May 5, 2022

VIA EMAIL

Mr. Edward Armstrong
Director, Office of State Procurement
Arkansas Department of Transformation and Shared Services
501 Woodlane Street, Suite 201
Little Rock, Arkansas 72201
Edward.Armstrong@Arkansas.gov

Re: Response to Protest of Award in Solicitation No. S161: Pharmacy Benefit Manager

Dear Mr. Armstrong:

Arkansas Procurement Law has several underlying purposes, including increased public confidence in the procedures followed in the public procurement, the fair and equitable treatment of all persons who deal with the procurement system of this state, increased economy in state procurement activities by fostering effective competition, and providing safeguards for the maintenance of a procurement system of quality and integrity. Whenever the Employee Benefit Division ("EBD") – or any state agency – procures commodities or services through an RFP, Arkansas Procurement Law requires that the contract be awarded to a "responsible" offeror whose proposal is determined in writing to be the most advantageous to the state.[1]

A. **Background of Solicitation Number S161 : Pharmacy Benefit Manager**

In Solicitation Number S161, EBD posted a Request for Proposal ("RFP") to notify the public of an opportunity to offer the State with the services of a Pharmacy Benefit Manager. The RFP was intended to present interested vendors with the same opportunity to have their proposals considered against the same evaluation factors set forth in the RFP. In the initial RFP, the Office of State Procurement ("OSP") determined that Navitus Health Solutions, LLC ("Navitus") submitted a pricing proposal that did not conform to the RFP's requirements and it should not have been evaluated against the other pricing proposals as if it did. OSP further determined that the "Anticipation to Award" had been issued to Navitus in violation of Arkansas Procurement Law. To cure that error, EBD conducted a process known as a Best and Final Offer ("BAFO") to ensure a clear and uniform pricing standard was extended to all offerors reasonably susceptible of being awarded the contract.

The Request for a Best and Final Offer

The Request for a Best and Final Officer (the "Request") was issued on March 31, 2023, and included an updated Cost Workbook with three tables:

- Table A required offerors to delineate its "All-inclusive PMPM Administration Fee."

- Table B.1, entitled "Claims Pricing: Existing Formulary," required offerors to calculate (1) claims processed via the existing formulary with rebates included and (2) claims processed via the prospective formulary with rebates included. Table B.2, entitled "Claims Pricing: Proposed Formulary," required offerors to calculate (1) claims processed via the existing formulary without rebates included and (2) claims processed via the prospective formulary without rebates included.

- Table C, entitled "Rebate Pricing," asked the offerors to provide a calculation of total rebates paid on a list of 25 drugs pre-selected by EBD.

The use of the tables reduced interpretations and avoided subjectivity that comes with an explanatory description.

After review of the results from the Request, EBD identified that language in 1.8.B. of the Request included a typographical error in the ranking information. Therefore, EBD exercised its judgment and issued an amended Request for Best and Final Offer (the "Amended Request") on April 11, 2023.

The Amended Request for a Best and Final Offer

The Amended Request issued on April 11 made one change to the evaluation specifications provided in the initial Request and provided prospective vendors with a clear and uniform pricing standard:

> Original language: "The maximum amount of cost points will be given to the proposal with the lowest subtotal for Table A, the lowest subtotal for Table B.1, the lowest subtotal for Table B.2, and the ***lowest*** subtotal for Table C." (Emphasis added.)
>
> Corrected language: "The maximum amount of cost points will be given to the proposal with the lowest subtotal for Table A, the lowest subtotal for Table B.1, the lowest subtotal for Table B.2, and the ***highest*** subtotal for Table C." (Emphasis added.)

As with the RFP and the Request, the offerors had the opportunity to ask questions related to the Amended Request.

The Protest

Arkansas Procurement Law contains a protest process by which offerors may inform the State Procurement Director of instances where the: (i) award of the contract exceeded the authority of the director or the procurement agency at issue; (ii) procurement process violated a constitutional, statutory, or regulatory provision; (iii) director or the procurement agency failed to follow the rules of the procurement as stated in the solicitation, and that failure materially affected the contract award; (iv) procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition; or (v) the anticipated contract award resulted from a technical or mathematical error made during the evaluation process.[2]

B. **EBD properly adhered to Arkansas Procurement Law, which resulted in the proper anticipated award to Navitus. MedImpact's protest should be dismissed.**

MedImpact Healthcare Systems, Inc. ("MedImpact") submitted a protest, which starts with the unsupported legal conclusion that: (A) the procurement process violated a constitutional, statutory, or regulatory provision; (B) the procurement agency failed to adhere to the rules of the procurement as stated in the solicitation, and the failure to adhere to the rules of the procurement materially affected the contact award; and (C) the award of the contract resulted from a technical or mathematical error made during the evaluation process.[3]

1. **The procurement process did not violate a constitutional, statutory, or regulatory provision.**

MedImpact's first argument is vague and conclusory. It fails to specifically cite any constitutional provision, statute, or administrative rule that the procurement process violated. It is not enough for MedImpact to broadly declare that, simply because it disagrees with the policy behind EBD's process, EBD somehow violated constitutional or statutory law. That is simply not the case, and EBD's determination in what criteria to weigh as more important does not render such a determination illegal merely because MedImpact does not benefit from it.

2. **The procurement agency did not fail to adhere to the rules of the procurement as stated in the solicitation.**

Responsive proposals from responsible offerors were evaluated based on the evaluation factors set forth in the RFP and Amended Request. After considering the price, the evaluation factors, and the results of any discussions with responsible offerors, an award was made to the responsible offeror whose proposal was determined in writing to be the most advantageous to the State. In the Amended Request at issue here, all offerors were presented with exactly the same opportunity to provide precisely the same responsive pricing information to be tallied and considered. They weighed in differently, but they stood on the same scale.

3. **The award of the contract did not result from a technical or mathematical error made during the evaluation process.**

MedImpact contends that the utilization and scoring of Tables B and C were not consistent with EBD's task to determine which offeror is "most advantageous to the state, taking into consideration price, the evaluation factors in the request for proposals, any best and final offers submitted, and the results of any discussions conducted with responsible offerors" as required by Ark. Code Ann. § 19-11-230(g)(1). This is another broad legal conclusion unsupported by any fact. MedImpact's declaration that EBD's determinations were not the "most advantageous to the state" are more legal conclusion couched as fact. Significantly, most of the arguments advanced by MedImpact seek to confuse, complicate, and obscure the issue with respect to the Tables.

All offerors were mandated to include claims and rebate pricing on Tables B and C. Table B was a worksheet that, after entry of identified cost elements, calculated claims processed via the existing formula with and without rebates and claims processed via the prospective formulary with and without rebates.

MedImpact begins its argument with the subjective statement that "[a]dding the two numbers (with rebates and without rebates) does not provide an actual number that the State can use to evaluate which bidders are providing the best value to the State."[4] MedImpact walks the reader of its Protest through EBD's drafting process, having the benefit of the use of the Freedom of Information Act, and describes how EBD eventually selected to calculate the difference in the values of without rebates and with rebates in order to get a measure of the "true" rebate amount.

MedImpact argues that "Table B was designed to reward estimated lowest net costs, not lowest rebates."[5] That was, however, not the intent of Table B. MedImpact is welcome to prioritize its own interests, establish its own mechinisms and procedures, and arrive at decisions contrary to EBD's decisions; however, MedImpact's pecuniary gain or internal objectives are not objectives of the State, nor is the State mandated to operate according to MedImpact's internal mechanisms, procedures, and objectives. For the benefit of the State, EBD is tasked with fairly and in good faith selecting a responsible offeror to achieve its given objectives and priorities in service of the best interests of state employees.

MedImpact argues that it would have used National Drug Codes instead of naming 25 drugs for Table C. The use of the drug names was logical and appropriate because it allows PBMs to use any of their rebated NDCs for a given drug (instead of limiting response to a particular product size that is specified by an NDC number). Limiting the rebated product opportunity by using narrow NDC numbers instead of broader drug name would not be in state's best interest to maximize rebate revenue.

C. **Execution of the PBM contract with Navitus without delay is necessary to protect substantial interests of the state.**

Ark. Code Ann. § 19-11-244(f) states, "In the event of a timely protest... the state shall not execute a contract that is the result of the protested solicitation or award unless the director or the head of the relevant procurement agency makes a written determination that the execution of the contract without delay is necessary to protect substantial interests of the state. It is the considered opinion of EBD that the Anticipation to Award the PBM contract to Navitus should stand without further delay to protect the substantial interests of the state since delay would (1) negatively impact the members of the state's ASE and PSE health insurance plan (the "Plan"), (2) disrupt EBD's contractual relationships with vendors dependent on the PBM's contractual obligations to EBD and (3) significantly hinder EBD's ability to meet the required state procurement deadlines.

1. **Further delay in the execution of the PBM contract would negatively impact EBD's ability to successfully implement the PBM contract affecting 143,022 members insured by the Plan.**

RFP section 1.7.E defines the implementation period as the "period of time beginning on the starting date of the contract, anticipated to be February 20, 2023, during which the Contractor shall perform all the start-up and implementation activities required to achieve full implementation by the Go-Live Date". Due to the first protest of this RFP on March 2, 2023, EBD has already lost months of anticipated implementation time. The current PBM contract will expires on July 30, 2023, requiring that the new PBM contract to have a Go-Live Date of July 1, 2023. Implementation of a PBM is a complex undertaking requiring the development of data systems and IT programing to properly service our members. To avoid a disruption to the pharmacy drug coverage of the members of the Plan EBD and Navitus must work immediately to facilitate these processes.

2. **EBD's contractual relationships with its other vendors which provide services for the Plan are dependent on the current PBM vendor's contractual obligations to EBD.**

The Board of Trustees for the University of Arkansas acting for and on behalf of the University of Arkansas for Medical Sciences, College of Pharmacy's Evidence-Based Prescription Drug Program ("EBRx'') is EBD's clinical consultant. EBRx is responsible for supporting the benefit design, managing and overseeing EBD's Delivery Coordination Workgroup, providing on-site pharmacy operations support, providing a prior authorization call center, managing physicians' appeals, providing pharmacy benefit programming and coordination. Many of the above-mentioned services relate to the PBM vendor contract. EBRx's contract will expire June 30, 2023. Further delay of implementation of the PBM contract would disrupt EBD's ability to properly negotiate the new contract with EBRx. Not only does the EBRx contract effect the Plan's members, but it also effects the jobs of several staff at EBD and EBRx who are left without information as to how the new EBD contract will change their duties and whether they will even be retained as employees. The only way to provide answers to questions regarding the EBRx contract is to have the PBM contract executed and implemented without further delay.

The HMO Partners Inc. d/b/a Health Advantage is EBD's third-party Administrator of the State's ASE and PSE health insurance plans. Health Advantage is obligated to provide medical and claims management services for the Plan. There are specific file shares that go directly between EBD's PBM and Health advantage. This data is vital to the successful operations of both the Third-party Administrator (Health advantage) and the PBM vendor. Without ample enough time to have the necessary discussions and negotiations of contracts between EBD's PBM and third-party administrator, it is quite likely that implementation of the PBM contract will not meet its July 1, 2023 deadline thereby effecting the ability of the members of the Plan to receive their pharmacy drugs as required.

Mainstream Technologies, LLC (Mainstream) is another essential EBD vendor. Mainstream provides software development, , and application support services for the custom-built benefits administration system (ARBenefits) portal. Mainstream provides the technology that handles all eligibility processing, transmits 834 files to several vendors, and supports all accounting functions for EBD. Implementation of the new PBM contract requires highly technical modifications and coding to the ARBenefits system. Further delay of the execution of the PBM contract would impair EBD's ability to successfully implement these programs and conduct the day-to-day functions required for the new PBM's operations.

3. **Further delay in the execution of the PBM contract would hinder EBD's ability to meet the required state procurement approval deadlines.**

EBD is required to have the new PMB contract approved by its Arkansas State Employees and Public-School Employees Advisory Committees ("Advisory Committees"), the Arkansas Legislative Council ("ALC") and the State Board of Finance. Each of these review entities only meet on certain predetermined schedules. In order for the PBM contract to meet its required Go-Live Date, it must have all the required contract documents executed and sent to these review entities in a timely matter to allow for approval. The Advisory Committees meet on the second Tuesday of each month. ALC will meet to approve contracts on May 9, 2023. The State Board of Finance has its next meeting for contract approvals on May 10, 2023. It is in the State's interest that these review entities are given ample enough time to complete reviews for approval of contracts like the PBM contract far ahead of commencement of the effective date. As it is now

May 5, 2023, further delay of the PBM contract could result in EBD failing to meet its obligations for meeting these approval deadlines required by the state.

Because further delay of the execution of the PBM contract would (1) negatively impact the members of the state's ASE and PSE health insurance plan (the "Plan"), (2) disrupt EBD's contractual relationships with vendors dependent on the PBM's contractual obligations to EBD and (3) significantly hinder EBD's ability to meet the required state procurement deadlines, EBD respectfully requests that the Office of State Procurement find that the execution of the Navitus and EBD PBM contract without delay is necessary to protect substantial interests of the state.

D. Conclusion

A neutral examination of the facts shows that EBD's Amended Request and its structure, process, scoring, and award were conducted carefully, professionally, and in good faith, in a fair and reasonable manner, and in the best interest of the State consistent with EBD's fiduciary responsibilities. EBD carefully considered the critical facts and arrived at decisions regarding the structure, process, scoring, and award that were logically connected with those objectives. The anticipated award to Navitus should be upheld and MedImpact's protest be denied in full.

Thank you for your time and consideration of this matter. If you have any questions, please do not hesitate to call.

Sincerely,

Dakini Fields
Staff Attorney

Cc: Michael Shannon (mshannon@qgtlaw.com)
Gary L. Hattendorf (gary.hattendorf@navitus.com)
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May 8, 2023

***VIA* EMAIL & HAND-DELIVERY**

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Edward.armstrong@arkansas.gov

Re: Protest of Award in Solicitation No. S000000161: Pharmacy Benefit Manager

Dear Mr. Armstrong:

On behalf of MedImpact Healthcare Systems, Inc. ("MedImpact") please accept this short response to the letters received from Mr. Page and Ms. Fields on Friday. MedImpact understands that the State of Arkansas is looking to resolve this RFP as quickly as possible, utilizing accurate and consistent supporting documentation in the best interest of the State and its members.

Neither EBD nor Navitus addressed in their responses the primary argument that the scoring was incorrect because it pulled in unintended data for analysis (e.g. rebates instead of lowest net costs) and subsequently awarded the most points to the bidders offering the lowest rebate savings to the State.

- The scoring sheet methodology was not updated to reflect the changes made to the workbook;
    - Subtotals were added to the workbook by EBD to reflect rebate values;
- Table B was intended to evaluate Lowest Net Costs;
- Rebate values were inadvertently pulled into Table B instead of Lowest Net Costs;
- Lowest Net Cost scoring erroneously awarded the highest point totals to the lowest rebate values, which is nonsensical; and
- **Lowest Net Costs in Table B of the EBD BAFO were not evaluated.**

MedImpact disagrees with the argument that the PBM contract must be signed with Navitus now to protect the substantial interests of the state. As the current PBM for the State, MedImpact is uniquely positioned, if needed, to seamlessly serve the State prescription benefit needs beyond July 1, 2023, while the State works to ensure the accuracy of its RFP analyses.

The purpose of the RFP procedure is to determine which offeror is "most advantageous to the state, taking into consideration price, the evaluation factors in the request for proposals, any best and final offers submitted, and the results of any discussions conducted with responsible offerors." Ark. Code Ann. § 19-11-230(g)(1). As scored, the BAFO process did not present a valid determination of which offeror was "most advantageous to the state."

Regardless of which PBM is ultimately chosen to serve the State of Arkansas, we submit it is imperative to analyze the correct financials to protect the interests of the State and the EBD Plan members.

Thank you for your time and attention to this matter. If you have any questions, please do not hesitate to call.

Respectfully,

QUATTLEBAUM, GROOMS & TULL PLLC

Michael N. Shannon

and

MEDIMPACT HEALTHCARE SYSTEMS, INC.

Lisa A. Varrato
Chief Client Experience Officer, CCEO

cc: Tanya Freeman (tanya.freeman@arkansas.gov)
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April 28, 2023

<u>VIA EMAIL & HAND-DELIVERY</u>

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Edward.armstrong@arkansas.gov

Re: Protest of Award in Solicitation No. S000000161: Pharmacy Benefit Manager

Dear Mr. Armstrong:

We represent MedImpact Healthcare Systems, Inc. ("MedImpact"). On behalf of MedImpact and pursuant to the provisions of Ark. Code Ann. § 19-11-244(a)(2) and Office of State Procurement Rule R1:19-11-244, we are submitting this protest of the anticipated award to Navitus Health Solutions, LLC ("Navitus") of the contract for a Pharmacy Benefit Manager for the TSS Employee Benefits Division ("EBD"). (RFP Number S000000161) (the "RFP"). Pursuant Ark. Code Ann. § 19-11-244(f), MedImpact respectfully requests no contract be awarded until its protest has been finally resolved.

In the Director's determination of MedImpact's March 2, 2023, protest of the first Anticipation to Award in this solicitation, it was noted that the solicitation could be revised to comply with the law by "**a BAFO request with a <u>clear and uniform</u> pricing standard** that is extended to all offerors reasonably susceptible of being awarded a contract." Exhibit 1 at 5 (3/24/2023 Protest Determination)(emphasis added). Unfortunately, there were issues with the BAFO Request and the scoring of the responses that indicate a clear and uniform pricing standard was not achieved. Also, fundamental errors existed regarding the scoring of the submissions. Wild variations in the numbers presented by the vendors occurred indicating significant unreliability of the final results. The variations were well outside the 10% threshold set in the BAFO.

This protest is made on one or all of the following grounds pursuant to Ark. Code Ann. § 19-11-244:

- The procurement process violated a constitutional, statutory, or regulatory provision;
- The procurement agency failed to adhere to the rules of the procurement as stated in the solicitation, and the failure to adhere to the rules of the procurement materially affected the contract award; and
- The award of the contract resulted from a technical or mathematical error made during the evaluation process.

Ark. Code Ann. § 19-11-244((a)(4)(ii), (iii) and (v).

I. Claims Pricing – Tables B.1 and B.2.

Table B of the Cost Workbook was designed to measure costs to the State of Arkansas. Table C was designed to capture rebate amounts on a list of 25 drugs. However, when the figures were ultimately scored, EBD/OSP awarded the maximum points in Table B to the bidders with the lowest rebates reported instead of the lowest costs to the State.

A. The BAFO Scoresheet ultimately rewarded the lowest <u>rebate</u> figures, not <u>cost</u> figures.

i. History of Table B of the BAFO Cost Workbook

Based upon documents received in response to a FOIA request, it appears the Cost Workbook was initially designed to capture only the figures entered for costs by the bidders in Table B without the need for any formulas. The draft Cost Workbook attached to Ms. Amanda Land's March 30, 2023, email was written without any formulas for Table B.

BAFO Cost Workbook
S000000161 Pharmacy Benefits Manager

TABLE A - Administration	Per Member Per Month (PMPM)	X 140,000 members	X 12 months	X 36 months
All-inclusive PMPM Administration Fee				

TABLE B - Claims Pricing	Claims repricing cost			
Claims Processed via existing formulary - with rebates included				
Claims Processed via prospective formulary - with rebates included				
Claims Processed via existing formulary - without rebates included				
Claims Processed via prospective formulary - without rebates included				

TABLE C - Rebate Pricing		Total Rebate
	X 1 quarter	X 12 quarters
25 drugs pre-selected by EBD		
		$0.00

Exhibit 2 (3/30/23 Amanda Land Email and attachment). Also on March 30th, Ms. Freeman asked Ms. Land whether Table B needed any formulas. Exhibit 3 (3/30/23 Freeman Email and attachment). Ms. Land responded at 9:24 am that it did not. *Id.* Ms. Oktawia DeYoung also confirmed at 9:25 am that Table B did not need any formulas.

From: Oktawia DeYoung
Date: March 30, 2023 9:25:34 AM (-05)
To: Dakini Fields
Subject: **RE: S161 BAFO draft**

Attachments:

Hey Dakini,

Since table B is a repricing table and they all received the same data, no formulas needed there! The tables A and C are the ones needing formulas.

From: Dakini Fields <Dakini.Fields@arkansas.gov>
Sent: Thursday, March 30, 2023 9:20 AM
To: Oktawia DeYoung <Oktawia.DeYoung@arkansas.gov>
Subject: Fw: S161 BAFO draft

see tanya's question below

Ex. 4 (DeYoung email).

On the evening of March 30th, Ms. Freeman sent out an email with a draft of the Cost Workbook that had additional separate subtotals for Table B.1 (existing formulary with and without rebates) and Table B.2 (prospective formulary with and without rebates). The formulas in those subtotal cells were =SUM(C9, C12) and =SUM(C10, C13). This would provide separate subtotals for Table B.1 and Table B.2.

C14 =SUM(C9,C12)

	B	C
8	TABLE B.1 and TABLE B.2 - Claims Pricing (105 total cost points possible for existing formulary and 183.75 cost points possible for prospective formulary)	Claims repricing cost
9	B.1 Claims Processed via existing formulary - with rebates included	
10	B.2 Claims Processed via prospective formulary - with rebates included	
11		
12	B.1 Claims Processed via existing formulary - without rebates included	
13	B.2 Claims Processed via prospective formulary - without rebates included	
14	Subtotal Table B.1	$ -
15	Subtotal Table B.2	$ -

C15 =SUM(C10,C13)

	B	C
8	TABLE B.1 and TABLE B.2 - Claims Pricing (105 total cost points possible for existing formulary and 183.75 cost points possible for prospective formulary)	Claims repricing cost
9	B.1 Claims Processed via existing formulary - with rebates included	
10	B.2 Claims Processed via prospective formulary - with rebates included	
11		
12	B.1 Claims Processed via existing formulary - without rebates included	
13	B.2 Claims Processed via prospective formulary - without rebates included	
14	Subtotal Table B.1	$ -
15	Subtotal Table B.2	$ -

Exhibit 5 (Freeman 3/30/23 7:56 pm email)(yellow highlighting added). The formulas used would cause the **addition** of cells C9 and C12 together and the **addition** of cells C10 and C13 together. That email also had a draft BAFO Request which provided that the maximum number of points would be given to "the lowest subtotal for Table B.1 [and] the lowest subtotal for B.2[.]" *Id.* at 1.8.B. This language was ultimately included in the BAFO sent to the bidders. Ex. 6.

Adding the two numbers (with rebates and without rebates) does not provide an actual number that the State can use to evaluate which bidders are providing the best value to the State. The "without rebate" numbers necessarily include the "with rebate" numbers. The result of adding the two numbers together includes the "with rebate" numbers two times. In essence, the formula is this: (cost with rebates) + (cost with rebates + rebates). The true lowest cost to the State is captured in the "cost with rebates" fields, C9 and C10.

At 9:37 am the next day, March 31st, Ms. Brandi Schroeder sent out the latest version of the workbook entitled "S000000161 BAFO Cost Workbook Final.xlsx" to the stakeholders within OSP and EBD. Ex. 7 (Schroeder email). That Cost Workbook retained the formulas noted from Ms. Freeman's email the evening before and § 1.8.B of the draft BAFO still awarded the maximum points to the lowest subtotal for B.1 and B.2. *Id.*

Then, at 9:54 am on the 31st, Mr. Wallace from EBD emailed out a revised Cost Workbook with the following message:

From: Grant Wallace (EBD)
Date: March 31, 2023 9:54:55 AM (-05)
To: Shannon Halijan;Dakini Fields;Amanda Land;Brandi Schroeder (OSP);Edward Armstrong;Tanya Freeman (OSP);Anthony Black
Cc: Paris Nielsen
Subject: **RE: S161 BAFO drafts**

Attachments: S000000161 BAFO Cost Workbook Final-GW Edit.xlsx;

My edits are attached. I made edits on the instruction tab in red to make sure we are consistent with BAFO, the calculation tab and instruction tab. Also, I updated the formula on the BAFO tab in section B to calculate the difference in the values of without rebates and with rebates, so we are getting a measure of the "true" rebate amount. I am not sure if that will impact the scoring formula, so someone will need to double check.

If everyone signs off on my edits, then I think we are good to release everything.

-Grant

Grant J. Wallace | Director, Employee Benefits Division
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Ex. 8 (Wallace 3/31 email). As shown, Mr. Wallace says that he "updated the formula" in section B to "calculate the difference" in values. *Id.* In Mr. Wallace's revision of the Cost Workbook, the subtotals for Tables B.1 and B.2 were changed to **subtract** the "with rebates" included from the "without rebates." Mr. Wallace's changes to the formulas in Tables B.1 and B.2 are shown below:

C14 | fx =SUM(C12-C9)

	A	B	C
7			
8		TABLE B.1 and TABLE B.2 - Claims Pricing (105 total cost points possible for existing formulary and 183.75 cost points possible for prospective formulary)	Claims repricing cost
9		B.1 Claims Processed via existing formulary - with rebates included	
10		B.2 Claims Processed via prospective formulary - with rebates included	
11			
12		B.1 Claims Processed via existing formulary - without rebates included	
13		B.2 Claims Processed via prospective formulary - without rebates included	
14		Subtotal Table B.1	$ -
15		Subtotal Table B.2	$ -

C15 | fx =SUM(C13-C10)

	A	B	C
7			
8		TABLE B.1 and TABLE B.2 - Claims Pricing (105 total cost points possible for existing formulary and 183.75 cost points possible for prospective formulary)	Claims repricing cost
9		B.1 Claims Processed via existing formulary - with rebates included	
10		B.2 Claims Processed via prospective formulary - with rebates included	
11			
12		B.1 Claims Processed via existing formulary - without rebates included	
13		B.2 Claims Processed via prospective formulary - without rebates included	
14		Subtotal Table B.1	$ -
15		Subtotal Table B.2	$ -

Ex. 8 (3/31 Wallace Email)(yellow highlighting added). The formulas used result in the **subtraction** of cells C9 from C12 and the **subtraction** of cells C10 from C13 whereas they had previously resulted in the **addition** of those cells together.

Neither adding nor subtracting the "with rebate" and "without rebate" costs result in a figure that accurately reflects the lowest net cost to the State of Arkansas. Subtracting them gives a "rebate" amount, but Table B was designed to reward estimated lowest net costs, not lowest rebates.

At 11:07 am, a little more than an hour after Mr. Wallace's email, Ms. Schroeder formally sent out the BAFO to the potential offerors. That email included Mr. Wallace's version of the BAFO Cost Workbook with the formulas designed to subtract the different figures in Tables B.1 and B.2. Ex. 9 (Schroder email). However, the BAFO document retained the language in 1.8.B. awarding the maximum points to the lowest subtotals for Tables B.1 and B.2. *Id.*

On the morning of April 11, 2023, Ms. Freeman sent Amendment 1 to the BAFO to three of the original five offerors. Ex. 10 (email and attachments). In that Amendment, section 1.8.B. was revised as it concerned the points for Table C by changing the phrase "lowest subtotal for Table C" to "highest subtotal for Table C."

CHANGE OF SPECIFICATIONS

A. Delete:
1.8.B.
The maximum amount of cost points will be given to the proposal with the lowest subtotal for Table A, the lowest subtotal for Table B.1, the lowest subtotal for Table B.2, and the lowest subtotal for Table C.

Replace with:
1.8.B.
The maximum amount of cost points will be given to the proposal with the lowest subtotal for Table A, the lowest subtotal for Table B.1, the lowest subtotal for Table B.2, and the highest subtotal for Table C.

Id. No changes were made to the scoring for Tables B.1 or B.2. Both continued to provide the maximum points to the lowest subtotals. *Id.*

ii. The BAFO Scoresheet incorrectly rewarded the lowest <u>rebate</u> totals rather than the lowest estimated net <u>costs</u>.

On April 14th after the deadline to submit responses to the Amended BAFO passed, the scores were recalculated. Consistent with the BAFO, the scoresheet was designed to award the most points to the <u>lowest</u> subtotals for Tables B.1 and B.2. Ex. 11. However, the formulas for Tables B.1 and B.2 had been changed an hour or so before the original BAFO request was sent on March 31st so that they produced the difference in the pertinent numbers instead of the total of those numbers. Ultimately, the scoring awarded the most points to the offerors submitting the lowest rebates.

MedImpact submits that capturing (and rewarding) the lowest discounted drug cost less rebates reflects the desired intent of the State of Arkansas . Neither adding cost figures with rebates to cost figures without rebates nor subtracting cost figures without rebates from cost figures with rebates yields a number that can be used to find the best benefit to the State and its citizens. Higher rebates do not necessarily reflect the lowest net cost to the State because drug costs can be higher as well. As originally noted by Ms. Land and Ms. DeYoung, Table B did not need any formulas and the scoresheet should have measured the lowest discounted drug costs less rebates from the vendors as reflected in fields C9 and C10.

iii. Revised Scoring Using Lowest Total Cost

The following represents revised scoring for Table B using the estimated lowest net costs s (discounted drug costs less rebates) submitted by MedImpact, Navitus and Magellan:

Table B.1: Claims Pricing: Existing Formulary

Prospective Contractor	Lowest Total Cost	Second (third, fourth, etc.) Lowest Total Cost	Maximum Points for Lowest Total Cost	Number Cost Points Scored
Magellan	$122,045,438		105	105
Navitus		$131,289,949		97.60
MedImpact		$138,212,676		92.72

Table B.2: Claims Pricing: Proposed Formulary

Prospective Contractor	Lowest Total Cost	Second (third, fourth, etc.) Lowest Total Cost	Maximum Points for Lowest Total Cost	Number Cost Points Scored
Medimpact	$104,748,671		183.75	183.75
Magellan		$122,045,438		157.70
Navitus		$126,187,447		152.53

Ex. 12 (Revised Score Sheet).

MedImpact feels certain the State did not intend to award the most points in this category to the entities providing the lowest rebates. Rather, it intended to reward the vendors submitting the lowest costs to the State. The updated score sheet above does just that. In any event, the scoring done by EBD/OSP rewarding the most points to the lowest rebates does not make sense. It does not adhere to the BAFO solicitation and results in an award based on a technical or mathematical error during evaluation.

II. Rebate Pricing – Table C.

The rebate pricing in Table C produced a massive deviation in responses from the three scored offerors. Indeed, the guaranteed rebates reported ranged from $254,729,280 down to $6,327,948.

Table C: Rebate Pricing

Prospective Contractor	Lowest Total Cost	Second (third, fourth, etc.) Lowest Total Cost	Maximum Points for Lowest Total Cost	Number Cost Points Scored
Magellan	$ 254,729,280.00		157.5	157.5
Navitus		$ 164,281,344.00		102
Medimpact		$ 6,327,948.00		4

Ex. 11 (April 14th scoresheet). Magellan's figure was over 4000% higher than MedImpact's figure. The average of the three figures supplied was $141,779,524. Section 1.6.C. of the BAFO noted that bidders submitting a BAFO response with a proposed cost "that **falls ten percent (10%) or more from the average submitted cost may be asked to discuss and further validate their submitted cost**."[1] Ex. 6 (emphasis added). Magellan's figure was 179.67% above the average and MedImpact's was 95.54% below the average. Both were significantly more than just 10% from the average submitted cost. Despite these very large differences, it does not appear that EBD or OSP made any inquiries regarding the methodologies used.

The discrepancies in these numbers can mean only one thing: the offerors did not present figures based upon the same calculations. According to the instructions page of the Cost Worksheet, "[s]ubmitted rates must be guaranteed." Ex. 9. In accordance therewith, MedImpact provided pricing based upon the guaranteed value per claim. Such a number is verifiable. If the other offerors were providing rebate totals based on what the drugs actually earn, their numbers would be based off the rebate contracts between the offerors and the pharmaceutical manufacturers. Such numbers are not verifiable as part of the RFP or BAFO process.

Because only drug names for the 25 drugs were provided instead of National Drug Codes (NDCs), Table C introduced wide variability. This left the results of claim pulls open to subjectivity and different claim totals. MedImpact's initial pull from the database yielded 550 claims. Ex. 13 (MedImpact BAFO Response). For comparison, Elixir provided a rebate total based on approximately 18,417 claims. Ex. 14 (Elixir BAFO Response). These deviations in claim amounts were available to EBD/OSP when the scoring was done.

[1] EBD wanted the ability to make further inquiry if a vendor submitted pricing more than 10% lower than the average pricing submitted. Ex. 15 (March 28, 2023, email from Armstrong to Freeman/Black).

MedImpact has repulled the claims detail for the last quarter of data provided by EBD and opened its search to include all NDCs rather than just drug names. This increased the total claims considered from 550 to 15,500. As a result, the quarterly rebate total for MedImpact moved from $557K to $11,782,575 or $141,390,895 for three years.

Even MedImpact's revised pull has a difference of around 3,000 claims when compared to total claims considered by Elixir. Although Magellan did not provide claim counts supporting its rebate financials provided in Table C, it is likely the volume of claims considered was higher than 15,500. Further, Navitus did not disclose the number of claims used in its analysis.

Per Section 1.6.C., the rebate totals provided by the vendors fell ten percent (10%) or more from the average submitted pricing (i.e. $141,779,524). Therefore, the expectation would have been for EBD/OSP to inquire about the assumptions utilized and then attempt to validate the totals. There were no discussions.

Using MedImpact's numbers revised to reflect a methodology similar to that used by Elixir, Magellan and others, revised scoring for Table C is as follows:

Table C: Rebate Pricing

Prospective Contractor	Highest Total Rebates	Second (third, fourth, etc.) Highest Total Rebates	Maximum Points for Highest Total Rebates	Number Cost Points Scored
Magellan	$ 254,729,280.00		157.5	157.5
Navitus		$ 164,281,344.00		102
Medimpact		$ 141,390,895.00		87

Ex. 12.

It is impossible for MedImpact or even EBD/OSP to know how Magellan and Navitus calculated the figures submitted for Table C. Specifically, the number of "claims" and the number of "NDC Codes" used were left to the subjective and individual determination of the vendors. This created the distinct probability that the vendors based rebate pricing for Table C on different claim totals. In fact, the wide discrepancies in the rebate figures provided by the vendors in Table C is based in large part on the fact that different claim totals were considered.

Other issues with Table C exist as well. First, the twenty-five (25) listed drugs will not all be on each offeror's formulary. This required the offeror to assume the drug listed would be switched to its formulary. Depending upon the patient, this may or may not be reasonable.

Also, not all vendors used the same exclusions. Based on information provided by Magellan in its BAFO response, Magellan had significantly more exclusions outlined than MedImpact. Magellan's rebate yield is comparable to MedImpact's, but Magellan's guarantees are much greater because they are applied to fewer prescriptions. If Magellan and

MedImpact had used the exact same number of prescriptions/claims and applied their rebates the same way, Magellan would have a rebate value of ~30% greater than MedImpact even though the projected rebate yield for both companies would be about the same.

In order to ensure that the offerors are using numbers that can be reliably compared, MedImpact suggests that EBD/OSP specify for the 25 drugs the number of claims per channel (e.g., 30, 90, Mail and Specialty) to be considered and/or NDC Codes to be used by each bidder. EBD/OSP should also specify whether rebate guarantees or 100% passthrough rates should be used. Finally, EBD/OSP should give direction on how the bidders are to handle drug exclusions. These clarifications would promote an accurate and consistent comparison among all bidders.

III. APPROPRIATE SCORING

If the issues in Table B are fixed as discussed above and MedImpact is allowed to present estimated rebates in Table C based at least in part on the same methodology as others apparently used (e.g. inclusion of all NDCs for each named drug), the final overall scoring would award the contract to MedImpact.

Final Cost Evaluation Summary Score Sheet BAFO

Solicitation #: S000000161
Description: Pharmacy Benefits Manager
Department TSS-Employee Benefits Division

Table A: Administration

Prospective Contractor	Lowest Total Cost	Second (third, fourth, etc.) Lowest Total Cost	Maximum Points for Lowest Total Cost	Number Cost Points Scored
Magellan	$ 9,324,000.00		78.75	78.75
Medimpact		$ 9,525,600.00		77.08
Navitus		$ 11,541,600.00		63.62

Table B.1: Claims Pricing: Existing Formulary

Prospective Contractor	Lowest Total Cost	Second (third, fourth, etc.) Lowest Total Cost	Maximum Points for Lowest Total Cost	Number Cost Points Scored
Magellan	$122,045,438		105	105
Navitus		$131,289,949		97.60
MedImpact		$138,212,676		92.72

Table B.2: Claims Pricing: Proposed Formulary

Prospective Contractor	Lowest Total Cost	Second (third, fourth, etc.) Lowest Total Cost	Maximum Points for Lowest Total Cost	Number Cost Points Scored
Medimpact	$104,748,671		183.75	183.75
Magellan		$122,045,438		157.70
Navitus		$126,187,447		152.53

Table C: Rebate Pricing

Prospective Contractor	Highest Total Rebates	Second (third, fourth, etc.) Highest Total Rebates	Maximum Points for Highest Total Rebates	Number Cost Points Scored
Magellan	$ 254,729,280.00		157.5	157.5
Navitus		$ 164,281,344.00		102
Medimpact		$ 141,390,895.00		87

Prospective Contractor	Total Cost Score	Total Technical Score	Total Score
Magellan	498.95	213.20	712.15
Medimpact	440.92	350.20	791.12
Navitus	415.31	324.40	739.71

Ex. 12. This demonstrates that the failure to adhere to the rules of the procurement and the errors made materially affected the contract award. MedImpact submits that its technical score and cost scores, if considered correctly, demonstrate it to be the most advantageous bidder for the State.

IV. CONCLUSION

In sum, MedImpact requests that its protest of the anticipated award to Navitus be upheld. As for a remedy, MedImpact suggests there are several possibilities:

1. Reissue the entire RFP to clear the slate and start from the beginning.
2. Reissue the BAFO with the clarifications discussed above regarding Tables B and C.

3. Recalculate and rescore the most recent BAFO submissions on-hand from the parties and award the contract to the true winner based on an apples-to-apples comparison.
   a. Revise the scoring in Table B to reflect what the State intended to capture, lowest net cost.
   b. Make inquiries to Magellan, Navitus and MedImpact pursuant to Section 1.6.C. of the BAFO and revise the scoring in Table C to reflect an apples-to-apples comparison of the same number of claims/NDC Codes, the same methodology regarding rebate guarantees or 100% passthrough, and the same methodology regarding exclusions.

As it stands, the BAFO process did not present a clear and uniform pricing standard and did not produce results that reliably provide the lowest actual costs to the State of Arkansas. Without correcting the issues discussed above, MedImpact submits that EBD/OSP cannot make a real determination of which offeror is "most advantageous to the state, taking into consideration price, the evaluation factors in the request for proposals, any best and final offers submitted, and the results of any discussions conducted with responsible offerors" as required by Ark. Code Ann. § 19-11-230(g)(1).

Thank you for your time and attention to this matter. If you have any questions, please do not hesitate to call.

Respectfully,

QUATTLEBAUM, GROOMS & TULL PLLC

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AND

MEDIMPACT HEALTHCARE SYSTEMS, INC.

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MNS/lad
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