

State Protest Committee Meeting No. 20
Summary of Decision and Minutes
Protest of RFP # 31865-00627
Medicaid Management Information System (MMIS) Core Modular Solution

The Department of Finance and Administration (“F&A”), Division of TennCare (“TennCare”), issued RFP # 31865-00627 for Medicaid Management Information System (MMIS) Core Modular Solution on July 20, 2022. The State completed the evaluations and, on January 27, 2023, provided its Notice of Intent to Award the contract, as it pertains to the Encounter Processing (“EP”) Module,¹ to Deloitte Consulting, LLP (“Deloitte”). On February 3, 2023, Client Network Services, LLC (“CNSI”) and Gainwell Technologies LLP (“Gainwell”) filed protests of that determination with Chief Procurement Officer Michael Perry (“CPO”).²

On April 4, 2023, the CPO issued his written decision denying the protests by CNSI and Gainwell. Gainwell filed a Notice of Appeal of the CPO’s decision to the State Protest Committee (“Committee”) on April 11, 2023.³ Position Statements were submitted by Gainwell, the CPO, TennCare, and Deloitte.

The Committee convened on May 31, 2023, to hear Gainwell’s appeal. The Committee was comprised of the following members: Jenny Howard, General Counsel for the Department of Environment and Conservation, as designee of F&A Commissioner Jim Bryson; Rick Dubray, Deputy Treasurer, Support Services with the Department of Treasury, as designee of State Treasurer David Lillard, Jr.; and Michael Winston, Director of Financial Management with the Department of General Services (“DGS”), as designee of DGS Commissioner Christi Branscom.

The protesting party Gainwell, the CPO, TennCare, and Deloitte appeared for the meeting.

The issues for determination by the Committee were:

The contract award to Deloitte was arbitrary and capricious and exceeded the authority of the CPO; and was contrary to applicable law, regulations, and terms of the RFP for the following reasons:

1. An unmitigable conflict of interest existed due to Deloitte's employment of the TennCare chief information officer's daughter during the procurement process.
2. Deloitte improperly revised its technical proposal after the proposal-submission deadline by substituting a key personnel following the resignation from Deloitte of the originally-named individual.
3. Deloitte should have been disqualified from consideration as a responsive and responsible respondent for its failure to provide required information regarding its history of terminations and liquidated damages.
4. Deloitte should have been determined to be unresponsive because it failed to demonstrate that it possessed the mandatory required minimum experience for the EP Module.

¹ The MMIS Core Modular Solution consists of three modules – the EP module, the Member Enrollment (“ME”) module, and the Financial Management (“FM”) module.

² No protest was filed regarding the award of the contract as it pertains to the ME or FM modules.

³ CNSI did not file a Notice of Appeal of the CPO’s decision to the Committee.

5. CNSI's proposal contradicted mandatory technical requirements rendering it ineligible for award.
6. Gainwell has demonstrated competitive prejudice based on multiple errors in this procurement.

After discussion and argument by counsel for Gainwell, the CPO, TennCare, and Deloitte, the Committee unanimously upheld the decision of the CPO denying Gainwell's appeal based on the written position statements from the parties and oral presentations by counsel for Gainwell, the CPO, TennCare, and Deloitte, as follows:

1. The Committee found no merit in the assertion that an unmitigable conflict of interest existed due to Deloitte's employment of the TennCare chief information officer's daughter during the procurement process. The Committee reasoned that no conflict of interest could have existed during the procurement process until such time as the chief information officer had knowledge of his daughter's employment with Deloitte. The Committee further noted that, once he had such knowledge, he immediately disclosed the potential conflict of interest to TennCare, TennCare promptly requested the CPO to review it, and the CPO determined that the facts did not arise to a conflict of interest under relevant CPO policy or Tennessee statute. The Committee also found no evidence of a quid pro quo between the procurement and the daughter's employment with Deloitte. Thus, the evidence did not support this assertion.
2. The Committee found no merit to the argument that Deloitte improperly revised its technical proposal after the proposal-submission deadline by substituting a key personnel following the resignation from Deloitte of the originally-named individual. The Committee determined that the language from the pro forma contract contemplated personnel changes and laid out a process for TennCare to review and approve personnel changes, which Deloitte followed when it notified TennCare of the unavailability of one of its key personnel listed in its technical response and made that named individual's substitute available to TennCare for evaluation during Deloitte's oral presentation. The Committee further noted the impracticality and detriment to the State in automatically cancelling a procurement when an individual listed as a key personnel resigns. Thus, the evidence did not support this argument.
3. The Committee found no merit to the allegation that Deloitte should have been disqualified from consideration as a responsive and responsible respondent for its failure to provide required information regarding its history of terminations and liquidated damages. The Committee recognized that Deloitte's response to the questions seeking this information was not evaluated under the RFP on a pass/fail basis, but as part of an overall scoring of their response on multiple separate items. The Committee opined that Deloitte fully answered the questions based upon the information available to it, and that the RFP evaluators had wide discretion to give Deloitte a low score if they disapproved of Deloitte's responses. Thus, the evidence did not support this allegation.
4. The Committee found no merit in the assertion that Deloitte should have been determined to be unresponsive because it failed to demonstrate that it possessed the mandatory required minimum experience for the EP Module. The Committee reasoned that Deloitte provided a response to the RFP demonstrating that it possessed the requisite experience, and then offered additional, clarifying information when requested by TennCare. The Committee further noted

that there was nothing in the record to indicate that such information was not reviewed or investigated by the evaluators. Thus, the evidence did not support this assertion.

5. The Committee found no merit in the argument that CNSI's proposal contradicted mandatory technical requirements rendering it ineligible for award. The Committee determined that CNSI's proposal, rather than contradicting mandatory technical requirements, instead constituted suggested changes to the pro forma contract. The Committee further noted that CNSI proposed these suggested changes in the appropriate manner as set forth in the RFP to make suggested changes, and also recognized that TennCare had the discretion to approve such suggested changes. Thus, the evidence did not support this argument.
6. The Committee found no merit to the allegation that Gainwell has demonstrated competitive prejudice based on multiple errors in this procurement. The Committee noted the absence of evidence to support any of Gainwell's other arguments and recognized specifically the absence of any evidence to demonstrate the existence of prejudice against Gainwell during this procurement. Thus, the evidence did not support this allegation.
7. Upon proper motion and second, the Committee unanimously voted to deny the protest and uphold the previous decision of the CPO.
8. Upon proper motion and second, the Committee unanimously voted to return the protest bond to Gainwell.⁴

⁴ The Committee observed that, because CNSI filed a protest bond but did not appeal the CPO's decision to the Committee, the Committee did not need to vote to return CNSI's protest bond.