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August 2, 2019

Dean Andretta
Executive Director
Marion Polk Coordinated Care
890 Oak St. SE
Salem, OR 97301

RE: Written Decision of Oregon Health Authority with Respect to Protest by Applicant Marion Polk Coordinated Care, RFA #4690-19

Dear Mr. Andretta:

As the official designated by the Oregon Health Authority ("OHA") to review and evaluate protests with respect to Request for Application #4690-19 ("RFA"), I write to inform you that, after careful review, OHA rejects the protest filed by Marion Polk Coordinated Care ("MPCC"), dated July 15, 2019. In making this determination, OHA has also considered the separate "Written Notice" submitted by MPCC on July 18, 2019, to the extent it provides further detail on the grounds of protest contained in the protest letter submitted on July 15.

Because OHA rejects MPCC's protest, OHA affirms its decision to reject MPCC's application, as well as its decision to grant PacificSource Community Solutions, Marion Polk ("PSCS-MP") a conditional award for a new contract as a Coordinated Care Organization ("CCO").

Below are the primary, but not exclusive, reasons for OHA's rejection of each of MPCC's grounds for protest:[1]

1. **MPCC Protest Paragraph 4.1**: "MPCC is adversely affected by the July 9, 2019 decision of OHA to reject the MPCC Application for a 5 year CCO 2.0 contract, and each of ORS 279B.410(1)(b)(A) through (D) apply." (Footnote omitted.)

Decision: ORS 279B.410(1) describes a proposer as adversely affected, for purposes of bringing a protest of a contract award, if (a) the "proposer would be eligible to be awarded the public contract in the event that the protest were successful," and (b) the reason for the protest is one of the grounds described in ORS 279B.410(1)(b)(A) through (D).[2] OHA

[1] The reasons for OHA's decision set out under each numbered protest heading may also apply to other numbered protest headings.

[2] OHA's contracts with CCOs and OHA's solicitation for those contracts "are not subject to ORS chapters 279A and 279B, except ORS 279A.250 to 279A.290 [state surplus property] and 279B.235 [labor conditions]." ORS 414.651(1)(b). OHA has, however, adopted many provisions of the DOJ Model Public Contract Rules (the "DOJ Model Rules"). OAR 410-141-

acknowledges that MPCC would be eligible for the conditional award of a contract in the event that its protest were successful. OHA disagrees, however, that any of ORS 279B.410(1)(b)(A) through (D) apply to MPCC.

2. **MPCC Protest Paragraph 4.2**: "The PSCS-MP proposal is nonresponsive. OHA 279B.410(1)."

Decision: OHA assumes this refers to ORS 279B.410(1)(b)(A), which provides that one reason for a protest is that "[a]ll . . . higher ranked proposals are nonresponsive." OHA rejects these grounds for protest:

i. The PSCS-MP application – like the MPCC application – is responsive. OAR 137-046-0110(32) defines "[r]esponsive" to mean "having the characteristic of substantial compliance in all material respects with applicable solicitation requirements." The applications of both PSCS-MP and MPCC substantially complied in all material respects with the RFA.

ii. The RFA measured applications using criteria described in the RFA. The RFA was not a competitive procurement, in which applicants were ranked against each other. OHA rejected MPCC's application because it fell far below OHA's standards in evaluating applications, not because MPCC scored worse than PSCS-MP.

iii. MPCC lacks standing to protest the award to PSCS-MP.

3. **MPCC Protest Paragraph 4.3**: "OHA failed to conduct the evaluation of the MPCC and PSCS-MP proposals in accordance with the criteria or processes described in the RFA. ORS 279B.410(1)(b)(B)."

Decision: OHA rejects these grounds for protest.

MPCC asserts that the RFA did not identify the criteria that OHA used to evaluate MPCC and PSCS-MP, which MPCC alleges violates ORS 279B.410(1)(b)(B), ORS 279B.055(6), (10), and OAR 137-047-0260(2)(c)(B) (citing ORS 279B.060(3)(e)). OHA rejects this assertion:

i. This argument is untimely. MPCC had an opportunity to protest the terms of the RFA, including the criteria for evaluation. MPCC did not avail itself of this opportunity. An award protest is not the place for

3010. The DOJ Model Rules, in turn, refer to or incorporate many provisions of the Public Contracting Code ("Code") in ORS chapters 279A and 279B. Thus, where this written response refers to or acknowledges the applicability of a provision of the Code, the response should be understood as referring to a provision of the Code which applies to the RFA via OHA rules which refer to the DOJ Model Rules. OHA reserves the right later to assert that a provision of the Code on which MPCC has relied does not apply to CCO contracting.

raising concerns about the RFA that could have been raised as a solicitation protest.

ii. The RFA included numerous questions about – and, in some cases, entire attachments about – the criteria on which the applicants were evaluated, including value-based payment, cost, performance, operations, claims and prior authorization, health information technology ("HIT"), communication with providers, communication with members, encounter data processing and validation, member transition, social determinants of health, communication with outside entities, transitions of care between levels of service, Intensive Care Coordination, Medicare dual eligibles, oral health integration, coordinating care for Department of Human Services-funded populations and Indian Health Services, utilization monitoring, access to services, network adequacy, behavioral health services, internal clinical review, complaints and grievances, innovation, Patient Centered Primary Care Homes delivery system, access to culturally and linguistically appropriate care, quality improvement, community engagement plan, and level of community engagement during application process.[3] The RFA made clear that applicants would be evaluated on the basis of their submissions and responses to inquiries relating to these criteria.

iii. Given the number of criteria, OHA grouped its evaluation of applicants' responses into six overarching categories: Finance; Business Administration; Care Coordination and Integration; Clinical and Service

[3] *See, e.g.*, CCO 2.0 RFA, at 5 ("CCOs are expected to improve the coordination of care for individuals with chronic conditions or those experiencing health disparities . . . ."); *id.* ("In alignment with 2018 House Bill 4018, Contracts awarded through this RFA will include additional focus on addressing the Social Determinants of Health and Health Equity (SDOH-HE), requiring CCOs to direct a portion of spending on SDOH-HE and to ensure their work with Community partners is designed to address Community priorities."); *id.* at 7 ("In all cases, CCOs will be expected to have plans in place for meeting the criteria laid out in the Application process and making sufficient progress in implementing plans and realizing the goals established by the OHPB. Applicants will be expected to demonstrate how they will meet the performance expectations of the Contract Template."); *id.* at 8 ("Applicants will use the RFA submission to describe and demonstrate to OHA how it proposes to accomplish the Work, and how it plans to meet progressive goals. Applicant must explain how its integrated and coordinated care systems will provide the full range of services in each of the OHP benefits packages, how it will develop Provider Panels and a delivery system consistent with Triple Aim objectives, how it intends to engage in collaborative Community engagement, and how it will demonstrate accountability for performance invest in services to eliminate health care disparities."); *id.*, App C (list of administrative rules relating to value-based purchasing requirements for CCOs); *id.*, Att. 7, at 3-4 (explaining that "Applicant's network of Providers must be adequate to serve Members' health care and service needs, meet access to care standards, including time and distance standards and wait time to appointment, and allow for appropriate choice for Members," and asking applicant to answer "Evaluation Questions" related to network adequacy); *id.*, Att. 7, at 2-4 (asking applicants to describe plans on working with, and executing contracts and MOUs with, Area Agencies on Aging, Department of Human Services' APD local offices, local mental health authorities, Community Mental Health Programs); *id.*, Att. 7, at 2-15 (asking applicants numerous questions about, among other things: "Member Engagement and Activation," "Transforming Models of Care," "Grievance and Appeals," "Coordination, Transition and Care Management," "Quality Improvement Program," and "Standards Related to Provider Participation"); *id.*, Att. 8 (five pages of expectations for, and questions regarding, CCO Value-Based Payments); *id.*, Att. 9 (five pages of expectations for, and questions regarding, CCO HIT); *id.*, Att. 10 (five pages of expectations for, and questions regarding, Social Determinants of Health); *id.*, Att. 12 (nine pages of expectations for, and questions regarding, costs and finances of CCOs).

Delivery; Delivery System Transformation; and Community Engagement.[4] While the RFA did not expressly list the six categories in which OHA organized the criteria for the evaluation of applications, that did not make the specific factors and responses on which MPCC was evaluated any less transparent.

4. **MPCC Protest Paragraph 4.4**: "OHA abused its discretion in rejecting MPCC's proposal as nonresponsive. ORS 279B.410(1)(b)(C). Please note that this ground for the protest is specifically being made by MPCC without waiver in any manner of the fact that OHA failed to reject MPCC's bid as nonresponsive, which therefore compels OHA, on this ground alone, to award a 5 year contract under CCO 2.0 to MPCC for Marion and Polk Counties."

Decision: OHA rejects these grounds for protest. As explained above, OHA did not reject MPCC's proposal as nonresponsive. Further, responsiveness is not a sufficient reason for OHA to award MPCC a contract. Rather, as discussed above, a responsive applicant was awarded a contract only if it met OHA's standards under OHA's evaluation criteria. MPCC did not meet those standards.

5. **MPCC Protest Paragraph 4.5**: "OHA's evaluation of proposals and/or OHA's subsequent determination of award to PSCS-MP is otherwise in violation of ORS Chapters 279A and 279B. *See* ORS 279B.410(1)(b)(D)."

Decision: OHA rejects these grounds for protest, for the reasons explained above and below. This protest paragraph does not identify any other violation of ORS Chapters 279A and 279B and is rejected as vague and unspecific.

6. **MPCC Protest Paragraph 4.6**: "Further with respect to #4.1 above (MPCC is adversely affected), OAR 137-047-0710(3)(b) provides that the protest must include: 'A description of the resulting harm to the Affected Person.' The reasons why MPCC is adversely affected and harmed include, without limitation, the following . . . ."

Decision: OHA rejects these grounds for protest.

In paragraph 4.6 of its protest, MPCC asserts that it met all the Minimum Qualifications, Minimum Submission Requirements, and Applications Requirements in Sections 3.1, 3.3 and 3.4, and therefore, "as a matter of law, OHA is compelled to score the MPCC Application as a 'Pass' based on RFA Section 4.12" and grant MPCC an award. In its "Written Notice," MPCC cites 279B.055(10)(A) in support of this argument.

MPCC confuses the responsiveness of its application, which OHA has conceded above, with being entitled to an award. The RFA did not state or suggest that an applicant would be entitled to an award if it complied with the Minimum Qualifications, Minimum Submission Requirements, and Applications Requirements. These qualifications and requirements were

[4] *See* MPCC Final Evaluation, at 15-25.

just what their titles suggest: "minimum" and "application" qualifications and requirements for an application to be accepted and reviewed by OHA. As explained above, the text of the RFA made clear that OHA would be evaluating MPCC and other CCO 2.0 applicants on a number of criteria – above and beyond the Minimum Qualifications, Minimum Submission Requirements, and Applications Requirements in Sections 3.1, 3.3 and 3.4 – and MPCC's application received a failing grade on all six (6) categories of these evaluation criteria. Nothing in ORS 279B.055(10)(A) or any other provision of law requires OHA to grant an award to MPCC solely because MPCC complied with the qualifications and requirements for an application to be accepted.

The overall reason for rejection is that MPCC failed to respond satisfactorily to the questions in the RFA, not that MPCC failed to respond at all. The separate financial evaluation raised some concerns, but was not the main basis for rejection.

7. **MPCC Protest Paragraph 4.7**: "MPCC, all Medicaid patients and/or enrollees in Marion and Polk Counties, and the community at large, including without limitation providers in Marion and Polk Counties, are adversely affected and harmed by OHA's decision to reject MPCC's Application under CCO 2.0 for the following reasons . . . ."

Decision: OHA rejects these grounds for protest.

MPCC argues that Medicaid enrollees and the Marion and Polk counties community will be harmed by awarding a contract to PSCS-MP instead of MPCC because: MPCC will provide better services and a better network to enrollees than PSCS-MP; MPCC will have a lower administrative load ratio than PSCS-MP; "approximately 180 persons currently serving WVCH [Willamette Valley Community Health] and MPCC will be laid off"; and "OHP Medicaid enrollees and patients will experience substantial disruption if MPCC is not awarded the contract."

For the reasons explained throughout this decision, the applications of MPCC and PSCS-MP did not demonstrate that Medicaid enrollees, or the Marion and Polk counties community, would be harmed by awarding a contract to PSCS-MP and not to MPCC. To the contrary, MPCC's application did not demonstrate that MPCC was capable of meeting the objectives of CCO 2.0. The potential impact on the economy and workforce in the Marion and Polk counties community is not a consideration or criterion that OHA used to evaluate CCO 2.0 applications. With respect to the administrative load ratio, PSCS-MP's 10% ratio is acceptable to OHA, and the fact that it is higher than MPCC's ratio does not warrant awarding a contract to MPCC.

MPCC also argues that PSCS-MP cannot handle the expected enrollment numbers in Marion and Polk counties. OHA disagrees. OHA acknowledges that PSCS-MP will need to demonstrate in readiness review that it is prepared to cover substantially all the eligible members in these two counties.

MPCC argues that OHA erred in giving PSCS-MP a "Pass" score on Care Coordination, because PSCS-MP's application purportedly lacked information with respect to coordinating care: for dual eligibles; for individuals receiving long-term services and supports ("LTSS"); for

individuals with special needs; and with oral health providers. MPCC argues that its application showed that MPCC was better able to coordinate care for dual eligibles and individuals receiving LTSS for a number of reasons, including because MPCC's enrollees would have access to a Medicare Advantage Special Needs Plan ("SNP").

The Care Coordination category is not limited to criteria relating to coordination of care among dual eligibles and individuals receiving LTSS, but covered criteria relating to coordination of care in a number of contexts. MPCC failed to provide satisfactory information about care coordination in many of these areas. For example:

- MPCC's "[b]ehavioral health covered services responses failed to include any information on patient involvement in planning, or the applicant's role in the System of Care."
- MPCC had "poor responses" with respect to care coordination for "out of network care, transitions and discharges, and follow up activities."
- MPCC's "Children's System of Care responses lacked strategies and showed little awareness of systems and partner organizations currently in place . . . ."
- MPCC's responses included "no description of agreements between hospitals and providers."[5]

Even with respect to dual eligibles and individuals receiving LTSS, "[p]oor responses were provided for care coordination with Medicare Advantage plans for dual eligible populations," and MPCC "failed to provide information on coordination with Long Term Care providers as well as Intensive and Critical Care."[6]

MPCC's protest stresses that, if it is awarded a contract, its enrollees will have access to a SNP, whereas PSCS-MP's enrollees will not. OHA did not require applicants to have an affiliated SNP plan, only an affiliated Medicare Advantage plan. If the SNP plan is provided by Atrio, members can still enroll in Atrio's SNP plan without MPCC being awarded a contract.

While PSCS-MP's application lacked sufficient detail on some questions relating to Care Coordination criteria, including with respect to dual eligibles and individuals receiving LTSS, its application provides a basis for OHA to expect that those deficiencies can be addressed through the readiness review process. In contrast, the deficiencies in MPCC's application relating to Care Coordination criteria were so significant that OHA does not have confidence that MPCC can correct them.

Finally, MPCC argues that OHA failed to acknowledge that MPCC's application stated "that Salem Health will support MPCC with needed additional capital in the event additional capital is needed or required to meet solvency and RBC requirements, or to otherwise meet financial targets." This vague information did not alter the financial evaluation of MPCC.

8. MPCC Protest Paragraph 4.8: "PSCS-MP's Proposal is Nonresponsive. As provided in ORS 279B.410(1)(b)(A), PSCS-MP's 'higher ranked proposal' is

[5] *See* CCO 2.0 Final Evaluation Report, MPCC, at 18.

[6] *Id.*

nonresponsive, as discussed in #2 and #3 above. Moreover, each of #4.7.1, 4.7.2, 4.7.3, 4.7.4, and 4.7.6 and their subsections document that PSCS-MP's higher ranked proposal is nonresponsive, because the OHP Evaluation of the PSCS-MP Application fails to demonstrate that PSCS-MP has available the appropriate financial, material, equipment, facility and personnel services and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities. *See* ORS 279B.110(2)(a) and OAR 137-047-0640(1)(c)(F)(i).

"Additional reasons why the PSCS-MP proposal is nonresponsive include, without limitation: . . ."

Decision: OHA rejects these grounds for protest. As discussed above, MPCC has confused responsiveness with the discretionary evaluation criteria. The following illustrates the discretionary evaluation decisions OHA made regarding PSCS-MP:

1) MPCC argues that PSCS-MP did not comply with the "'single corporate structure requirement'" of ORS 414.625(1); does not have its own reserves that are not commingled with the reserves of PacificSource Community Solutions ("PSCS"); and does not meet "the restricted reserve and net worth requirements in ORS 414.625(1)(b)(A) and (B)." ORS 414.625(1) states that "[a] coordinated care organization may be a single corporate structure or a network of providers organized through contractual relationships." Although OHA does have questions about how PacificSource Community Solutions will allocate its capital among its four awarded plans, PSCS-MP's structure does not violate ORS 414.625(1). PSCS-MP's structure is materially the same as the two incumbent PSCS CCOs whose corporate structures OHA has accepted since 2012. In the future, OHA rules implementing SB 1041 will require CCOs to maintain separate restricted reserves for multiple OHP contracts, but this new rule is not published yet and does not apply to the application evaluation. Further, OHA will ask PSCS-MP to address this issue in the readiness review. Finally, OHA found PSCS-MP's financial structure to be fundamentally sound, and it will ask PSCS-MP to address its compliance with the capital requirements in ORS 414.625(1)(b) as part of the readiness review.

2) MPCC argues OHA erred in approving PSCS-MP when DCBS made a finding that the financials presented by PSCS-MP "are 'incorrect, misleading, and not viable.'" Despite this finding, DCBS found PSCS-MP's financial structure to be fundamentally sound. In addition, PSCS-MP will be asked to address this issue in readiness review.

9. MPCC Protest Paragraph 4.9: "<u>The MPCC Proposal is Responsive</u>. . . . [T]he OHA Evaluation of MPCC contains a finding on page 7 that 'No information was provided that would indicate additional sources of capital or cash infusion for liquidity needs, if the need arises.' This finding is incorrect."

Decision: OHA rejects these grounds for protest:

i. As discussed above, OHA concurs that the MPCC application is responsive but disagrees that this alone provides a reason to award MPCC a contract.

ii. As noted above, the financial analysis of the pro formas was not the basis for rejection of the application.

10. **MPCC Protest Paragraph 5**: "The RFA does not set forth the criteria under which the CCO 2.0 applications would or will be evaluated. RFA Section 4.12 provides that 'Evaluators will assign a pass or fail score for each evaluation criterion', but it does not say what the criteria are, other than to provide at the end of Section 4.12 that Minimum Qualifications and Application Requirements 'will be scored on an initial pass/fail basis.' As demonstrated in #4.6.1 through #4.6.5 above, MPCC meets all of the foregoing requirements and must be scored as a 'Pass', based on OHA's own RFA. OHA 'failed to conduct the evaluation in accordance with the criteria or processes described in the solicitation materials.' ORS 279B.410(1)(b)(B)."

Decision: OHA rejects these grounds for protest, for the reasons explained in Number 3 above.

11. **MPCC Protest Paragraph 6**: "OHA's RFA and Notice of Intent to Award, and rejection of the MPCC proposal contravene the policy of the State of Oregon that the public contracting process with respect to CCO 2.0 must 'instill public confidence through ethical fair dealing, honesty, good faith on the part of government officials and those who do business with the government.' ORS 279A.015(2)."

Decision: OHA rejects these grounds for protest. The CCO 2.0 RFA process was conducted with ethical fair dealing, honesty, and good faith on the part of government officials. MPCC's assertion to the contrary is unfounded.

12. **MPCC Protest Paragraph 7**: "OHA's RFA and Notice of Intent to Award and rejection of the MPCC proposal also contravene the requirement that the public contracting system 'allow impartial and open competition, protecting both the integrity of the public contracting process and the competitive nature of public procurement', as provided in ORS 279A.015(5). This statute further provides that 'service and product quality' should be considered in arriving at best value. ORS 279A.015(5). Specifically, WVCH, and its successor, MPCC, perform materially better in quality measures than PacificSource-Central Oregon, based on OHA's CCO Metrics 2018 Final Report, which was 'embargoed until July 2, 2019'. . . ."

Decision: OHA rejects these grounds for protest.

With certain exceptions such as past financial solvency, OHA did not consider past performance of CCOs in the CCO 2.0 contract award process. Rather, the RFA and its evaluation focused on what the applicant demonstrated it can do in the future. One reason for

this approach is because OHA sought an open procurement process in which new applicants, like MPCC, would not be at a disadvantage compared to incumbent applicants.

Further, MPCC is neither WVCH nor a successor to WVCH. Rather, MPCC is a newly organized company. Consequently, it would not be appropriate to credit MPCC for WVCH's performance, even if some of the individuals and entities involved with MPCC are also involved with WVCH.

13. **MPCC Protest Paragraph 8**: "OHA awarded PacificSource Community Solutions up to a maximum of 263,000 lives for its four applications, based on page 32 of the MPCC Evaluation. This amount of lives is not viable, because it represents 33.5% of the total OHP 785,144 Medicaid lives, which total appears on the last page of both Evaluations."

Decision: OHA rejects these grounds for protest.

The 263,000 lives taken from page 32 of the MPCC Evaluation is the total self-reported membership maximum across all four PacificSource Community Solutions applicants. It is not an OHA figure. As noted on the last page of the MPCC Evaluation, the total estimated CCO member count is 785,000 plus 180,000 special population members, for a total of 965,000.

Based on the preliminary member allocation exercise undertaken by OHA, an estimated total of 177,000 members may be allocated across four PacificSource Community Solutions applicants, of which PSCS-MP accounts for 100,000.

OHA does not see any merit in MPCC's statewide "market share" argument.

14. **MPCC Protest Paragraph 9**: "OHA applied disparate treatment to the MPCC Application as compared to the PSCS-MP Application, in a manner which is unreasonable or undue. The 'criteria' were applied unevenly as between MPCC and PSCS-MP, as documented in this protest."

Decision: OHA rejects these grounds for protest.

OHA treated MPCC and PSCS-MP fairly and evenly. MPCC's argument of "disparate" and "uneven" treatment is belied by the fact that OHA staff reviewed the applications blindly – that is, OHA redacted information from all the CCO 2.0 applications so that it would be impossible for OHA reviewers to know which CCO 2.0 applicant they were reviewing. Under the blind review, MPCC failed all six categories of evaluation criteria, while PSCS-MP passed all six categories. As for MPCC's various allegations of specific "disparate" and "uneven" treatment on specific evaluation criteria, OHA's evaluation reports for MPCC and PSCS-MP explain in detail why each entity passed or failed each category of criteria.

15. **MPCC Protest Paragraph 10**: "MPCC has 29 letters of support, including support from 16 nonprofit organizations who do not necessarily provide medical services. They were identified as partners of MPCC who will address social determinants of health. PSCS-MP has a total of 16 letters of support, which included only one letter of recommendation from a nonprofit agency

that might assist with social determinants of health. However, MPCC was scored as a 'Fail' with respect to community engagement, whereas PSCS-MP scored a 'Pass'."

Decision: OHA rejects these grounds for protest.

The number and substance of the letters of support were not the only criteria considered in the Community Engagement category. The final evaluation reports explain why MPCC failed the Community Engagement category and why PSCS-MP passed that category, and those grounds are valid.

16. **MPCC Protest Paragraph 11**: "On page 16 of the MPCC Evaluation, OHA found that for EHR adoption, there are 'no roadmaps'. However, MPCC provided a HIT roadmap in Attachment 9, together with an extensive discussion (16 pages) with respect to MPCC's HIT capabilities."

Decision: OHA rejects these grounds for protest.

The evaluation team found deficiencies in MPCC's application including the following:

The instructions in question B.1 of Attachment 9 clearly instruct the applicant to "include information on Applicant's current operations, what Applicant intends to arrange by the Contract Effective Date, and Applicant's future plans . . . as well as a roadmap that includes activities, milestones and timelines." MPCC's responses were high level and offered little to no information about the specific steps it would take, methods, milestones, or how MPCC's actions could result in an increase in EHR adoption. The responses for how MPCC would address barriers to EHR adoption were similarly deficient.

As another example, in the "HIT for VBP and Population Health Management" section in Attachment 9, MPCC combined questions D2a, D2b(1-3), D2c, and D2d into a single response that lacked detail, did not include milestones or timelines, and did not describe plans over the five-year contract as required in the question.

MPCC's responses on Health Information Exchange ("HIE") were also deficient. The questions related to supporting increased access to HIE for care coordination among physical health providers required the response to include "your strategy, including any focus on use cases or types of Providers, any HIE tool(s) or HIE methods included, and the actions you plan to take." MPCC's response, in its entirety, was: "The principal partners of MPCC are already supporting increased access to HIE for care coordination among contracted physical health providers. The strategy relies on national standards integrated into the primary EHRs in use in the community."

17. **MPCC Protest Paragraph 12**: "On page 15 of the MPCC Evaluation, OHA states that 'As a whole, the value-based payment aspect of MPCC's Application is satisfactory. However, there is limited detail to sufficiently address PCPCH spending requirements, no increases discussed, and no explanation of rate development process and theory'. This finding is

erroneous. MPCC's Attachment 8 - Value Based Payment Questionnaire and the VBP Data Template and the Model Descriptions in tab 4 show the high degree of sophistication of the MPCC VBP Model. On the other hand, the PSCS-MP Evaluation provides on page 15 that: 'There are no concerns regarding VBP.' This again shows the disparate treatment, which is unreasonable and undue, which OHA applied with respect to the MPCC Application as compared to the PSCS-MP Application."

Decision: OHA rejects these grounds for protest.

MPCC's responses provided inadequate levels of detail and did not provide explanations as required. For example, question C.2. required the Applicant to "provide a detailed estimate of the percent of the Applicant's PMPM LAN category 2A investments in PCPCHs and the plan to grow those investments" that includes "a. Payment differential across the PCPCH tier levels and estimated annual increases to the payments"; and "b. Rationale for approach (including factors used to determine the rate such as Rural, Urban, or social complexity)." MPCC's response to C.2.a, in its entirety, was: "The payment differentials for PCPCH tier are shown on the VBP Data Template on the PCPCH tab. These values are modeled based on the membership with the various primary care clinics and their associated PCPCH tier." No details were provided regarding the plan to grow those investments, as required by the question. MPCC's response to C.2.b, in its entirety, was: "The rationale for the payment differential is the PCPCH tier. The demands on the Primary Care infrastructure increase as the tier rises. These values are based on feedback from the primary care network." The response did not identify the factors used to determine the rate, as required by the question.

Further, as explained above, OHA did not apply "disparate treatment" to MPCC compared to PSCS-MP.

18. **MPCC Protest Paragraph 13**: "On page 4 of the MPCC Evaluation, OHA scored a 'Fail' with respect to Community Engagement. The community engagement plan of MPCC is in Attachment 10 to the MPCC Application, and contains an extensive discussion of MPCC's capabilities with respect to community engagement and its plan for community engagement. This should have been scored as a 'Pass' if OHA had applied its processes evenly as between MPCC and PSCS-MP."

Decision: OHA rejects these grounds for protest, as explained in Number 15.

19. **MPCC Protest Paragraph 14**: "On page 17 of the MPCC Evaluation, under the heading Social Determinants of Health, it provides that any deficiencies 'could be remedied relatively quickly.' This should result in a 'Pass' recommendation, but instead OHA recommended a 'Fail' with respect to Business Administration, which includes Social Determinants of Health. The Evaluation on pages 15 and 16 demonstrates that OHA 'marked down' MPCC, because it is currently not a CCO. This demonstrates a lack of appreciation by OHA that MPCC is 'an entity newly formed' from a CCO,

> which is clearly permitted in RFA Section 3.1b(5). This finding demonstrates a bias against newly formed entities such as MPCC. MPCC has documented that it meets the Responsibility requirements, without waiver of the fact that OHA failed to make a determination that MPCC's proposal is nonresponsive or that MPCC is 'not responsible' which is required under ORS 279B.110(1) in the event that OHA intended to make such a determination. As a matter of law, MPCC is responsible, and meets the Responsibility requirements."

Decision: OHA rejects these grounds for protest.

Social determinants of health criteria were only some of the many evaluation criteria in the Business Administration category, and MPCC's application was lacking with respect to many of the other evaluation criteria within that category. For example, OHA concluded that it would "take a large amount of effort to correct" MPCC's administrative functions, HIT, and member transition.[7]

OHA did not "mark down" MPCC because it was not an existing CCO. To the contrary, OHA reviewers blindly evaluated MPCC and thus did not even know it was not an existing CCO, and OHA took other steps to ensure that new applicants would be treated equally compared to existing CCOs (e.g., declining to consider past performance in the evaluation criteria).

* * * *

As explained above, OHA rejects MPCC's protest, affirms OHA's decision to reject MPCC's application, and affirms OHA's decision to grant PSCS-MP a conditional award for a new five-year contract as a CCO. In making this decision, OHA has given due consideration to all grounds advanced in MPCC's protest and has worked to provide MPCC with a prompt written decision. OHA reserves the right to supplement the reasons for rejecting MPCC's protest articulated in this written decision in the event of further proceedings.

This is a final order of OHA in other than a contested case. Pursuant to OAR 410-141-3010(9), "[j]udicial review of [OHA's] decisions relating to a . . . contract award is governed by the Oregon Administrative Procedures Act (APA)."

Sincerely,

Patrick M. Allen
Director

[7] *See* CCO 2.0 Final Evaluation Report, MPCC, at 16-17 (emphases omitted).