

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
Office of the Executive Director

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Bill Ritter, Jr.
Governor

May 23, 2008

Ms. Leslie J. Ranniger
Colorado Nurse Health Program (CNHP)
44 Union Boulevard, Suite 505
Lakewood, CO 80228

RE: *Letter of Protest Concerning the Award of RFP SJN-0803*

Dear Ms. Ranniger:

I am in receipt of your official protest, received on May 14, 2008. My staff and I have thoroughly reviewed the issues you raise in the aforementioned protest to the award made for RFP SJN-0803 ("RFP"). You have raised several areas of protest. After a review of the materials in the RFP file and discussions with appropriate personnel, I believe this letter addresses the concerns raised in your letter. Since CNHP participated in the process for RFP SJN-0803, issues raised regarding RFP SJN-0801 are irrelevant. In the interest of fully responding to your concerns, however, your issues related to RFP SJN-0801 are addressed as necessary.

Concerns Raised in the Letter of Protest and DORA's Response to Each

1. Protest: CNHP alleges that DORA breached the confidentiality of CNHP's proposal in response to RFP SJN-0801.

Response: In the protest, CNHP suggests that it met "[a]ll other requirements to secure confidentiality," as set forth in Section 1.12 of the RFP. (Protest, p. 3). However, CNHP failed to follow the specific instructions to submit confidential/proprietary information with its proposals.

Section 1.12 of the RFP outlined the requirements for requesting the confidentiality of elements of proposals. Section 1.12 states:

Proprietary/Confidential Information

Any restrictions of the use or inspection of material contained within the proposal shall be clearly stated in the proposal itself. Written requests for confidentiality shall be submitted by the Offeror with the proposal. The Offeror must state specifically what elements of the proposal are to be considered confidential/proprietary and must state the statutory basis for the request under the Public (open) Records Act. (Section 24-72-201 et seq., C.R.S.). Confidential/Proprietary information must be readily identified, marked and separated/packaged from the rest of the proposal. Co-mingling of confidential/proprietary and other information is not acceptable. Neither a proposal, in its entirety, nor proposal price information will be considered confidential and proprietary. Any information that will be included in any resulting contract cannot be considered confidential (emphasis added).

The Purchasing Office will make a written determination as to the apparent validity of any written request for confidentiality. In the event the Purchasing Office does not concur with the offeror's request for confidentiality, the written determination will be sent to the offeror. Ref. Section 24-72-201 et. seq., C.R.S., as amended, Public (open) Records Act.

CNHP did not submit a written request for confidentiality specifically stating what elements of the proposal it wanted considered confidential/proprietary. Because there was no request for confidentiality, no written determination was made. The items in CNHP's proposal with "copyright designation" (see Protest, p. 3) are co-mingled in the proposal document, not identified or marked as confidential. Also, Section 1.12 clearly states that "proposal price information" will not be considered confidential. While CNHP put its price proposal in a separate envelope as required by Section 5.1 of the RFP¹ it did not label it as "confidential." Information which CNHP refers to as "financial" is actually its price proposal. CNHP did not include "financials," which normally refers to financial statements.

All allegations that DORA allowed Peer Assistance Services, Inc. ("PAS") to view confidential/proprietary information are not valid. CNHP did not follow the appropriate requirements to have any information determined as confidential/proprietary under Section 1.12 of the RFP. Therefore, no information was determined to be confidential/proprietary. Further, if CNHP had followed the requirements to request that information in its proposal be considered confidentiality/proprietary, such request would not have met the conditions for confidentiality described in Section 1.12, as the material would have been included in any resulting contract and proposal price information cannot be considered confidential.

2. Protest: "The scoring of 95% of RFP SJN 0803 was fundamentally flawed, as will be addressed, by section, below." (Protest, p. 5).

Response: The scoring of the RFP was sound and impartial. DORA's specific response to CNHP's protest to each section follows.

Technical Component (40%)

Protest: PAS copied CNHP's bid proposal on RFP SJN-0801 for PAS's proposal on RFP SJN-0803.

Response: The RFP Evaluation Committee (also referenced as "Committee") judged each proposal submitted in response to the RFP on its own merit and separate from each other. The Committee members had no knowledge or pre-conceived opinion on any potential offeror.

Management Component (40%)

Protest: Three of the four sections in the Management section of the RFP (*i.e.*, Section 5.1.1, B through D) were omitted from the rating forms and were not scored.

Response: This is an inaccurate assertion. The RFP evaluation process provided for two scoring tools, one to rate the individual elements set forth in Sections 4.1 and 4.2, and then the overall score of the requirements in Section 5 of the RFP (Technical,

¹ Section 5.1 states: "Offeror must segregate the portion of the proposal responding to the pricing and funding proposal so the technical proposal can be evaluated without consideration of the price or funding model."

Management, Cost and Contract Acceptance). The items that CNHP assumes were not scored are actually included in the evaluators' overall score of the section. Verbal instructions on scoring were given to the Committee members at the initial meeting. A review of the Committee members' evaluation materials (*i.e.*, the offerors' proposals) confirms that the Committee considered these three sections.

Cost Component (15%)

Protest: "The entire cost bid was [by PAS] 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 [*sic*] own first bid and, most significantly, LOWER than even CNHP's first bid - to ensure that PAS could win on this item." (Protest, p. 8).

Response: The cost component of each proposal was judged on a non-qualitative assessment based upon the Board of Nursing budget for the program of \$662,175. CNHP proposed a budget of \$694,300; PAS proposed a budget of \$609,975. DORA's response to CNHP's claim that it disclosed confidential information from RFP SJN-0801 is set forth above.

3. Protest: "RFP SJN 0803 sought the scoring of less substantive information than RFP SJN 0801." (Protest, p. 8).

Response: RFP SJN-0803 did not seek the scoring of less substantive information than that of the prior RFP. The RFP sought information pertaining to all of the key technical and management elements necessary for the effective and efficient operation of nursing peer health assistance or nurse alternative to discipline programs. Each bidder responded to these key elements and each proposal was independently evaluated on those elements by an evaluation team using the same scoring criteria for all offerors. The scoring criteria addressed both the individual technical and management elements set forth in the RFP, along with an overall score for each of the four evaluation factors set forth in the RFP.

4. Protest: "RFP SJN 0803 modified the previous RFP SJN 0801 in order to give favorable accommodations to PAS." (Protest, p. 9).

Response: The RFP Evaluation Committee judged each of the proposals submitted in response to the RFP on its own merit, separate from each other, and without reference to RFP SJN-0801 or any proposals thereto. As stated previously, the RFP requested information pertaining to technical and management elements necessary for the effective and efficient operation of nursing peer health assistance or nurse alternative to discipline programs.

Protest: The RFP did not address one of the purported bases for its issuance, to include new nurse applicants.

Response: Applicants for Practical Nurse and Registered Nurse licenses have historically paid a fee to support a nursing peer health assistance or alternative to discipline program. No change to this practice was made because of the RFP process to select a vendor to provide these services for the Board of Nursing. Such a fee is authorized by the statute, which provides that payment of a fee to support a nursing peer health assistance program or a nurse alternative to discipline program is a condition of licensure. Act of May 7, 2007, ch. 198, § 1, 2007 Colo. Sess. Laws 729 (to be codified at § 12-38-131(1), C.R.S.). Therefore, identifying the approximately 5800 new nurses that are licensed in Colorado

every year and are eligible to receive services from the program was important and relevant information to the RFP process. It is also noteworthy that the applicants for the other three professions who have a similar statutorily-created program have also historically paid a fee required to support their peer health assistance programs.

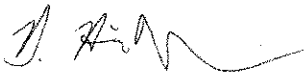
5. Protest: "Non-Submission of Blind Copies Pursuant to RFP SJN 0803, Section 5.1." (Protest, p. 10).

Response: The PAS proposal met the standards required for submitting blind copies, which was the deletion of the offeror's name, names and titles of products or programs specific to the offeror, and names of personnel. CNHP however, failed to delete its name on copies of its operational budget (per Section 5.3.4 of the RFP), which CNHP submitted in an envelope labeled "Colorado Nurse Health Program, RFP-SJN-0803, Appendix 5.5.4 [sic], (6 Blind Copies)." In order to bring CNHP's submission into compliance with the RFP requirements, the Purchasing Officer used correction tape to mask just CNHP's name on one of the copies of its operational budget prior to distributing copies to the Committee.

Finally, I appreciate that your protest letter closed with an apology regarding your tone. I believe that such an apology was appropriate given CNHP's allegations that DORA acted in an inappropriate and unprofessional manner. Research was conducted on materials in the RFP file and detailed discussions were held with appropriate personnel who were involved in the evaluation of proposals for the RFP. Based on the review, it is apparent that the proposals submitted in regard to the RFP were evaluated in an ethical, fair, and unbiased manner, that the evaluation was conducted in accordance with the process outlined in the RFP, and that the RFP was awarded to the proposal that was the most advantageous to the State of Colorado, price and other factors taken into consideration.

For the reasons stated above, I decline your request to cancel RFP SJN-0803 or to award the RFP to CNHP. I appreciate the effort that CNHP has put into providing services to the citizens of the State of Colorado and wish you success in future endeavors.

Sincerely,



D.Rico Munn
Executive Director