

November 5, 2024

The Honorable Warren Petersen, President
Arizona State Senate
1700 W. Washington
Phoenix, AZ 85007

The Honorable Ben Toma, Speaker
Arizona State House of Representatives
1700 W. Washington
Phoenix, AZ 85007

Re: Report on Modified or Rejected Administrative Law Judge Conclusions of Law

Dear President Petersen and Speaker Toma:

A.R.S. 41-1092.08(B) provides that, within thirty days of receiving an administrative law judge's decision, the head of the agency may review the decision and accept, reject or modify it. If the head of the agency rejects or modifies the decision, the agency head must provide a written justification for the rejection or modification of each Finding of Fact or Conclusion of Law.

Subsection (B) also requires that if the agency head rejects or modifies a Conclusion of Law, the written justification shall be sent to the President of the Senate and the Speaker of the House of Representatives.

Most administrative law judge decisions and the associated decision of the agency head regarding the AHCCCS program include information that is confidential under State and Federal law. See 45 CFR Part 164 and AAC R9-22-309. As such, AHCCCS cannot provide the full text of the administrative law judge decisions or the agency decision. As a practical matter, redacted versions of the justification for a modification or rejection of an administrative law judge's Conclusion of Law are not comprehensible without the full context of Findings of Fact and Conclusions of Law made by the administrative law judge.

For that reason, AHCCCS is providing quarterly summary information. For the quarter ending September 30, 2024, AHCCCS has identified twenty matters where the agency modified an administrative law judge's Conclusions of Law. During that same quarter, AHCCCS reviewed 281 administrative law judge decisions. The following Conclusions of Law were modified:

- Conclusions of Law were modified in twelve director's decisions to reflect the record more accurately.

- Conclusions of Law were modified, and language was stricken and replaced with correct language in eight director's decisions.

For the SFY 25 Q1 Report, AHCCCS has also included the Administrative Law Judge Decision, Final Agency Decision (Director's Decision) and Addendum in Mercy Care, BCBS of Arizona Health Choice, Banner-University Family Care v AHCCCS Administration. The Addendum provides a justification table outlining the basis for any modifications and rejections of Findings of Fact and Conclusions of Law of the Administrative Law Judge. The decision in this matter does not contain any protected health information or information that is confidential under State and Federal Law.

Please feel free to contact me if you have any questions about this report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carmen Heredia', written in a cursive style.

Carmen Heredia
Director

cc: Richard Stavneak, Director, Joint Legislative Budget Committee
Sarah Brown, Director, Governor's Office of Strategic Planning and Budgeting
Zaida Dedolph Piccoro, Health Policy Advisor, Office of the Governor

**BEFORE THE DIRECTOR OF
THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**

**Mercy Care, BCBS of Arizona Health
Choice, Banner-University Family Care,**

Complainants,

v.

AHCCCS Administration,

Respondent,

**Health Net Access, Inc. DBA Arizona
Complete Health Complete Care Plan,**

and

**Arizona Physicians IPA DBA
UnitedHealthcare Community Plan**

Intervenors.

**NOTICE OF
NONCONSIDERATION
OF FILINGS**

24F-OTR-317925-AHC

The Parties are advised that in issuing the Final Agency Decision, the Director's Designee did not consider matters filed after the August 9, 2024 Administrative Law Judge Decision, including the August 15, 2024 Health Net Motion, the August 23, 2024 AHCCCS Position Statement, and Appellants' August 30, 2024 Opposition to Unauthorized Filings.

/s/ Marcus Johnson
Marcus Johnson
Director's Designee

By /s/ Vanessa Gonzales

Copy transmitted electronically on September 18, 2024 to:

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**BEFORE THE DIRECTOR OF
THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**

**Mercy Care, BCBS of Arizona Health
Choice, Banner-University Family Care,**

Complainants,

v.

AHCCCS Administration,

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Complete Health Complete Care Plan,**

and

**Arizona Physicians IPA DBA
UnitedHealthcare Community Plan**

Intervenors.

DIRECTOR'S DECISION

24F-OTR-317925-AHC

PURSUANT TO the authority granted to me by A.R.S. §§ 41-1092.08(B), 36-3413, 36-2903.01(B)(4), and the Director's delegation of authority pursuant to A.R.S. § 36-2903.01(D)(3), and in consideration of the record in the above matter, along with the applicable federal and state statutes and regulations, I hereby make the following Decision and Order:

IT IS ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Decision in the attached Decision are **accepted in part, modified in part, and rejected in part** as follows.

Findings of Fact

1. Findings of Fact #1 and 2 are consolidated, stricken and modified to state: Pursuant to the Amended Notice of Hearing issued by the Arizona Health Care Cost Containment System ("AHCCCS")

Administration on February 13, 2024, this hearing was commenced upon the referral by AHCCCS of the appeals of Mercy Care, Health Choice, and Banner challenging the decision of AHCCCS' Chief Procurement Officer ("CPO") denying their protests of AHCCCS' contract awards arising from Request for Proposal Solicitation # YH24-0001, Long Term Care for Individuals who are Elderly and/or Have a Physical Disability (the "RFP") issued on August 1, 2023.¹

2. Finding of Fact #3 is stricken and modified to read: AHCCCS is Arizona's Title XIX Medicaid program operating under Arizona Section 1115 Demonstration Waiver and Title XXI program operating under Title XXI Arizona State Plan authority. AHCCCS is charged with the administration of the Arizona Long-Term Care System ("ALTCS").²
3. Finding of Fact #4 is accepted: The ALTCS Elderly and Physically Disabled ("E/PD") program was established to provide "management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration."³ AHCCCS has full operational responsibility for the ALTCS E/PD program, including contracting with Medicaid managed care organizations ("MCOs") to provide the comprehensive delivery of services under the program.⁴
4. Finding of Fact #5 is accepted: To qualify for ALTCS, members must require an institutional level of care, meaning that, but for the ALTCS program and related services, these members would reside in a skilled nursing facility or nursing home.⁵
5. Finding of Fact #6 is stricken.
6. Finding of Fact #7 is accepted: The ALTCS E/PD program currently serves approximately 26,000 members in three Geographic Service Areas ("GSAs"): North, Central, and South.⁶
7. Finding of Fact #8 is accepted: AHCCCS contracts with MCOs to implement and operate ALTCS. MCOs serving the ALTCS program are charged with providing integrated care addressing physical

¹ ALTCS EPD RFP NO. YH24-0001; ARS § 36-2906; A.R.S. § 36-2944; A.A.C. R9-22-601 et seq.; and A.A.C. R9-28-601 et seq.

² Ex. 4 at PF000054.

³ See A.R.S. § 36-2932(A).

⁴ See A.R.S. § 36-2932(B)(1).

⁵ Day 3 Tr. 639:24-640:13; see also Day 1 Tr. 35:22-36:3.

⁶ Day 1 Tr. 36:24-37:9; Ex. 8 at 316, 322.

and behavioral health needs and Long Term Services and Supports (“LTSS”) to the E/PD population.⁷

8. Finding of Fact #9 is accepted: Appellants Mercy Care and Banner are incumbent ALTCS MCOs. Appellant Health Choice is a current AHCCCS MCO serving the general Medicaid population.
9. Finding of Fact #10 is stricken and modified to read: Pursuant to statute, AHCCCS is required to issue a request for proposal for MCOs to bid to administer the ALTCS program services to members.⁸
10. Finding of Fact #11 is stricken and modified to read: AHCCCS is required to issue a request for proposal every five years under A.R.S. § 36-2944(A). AHCCCS has previously issued contract terms of up to seven years by complying with the process laid out in A.R.S. § 41-2546.⁹
11. Finding of Fact #12 is accepted: AHCCCS estimated the costs of administering the ALTCS E/PD program for the next seven years to exceed \$15 billion.¹⁰
12. Finding of Fact #13 is accepted: AHCCCS issued the RFP that is the subject of this appeal on August 1, 2023, after more than a year of development.¹¹
13. Finding of Fact #14 is accepted: AHCCCS utilized three groups comprised of its own employees and an outside consultant firm, Pacific Health Policy Group (“PHPG”), to develop the RFP. PHPG has assisted AHCCCS with numerous prior procurements and has vast national procurement experience, particularly in Medicaid managed care procurements.¹² Two principals of PHPG, Andy Cohen and Scott Wittman, participated in all aspects of the RFP, including its development and drafting.¹³
14. Finding of Fact #15 is accepted as follows with modified footnote: This work was performed by workgroups as follows:¹⁴

1. The Sub-Work Groups:

⁷ Ex. 4 at PF000054; Day 1 Tr. 35:17-36:3; Day 3 Tr. 639:19-640:4.

⁸ A.R.S. § 36-2944(A).

⁹ Day 14 Tr. 3317:25-3318:20; See Ex. 311.

¹⁰ Ex. 151 at AHCCCS000031.

¹¹ Day 4 Tr. 689:13-21; see also, e.g., Ex. 172.

¹² Day 12 Tr. 2669:25-2671:12.

¹³ Day 1 Tr. 131:1-17; Day 12 Tr. 2728:24-2730:6; see Ex. 98.

¹⁴ Ex. 172 at AHCCCS000458.

- Responsible for reviewing stakeholder feedback, and current processes and deliverables and recommending efficiencies/improvements to incorporate into the RFP
- Evaluates costs and payment methodology to recommend changes/improvements
- Makes recommendations
- Implements approved recommendations
- Contributes new content based on approved decisions
- Edit RFP documents including contract language, instructions to offerors, and submission requirements for evaluation of all bidders
- May serve on scoring team
- Present recommendations/findings to the Scope Team;

2. The Scope Team:

- Responsible for ensuring that RFP content is accurate and reflects major decisions and improvements identified throughout the process
- Decision[-]makers
- Provides status updates, and brings escalated items, to Executive Team
- Provides approval of recommendations from Proposal WG; and

3. The Executive Team:

- Ensures agency initiatives and issue items that would impact the awarded vendor, and the impacted populations and/or services, are considered and developed into the RFP
- Decision-makers
- Receives status updates from Scope Team
- Provides approval of escalated recommendations.

15. Finding of Fact #16 is stricken and modified to read: Some of the work groups' investigation of issues developed into major decisions which were escalated to the Executive Team and could potentially impact the RFP; these major decisions were communicated to potential offerors in advance of the issuance of the RFP.¹⁵
16. Finding of Fact #17 is stricken and modified to read: The Scope Team considered recommendations by the workgroups on items to include in the RFP and then shared that information with the Executive Team.¹⁶ The Scope Team was also responsible for ensuring the RFP content was accurate and reflected major decisions and improvements identified throughout the process.¹⁷
17. Finding of Fact #18 is stricken and modified to read: The Scope Team was ultimately responsible for bringing together the materials to create and implement the RFP, including by taking the lead in drafting the RFP.¹⁸
18. Finding of Fact #19 is stricken and modified to read: The Executive Team provided overarching support in the procurement and had final approval over the language in the RFP and all decisions escalated by the Scope Team for review.¹⁹
19. Finding of Fact #20 is accepted as follows with modified footnote: Other items were within the Scope Team's purview to approve.²⁰
20. Finding of Fact #21 is stricken and modified to read: There was some overlap between members of the Scope Team and Executive Team. AHCCCS' expert consultant, Andy Cohen, explained that overlap between members of such teams is often unavoidable because there are typically a finite number of people in an agency who can work on this type of complex procurement.²¹

¹⁵ Day 4 Tr. 693:22-697:14; *see, e.g.*, Ex. 2. *See also* Day 4 Tr. 639:22-695:10 (testifying that some of the research topics/issues were classified as Major Decisions and shared with prospective offerors prior to the issuance of the RFP).

¹⁶ Day 2 Tr. 289:2-17; *see also* Day 1 Tr. 55:3-6, 123:3-16.

¹⁷ *See e.g.*, Ex. 172 at AHCCCS00458; Day 2 Tr. 289:02-289:17 (describing generally the role of the Scope Team).

¹⁸ Day 2 Tr. 289:2-17.

¹⁹ Day 1 Tr. 125:5-24.

²⁰ Day 1 Tr. 124:5-23.

²¹ Ex. 214 at 21, Day 1 Tr. 125:5-24; Ex. 214 at AHCCCS000434; Day 1 Tr. 124:5-23; Day 12 Tr. 2853:2-9.

21. Finding of Fact #22 is stricken and modified to read: The RFP stated: "AHCCCS intends to make a total of three awards for this RFP, awarding GSAs based upon the winning bids in each GSA and may also consider Order of Preference indicated on Section I, Exhibit B: Offeror's Bid Choice Form. Awards may result in zero, one, or two statewide Contractors."²²
22. Finding of Fact #23 is accepted: The RFP noted that "awards shall be made to the responsible Offeror(s) whose Proposal is determined in writing to be the most advantageous to the state based upon the evaluation criteria. Proposals will be evaluated based upon the ability of the offeror to satisfy the requirements of the RFP in a cost-effective manner."²³ The RFP further noted AHCCCS' decision would be "guided, but not bound, by the scores awarded by the evaluators. AHCCCS will make its decision based on a determination of which Proposals are deemed to be most advantageous to the State and in accordance with Paragraph 11, Award of Contract, in this Section."²⁴
23. Finding of Fact #24 is accepted: Paragraph 11, Award of Contract, set forth:
- "AHCCCS shall award a Contract or Contracts to the responsible and responsive Offeror(s) whose Proposal is determined most advantageous to the State. . . . A Proposal submitted in response to this RFP is an offer to contract with AHCCCS based upon the terms, conditions, scope of work (Program Requirements), and specifications of the RFP. The Proposal submitted by the Offeror will become part of the Contract with AHCCCS. . . . AHCCCS will award Contracts in each GSA to Successful Offerors in the best interest of the State. . . . Each Offeror shall elect to bid on all three GSAs and indicate the order of preference for GSAs to be awarded. . . . AHCCCS anticipates awarding a maximum of two Contractors in the North GSA, a maximum of two Contractors in the South GSA, and a maximum of three Contractors in the Central GSA. . . . AHCCCS intends to make a total of three awards for this RFP, awarding GSAs based upon the winning bids in each GSA and may

²² Ex. 8 at PF000322.

²³ *Id.* at PF000319.

²⁴ *Id.*

also consider Order of Preference indicated on Section I, Exhibit B: Offeror's Bid Choice Form. Awards may result in zero, one, or two statewide Contractors. . . . In the event a protest or unforeseen circumstance delays the October 1, 2024, implementation in one or more GSAs, the current ALTCS E/PD Contractors shall be required to continue provision of services according to the terms of their existing Contract, until such time as determined by AHCCCS and in the best interest of the State."²⁵

24. Finding of Fact #25 is accepted: The RFP further specified that, in the event AHCCCS "deem[ed]" that a "negligible difference in scores" existed between two or more competing proposals "for a particular Geographic Service Area (GSA), in the best interest of the State, AHCCCS may consider additional factors in awarding the Contract, including, but not limited to . . . [p]otential disruption to members" and/or "[a]dministrative burden to the Agency." The RFP did not require AHCCCS to consider any of these additional factors if there was not a negligible difference in scores, nor did the RFP prevent AHCCCS from considering one or more of these factors in making its contract award determination even where there was not a negligible difference in scores.²⁶
25. Finding of Fact #26 is accepted: The RFP informed prospective offerors that if they had concerns about what was or was not in the RFP, they were required to file a protest at least 14 days prior to the deadline for proposal submission, or if an amendment was issued within that 14 day period, prior to the deadline for proposal submission.²⁷
26. Finding of Fact #27 is accepted: The RFP also gave prospective offerors two opportunities to submit questions about the RFP, which AHCCCS would answer through amendments to the RFP.²⁸ In total, AHCCCS issued three amendments to the RFP.²⁹

²⁵ *Id.* at PF000321.

²⁶ *Id.* at PF000319-320.

²⁷ *See id.* at PF000323-PF000324 ("Protests shall comply with the requirements set forth in A.A.C. R9-28-601 et seq. and in particular A.A.C. R9-28-604."); A.A.C. R9-22-604(D)(1) (Any protest alleging improprieties in an RFP or an amendment to an RFP must be filed at least 14 days prior to the due date for receipt of proposals.); *see also* Day 14 Tr. 3350:10-3351:7.

²⁸ Ex. 8 at PF000318, PF000326.

²⁹ Day 1 Tr. 257:25-258:2; *see also* Exs. 18, 19, 20.

27. Finding of Fact #28 is stricken and modified to read: AHCCCS did not provide further details on scoring or weighting beyond what was contained in the RFP and its amendments prior to offerors submitting their bids.³⁰
28. Finding of Fact #29 is accepted: The deadline for the submission of proposals was October 2, 2023.
29. Finding of Fact #30 is accepted: Section 8 of the Instructions to Offerors, entitled “Evaluation Factors and Selection Process,” listed two “scored portions of the evaluation” “in their relative order of importance” as “1. Programmatic Submission Requirements” and “2. Financial Submission Requirements.”³¹
30. Finding of Fact #31 is stricken in its entirety.
31. Finding of Fact #32 is accepted: The RFP instructed offerors to submit written responses to a series of “Narrative Submission Requirements” and to participate in oral presentations, which “may be audio-taped by AHCCCS for the Agency’s use in the evaluation process.”³² Narrative Submission Requirements were identified as B1-B11.³³ Narrative Submission Requirements did not include oral presentations (B12). The Instructions to Offerors contained in Section H of the RFP provided detailed instructions of what offerors should expect in the procurement process.³⁴
32. Finding of Fact #33 is stricken and modified to read: The RFP explained that “[t]he items which are designated for scoring in this RFP shall be evaluated and scored.”³⁵
33. Finding of Fact #34 is stricken and modified to read: The RFP provided: Programmatic and Finance Requirements will be evaluated and weighted. The Capitation Agreement/Administrative Cost Bid will be scored for each Offeror and the score for that Offeror will be applied to all GSAs bid by that Offeror. The Case Management Cost Bid will be scored by GSA for each Offeror. With the exception of Narrative Submission Requirements noted as a non-scored item and Narratives that

³⁰ Ex. 18 at 371-72, 375.

³¹ Ex. 8 at PF000319

³² *Id.* at PF000332.

³³ *See* Ex. 16.

³⁴ *See* Ex. 8.

³⁵ *Id.* at PF000319.

are noted as GSA-specific, Narrative Submission Requirements will be scored for each Offeror and the score for that Offeror will be applied to all GSAs bid.³⁶

34. Finding of Fact #35 is stricken and modified to read: In addition to the Narrative Submission Requirements, the RFP required each offeror to participate in a scheduled oral presentation “pertaining to key areas of the ALTCS E/PD Program.” The RFP indicated that the offerors should bring no more than six individuals to the meeting, all of whom should be employees of the offeror and not consultants, and that among the six, they should have expertise in medical management, case management, and quality management. The RFP stated that “[p]resentations may be audio-taped by AHCCCS for the Agency’s use in the evaluation process.”³⁷
35. Finding of Fact #36 is stricken in its entirety.
36. Finding of Fact #37 is accepted: Five MCOs responded to the RFP: APIPA, Banner, Health Choice, Health Net, and Mercy Care.³⁸
37. Finding of Fact #38 is accepted: APIPA, Mercy Care, and Banner currently contract with AHCCCS for ALTCS E/PD services.³⁹
38. Finding of Fact #39 is accepted: Although Health Net and Health Choice do not currently contract with AHCCCS for ALTCS E/PD services, they hold other contracts with AHCCCS and are affiliates of large national entities with significant experience in providing services pursuant to Medicaid contracts.⁴⁰
39. Finding of Fact #40 is stricken and modified to read: On October 3, 2023, AHCCCS held a scoring training for its evaluators.⁴¹
40. Finding of Fact #41 is stricken and modified to read: All the evaluators received this training related to their duties, provided by Ms. Sandy Borys, who informed evaluators of the individual and consensus ranking portions of the evaluation process.⁴²

³⁶ Ex. 8 at PF000320.

³⁷ *Id.* at PF000332.

³⁸ Ex. 95.

³⁹ Day 1 Tr. 253:22-24; Ex. 105.

⁴⁰ See Day 5 Tr. 887:9-13; Day 12 Tr. 2727:13-2728:2; Ex. 105.

⁴¹ See Ex.151.

⁴² See *Id.*

41. Finding of Fact #42 is accepted as follows with modified footnote: AHCCCS directed its evaluators as follows: "It is strongly suggested that you do not print any documents related to the offerors or the scoring documents themselves. If you do *YOU* must ensure that the documents are shredded. *Do Not* put them into the shredding can in your office. You must physically put them into the locked shredding bin yourself."⁴³
42. Finding of Fact #43 is stricken and modified to read: During the training, evaluators were informed that "AHCCCS will be awarding a total of three contracts: [t]wo in the North GSA consisting of Mohave, Coconino, Apache, Navajo, and Yavapai Counties; [t]hree in the Central GSA including Maricopa, Gila, and Pinal Counties. [t]wo in the South GSA consisting of Cochise, Graham, Greenlee, La Paz, Pima, Santa Cruz, and Yuma Counties." AHCCCS also informed evaluators that "There is a potential for 0, 1, or 2 statewide contracts being awarded."⁴⁴
43. Finding of Fact #44 is stricken and modified to read: AHCCCS instructed evaluators to complete their own individual reviews for their assigned sections and rank each of the offerors 1 through 5, with 1 being the best. After individual scoring, the evaluation team members for each section would then meet to discuss their individual rankings and notes and decide upon a consensus ranking.⁴⁵
44. Finding of Fact #45 is accepted as follows with modified footnote: Ms. Borys testified that she discouraged the use of ties.⁴⁶ The training materials further directed evaluators that "ties are ok but try to rank 1-5."⁴⁷
45. Finding of Fact #46 is stricken in its entirety.
46. Finding of Fact #47 is stricken and modified to read: Prior to the issuance of the RFP, AHCCCS decided to use a consensus and ranking scoring methodology, consistent with what had been used in numerous prior procurements, including a prior procurement for the ALTCS E/PD program.⁴⁸
47. Finding of Fact #48 and 49 are consolidated, stricken and modified to read: The maximum total points an Offeror could receive in this RFP was 1,000 total points, with the total points assigned to

⁴³ *Id.* at AHCCCS000062 (emphasis in original).

⁴⁴ Ex. 151 at AHCCCS000032.

⁴⁵ See *Id.* and Ex. 97 at 1-2.

⁴⁶ See Day 1 Tr. 89:9-18

⁴⁷ Ex. 151 at AHCCCS000032 and *Id.*

⁴⁸ Day 1 Tr. 180:22-24, 242:8-243:7; Day 2 Tr. 310:12-19; Day 14 Tr. 3328:15-3329:20.

each submission requirement ranging from 20 – 145 points.⁴⁹ When the evaluators performed their consensus rankings, the most favorable rank (1) was given to the best submission, and the next most favorable rank (2) was given to the next most favorable submission. The ranking process continued in this manner until all the submissions were ranked.⁵⁰ The rankings were used to calculate scores within each submission requirement. Using a set formula to allocate points within each submission requirement, the first-ranked proposal received 100 percent of the available points, and the last-ranked proposal received 20 percent of the available points. There was a 20 percent point differential between each offeror by virtue of the 1-to-5 ranking. A total score was then calculated for each proposal based on the summation of points awarded within each submission requirement.⁵¹ As stated in the RFP, AHCCCS will be “guided but not bound, by the scores awarded by the evaluators. AHCCCS will make its [award] decision based on a determination of which Proposals are deemed to be most advantageous to the State ...”.⁵²

48. Finding of Fact #50 is stricken and modified to read: Under a consensus method, a group of evaluators are assigned a specific portion of each proposal to review individually before meeting as a group to arrive at a consensus rank of the proposals. AHCCCS asserted that each of the evaluators brought to bear his or her own experience, expertise and perspective to decide on a consensus rank of the proposals against the particular submission requirement being evaluated, with the assistance of an experienced facilitator.⁵³
49. Finding of Fact #51 is stricken and modified to read: AHCCCS' Scoring Training Manual stated to the evaluators “*You* have been chosen because of *your* subject matter expertise and *your* knowledge.” AHCCCS chose the evaluators for their relevant experience, knowledge and perspective.⁵⁴

⁴⁹ See Ex. 96, ALTCS E/PD Overall Scoring Tool.

⁵⁰ See *Id.* and Ex. 97 at PF001230-PF001232, Overview of RFP Evaluation Process.

⁵¹ *Id.* (emphasis added).

⁵² Ex. 8 at PF000319.

⁵³ Day 4 Tr. 728:7-18; Day 6 Tr. 1153:1-12; see also Ex. 97 at PF001227; Day 4 Tr. 728:19-729:3; Day 12 Tr. 2682:7-2683:21, 2687:5-2688:5, 2689:1-2692:6, 2694:9-2701:7.

⁵⁴ Ex. 151 at AHCCCS000062 (emphasis in original); Day 4 Tr. 728:19-729:3; Day 12 Tr. 2682:7-2683:21, 2687:5-2688:5, 2689:1-2692:6, 2694:9-2701:7.

50. Finding of Fact #52 is accepted: After the evaluators reached a consensus rank of the proposals for each evaluation factor, each of the ranked evaluation factors were weighted, with the rank given to each proposal for each evaluation factor converted into a number of points.⁵⁵
51. Finding of Fact #53 is stricken and modified to read: There were a total of 1,000 points to award during the evaluation process. AHCCCS designated 290 of the 1,000 points available to scoring the oral presentations each offeror gave and designated 610 of the available points to scoring the Narrative Submission Requirements.
52. Finding of Fact #54 is accepted: AHCCCS did not include information on how the evaluation factors would be scored or their weighting in the RFP.⁵⁶
53. Finding of Fact #55 is stricken and modified to read: Twenty-two AHCCCS employees were tasked with evaluating the proposals. Evaluators were divided into teams of 2-4 members each to review and score each of the Programmatic and Financial Submission Requirements.⁵⁷
54. Finding of Fact #56 is stricken in its entirety.
55. Finding of Fact #57 is stricken and modified to read: AHCCCS prepared scoring tools for the evaluators to use in their evaluation of the proposals. The purpose of the tools was to provide a framework for the evaluation, not a predetermined scoring rubric.⁵⁸
56. Finding of Fact #58 is accepted: Each scoring tool aligned with a particular evaluation factor and included both “Broad Categories” and “Criteria Considerations.”⁵⁹ The “Broad Categories” related back to major components of the RFP and were aspects that would have been anticipated in any response to that evaluation factor under the RFP.⁶⁰ The “Criteria Considerations” that fell under the Broad Categories served as essentially “guideposts” or as items that could be expected to be discussed given the evaluation factor and Broad Category at hand.⁶¹

⁵⁵ Ex. 97.

⁵⁶ Day 2 Tr. 317:8-15.

⁵⁷ See Ex. 214 at 434. Day 2 Tr. 278:3-8; Day 4 Tr. 843:21-844:1; Day 6 Tr. 1309:7-19, 1309:24-1310:4; Day 7 Tr. 1429:10-1430:7; Day 7 Tr. 1464:11-1465:10, 1493:6-13; Day 8 Tr. 1725:4-15; Day 8 Tr. 1745:9-1746:6; Day 8 Tr. 1809:16-19, 1809:20-1810:5; Day 9 Tr. 2136:1-2138:11; Day 10 Tr. 2290:22-2291:5; Day 11 Tr. 2420:10-14; Day 11 Tr. 2586:18-2587:4; Day 13 Tr. 3145:4-7, 3162:16-20.

⁵⁸ Day 2 Tr. 297:12-20; Day 4 Tr. 776:7-24; Day 5 Tr. 1045:18-1046:21; Day 12 Tr. 2694:23-2697:2, 2708:2-7.

⁵⁹ Exs. 153-163.

⁶⁰ Day 1 Tr. 247:5-249:6, Day 4 Tr. 778:21-779:10.

⁶¹ Day 1 Tr. 249:2-23; Day 2 Tr. 377:4-10; Day 4 Tr. 775:7-22, 777:19-778:5, 812:1-5.

57. Finding of Fact #59 is stricken in its entirety.
58. Finding of Fact #60 is stricken and modified to read: The Scope Team created the initial layout of Broad Categories and Criteria Considerations. The evaluation team assigned to each factor reviewed and finalized the scoring tool for that factor.⁶²
59. Findings of Fact #61 and 62 are consolidated, stricken and modified to read: The scoring tools, including the Broad Categories and Criteria Considerations, were determined prior to the receipt of proposals but after the issuance of the RFP. Each scoring tool included an “Other” Criteria Consideration category, which was a place for evaluators to make notes regarding something they wanted to discuss during the consensus evaluation meeting that might not clearly fit within a preset Broad Category or Criteria Consideration.⁶³
60. Finding of Fact #63 is stricken and modified to read: For Narrative Submission Requirements B4 through B11, the evaluators would first review the portions of the proposals corresponding to the Narrative Submission Requirement they were evaluating individually, and then use their individual scoring tool to record any initial thoughts and draft rankings.⁶⁴
61. Finding of Fact #64 is stricken and modified to read: Evaluators were assigned to particular submissions; some evaluators were assigned to multiple submissions.⁶⁵
62. Finding of Fact #65 is stricken and modified to read: For written submissions, the process required evaluators to individually review the submissions, take notes, and prepare a draft ranking based on their individual assessment. This was known as the “individual evaluation process.” After deciding their individual rankings, the evaluators gathered (typically virtually) to discuss their individual rankings and come to a consensus on the final ranking. This was known as the consensus meetings.⁶⁶

⁶² Day 1 Tr. 86:5-13; Day 3 Tr. 502:4-14, 502:18-25.

⁶³ Day 1 Tr. 86:10-18, 148:10-18; Day 5 Tr. 1088:22-24; Ex. 169. Day 1 Tr. 88:4-12; Day 4 Tr. 776:25-777:12, 800:15-801:3; Day 12 Tr. 2704:16-2705:4.

⁶⁴ See, e.g., Day 6 Tr. 1177:9-1179:20; Day 8 Tr. 1681:17-23

⁶⁵ See, e.g., Day 8 Tr. 1681:24-1682:7.

⁶⁶ Ex. 151 at AHCCCS000059-AHCCCS000061; Day 3 Tr. 503:18-25; Ex. 151 at AHCCCS000067-AHCCCS000068; Ex. 151 at AHCCCS000068.

63. Finding of Fact #66 is stricken and modified to read: As the Oral Presentations did not involve pre-submitted written materials for the evaluation team to independently review, the Oral Presentation evaluations immediately began with the evaluation team meeting as a consensus; provided, however, the evaluators were able to take individual notes, through use of the Oral Presentation individual scoring tools.⁶⁷
64. Finding of Fact #67 is accepted: AHCCCS provided the same instructions to each of the offerors ahead of the oral presentations.⁶⁸ The representatives of the offerors, comprised of senior-level MCO employees, had an hour to prepare for each of the two presentations.⁶⁹ They then had a half hour to present their response to each question.⁷⁰
65. Finding of Fact #68 is stricken and modified to read: The evaluators achieved consensus on ranking all five offerors' oral presentations after reviewing, approving and attesting to the final ranking and rationale sheet.⁷¹
66. Finding of Fact #69 is stricken and modified to read: The oral presentations took place on five dates between October 24, 2023 and November 2, 2023 and were all recorded.⁷²
67. Finding of Fact #70 is stricken and modified to read: The oral presentations together weighed 29 percent of the available points. As Ms. Lebsack explained, this was intentional, so that AHCCCS could evaluate the responses of the MCOs themselves, rather than through the filter of consultants who often prepare the narrative submission portions of proposals.⁷³
68. Finding of Fact #71 is stricken in its entirety.
69. Finding of Fact #72 is stricken and modified to read: The Cost Bid team ranked each offeror's respective administrative and case management bids, and those rankings correlated directly with the overall rankings for the cost bid submissions.⁷⁴

⁶⁷ See Ex 162, OP1 Scoring Tool; Ex. 163, OP 2 Scoring Tool; Day 6 Tr. 1197:21-1201:21 (explaining that she used the Oral Presentation Scoring Tool to take notes during the Oral Presentations).

⁶⁸ Exs. 75-79.

⁶⁹ Day 3 Tr. 606:8-16.

⁷⁰ Day 3 Tr. 606:23-25.

⁷¹ See Ex. 108, OP1 Final Ranking & Observations; Ex. 109, OP2 Final Ranking Evaluations.

⁷² Ex. 8 at PF000332.

⁷³ Day 2 Tr. 358:6-15, 359:10-17.

⁷⁴ Day 14 Tr. 3263:25-3264:19; Ex. 238 at Row 22, Columns B & E.

70. Finding of Fact #73 is stricken and modified to read: The rankings for the administrative and case management bid components were determined using formulas in an Excel file. The Excel file was populated with data from each offeror's Best and Final Offer ("BAFO") submission and calculations made in various pivot tables. When the Excel file was disclosed by AHCCCS, various data fields reflected error messages. As such, the Excel file that was disclosed did not reflect all data used within the tool to formulate the calculated rankings.⁷⁵
71. Finding of Fact #74 is stricken in its entirety.
72. Finding of Fact #75, 76, 77 and 78 are consolidated, stricken and modified to read: For the administrative and case management cost bids, the evaluators used certain formulaic tools to analyze the data and create an initial order of the cost bids, although the order did not determine the overall ranking on the Financial Submission Requirements as the evaluators also considered the risk presented by the cost bids.⁷⁶
73. Finding of Fact #79 is stricken and modified to read: On October 16, 2023, the evaluators for the Financial Submission Requirements requested a BAFO on the administrative and cost bid components of the Financial Submission Requirements. The letters seeking BAFOs from the offerors included clarification requests to the offerors specific to their proposals.⁷⁷
74. Finding of Fact #80 is stricken and modified to read: AHCCCS' letters to Health Net and APIPA sought clarification and provided supplemental direction to remedy identified issues in their respective submissions. Although AHCCCS' letter to Health Choice instructed it to submit revised documentation, AHCCCS did not request any further clarification.⁷⁸
75. Finding of Fact #81 is stricken and modified to read: AHCCCS instructed APIPA that it "must submit a revised agreement Accepting Capitation Rates that aligns with RFP Amendment #2." APIPA did so.⁷⁹

⁷⁵ Ex. 244 at 584 (native).

⁷⁶ Day 14 Tr. 3260:5-24, 3261:5-22.

⁷⁷ Exs. 81-85; Day 14 Tr. 3270:1-5, 3270:17-25; Day 14 Tr. 3278:7-20; see also Ex. 8 at PF000320 ("AHCCCS may request clarification of an offer any time after the Proposal due date and time.").

⁷⁸ Exs. 81 (APIPA), 83 (Health Choice), 84 (Health Net).

⁷⁹ Ex. 81; Ex. 52; Day 14 Tr. 3274:7-3275:9.

76. Finding of Fact #82 is stricken and modified to read: AHCCCS instructed Health Net to submit a revised Workbook to include missing components for care management/coordination and interpretation/translation services or, in the alternative, explain why those components were omitted. Health Net followed AHCCCS' direction and submitted a revised workbook that included the information it had previously omitted.⁸⁰
77. Finding of Fact #83 is stricken in its entirety.
78. Finding of Fact #84 is stricken and modified to read: AHCCCS' October 16, 2023, letter to Health Choice did not seek more clarification or information beyond the revised documents required to be submitted in support of its BAFO. On November 9, 2023, after Health Choice's BAFO had been submitted and reviewed by the Cost Bid evaluation team, the evaluators noted in the Cost Bid Final Rankings that "[Health Choice] submitted total administrative rates (fixed and variable) that appear to consistently decrease as membership increases, which does not appear reasonable absent further explanation."⁸¹
79. Finding of Fact #85 is accepted: The cost bids were worth 100 points, or 10 percent of the overall points allotted under the RFP.⁸²
80. Finding of Fact #86 is accepted: Ultimately, with the assistance of the facilitators, AHCCCS created a final ranking document, with each evaluator signing the final ranking document.⁸³
81. Finding of Fact #87 is stricken in its entirety.
82. Finding of Fact #88 is accepted: The final rankings on each evaluation factor were used to calculate the individual score of an offeror for each submission element and the total scores were then added, resulting in the following final scores and ranks.⁸⁴

| | | |
|------------|---------------|--------|
| Health Net | 715.00 points | Rank 1 |
| APIPA | 668.00 points | Rank 2 |
| Mercy Care | 557.50 points | Rank 3 |

⁸⁰ Ex. 84; Ex. 71; Day 14 Tr. 3275:10-23, 3275:10-3276:9.

⁸¹ Ex. 83, Ex. 107.

⁸² Ex. 97 at PF001229.

⁸³ Exs. 99-109.

⁸⁴ Ex. 95 at PF001224.

| | | |
|---------------|---------------|--------|
| Health Choice | 537.00 points | Rank 4 |
| Banner | 522.60 points | Rank 5 |

83. Finding of Fact #89 is accepted: On November 16, 2023, the Scope and Executive Teams met to discuss the scores and ultimate award recommendation.⁸⁵ Carmen Heredia, Cabinet Executive Officer and Executive Deputy Director, was present for the meeting.
84. Finding of Fact #90 is stricken and modified to read: AHCCCS provided the agenda meeting minutes from the November 16, 2023 meeting.⁸⁶
85. Findings of Fact #91 and 92 are stricken in their entirety.
86. Finding of Fact #93, 98, 99 and 101 are consolidated, stricken and modified to read: Testimony from several witnesses demonstrated that there were numerous considerations at the November 16, 2023 meeting, including the point totals of each offeror (and the wide gap between the second and third place offerors); administrative concerns and the implementation of upcoming federal regulatory requirements; member choice and transition; administrative burden; the viability of the MCOs serving the ALTCS program; and the low risk of mergers or acquisitions. AHCCCS' CPO, Ms. LaPorte, testified that "first and foremost," the team considered the "clear delineation between two [] offerors that . . . ranked higher than the other three."⁸⁷
87. Finding of Fact #94 is stricken in its entirety.
88. Finding of Fact #95 is stricken and modified to read: Mr. Cohen, AHCCCS' consultant, testified that the consensus ranking process was developed in response to a series of protests that occurred over the years.⁸⁸
89. Finding of Fact #96 is stricken in its entirety.

⁸⁵ Ex. 213; Day 3 Tr. 478:3-7.

⁸⁶ Ex. 213.

⁸⁷ Day 1 Tr. 156:7-158:17; Day 3 Tr: 451:9-452:8, 456:24-458:5, 636:20-637:19; Day 4 Tr. 823:11-829:11, 830:14-832:9, 832:14-835:16; Day 5 Tr. 1064:19-1065:4; Day 12 Tr. 2786:23-2788:15, 2848:9-19; Day 13 Tr. 3157:11-3159:8; Day 14 Tr. 3379:24-3381:5, 3495:19-3497:1; Day 15 Tr. 3521:7-3524:24, 3529:223532:7; Day 15 Tr. 3522:16-25.

⁸⁸ Day 12 Tr. 2682:7-22.

90. Finding of Fact #97 is stricken and modified to read: AHCCCS preserved all documents required to be produced in the procurement file and, in order to maintain confidentiality, directed evaluators to destroy any printed copies of scoring documents.⁸⁹
91. Finding of Fact #100 is stricken in its entirety.
92. Finding of Fact #102 is stricken and modified to read: Administrative burden to the Agency was identified as an “additional factor” that AHCCCS may consider “[i]f AHCCCS deems that there is a negligible difference in scores between two or more competing Proposals for a particular Geographic Service Area (GSA).”⁹⁰
93. Findings of Fact #103 and 104 are stricken in their entirety.
94. Finding of Fact #105 is accepted: The team members were also cognizant that the awards to the proposed awardees—which would result in displacing two incumbent MCOs—would require member transition, and the teams discussed those anticipated impacts and AHCCCS' likely response.⁹¹
95. Finding of Fact #106 is stricken in its entirety.
96. Finding of Fact #107 is stricken and modified to read: No vote was documented on the meeting minutes for the November 16, 2023 meeting, however testimony exists that a final decision was made at the meeting.⁹²
97. Findings of Fact #108 and 109 are stricken in their entirety.
98. Finding of Fact #110 is stricken modified to read: Ms. Heredia attended the November 16, 2023 meeting.⁹³
99. Finding of Fact #111 is stricken in its entirety.
100. Finding of Fact #112 is stricken modified to read: AHCCCS staff prepared a memorandum to the Governor’s office that presented two options: either award two statewide contracts or award two

⁸⁹ Ex. 151 at AHCCCS000062.

⁹⁰ Ex. 8 at PF000319-PF000320.

⁹¹ Day 4 Tr. 855:20-856:13; Day 7 Tr. 1588:18-22, 1634:11-24; Day 12 Tr. 2725:6-2726:10, 2728:15-20.

⁹² Day 7 Tr. 1586:23-1587:12; Ex. 213.

⁹³ Ex. 213.

statewide contracts with a third contract in the central GSA. AHCCCS recommended awarding just two statewide contracts.⁹⁴

101. Finding of Fact #113 is stricken and modified to read: On December 1, 2023, AHCCCS announced its decision to award contracts to APIPA and Health Net.⁹⁵
102. Finding of Fact #114 is stricken and modified to read: Also on December 1, 2023, AHCCCS posted the RFP procurement file on its website containing the basis for the award decision.⁹⁶
103. Finding of Fact #115 is stricken and modified to read: “Appellants each made public records requests to AHCCCS for additional documents related to the RFP. AHCCCS produced additional documents.”
104. Finding of Fact #116 is accepted: Mercy Care filed a protest of AHCCCS’ contract awards on December 20, 2023. Banner and Health Choice filed their protests of the contract award decision on December 21, 2023.⁹⁷
105. Finding of Fact #117 is accepted: Mercy Care’s protest alleged, in summary, that AHCCCS: did not formulate a scoring methodology until after it had received and reviewed proposals; erroneously scored oral presentations, according them too much weight in the evaluation; employed an “unreasonable” format for the oral presentations; erroneously used a ranking methodology for scoring; and arbitrarily scored several categories including both Oral Presentations, B5, B7, and B9.⁹⁸ Mercy Care also reserved the right to supplement its protest in the event additional public records or materials demonstrated further legal or factual bases for protest.⁹⁹
106. Finding of Fact #118 is accepted: Banner’s protest alleged, in summary, that AHCCCS: did not formulate a scoring methodology until after the proposals were opened; used an erroneous ranking methodology; erroneously devalued past performance in the evaluation; weighted oral presentations too heavily in the evaluation; and erroneously scored the cost bids, B10, and B11,

⁹⁴ Ex. 572.

⁹⁵ See Ex. 91, Ex. 93; Ex. 95.

⁹⁶ See Exs. 95-98.

⁹⁷ Exs. 130, 131, 132.

⁹⁸ Ex. 132.

⁹⁹ *Id.*

among other issues.¹⁰⁰ Banner's protest also stated that it expressly reserved its right to supplement its protest as additional public records related to this procurement process were produced.¹⁰¹

107. Finding of Fact #119 is accepted: Health Choice's protest alleged, in summary, that AHCCCS: did not formulate a scoring methodology until after the proposals were opened; erroneously used a ranking scoring methodology; failed to disclose the weighting of the evaluation factors and subfactors; and erroneously scored B4 through B11, and the cost bids.¹⁰² Health Choice also reserved the right to amend or supplement its protest based upon materials that AHCCCS had not yet produced.¹⁰³
108. Finding of Fact #120 is stricken in its entirety.
109. Finding of Fact #121 is accepted: On February 2, 2024, AHCCCS' CPO issued a detailed decision denying the three protests.¹⁰⁴
110. Finding of Fact #122 is accepted: The CPO found that several of Appellants' protest grounds were untimely because they related to elements that were apparent from the face of the RFP and thus were required to be raised in a protest before the proposal submission deadline.¹⁰⁵
111. Finding of Fact #123 is accepted: The CPO also found that Appellants were required and failed to establish actual and sufficient prejudice to their opportunity for award as a result of each alleged impropriety.¹⁰⁶
112. Finding of Fact #124 is accepted: In addition to rejecting certain protest grounds as untimely, the CPO rejected the protest grounds that she determined were timely made.¹⁰⁷
113. Finding of Fact #125 is accepted: With respect to Appellants' claim that the scoring methodology was not developed until after the proposals were opened and reviewed, the CPO rejected this argument as factually incorrect and based on a typographical error that was "regrettably

¹⁰⁰ Ex. 130.

¹⁰¹ *Id.*

¹⁰² Ex. 131.

¹⁰³ *Id.*

¹⁰⁴ *See* Ex. 144

¹⁰⁵ *Id.* at PF002399-400.

¹⁰⁶ *Id.* at PF002401.

¹⁰⁷ *Id.* at PF002403-33.

overlooked” in the Executive Summary summarizing the procurement.¹⁰⁸ Specifically, the statement that “The Scope Team met October 2, 2023 through November 15, 2023, to determine the scoring methodology and came to an agreement to apply the scoring methodology detailed in the Evaluation Process Overview document available in the procurement file.”¹⁰⁹

114. Finding of Fact #126 is accepted: The CPO also rejected arguments that AHCCCS was required and failed to disclose the specific evaluation criteria and scoring and weighting details, noting that such arguments were untimely as the protestors were on notice after RFP Amendment 1 that AHCCCS would not disclose such information but failed to protest.¹¹⁰ The CPO found that even if timely, this argument failed because no controlling law required AHCCCS to disclose additional details about its evaluation criteria and scoring methods.¹¹¹ The CPO noted that AHCCCS elected not to require disclosure of such details in its RFPs because highly detailed listing of scoring criteria can lead to offerors trying to “game” the process and focus their proposals on supplying information for the factors capable of earning them the most possible points while shorting their responses to “low-value” submission factors.¹¹²
115. Finding of Fact #127 is accepted: The CPO rejected Banner’s and Mercy Care’s arguments that AHCCCS failed to disclose that oral presentations would be scored given the RFP’s express language including a statement indicating that they would be used in the evaluation process, and further found that protests about the format of the oral presentations were untimely because information about the oral presentations was apparent from the face of the RFP.¹¹³ The CPO concluded that Banner and Mercy Care also failed to establish prejudice from the scoring of the oral presentations, because they did not demonstrate that they would have structured or performed any differently had they “known” AHCCCS would score the oral presentations.¹¹⁴

¹⁰⁸ *Id.* at PF002403-05.

¹⁰⁹ *Id.* at PF002403.

¹¹⁰ *Id.* at PF002405-06.

¹¹¹ *Id.* at PF002406-07.

¹¹² *Id.* at PF002407.

¹¹³ *Id.* at PF002408-10.

¹¹⁴ *Id.* at PF002410.

116. Finding of Fact #128 is accepted: The CPO also rejected arguments about the use of a consensus ranking methodology to score the proposals, finding, among other things, that the ranking methodology did not violate any law; the consensus ranking methodology used in this procurement was consistent with the scoring methodology AHCCCS had used in prior managed care procurements; and the better proposals received a higher rank than inferior proposals on each evaluation criterion with ties being awarded for equivalent responses.¹¹⁵
117. Finding of Fact #129 is accepted: The CPO denied the protests and upheld AHCCCS' decision to award statewide contracts to Health Net and APIPA.¹¹⁶
118. Finding of Fact #130 is accepted: On February 7, 2024, Mercy Care, Banner, and Health Choice appealed the CPO's decision.¹¹⁷
119. Finding of Fact #131 is accepted: Banner argued in its appeal that: the CPO erred by applying the wrong burden of proof, level of discretion, and standard of review; the CPO erred in requiring Banner to establish prejudice, but in any event, Banner established such prejudice; Banner's protest was timely; mistakes in recordkeeping and "blame shifting" justified sustaining Banner's appeal; oral presentations were noticed for evaluation but not scoring; the scoring process resulted in numerous errors, including overvaluation of the oral presentations and AHCCCS' failure to give appropriate consideration to past performance; AHCCCS failed to score the cost bids appropriately; the evaluations and final rankings were not supported by the record; and a summary list of "[o]ther issues" that Banner contended justified sustaining Banner's appeal, including "the incomplete procurement file and outstanding public records requests."¹¹⁸
120. Finding of Fact #132 is accepted: In its appeal, Health Choice argued in summary that: the CPO applied the incorrect standard of review; Health Choice met its burden to show prejudice; Health Choice's protest was timely; the timeline of the development of the scoring methodology and evaluation criteria warranted a rebid; AHCCCS erred in applying a "forced ranked scoring

¹¹⁵ *Id.* at PF002415-21.

¹¹⁶ *See Id.* at PF002432-33.

¹¹⁷ *See Exs.* 147, 148, 149

¹¹⁸ *Ex.* 147.

methodology”; AHCCCS erred in not disclosing the weighting of evaluation factors; and the final rankings illustrate scoring errors, specifically in B4 through B11, and the cost bid.¹¹⁹

121. Finding of Fact #133 is accepted: In its appeal, Mercy Care argued in summary that: the CPO applied an inappropriate burden of proof; allocating 29 percent of the available points to the oral presentations was irrational and violated the RFP; the ranking scoring system failed to measure the relative merits of the proposals; and AHCCCS' scoring of Oral Presentations, B5, B7, and B9 was arbitrary.¹²⁰
122. Finding of Fact #134 is accepted: AHCCCS referred the appeals to the Office of Administrative Hearings for hearing pursuant to A.A.C. R9-22-604(I), (J), and (K).
123. Finding of Fact #135 is accepted: Health Choice argued in its appeal that AHCCCS failed to establish the scoring methodology to be used in the RFP before receipt and scoring of the proposals.
124. Finding of Fact #136 is accepted: The evidence presented at hearing confirmed that AHCCCS decided to use its consensus and ranking scoring methodology prior to the issuance of the RFP.
125. Finding of Fact #137 is accepted: Witnesses, including the CPO herself, credibly testified that the statement in the Executive Summary that the scoring methodology was not finalized until November 15, 2023, was a typographical error.¹²¹
126. Finding of Fact #138 is accepted: Appellants argued that AHCCCS' finalization of the scoring tools, including the Broad Categories and Criteria Considerations, after issuance of the RFP amounted to the creation of new evaluation criteria.
127. Finding of Fact #139 is stricken and modified to read: AHCCCS argued it met its obligation under A.A.C R9-22-602 by identifying the “scored portions of the evaluation” in “relative order of importance” with the phrases: (1) “Programmatic Submission Requirements” and (2) “Financial Submission Requirements.”¹²²
128. Findings of Fact #140 and 141 are stricken in their entirety.

¹¹⁹ Ex. 148.

¹²⁰ Ex. 149.

¹²¹ Day 1 Tr. 185:18-186:4; Day 11 Tr. 2500:6-23; Day 14 Tr. 3362:4-24.

¹²² Ex. 8 at PF000319.

129. Finding of Fact #142 is stricken and modified to read: The evaluation teams met in August and September 2023, prior to the submission deadline for proposals, to review and finalize the Broad Categories and Criteria Considerations used in the scoring tools.¹²³
130. Finding of Fact #143 is stricken in its entirety.
131. Finding of Fact #144 is stricken and modified to read: In developing the individual scoring tool for B10, the evaluators decided to use the following Criteria Considerations: the total number of standards to which incumbents were subject in the appropriate operational review (e.g., there were 173 for incumbent ALTCS E/PD contractors); the number of standards at “full compliance,” i.e., equal to or greater than 95 percent; and whether the offeror had prior LTSS experience. Ninety-five percent is the well-established full compliance standard used by AHCCCS in assessing compliance in operational reviews; anything below this amount warrants a corrective action plan. During the consensus meetings, the evaluators also considered whether the offerors’ operational reviews showed any standards that fell below 80 percent.¹²⁴
132. Findings of Fact #145, 146, and 147 are stricken in their entirety.
133. Finding of Fact #148 is accepted: Appellants argued that the ranking system AHCCCS used was inappropriate because it failed to account for the relative merits of the proposals, “forcing” a 20 percent score differential between offerors by virtue of the 1 through 5 ranking. Health Choice also challenged AHCCCS’ decision not to disclose additional information regarding the evaluation criteria, including that the ranks would be converted to points and the weights of the various evaluation factors.
134. Finding of Fact #149 is accepted: AHCCCS’ consultant, Mr. Cohen, explained that ranking was a common and even preferable way to conduct the evaluation of offers by MCOs to differentiate between companies that can all likely perform the work—as compared to a simple process where

¹²³ Ex. 144 at PF002426; Day 1 Tr. 86:5-18; Day 5 Tr. 902:904:5, 906:8-21.

¹²⁴ Day 3 Tr. 529:14-17; Ex. 160; Day 3 Tr. 541:19-542:2, 550:10-16; Day 5 Tr. 993:3-12; Day 10 Tr 2293:4-13, 2346:5-2347:1; Day 3 Tr. 572:10-23; Day 5 Tr. 1062:22-24; Day 10 Tr. 2345:1-2346:4; Day 12 Tr. 2885:3-2886:5, 2888:11-17; see *also* Ex. 105.

scores are awarded—by allowing the agency to focus on identifying the offerors that best align with the agency’s goals and priorities.¹²⁵

135. Finding of Fact #150 is accepted: Mr. Cohen further explained why it was rational, even preferable, not to disclose to the evaluators the effect of their rankings so that evaluators could focus on the task before them—evaluating the proposals against the relevant evaluation factors— while not being distracted by what the ranks could potentially mean for final scoring of the proposals.¹²⁶
136. Finding of Fact #151 is accepted: Mr. Cohen also testified that it was not unreasonable for some evaluators, due to their dual roles as evaluators and members on the Scope and/or Executive Teams, to be aware of the final ranking methodology, and there was no evidence that anyone in such a dual role behaved inappropriately in the procurement process.¹²⁷
137. Findings of Fact #152, 153, 154, and 155 are stricken in their entirety.
138. Finding of Fact #156 is stricken and modified to read: The evaluators were tasked with ranking each proposal from 1 to 5 (as there were five offerors), with 1 being the best proposal. Ties were allowed and neither encouraged nor discouraged. The consensus scoring process resulted in several tie rankings.¹²⁸
139. Finding of Fact #157 is stricken and modified to read: The consensus ranking evaluation method involved evaluators ranking offerors’ responses 1 through 5, which was decided during consensus meetings. The first ranked response received 100% of the points.
140. Finding of Fact #158 is stricken in its entirety.
141. Finding of Fact #159 is accepted: The percentage of awarded points was predetermined by a formula which divided the total number of points available by the total number of offerors and multiplied the quotient by the Offeror’s inverse ranking, resulting in an equal divide in number of points awarded between each ranked offeror.¹²⁹

¹²⁵ Day 12 Tr. 2684:7-2685:3, 2686:5-2687:4, 2710:9-2173:6.

¹²⁶ Day 12 Tr. 2849:20-2850:19.

¹²⁷ See Day 12 Tr. 2853:17-2854:19.

¹²⁸ Ex. 97 at PF001230; Ex. 151 at AHCCCS000062; Day 2 Tr. 399: 12-14; Day 3 Tr. 444:4-7, 579:11-22; Day 6 Tr. 1325:7-11; Day 7 Tr. 1435:17-22, 1470:1214, 1629:25-1630:7; Day 11 Tr. 2691:20-2692:6, 2812:19-2813:7; Day 12 Tr. 2691:20-2692:6; Day 5 Tr. 1089:4-7.

¹²⁹ See Ex. 97 at PF001230.

142. Finding of Fact #160 is accepted: Because there were five offerors in the ALTCS procurement, whoever ranked first on a given criteria received 100 percent of the available points, second place received 80 percent, third place received 60 percent, fourth place received 40 percent, and last place received just 20 percent.¹³⁰
143. Finding of Fact #161 is accepted: To further illustrate this methodology, if there had been 15 offerors, points would have been divided by 6.66 percent, with each ranking receiving 6.66 percent more than the rank behind it; conversely, if there had been two offerors, the points would have been divided by 50 percent, with first place receiving 100 percent of points available and second place receiving 50 percent.¹³¹
144. Findings of Fact #162 and 163 are stricken in their entirety.
145. Finding of Fact #164 is accepted as follows with a modified footnote: During the consensus meeting for each criteria submission, the evaluators discussed their individual impressions of the submissions and came to a collective decision regarding the final rankings.¹³²
146. Findings of Fact #165, 166, 167, and 168 are stricken in their entirety.
147. Finding of Fact #169 is accepted: None of the evaluators testified that any of the bidders failed on the submission requirement they evaluated.¹³³
148. Findings of Fact #170-177 are stricken in their entirety.
149. Finding of Fact #178 is stricken and modified to read: AHCCCS designated 290 of the 1,000 points available in evaluating the offerors' submissions to scoring the two 30-minute oral presentations each offeror gave.¹³⁴
150. Finding of Fact #179 is accepted: Offerors were instructed to bring "no more than six individuals to the [oral presentations]" but were told only that their teams should include "individuals with expertise in Medical Management, Case Management, and Quality Management."¹³⁵

¹³⁰ Ex. 96.

¹³¹ Day 5 Tr. 898:12-25, 899:4-8.

¹³² Day 7 Tr. 1550:1-12; Ex. 151 at 40.

¹³³ See, e.g., Day 7 Tr. 1486:14-25 (definitely that wasn't the way I considered it that [Mercy Care] had only addressed a fifth [of the criteria]").

¹³⁴ Ex. 96 at 2.

¹³⁵ Ex. 8 at PF000332.

151. Finding of Fact #180 is accepted: Offerors were provided the oral prompts one hour before their presentations and had that one hour to prepare each oral presentation after learning the prompt.¹³⁶
152. Finding of Fact #181 is stricken and modified to read: Ms. LaPorte testified that the oral presentations reflected “how [the Offerors] did on their feet, how their team works together, information like that.”¹³⁷
153. Finding of Fact #182 is accepted: AHCCCS sought to use the presentations to “give insight to team chemistry, experience and expertise, culture fit, and commitment and passion.”¹³⁸ Ms. Lebsock testified that the oral presentations were “the one opportunity for the health plans to stand on their own with the staff that they have hired to share knowledge of how they do business.”¹³⁹
154. Finding of Fact #183 is accepted: Section 8 of the Instructions to Offerors, entitled “Evaluation Factors and Selection Process,” listed two “scored portions of the evaluation” “in their relative order of importance” as “1. Programmatic Submission Requirements” and “2. Financial Submission Requirements.”¹⁴⁰ The phrase “Programmatic Submission Requirements” was not defined in the RFP.¹⁴¹ The Instructions to Offerors went on to explain which items were “designated for scoring”:
- a. “The Capitation Agreement/Administrative Cost Bid *will be scored*”
 - b. “The Case Management Cost Bid *will be scored*”
 - c. “With the exception of Narrative Submission Requirements noted as a non-scored item and Narratives that are noted as GSA-specific, Narrative Submission Requirements *will be scored*”¹⁴²
155. Finding of Fact #184 is stricken in its entirety.
156. Finding of Fact #185 is accepted: The Instructions to Offerors referred to Section I, Exhibit H of the RFP for the “Narrative Submission Requirements.”¹⁴³ RFP Section I, Exhibit H, entitled “Narrative

¹³⁶ Day 3 Tr. 522:5-6; Day 6 Tr. 1196:7-11.

¹³⁷ Day 14 Tr. 3430:16-24.

¹³⁸ Ex. 350 at AHCCCS003364.

¹³⁹ Day 4 Tr. 703:25–704:3.

¹⁴⁰ Ex. 8 at PF000319; *see also* Ex.8 at PF000320.

¹⁴¹ *See Id.* at PF000319-20.

¹⁴² *Id.* at PF000320 (emphases added).

¹⁴³ Ex. 8 at PF000330.

Submission Requirements,” identified narrative submissions B1-B11 and their associated page limits.¹⁴⁴

157. Finding of Fact #186 is stricken in its entirety.
158. Finding of Fact #187 is accepted: Section 20 of the Instructions to Offerors stated offerors would participate in oral presentations that “may be audio-taped by AHCCCS for the Agency’s use in the evaluation process.”¹⁴⁵
159. Findings of Fact #188 and 189 are stricken in their entirety.
160. Finding of Fact #190 is stricken and modified to read: Appellants took no issue with the use of a consensus evaluation process, and they did not dispute that a consensus final evaluation may differ from an individual’s initial assessment.
161. Findings of Fact #191-198 are stricken in their entirety.
162. Finding of Fact #199 is accepted: B7 asked the bidders to provide “action steps and a timeline for the first three years of the Contract.”¹⁴⁶ B7 was evaluated by Christina Quast, Gini Britton, and Jay Dunkleberger.¹⁴⁷ In response to a question submitted by Health Net, AHCCCS told the bidders that the “action steps should focus on the contract start (execution) date.”¹⁴⁸ The RFP defined the “term of Contract” to start on October 1, 2024.¹⁴⁹ APIPA and Health Net’s acceptance forms also indicated a contract start date of October 1, 2024.¹⁵⁰
163. Findings of Fact #200-204 are stricken in their entirety.
164. Finding of Fact #205 is accepted: Mercy Care challenged the scoring of B9 on various grounds in its protest and appeal.¹⁵¹ The B9 evaluators were Dr. Melissa Del-Colle, Rachel Conley, and Susan Kennard.¹⁵²
165. Finding of Fact #206 is stricken in its entirety.

¹⁴⁴ Ex. 16.

¹⁴⁵ Ex. 8 at PF000332.

¹⁴⁶ Ex. 16 at PF000358.

¹⁴⁷ Ex. 157.

¹⁴⁸ Ex. 19 at PF000384.

¹⁴⁹ Ex. 4 at PF000279 ¶ 51; Day 10 Tr. 2255:11-2256:17.

¹⁵⁰ Ex. 92, Ex. 94.

¹⁵¹ Ex. 132 at PF0001362-63; Ex. 149 at PF0002625-26.

¹⁵² Ex. 159.

166. Finding of Fact #207 is stricken and modified to read: The evaluation team for B10 consisted of Christina Quast, Jakenna Lebsock, and Michelle Holmes. B10 concerned the bidders' operational reviews ("ORs"). Because all bidders were incumbent AHCCCS plans, no submissions were necessary for B10, since AHCCCS stated they would utilize the "AHCCCS Calendar Year (CY) 23 ALTCS E/PD Operational Review (OR)" or "the most recent finalized AHCCCS Operational Review (OR)."¹⁵³
167. Finding of Fact #208 is accepted with modified footnote: AHCCCS utilized the 2023 ALTCS OR for the three incumbent ALTCS E/PD contractors (Banner, Mercy Care, and APIPA). For the MCOs who had existing non-E/PD contracts with AHCCCS (Health Choice and Health Net), AHCCCS was to use "the most recent finalized" AHCCCS OR.¹⁵⁴
168. Finding of Fact #209 is stricken and modified to read: AHCCCS used Health Choice's 2022 AHCCCS Complete Care ("ACC") OR. AHCCCS used Health Net's 2020 RBHA OR.¹⁵⁵
169. Findings of Fact #210, 211, 212, 213, 214, 215, 216, 217 and 218 are stricken in their entirety.
170. Finding of Fact #219 is stricken and modified to read: AHCCCS required the bidders to submit their Arizona 2023 STAR score ratings. If the Offeror did not have a D-SNP STAR Rating in Arizona, the Offeror was instructed to cite its most recent STAR rating with the corresponding Medicare Contract Number, from one of the states for the Medicaid contracts cited in Submission Requirement B2, using the preference order detailed in the Narrative Submission requirements.¹⁵⁶
171. Findings of Fact #220, 221, 222, 223, and 224 are stricken in their entirety.
172. Findings of Fact #225, 226, 227, 228, 229, 230, 231 and 232 are consolidated, stricken and modified to read: AHCCCS considered past performance in evaluating proposals in response to the RFP. As disclosed in the RFP, AHCCCS used operational and compliance reviews, and STAR ratings to measure past performance via Narrative Submission Requirements B10 and B11. The RFP also stated that, "[i]f AHCCCS deems that there is a negligible difference in scores between two or more competing Proposals for a particular [GSA], in the best interest of the State, AHCCCS

¹⁵³ Ex. 16 at PF000359

¹⁵⁴ *Id.*

¹⁵⁵ Ex. 160.

¹⁵⁶ Ex. 16 at PF000360.

may consider additional factors in awarding the Contract including, but not limited to . . . [a]n Offeror's past performance with AHCCCS" or "the nature, frequency, and significance of any compliance actions." This language was permissive, and not mandatory, and only became applicable if AHCCCS determines there is a negligible difference in scores between two offerors. The RFP also reflected AHCCCS' anticipated, but not required, use of past performance in the evaluation process.¹⁵⁷

173. Finding of Fact #233 is stricken in its entirety.
174. Finding of Fact #234 is stricken and modified to read: The Instructions of the RFP informed the offerors that "AHCCCS will award Contracts in each GSA to Successful Offerors in the best interest of the State."¹⁵⁸ "The Capitation Agreement/Administrative Cost Bid will be scored for each Offeror and the score for that Offeror will be applied to all GSAs bid by that Offeror. The Case Management Cost Bid will be scored by GSA for each Offeror. With the exception of Narrative Submission Requirements noted as a non-scored item and Narratives that are noted as GSA-specific, Narrative Submission Requirements will be scored for each Offeror and the score for that Offeror will be applied to all GSAs bid."¹⁵⁹
175. Finding of Fact #235 is accepted: There were no GSA-specific narrative questions in the RFP.¹⁶⁰
176. Finding of Fact #236 is stricken in its entirety.
177. Finding of Fact #237 is stricken and modified to read: The Final Ranking and Rationale Spreadsheet for the Cost Bid identified which case management rates were the lowest "using membership-weighted rates by GSA."¹⁶¹
178. Findings of Fact #238, 239, 240, 241 and 242 are stricken in their entirety.

Conclusions of Law

1. Conclusion of Law #1 is stricken and modified to read: Appellants bear the burden to prove their case by a preponderance of the evidence.¹⁶²

¹⁵⁷ Ex. 8 at PF000319, PF000320 (emphasis added), PF000331, PF000332.

¹⁵⁸ *Id.* at PF000320.

¹⁵⁹ *Id.*

¹⁶⁰ Day 1 Tr. 154:17-155:13.

¹⁶¹ Ex. 107.

¹⁶² A.A.C. R2-19-119.

2. Conclusion of Law #2 is stricken and modified to read: A preponderance of the evidence means “proof which leads the [trier of fact] to find that the existence of the contested fact is more probable than its nonexistence.”¹⁶³
3. Conclusion of Law #3 is stricken and modified to read: Appellants must prove, by a preponderance of the evidence, that the CPO’s decision, underlying procurement process, and resulting awards, were either: 1) contrary to law, or 2) arbitrary or capricious or an abuse of discretion. Appellants must also show that the alleged errors in the procurement process were prejudicial to Appellants, and, absent those errors, there was a substantial chance that the Appellants would have been awarded a contract.¹⁶⁴ In determining whether the CPO’s decision, underlying procurement process, and resulting awards, were arbitrary or capricious, AHCCCS’ decision must be affirmed if it is supported

¹⁶³ *In re William L.*, 211 Ariz. 236, 238 (App. 2005) (quoting *Matter of Appeal in Maricopa Juv. Action No. J-84984*, 138 Ariz. 282, 283 (1983)).

¹⁶⁴ Arizona statute and caselaw support the standard of review applied by the Director’s Designee in this case. Moreover, in the absence of state law, Arizona courts seek guidance from federal law when applying Arizona procurement statutes and regulations. See *Ariz.’s Towing Pros., Inc. v. State*, 196 Ariz. 73, 76–78 (App. 1999) (relying on federal law in considering state bid protest); see also *New Pueblo Constructors, Inc. v. State*, 144 Ariz. 95, 101 (1985) (“In the absence of controlling state authority, state courts naturally look for guidance in public contract law to the federal court of claims and the federal boards of contract appeals.”).

1) A.R.S. § 12-910

2) *Tech Systems, Inc. v. United States*, 50 Fed Cl 216, 221(2001): “The court evaluates the procuring agency’s conduct to determine whether it was arbitrary and capricious. *Id.* (citing 28 USC § 1491(b)(4)) (emphasis added) “To prevail under the arbitrary and capricious standard, a frustrated offeror is required to establish that (1) the Government officials involved in the procurement process were without a rational and reasonable basis for their decision, or (2) the procurement procedure involved a clear and prejudicial violation of applicable statutes and regulations.” *Id.* (citations omitted). Further, “Plaintiff must show not only that the USDA made significant errors in the procurement process, but that, had the USDA made no errors, “there was a reasonable likelihood that [plaintiff] would have been awarded the contract.” *Id.* at 224.

3) *Richard E. Lambert, Ltd. v. City of Tucson Department of Procurement*, 221 P3d 375 (Ct App Az, 2009). In *Richard E. Lambert*, the Court held “when reviewing an administrative decision, the superior court must determine whether the administrative officer’s ‘determination was arbitrary and capricious or an abuse of discretion.’” 221 P3d at 378 (citations omitted). “In determining whether an administrative decision is arbitrary or capricious, the superior court ‘may not weigh the evidence on which the decision was based’ and must affirm if the decision is supported by substantial evidence.” *Id.* (citations omitted).

4) *Data Gen. Corp. v. Johnson*, 78 F3d 1556 (Fed Cir 1996): “To prevail in a protest the protester must show not only a significant error in the procurement process, but also that the error prejudiced it.” *Id.* at 1562 (citation omitted) “To establish prejudice, a protester must show that, had it not been for the alleged error in the procurement process, there was a reasonable likelihood that the protester would have been awarded the contract.” *Id.*

by substantial evidence.¹⁶⁵ The standard of review applied by the Administrative Law Judge in her decision was adopted verbatim by reference to a separate, unpublished Administrative Law Judge Decision in *Cigna Healthcare v. Arizona State Procurement Office*, 04-0008-ADM (2004). Pursuant to Rule 111 of the Arizona Supreme Court, an unpublished memorandum has limited precedential value. Arizona Supreme Court Rule 111(c) states “Memorandum decisions of Arizona state courts are not precedential and such a decision may be cited only: (A) to establish claim preclusion, issue preclusion, or law of the case; (B) to assist the appellate court in deciding whether to issue a published opinion, grant a motion for reconsideration, or grant a petition for review; or (C) *for persuasive value, but only if it was issued on or after January 1, 2015; no opinion adequately addresses the issue before the court; and the citation is not to a depublished opinion or a depublished portion of an opinion.*” (emphasis added). Although Rule 111(c) does allow for citation to an unpublished opinion “for persuasive value” so long as the opinion was issued after January 1, 2015, the decision cited by the Administrative Law Judge was issued in 2004, which is not consistent with Rule 111(c). Furthermore, published opinions are available to provide guidance on the issue. The standard of review adopted and applied by the Director’s Designee is properly supported by statute and published state and federal caselaw.

4. Conclusion of Law #4 is stricken and modified to read: Appellants’ challenges and protest of the CPO’s decision were referred to OAH by AHCCCS for a hearing conducted under the Arizona Procedure Act (“APA”).¹⁶⁶ Under the APA, parties “have the opportunity to respond and present

¹⁶⁵ 1) *Statistica Inc. v. Christopher*, 102 F3d 1577 (Fed Cir 1996): “We review protest decisions of the GSBCA under the standard set forth in the Contract Disputes Act of 1978.” *Id* at 1581 (citing to 40 USC 759(f)(6)(A)) “That standard mandates that we affirm the board’s decision on any fact question unless its findings are “fraudulent, or arbitrary, or capricious, or so grossly erroneous as to necessarily imply bad faith, or ... not supported by substantial evidence.” *Id* (citations omitted) “Substantial evidence means ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Id* (citations omitted) “A protester must show not simply a significant error in the procurement process, but also that the error was prejudicial, if it is to prevail in a bid protest.” *Id* “To establish competitive prejudice, a protester must demonstrate that but for the alleged error, there was a ‘substantial chance that [it] would receive an award-that it was within the zone of active consideration.’” *Id* (citations omitted).

2) *Labarge Products, Inc. v. West*, 46 F3d 1547 (Fed Cir 1995): “Our review of the Board’s fact findings is limited to a determination of whether those findings are supported by substantial evidence.” *Id* at 1550 (citing 41 USC 609(b)) “We will affirm the Board’s decision if there is ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Id* (citation omitted).

¹⁶⁶ A.A.C. R9-22-604(K).

evidence and argument on all relevant issues.”¹⁶⁷ Evidence that is relevant to the present review is that which was timely raised by Appellants and was in existence or available at the time AHCCCS made its contract award decisions. In bid protests, the review is generally limited to the record that was actually before the agency in making its award decision.¹⁶⁸ In addition, pursuant to A.A.C. R9-22-604(D)(3), “any protest alleging improprieties in an amendment issued 14 or fewer days before the due date of the proposal shall be filed before the due date for receipt of proposals. In cases other than those covered in subsections (D)(1) and (2), a protester shall file a protest no later than 10 days after the procurement officer makes the procurement file available for public inspection.” This mechanism allows for the process of claimants to raise protests on other issues related to a procurement, and for the CPO to issue a written decision on those issues. An appeal of the CPO’s decision can then be raised to the Director, who refers it to OAH. Issues, evidence and arguments offered at hearing regarding matters not timely raised by Appellants, either before the due date of receipt of proposals or within 10 days of the procurement officer making the procurement file available for public inspection, are beyond the scope of this review. The matters at issue are limited to Appellants’ appeals of the CPO’s decision.¹⁶⁹

5. Conclusion of Law #5 is stricken and modified to read: AHCCCS is exempt from the Arizona Procurement Code.¹⁷⁰ The Arizona Legislature provides discretion to the AHCCCS director to adopt rules regarding the request for proposal process and the award of contract.¹⁷¹ An agency decision is

¹⁶⁷ A.R.S. § 41-1092.07(D).

¹⁶⁸ See, e.g., *Hatch v. Ariz. Dep’t of Transp.*, 184 Ariz. 536, 540 (App. 1996) (“the parties may not impeach the agency’s decision with evidence that developed after the agency’s ruling”). See, e.g., *Axiom Resource Mgmt., Inc. v. U.S.*, 564 F.3d 1374, 1379-80 (Fed. Cir. 2009) (trial court abused its discretion by permitting protestor to supplement the record with materials that were not before the agency when it made its contract award decision).

¹⁶⁹ The standard of review applied by the Administrative Law Judge in her decision was adopted verbatim by reference to *Eel River Disposal & Res. Recovery, Inc. v. Cnty of Humboldt*, 221 Cal. App. 4th 209, 238, 164 Cal. Rptr. 3d 316, 339 (2013). However, this California Court of Appeals decision does not hold precedential value and there are federal and state cases available on this issue.

¹⁷⁰ A.R.S. § 41-2501.

¹⁷¹ A.R.S. § 36-2944(B) and A.A.C. R9-28-601; “Even were the regulations not clear, we give deference to an agency’s permissible interpretation of its own regulations.” *Info. Tech. & Applications Corp. v. United States*, 316 F.3d 1312, 1323 (Fed. Cir. 2003) (citing *United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 218–19, 121 S.Ct. 1433, 149 L.Ed.2d 401 (2001); *Am. Express Co. v. United States*, 262 F.3d 1376, 1382 (Fed.Cir.2001)).

entitled to a presumption of regularity.¹⁷² There is a presumption that public officials act in good faith unless there is clear evidence to the contrary.¹⁷³

6. Conclusion of Law #6 is stricken and modified to read: Arizona law requires AHCCCS' director to "adopt rules regarding the request for proposal process that provide . . . [f]or the awarding of contracts to contractors with qualified proposals determined to be the most advantageous to the state for each of the counties in this state."¹⁷⁴ The AHCCCS director may adopt rules regarding the request for proposal "in order to secure the most financially advantageous proposals for the system."¹⁷⁵
7. Conclusion of Law #7 is stricken and modified to read: AHCCCS is required to award a contract to "the responsible and responsive offeror whose proposal is determined most advantageous to the state under A.R.S. § 36-2906."¹⁷⁶
8. Conclusion of Law #8 is stricken and modified to read: Appellants failed to prove that the procurement process and resulting decision did not meet the statutory requirement that AHCCCS award the contract to the proposal determined to be the most advantageous to the state. Although properly considered, administrative burden to the system and protest mitigation were not prioritized by AHCCCS over its primary duty to determine which proposal was most advantageous to the state.
9. Conclusions of Law #9, 11, 24, 25 and 26 are consolidated, stricken and modified to read: The ranking and scoring methodology used in the procurement process, including the extent to which scoring information would be provided to offerors, was apparent from the face of the RFP and AHCCCS' response to inquiries through amendment to the RFP. A protest alleging improprieties in an RFP, or an amendment to an RFP, must be filed at least 14 days before the due date of receipt of proposals.¹⁷⁷ None of the Appellants protested the RFP, or any of the amendments to the RFP, before submitting their proposals. In failing to do so, Appellants have waived their ability to challenge the ranking and

¹⁷² See *Impresa Construzioni Geom. Domenico Garufi v. U.S.*, 238 F.3d 1324, 1338 (Fed. Cir. 2001).

¹⁷³ See e.g., *Info. Tech. & Applications Corp. v. United States*, 316 F.3d 1312, 1323 n.2 (Fed. Cir. 2003) (holding that allegations the contracting officer erred in evaluating the proposals was "insufficient to overcome the presumption that the contracting officer acted in good faith."); *Spezzaferro v. Fed. Aviation Admin.*, 807 F.2d 169, 173 (Fed.Cir.1986) (requiring presumption of good faith in procurement decisions and "irrefragable" proof to overcome presumption).

¹⁷⁴ A.R.S. § 36-2906(C)(7).

¹⁷⁵ A.R.S. § 36-2944(B)(1) (emphasis added).

¹⁷⁶ A.A.C. R9-22-603.

¹⁷⁷ A.A.C. R9-22-604(D)(1).

scoring methodology applied in the procurement process, including the extent to which scoring and weighting information was disclosed by AHCCCS. Even if Appellants' challenge had been timely raised, Appellants failed to prove that the ranking and scoring methodology, or the use of oral presentations, implemented by AHCCCS was in violation of law, or was arbitrary or capricious or an abuse of discretion. No statute or rule required AHCCCS to disclose specific scoring or weighting information in the RFP, including with respect to oral presentations.¹⁷⁸ AHCCCS has discretion to identify the criteria used as part of the procurement process.¹⁷⁹ AHCCCS properly exercised its discretion in implementing a multi-tiered, consensus ranking and scoring system that allowed evaluators to rank each proposal based on merit and responsiveness to each submission requirement. Furthermore, Appellants have failed to establish that they were prejudiced by the format or scoring methodology used by AHCCCS to evaluate the proposals, including oral presentations, as they were applied equally to each offeror. Appellants have also failed to prove that, but for the alleged errors in notification, format, and scoring, they would have prepared for, delivered, or submitted their proposals differently, resulting in a substantial chance of being awarded a contract.¹⁸⁰

10. Conclusion of Law #10 is stricken and modified to read: Appellants failed to prove that, in each instance of alleged impropriety in the procurement process, they were actually prejudiced by the purported errors. The evidence presented at the hearing established that AHCCCS applied the RFP processes and procedures equally to all respondents. Moreover, none of the Appellants have established that, but for the alleged error, there was a "substantial chance" they would have been awarded the contract.¹⁸¹

11. Conclusions of Law #12 and 13 are consolidated, stricken and modified to read: The Legislature has granted AHCCCS broad authority to enter into health services contracts that it determines to be most

¹⁷⁸ See A.A.C. R9-22-602(A), R9-28-602.

¹⁷⁹ See A.R.S. § 36-2944(b).

¹⁸⁰ "[A] protest alleging improprieties in an amendment issued 14 or fewer days before the due date of the proposal shall be filed before the due date for receipt of proposals." A.A.C. R9-22-604(D)(2). The evidence shows that the last amendment to the RFP was issued more than 14 days before the due date for proposals. Ex. 20; Day 14 Tr. 3350:7-24.

¹⁸¹ *Statistica Inc v. Christopher*, 102 F3d 1577 (Fed Cir 1996): "A protester must show not simply a significant error in the procurement process, but also that the error was prejudicial, if it is to prevail in a bid protest." *Id.* at 1581. "To establish competitive prejudice, a protester must demonstrate that but for the alleged error, there was a 'substantial chance that [it] would receive an award-that it was within the zone of active consideration.'" *Id.* (citations omitted).

advantageous to the state.¹⁸² The number of contract awards is a matter within the agency's discretion.¹⁸³ While the RFP stated that AHCCCS intended to make "a total of three awards," the RFP confirmed that "[a]wards may result in zero, one, or two statewide Contractors."¹⁸⁴ Although AHCCCS initially considered awarding three contracts, AHCCCS ultimately determined that, based on its review of the proposals, two contracts were most advantageous to the state. Appellants have failed to prove that AHCCCS' decision to award two contracts, rather than three, was in violation of any statute or rule that mandates a particular number of contract awards, was arbitrary or capricious or an abuse of its discretion.¹⁸⁵

12. Conclusion of Law #14 is stricken in its entirety.

13. Conclusions of Law #15, 16, 17 and 18 are consolidated, stricken and modified to read: A.R.S. § 36-2906(C)(4) requires the director to "adopt rules regarding the request for proposal process that provide: . . . 4. For analysis of the proposals *for* each geographic service area as defined by the director to ensure the provision of health and medical services that are required to be provided throughout the geographic service area pursuant to section 36-2907." (emphasis added). A.A.C. R9-22-602(B)(2) provides: The Administration shall evaluate a proposal based on the GSA and the evaluation factors listed in the RFP. No protest alleged that AHCCCS was required, and failed, to evaluate the proposals or award contracts on a GSA-by-GSA basis, nor did Appellants challenge any alleged failure by AHCCCS to do so in their appeal.¹⁸⁶ Issues, evidence, and arguments offered at hearing regarding matters not timely raised by Appellants are beyond the scope of this review. Even

¹⁸² A.R.S. § 36-2944; see also A.R.S. §§ 36-2904(A), 36-2906(C)(7).

¹⁸³ A.A.C. R9-22-603 ('If the Administration determines that multiple contracts are in the best interest of the state, the Administration *may* award multiple contracts.' (emphasis added)).

¹⁸⁴ Ex. 8 at PF000322.

¹⁸⁵ 1) See *Neptune Swimming Found. v. City of Scottsdale*, 256 Ariz. 497, 542 P.3d 241, 253 (2024) (agencies can "exercise discretion in choosing the most advantageous award[s] after scoring the proposals" (internal citation omitted)); see also *Am. Safety Council, Inc. v. U.S.*, 122 Fed. Cl. 426, 439 (2015) ("it is within the sound discretion of an agency to determine its minimum needs and determine the number of contract awards, consistent with a solicitation's requirements."); *Am. K-9 Detection Servs. v. U.S.*, 155 Fed. Cl. 248, 273 (2021) ("it is firmly within the agency's discretion to determine the number of contract awards").

2) AHCCCS designed the RFP to retain flexibility in contract awards so the decision about how many contracts to award could be made in the best interest of the State after the proposals were evaluated. Day 10 Tr. 2339:21-2340:12.

¹⁸⁶ See Exs. 130, 131, 132, 147, 148, and 149.

if a challenge had been timely raised, Appellants have failed to demonstrate that the manner in which AHCCCS evaluated the proposals was in violation of law, arbitrary or capricious or an improper exercise of its discretion. Appellants have failed to identify a statute or rule that requires AHCCCS to evaluate proposals solely on a GSA-by-GSA basis, so long as the evaluation considered each geographic service area served, and the resulting award was made based on a determination of what is most advantageous to the state. Nor do the terms of the RFP mandate that AHCCCS evaluate the proposals solely on GSA-by-GSA basis. Appellants have further failed to demonstrate prejudice or that a GSA-by-GSA evaluation would have resulted in a substantial chance of being awarded a contract.¹⁸⁷

14. Conclusions of Law #19, 21, 22 and 23 are consolidated, stricken and modified to read: A.A.C. R9-22-602 governs the request for proposals process and specifies the limited information that AHCCCS is required to include in a request for proposals. This rule does not require that AHCCCS include evaluation criteria, or the scoring methodology or weighting, in a request for proposals. The rule requires that the request for proposals include only “[t]he factors used to evaluate a proposal.”¹⁸⁸ The rule states that AHCCCS shall evaluate a proposal based on “the evaluation factors listed in the RFP.”¹⁸⁹

15. Conclusion of Law #20 is stricken and modified to read: Appellants have failed to prove that AHCCCS impermissibly created and used evaluation criteria not disclosed in the RFP. The RFP appropriately disclosed the evaluation factors to be used in the procurement, as required by law. Appellants argue that AHCCCS' finalization of the scoring tools after issuance of the RFP and the inclusion of the “other considerations” field within the scoring tool amounted to the creation of new evaluation criteria. As the scoring tools used by evaluators were “locked down” before receipt of the proposals and included matters within the evaluation factors disclosed in the RFP, Appellants have not shown that new, undisclosed evaluation factors were created after the receipt of proposals. AHCCCS properly exercised its discretion in the development and use of scoring tools, including the “other

¹⁸⁷ See also A.A.C. R9-28-602 (“The ALTCS RFP for a program contractor serving members who are EPD shall meet the requirements of A.R.S. §§ 36-2944 and 36-2939, A.A.C. R9-22-602, and Articles 2 and 11 of this Chapter.”).

¹⁸⁸ A.A.C. R9-22602(A)(4).

¹⁸⁹ A.A.C. R9-22-602(B)(2).

considerations” field, in evaluating the proposals based on the factors listed in the RFP. Appellants have failed to show that they were prejudiced by the development, timing, or use of the scoring tools, as each offeror’s proposal was reviewed using the same methodology. Appellants have also failed to demonstrate that, but for the alleged creation of new and undisclosed evaluation criteria, they would have had a substantial chance of receiving a contract award.

16. Conclusions of Law #27, 28, 29, 30 and 31 are consolidated, stricken and modified to read: The inclusion of past performance of incumbent offerors as an element of scoring was apparent from the face of the RFP and AHCCCS’ response to inquiries through amendment to the RFP. A protest alleging improprieties in an RFP, or an amendment to an RFP, must be filed at least 14 days before the due date of receipt of proposals.¹⁹⁰ None of the Appellants protested the RFP or any of the amendments to the RFP before submitting their proposals. In failing to do so, Appellants have waived their ability to challenge the ranking and scoring methodology applied in the procurement process, including the extent to which scoring and weighting information was disclosed by AHCCCS. Even if Appellants’ challenge had been timely raised, Appellants failed to prove that the ranking and scoring of prior performance implemented by AHCCCS was in violation of law, or was arbitrary or capricious or an abuse of discretion. No statute or rule required AHCCCS to disclose specific scoring or weighting information in the RFP, including with respect to review of an offeror’s prior performance.¹⁹¹ AHCCCS has discretion to identify criteria used as part of the procurement process, and in the case of prior performance and expenses, at what value that information would be weighed as part of the procurement process.¹⁹² Furthermore, Appellants have failed to establish that they were prejudiced by the format or scoring methodology used by AHCCCS, as they were applied equally to each offeror.
17. Conclusions of Law #32 and 33 are consolidated, stricken and modified to read: No protest raised by the Appellants challenged AHCCCS’ call for and use of BAFOs, or the related cost bid clarification requests, nor did Appellants do so in their appeals.¹⁹³ Issues, evidence, and arguments offered at hearing regarding matters not timely raised by Appellants are beyond the scope of this review. Even

¹⁹⁰ A.A.C. R9-22-604(D)(1).

¹⁹¹ See A.A.C. R9-22-602(A), R9-28-602.

¹⁹² See A.R.S. § 36-2944(b).

¹⁹³ See Exs. 130, 131, 132, 147, 148, and 149.

if timely raised, Appellants have failed to prove that AHCCCS was in violation of law, arbitrary or capricious or abused its discretion by requesting BAFOs, or further clarification on some, but not all, cost bids. AHCCCS may call for BAFOs pursuant to A.A.C. R9-22-602(B)(6) (“The Administration may issue a written request for best and final offers.”). In addition, A.A.C. R9-22-602(B)(3) allows for “[t]he Administration [to] initiate discussions with a responsive and responsible offeror to clarify and assure full understanding of an offeror’s proposal.” This rule does not mandate that the same communication, question, or instruction be given to all offerors. AHCCCS properly exercised its discretion in sending specific requests for clarification or revision to offerors based on the evaluators’ need for additional information relative to that offeror’s cost bid. Appellants have failed to establish that they were materially prejudiced by the alleged failure of AHCCCS to issue cost bid clarification requests to each offeror and, had the requests for clarification been issued, that the Appellants would have had a substantial chance of being awarded a contract. A.A.C. R9-22-603 mandates that “[t]he contract file shall contain the basis on which the award is made.” Pursuant to A.A.C. R9-22-601(E), “[t]he procurement file shall include in electronic or paper form a list of notified vendors, final solicitation, solicitation amendments, bids/offers, final proposal revisions, clarifications, and final evaluation report.” Appellants have not met their burden to show that AHCCCS failed to maintain a procurement file in accordance with A.A.C. R9-22-601(E), or that the records in the file do not sufficiently demonstrate the basis on which the contract awards were made.¹⁹⁴

18. Conclusions of Law #34, 35, 36, 37, 38, 39 and 45 are consolidated, stricken and modified to state: AHCCCS has designed an administrative review for protests.¹⁹⁵ Those regulations outlined in Title 9, Chapter 22, Article 6, are adopted and applied to Arizona Long Term Care Contract Procurement in A.A.C. R9-28-604. The procurement officer issuing a RFP shall have the authority to resolve proposal protests. “An appeal from the decision of the procurement officer shall be made to the Director.”¹⁹⁶ “A person may file an appeal of a procurement officer’s decision with both the Director and the

¹⁹⁴ “[A] protester must demonstrate that but for the alleged error, there was a ‘substantial chance that [it] would receive an award—that it was within the zone of active consideration.’ *Statistica Inc v. Christopher*, 102 F3d 1577, 1581 (Fed Cir 1996).

¹⁹⁵ See A.R.S. § 36-2944 (for AHCCCS’ authority to create administrative rules regarding procurement); A.A.C. R9-22-604 (Contract Proposal Protests; Appeals).

¹⁹⁶ A.A.C. R9-22-604(B).

procurement officer.”¹⁹⁷ Pursuant to A.R.S. § 41-1092.01(E), AHCCCS determinations that are noticed as appealable agency actions, may be appealed to a hearing before an administrative law judge. AHCCCS refers those appeals to OAH for a hearing conducted by an Administrative Law Judge.¹⁹⁸ The administrative law judge then drafts a recommended decision and submits it to the Director for review and issuance of a final agency decision.¹⁹⁹

19. Conclusions of Law #40, 41 and 42 are consolidated, stricken and modified to read: AHCCCS was required to maintain those documents that are contained in the procurement file. “The procurement file shall include in electronic or paper form a list of notified vendors, final solicitation, solicitation amendments, bids/offers, final proposal revisions, clarifications, and final evaluation report.”²⁰⁰ “[W]hen no evidence shows intentional or bad faith destruction of evidence . . .” no adverse inference is assumed by the finder of fact.²⁰¹ Therefore, the burden remained with the Appellant to rebut the presumption of good faith by public officials, and Appellants failed to provide evidence to meet that burden.²⁰²
20. Conclusion of Law #43 is stricken and modified to read: The matters at issue are limited to Appellants’ appeals of the CPO’s decision.²⁰³ Appellants’ may not raise issues that were not raised in protests prior to the CPO decision if they relate to issues apparent on the face of the RFP, regarding the process, or conduct during the course of the procurement, or the contract awards, among others found in the scope of the CPO decision.
21. Conclusion of Law #44 is stricken, consolidated with Conclusion of Law #43 and modified to read: Based on the foregoing conclusions, Appellants have failed to sustain their burden to prove that the procurement process and resulting awards violated applicable law, were arbitrary or capricious or constituted an abuse of discretion on the part of AHCCCS. Appellants also failed to establish that

¹⁹⁷ A.A.C. R9-22-604(I)(1).

¹⁹⁸ A.A.C. R9-22-604(K).

¹⁹⁹ See A.R.S. § 41-1092.08.

²⁰⁰ A.A.C. R9-22-601(E).

²⁰¹ *Smyser v. City of Peoria*, 215 Ariz. 428, 440, 160 P.3d 1186, 1198 (Ct. App. 2007).

²⁰² Here, there was no evidence of bad faith introduced by the Appellants, therefore the opportunity for the trial court to reach the questions of sanctions is inapplicable. (See *McMurtry v. Weatherford Hotel, Inc.*, 231 Ariz. 244, 293 P.3d 520 (App. 2013)).

²⁰³ See Conclusion of Law #4.

they were materially prejudiced by the alleged errors in the process or award and, but for such purported improprieties, the Appellants would have been the recipients of a contract award. The CPO's review of the protests raised by Appellants was comprehensive, and the resulting decision was supported by law and the evidence in the record.

22. Conclusion of Law #46 is stricken in its entirety.

23. Conclusion of Law #47 stricken and modified to read: In these respects, the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Decision are accepted in part, modified in part, and rejected in part as reflected in the above Decision.

24. ACCORDINGLY, the Appellants' appeals are **denied**.

If you disagree with this decision, you may ask the Administration to reconsider its decision or you can appeal to the Superior Court.

If you choose to file a Motion for Rehearing or Review, a rehearing or review may be granted only if you can establish one of the following causes:

1. Irregularity in the proceedings of the hearing that deprived you of a fair hearing;
2. Misconduct of a party or an agency;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. That the Director's Decision is the result of passion or prejudice;
5. That the Director's Decision is not justified by the evidence or is contrary to law; or,
6. Good cause is established for the nonappearance of a party at the hearing.

You must submit your request within thirty (30) days of the date of the Decision. The thirty (30) days start five (5) days after the postmark date of the Director's Decision if the Decision is mailed to you; however, if the Director's Decision is mailed to you by certified mail, the thirty (30) days start after the date of delivery of the certified mail as shown on the certified mail return receipt.

The Motion for Rehearing or Review must be received by the AHCCCS Administration by the thirtieth (30th) day; if your Motion for Rehearing or Review is mailed or postmarked on or before the thirtieth (30th) day, but not received by AHCCCS until after the thirtieth (30th) day, it will be considered untimely

and will be denied. If you do file a Motion for Rehearing or Review, you should mail a copy of your Motion to all other parties. Please mail requests for re-hearing to:

AHCCCS Office of the General Counsel
Attn: Director's Designee
PO Box 25520, Mail Drop 6200
Phoenix, AZ 85002
Or fax to: 602-253-9115

A Motion for Rehearing or Review is not required to exhaust administrative remedies; you may choose to appeal directly to court. If you choose to appeal directly to court, you must commence a legal action in Superior Court in accordance with the provisions of A.R.S. §§ 12-901 through 12-914, and you must do so within thirty-five (35) days after the personal delivery or mailing of this decision.

SI USTED NO PUEDE LEER INGLES, Y NECESITA AYUDA PARA COMPRENDER ESTA CARTA, POR FAVOR LLAME AL (602) 417-4455 O 1-800-654-8713 EXTENSIÓN 74232

/s/ Marcus Johnson
Marcus Johnson
Director's Designee

By /s/ Vanessa Gonzales

Copy transmitted electronically on September 8, 2024 to:

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Addendum to Director’s Decision

No. 24F-OTR-317925-AHC

Justification Table in Support of Director’s Decision

per A.R.S. § 41-1092.08(B)

Findings of Fact

| FoF # | Status | Justification |
|--------------|---------------|---|
| 1 | MODIFY | Finding of Fact consolidated, and relevant hearing and procedural information added from the record. |
| 2 | MODIFY | Finding of Fact consolidated with Finding of Fact #1. |
| 3 | MODIFY | Finding of Fact modified to add relevant information regarding the AHCCCS program and ALTCS program. |
| 4 | ACCEPT | |
| 5 | ACCEPT | |
| 6 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 7 | ACCEPT | |
| 8 | ACCEPT | |
| 9 | ACCEPT | |
| 10 | MODIFY | Finding of Fact modified to add citation. |
| 11 | MODIFY | Finding of Fact modified to add statutory language regarding the procurement process to extend contract time. |
| 12 | ACCEPT | |
| 13 | ACCEPT | |
| 14 | ACCEPT | |
| 15 | ACCEPT | |
| 16 | MODIFY | Finding of Fact modified to provide additional, relevant details regarding major decision process. |
| 17 | MODIFY | Finding of Fact modified to clarify the role of the Scope Team as supported by the record. |
| 18 | MODIFY | Finding of Fact modified to clarify the role of the Scope Team as supported by the record. |
| 19 | MODIFY | Finding of Fact modified to clarify role of the Executive Team as supported by the record. |
| 20 | ACCEPT | |
| 21 | MODIFY | Finding of Fact modified to add additional, relevant context to the overlap in team membership. |
| 22 | MODIFY | Finding of Fact modified to reflect documentation from the record. |
| 23 | ACCEPT | |
| 24 | ACCEPT | |

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| 25 | ACCEPT | |
| 26 | ACCEPT | |
| 27 | ACCEPT | |
| 28 | MODIFY | Finding of Fact modified to reflect AHCCCS's actions regarding all additional scoring and weighting questions prior to bid submissions. |
| 29 | ACCEPT | |
| 30 | ACCEPT | |
| 31 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 32 | ACCEPT | |
| 33 | MODIFY | Finding of Fact modified to reflect documentation from the record. |
| 34 | MODIFY | Finding of Fact modified to reflect documentation from the record. |
| 35 | MODIFY | Finding of Fact modified to reflect documentation from the record. |
| 36 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 37 | ACCEPT | |
| 38 | ACCEPT | |
| 39 | ACCEPT | |
| 40 | MODIFY | Finding of Fact modified to reflect documentation from the record. |
| 41 | MODIFY | Finding of Fact modified to reflect documentation from the record. |
| 42 | MODIFY | Finding of Fact modified in the footnote to clarify where the information is located in the record. |
| 43 | MODIFY | Finding of Fact modified to reflect documentation from the record. |
| 44 | MODIFY | Finding of Fact modified to add footnote with relevant citation to the record. |
| 45 | MODIFY | Finding of Fact footnote modified to add additional citations from the record. |
| 46 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 47 | MODIFY | Finding of Fact modified to add additional, relevant information from the record. |
| 48 | MODIFY | Finding of Fact modified to add additional, relevant information from the record regarding the scoring methodology. |
| 49 | MODIFY | Finding of Fact #49 consolidated with Finding of Fact #48. |
| 50 | MODIFY | Finding of Fact modified to add additional, relevant information from the record. |
| 51 | MODIFY | Finding of Fact modified to reflect cited documentation in the record. |
| 52 | ACCEPT | |
| 53 | MODIFY | Finding of Fact modified to reflect cited documentation in the record. |
| 54 | ACCEPT | |
| 55 | MODIFY | Finding of Fact modified to reflect AHCCCS' plan and actions as documented in the record. |
| 56 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 57 | MODIFY | Finding of Fact modified to add additional, relevant information from the record regarding the scoring tool. |
| 58 | ACCEPT | |
| 59 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 60 | MODIFY | Finding of Fact modified to reflect documentation in the record. |
| 61 | MODIFY | Finding of Fact modified to add additional, relevant information from the record regarding the development and use of the scoring tool. |
| 62 | MODIFY | Finding of Fact consolidated with Finding of Fact #61 |

| | | |
|----|--------|---|
| 63 | MODIFY | Finding of Fact modified to provide clarity. |
| 64 | MODIFY | Finding of Fact modified to provide clarity and to reflect documentation in the record. |
| 65 | MODIFY | Finding of Fact modified to provide clarity and additional citations in the footnote. |
| 66 | MODIFY | Finding of Fact modified to provide additional, relevant information from the record regarding the oral presentation scoring process. |
| 67 | ACCEPT | |
| 68 | MODIFY | Finding of Fact modified to reflect documentation in the record regarding oral presentation scoring. |
| 69 | MODIFY | Finding of Fact modified to reflect documentation in the record. |
| 70 | MODIFY | Finding of Fact modified to provide clarity and to reflect documentation in the record. |
| 71 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 72 | MODIFY | Finding of Fact modified to reflect documentation in the record regarding scoring for the Cost Bid section. |
| 73 | MODIFY | Finding of Fact modified to provide additional, relevant, technical information regarding the Excel tool. |
| 74 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 75 | MODIFY | Finding of Fact modified to provide clarity regarding scoring methodology for the Cost Bid section, the function of the Excel tool, and to reflect documentation in the record. |
| 76 | MODIFY | Finding of Fact consolidated with Finding of Fact #75. |
| 77 | MODIFY | Finding of Fact consolidated with Finding of Fact #75. |
| 78 | MODIFY | Finding of Fact consolidated with Finding of Fact #75. |
| 79 | MODIFY | Finding of Fact modified to add additional, relevant information and reflect documentation in the record. |
| 80 | MODIFY | Finding of Fact modified to add additional, relevant information and reflect documentation in the record. |
| 81 | MODIFY | Finding of Fact modified to reflect documentation in the record. |
| 82 | MODIFY | Finding of Fact modified to reflect documentation in the record. |
| 83 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 84 | MODIFY | Finding of Fact modified to reflect documentation in the record. |
| 85 | ACCEPT | |
| 86 | ACCEPT | |
| 87 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 88 | ACCEPT | |
| 89 | ACCEPT | |
| 90 | MODIFY | Finding of Fact modified to reflect documentation in the record. |
| 91 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 92 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 93 | MODIFY | Finding of Fact modified to consolidate additional, relevant information and reflect documentation from the record regarding considerations in scoring and ranking offerors. |
| 94 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 95 | MODIFY | Finding of Fact modified to provide clarity. |
| 96 | STRIKE | Finding of Fact stricken because it was not supported by the record. |

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| 97 | MODIFY | Finding of Fact modified to reflect documentation in the record regarding practices to maintain confidentiality during the procurement process. |
| 98 | MODIFY | Finding of Fact consolidated with Findings of Fact 93, 98, and 101 for logical clarity. |
| 99 | MODIFY | Finding of Fact consolidated with Findings of Fact 93, 98, and 101 for logical clarity. |
| 100 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 101 | MODIFY | Finding of Fact consolidated with Findings of Fact 93, 98, and 99 for logical clarity. |
| 102 | MODIFY | Finding of Fact modified to reflect the record and update where the information was located in the record. |
| 103 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 104 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 105 | ACCEPT | |
| 106 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 107 | MODIFY | Finding of Fact modified to more accurately reflect the record. |
| 108 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 109 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 110 | MODIFY | Finding of Fact modified to state the attendance of the relevant meetings reflected in the record, and to remove conclusions of law. |
| 111 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 112 | MODIFY | Finding of Fact modified to reflect the timeline and documentation in the record. |
| 113 | MODIFY | Finding of Fact modified to reflect the timeline and documentation in the record. |
| 114 | MODIFY | Finding of Fact modified to reflect the timeline and documentation in the record. |
| 115 | MODIFY | Finding of Fact modified to reflect the timeline and documentation in the record. |
| 116 | ACCEPT | |
| 117 | ACCEPT | |
| 118 | ACCEPT | |
| 119 | ACCEPT | |
| 120 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 121 | ACCEPT | |
| 122 | ACCEPT | |
| 123 | ACCEPT | |
| 124 | ACCEPT | |
| 125 | ACCEPT | |
| 126 | ACCEPT | |
| 127 | ACCEPT | |
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| 135 | ACCEPT | |
| 136 | ACCEPT | |
| 137 | ACCEPT | |
| 138 | ACCEPT | |
| 139 | MODIFY | Finding of Fact modified to reflect only the arguments raised by AHCCCS and provide correct record citation. |
| 140 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 141 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 142 | MODIFY | Finding of Fact modified to reflect the relevant timeline found in the record, related to the issue of scoring methodology Appellants raised in their appeals. |
| 143 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 144 | MODIFY | Finding of Fact modified to clarify the description of the scoring criteria found in the record and the hearing transcripts. |
| 145 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 146 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 147 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 148 | ACCEPT | |
| 149 | ACCEPT | |
| 150 | ACCEPT | |
| 151 | ACCEPT | |
| 152 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 153 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 154 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 155 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 156 | MODIFY | Finding of Fact modified to clarify the information about consensus ranking methodology found in the record and hearing transcripts. |
| 157 | MODIFY | Finding of Fact modified to clarify the description of consensus ranking methodology found in the record. |
| 158 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 159 | ACCEPT | |
| 160 | ACCEPT | |
| 161 | ACCEPT | |
| 162 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 163 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 164 | MODIFY | Finding of Fact modified in the footnote to clarify where the information is located in the record. |
| 165 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 166 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 167 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 168 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 169 | ACCEPT | |
| 170 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 171 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 172 | STRIKE | Finding of Fact stricken because it was not supported by the record. |

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| 173 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 174 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 175 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 176 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 177 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 178 | MODIFY | Finding of Fact modified to clarify the information found in the record. |
| 179 | ACCEPT | |
| 180 | ACCEPT | |
| 181 | MODIFY | Finding of Fact modified to clarify the information found in the transcript. |
| 182 | ACCEPT | |
| 183 | ACCEPT | |
| 184 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 185 | ACCEPT | |
| 186 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 187 | ACCEPT | |
| 188 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 189 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 190 | MODIFY | Finding of Fact modified to reflect the issues Appellants argued on appeal. |
| 191 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 192 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 193 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 194 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 195 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 196 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 197 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 198 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 199 | ACCEPT | |
| 200 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 201 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 202 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 203 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 204 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 205 | ACCEPT | |
| 206 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 207 | MODIFY | Finding of Fact modified to clarify the information supported by the record and remove conclusions of law. |
| 208 | MODIFY | Finding of Fact modified in the footnote to clarify where the information is located in the record. |
| 209 | MODIFY | Finding of Fact modified to clarify those operational reviews used in the agency review, and remove conclusions of law. |
| 210 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 211 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 212 | STRIKE | Finding of Fact stricken because it was not supported by the record. |

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| 213 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 214 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 215 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 216 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 217 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 218 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 219 | MODIFY | Finding of Fact modified to clarify that there was a requirement of submission by all Offerors to include relevant STAR or STAR-related information in their bids. |
| 220 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 221 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 222 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 223 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 224 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 225 | MODIFY | Finding of Fact modified to consolidate with findings of fact below |
| 226 | MODIFY | Finding of Fact modified to consolidate with findings of fact above and to provide clarity by adding additional relevant information from the record. |
| 227 | MODIFY | Finding of Fact modified to consolidate with findings of fact above and to provide clarity by adding additional relevant information from the record. |
| 228 | MODIFY | Finding of Fact modified to consolidate with findings of fact above and to provide clarity by adding additional relevant information from the record. |
| 229 | MODIFY | Finding of Fact modified to consolidate with findings of fact above and to provide clarity by adding additional relevant information from the record. |
| 230 | MODIFY | Finding of Fact modified to consolidate with findings of fact above and to provide clarity by adding additional relevant information from the record. |
| 231 | MODIFY | Finding of Fact modified to consolidate with findings of fact above and to provide clarity by adding additional relevant information from the record. |
| 232 | MODIFY | Finding of Fact modified to consolidate with findings of fact above and to provide clarity by adding additional relevant information from the record. |
| 233 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 234 | MODIFY | Finding of Fact modified to add additional, relevant information from the record. |
| 235 | ACCEPT | |
| 236 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 237 | MODIFY | Finding of Fact modified for clarity and to reflect the record. |
| 238 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 239 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 240 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 241 | STRIKE | Finding of Fact stricken because it was not supported by the record. |
| 242 | STRIKE | Finding of Fact stricken because it was not supported by the record. |

Conclusions of Law

| CoL # | Status | Justification |
|-------|--------|--|
| 1 | MODIFY | Conclusion of Law modified to more clearly state the burden of proof required. |
| 2 | MODIFY | Conclusion of law modified to provide definition from case law rather than treatise. |

| | | |
|----|--------|---|
| 3 | MODIFY | Conclusion of law modified to provide standard of review based on published case law. |
| 4 | MODIFY | Conclusion of law modified to establish scope of review of the ALJ. |
| 5 | MODIFY | Conclusion of law modified to establish exemption from APC and presumption of good faith. |
| 6 | MODIFY | Conclusion of law modified to provide citation to A.R.S. 36-2944(B)(1). |
| 7 | MODIFY | Conclusion of law modified to provide citation to A.A.C. R9-22-603. |
| 8 | MODIFY | Conclusion of law modified to clarify that Appellants did not meet burden of proof. |
| 9 | MODIFY | Conclusion of law modified to address issue to be untimely and apply new standard of review. |
| 10 | MODIFY | Conclusion of law modified to provide legal authority, apply the correct standard of review, ultimately finding Appellants did not meet their burden of proof. |
| 11 | STRIKE | Conclusion of law modified to consolidate with and address in Conclusion of Law #9. |
| 12 | MODIFY | Conclusion of law modified to provide correct legal authority, apply correct standard of review, ultimately finding Appellants did not meet their burden of proof. |
| 13 | STRIKE | Conclusion of law modified to consolidate with and address in Conclusion of Law #12. |
| 14 | STRIKE | Conclusion of Law stricken because application of correct standard of review, including whether the challenged action was contrary to law, was also stated across a number of conclusions of law. |
| 15 | MODIFY | Conclusion of law modified to address issue to be untimely, provide legal authority, apply correct standard of review, and ultimately finding Appellants did not meet their burden of proof. |
| 16 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #15. |
| 17 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #15. |
| 18 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #15. |
| 19 | MODIFY | Conclusion of law modified to refer to and cite applicable statute and rule. |
| 20 | MODIFY | Conclusion of law modified to apply correct standard of review, ultimately find Appellants did not meet their burden of proof. |
| 21 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #19. |
| 22 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #19. |
| 23 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #19. |
| 24 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #9. |
| 25 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #9. |
| 26 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #9. |
| 27 | MODIFY | Conclusion of law modified to address issue to be untimely, provide correct legal authority, apply correct standard of review, and ultimately find Appellants did not meet their burden of proof. |
| 28 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #27. |

| | | |
|----|--------|--|
| 29 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #27. |
| 30 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #27. |
| 31 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #27. |
| 32 | MODIFY | Conclusion of law modified to address issue to be untimely, to provide correct legal authority, to apply correct standard of review, and ultimately to find Appellants did not meet their burden of proof. |
| 33 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #32. |
| 34 | MODIFY | Conclusion of law modified to provide process for administrative review of protests with citations to statute and rule. |
| 35 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #35. |
| 36 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #35. |
| 37 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #35. |
| 38 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #35. |
| 39 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #35. |
| 40 | MODIFY | Conclusion of law modified to provide correct legal authority, and ultimately to find Appellants did not meet their burden of proof. |
| 41 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #41. |
| 42 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #41. |
| 43 | MODIFY | Conclusion of law modified to restate scope of review identified and addressed in Conclusion of Law #4. |
| 44 | MODIFY | Conclusion of law modified to apply correct standard of review, and ultimately to find Appellants did not meet their burden of proof. |
| 45 | STRIKE | Conclusion of law stricken to consolidate with and address in Conclusion of Law #35. |
| 46 | STRIKE | Conclusion of law modified to remove unnecessary citation to remedies available on protest. |
| 47 | MODIFY | Conclusion of law modified to reflect the decision of the Director's Designee. |

/s/ Marcus Johnson
 Marcus Johnson
 Director's Designee

By /s/ Sladjana Kuzmanovic

Copy transmitted electronically on September 9, 2024 to:

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