

State Protest Committee Meeting No. 21
Minutes and Summary of Decision
August 29, 2023

The State Protest Committee (“Committee”) met on August 29, 2023, to hear the appeal of Unite USA Inc. dba Unite Us (“Unite Us”), concerning RFP # 31865-00653, issued by the Department of Finance and Administration (“F&A”), Division of TennCare (“TennCare”), for Closed Loop Referral System (CLRS).

The Committee was comprised of the following members:

- Rick Dubray, Deputy Treasurer, Support Services with the Department of Treasury, as designee of State Treasurer David Lillard, Jr.;
- Jenny Howard, General Counsel for the Department of Environment and Conservation, as designee of F&A Commissioner Jim Bryson; and
- Michael Winston, Director of Financial Management with the Department of General Services (“DGS”), as designee of DGS Commissioner Christi Branscom.

Agenda Item #1. Recently enacted Tennessee Code Annotated § 8-44-112 requires a period of time to be made available at public meetings for public comment. The requirement applies to all public meetings when action items (voting items) appear on the agenda and requires that the public be provided a reasonable opportunity to comment on “matters that are germane to the items on the agenda for the meeting.”

As no members of the public presented themselves to make any comments, no further action was required on this agenda item.

Agenda Item #2. Approval of Minutes from Meeting Number 19, which took place May 24, 2023, for the protest concerning RFP # 34349-03823 for Insurance Assistance Program Benefits Management.

Upon proper motion and second, the Committee unanimously voted to approve the minutes from Meeting Number 19 as presented.

Agenda Item #3. Approval of Minutes from Meeting Number 20, which took place May 31, 2023, for the protest concerning RFP # 31865-00627, for Medicaid Management Information System Core Modular Solution.

Upon proper motion and second, the Committee unanimously voted to approve the minutes from Meeting Number 20 as presented.

Agenda Item #4. Consideration of a Protest Appeal by Unite Us, challenging the Protest Decision of Chief Procurement Officer Michael Perry (the “CPO”) to uphold the intended award of a State contract to Aunt Bertha, a Public Benefit Corporation dba findhelp (“findhelp”), pursuant to RFP # 31865-00653 issued by the Division of TennCare for CLRS.

TennCare issued RFP # 31865-00653 for CLRS on November 18, 2022. The State completed the evaluations and, on April 21, 2023, provided its Notice of Intent to Award the contract to findhelp. On April 28, 2023, Unite Us filed a protest of that determination with the CPO.

On June 26, 2023, the CPO issued his written decision denying the protests by Unite Us. Unite Us filed a Notice of Appeal of the CPO's decision to the Committee on June 29, 2023. Position Statements were submitted by Unite Us, the Central Procurement Office, TennCare, and findhelp.

The protesting party Unite Us, the Central Procurement Office, TennCare, and findhelp appeared for the meeting.

The issues for determination by the Committee were:

The contract award to findhelp 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. findhelp's failure to disclose a subcontractor's possible conflict of interest violated the terms of the RFP; and
2. findhelp submitted its cost proposal in bad faith.

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

1. The Committee found no merit in the assertion that findhelp's failure to disclose a subcontractor's possible conflict of interest violated the terms of the RFP. The Committee determined that findhelp satisfied the requirements of RFP, Attachment 6.2, § A.2, to provide a statement of possible conflicts of interest based upon a reasonable inquiry, as findhelp identified Rural Health Association of Tennessee (RHAT) in § A.2, listed the contracts that RHAT holds with the Tennessee Department of Health (DOH), and affirmed that none of RHAT's current contracts directly or indirectly related to the TennCare CLRS scope of work. Additionally, the Committee determined that the evidence did not indicate that an actual conflict of interest existed between RHAT and Tina Pilgreen, the Director of the Office of Rural Health with DOH, who serves as an *ex officio* board member of RHAT by virtue of her position with DOH. Thus, the evidence did not support this assertion.
2. The Committee found no merit to the argument that findhelp submitted its cost proposal in bad faith. The Committee recognized that both findhelp and Unite Us had the opportunity to reevaluate their cost proposals once the procurement file related to the previous RFP for CLRS, RFP no. 31865-00626, was opened, and both chose to make significant adjustments to their cost proposals for the current RFP for CLRS. The Committee additionally noted that the record reflected reasonable, good faith explanations for findhelp's decision to lower their cost proposal. Lastly, the Committee afforded great weight to the administrative discretion of the Central Procurement Office in evaluating the respondents' cost proposals, as there was no information in the record to suggest that the Central Procurement Office evaluated the cost proposals in a manner inconsistent with applicable rules and policy. Therefore, the evidence did not support this argument.

Upon proper motion and second, the Committee unanimously voted to deny the protest and uphold the previous decision of the CPO.

Agenda Item #5. Consideration of the return of the protest bond to Unite Us.

Upon proper motion and second, the Committee unanimously voted to return the protest bond to Unite Us.