40	0.89	4.00	
* not in overall score								
Total (n=15)								
Mean: 3.40, SD: 0.89, Median: 4.00								
a b c d e	4.00	4.00	4.00	4.00	3.00	3.60	0.45	4.00
	4.00	4.00	4.00	3.00	2.00	3.40	0.89	4.00
	4.00	4.00	4.00	3.00	2.00	3.40	0.89	4.00
	4.00	4.00	4.00	4.00	2.00	3.60	0.89	4.00
	4.00	4.00	4.00	4.00	2.00	3.60	0.89	4.00
Total (n=5)								
Mean: 3.60, SD: 0.89, Median: 4.00								
a b c d	3.00	3.00	3.00	3.00	2.00	2.80	0.45	3.00
	4.00	4.00	4.00	3.00	2.00	3.40	0.89	4.00
	4.00	4.00	4.00	4.00	2.00	3.60	0.89	4.00
	3.00	4.00	3.00	3.00	3.00	3.20	0.45	3.00
Total (n=4)								
Mean: 3.20, SD: 0.89, Median: 3.00								
contract								
4.00 4.00 4.00 3.00 2.00 3.40 0.89 4.00								
OVERALL								
Rater 1 Rater 2 Rater 3 Rater 4 Rater 5						Sum of Mean Scores	Median Standard Deviation	Sum of Median Scores

All

### 5.3 Response Format

#### 5.3.1 Executive Summary

Condense and highlight the contents of the proposal. The summary should provide the reader with an overall understanding of the proposal and offeror's approach.

#### 5.3.2 Technical Component

Describe how you will meet the requirements set forth in Section 4.1.

#### 5.3.3 Management and Experience Component

- A. Describe how you will meet the requirements set forth in Section 4.2. a-e**
- 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.**

#### 5.3.4 Cost Component/Funding Model

- A. The Offeror shall provide an operational budget for each year of the work proposed in response to the Statement of Work, Section 4. The budget must include an estimate of the number of licensees who will be utilizing each of the services of the program and must also include a breakdown of the various services that will be provided by the program and an estimated cost per participant for each of those services. Such services would include but not be limited to, evaluation of licensees, monitoring of licensees in the program, and preparation of monitoring reports. The Offeror should provide as much detail as possible as to the services that will be provided, how the estimates of the number of licensees accessing those services and the cost of the services were derived.**
- B. The Offeror shall also provide information as to whether the Offeror will use supplemental or matching funds to offset any of the costs to provide any of the services set forth in the Statement of Work, Section 4. If so, the proposal must breakdown the supplemental and/or matching funds that will be used and the funds that would be required from the fees collected by the State. If supplemental and/or matching funds are identified, the Offeror must indicate whether the availability of such funds are guaranteed and the source of such funds.**

## **4.2. Management and Administrative Reporting Requirements**

- a. At the request of the State, a review may be made of the performance provided under the terms of the contract six months from the first day of the contract period for any new Contractor and annually each subsequent twelve-month period during the contract term for any contractor, as deemed necessary by the State. This performance review will be conducted at the State's direction in consultation with the Contractor, and at the Contractor's expense.
  - An unsatisfactory review may result in cancellation of the contract
  - The reviewer may determine total service quality, responsiveness, timeliness of required reporting, and any other specifics as required under the terms of this contract. Review results, along with recommendations for change, will be distributed to the Contractor.
  - Should the Contractor desire, a meeting will be arranged between all concerned parties within ten (10) calendar days of the date the Contractor received, or could reasonably have been expected to receive, the review comments. This meeting will provide the Contractor with an opportunity to appeal the review recommendation to the Executive Director of the Department of Regulatory Agencies.
  
- b. The State retains the right to examine the financial records of the Contractor to determine the use of funds provided pursuant to this contract. The Contractor agrees to undergo a financial audit by a CPA firm of the State's choice, if requested by the State. Such audit will be at the Contractor's expense.
  
- c. The Contractor shall provide financial statements, including balance sheet and income statement, to the State on a quarterly basis to account for the monies received pursuant to the contract. The Contractor agrees to permit an authorized agent of the State to inspect any other financial records relating to the performance of the contract at a reasonable time and place after notice to the Contractor. It is understood that the Contractor may provide peer assistance programs for persons who are not licensed nurses in Colorado and, if so, the Contractor shall obtain funding for those persons from other sources. The Contractor shall also provide any other financial data requested by the State or its authorized agent.
  
- d. Contractor must provide quarterly reports to the Board that contains the following service demographics:
  - Current number of participants in the program
  - Number of participants under case management
  - Number of monitoring contracts
  - Number of peer support group session participants
  - Number of assessments completed
  - Number of assessments pending
  - Number of participants terminated without successfully completing the program
  - Number of participants who successfully completed program
  - Number of referrals back to the Board of Nursing for non-compliance
  - Total census
  - Education and Outreach
  - Other contract activity details