

State of Maine
Department of Administrative and Financial Services
Bureau of General Services

In Re: Appeal of Contract Award
For Health Insurance Services
By Celtic Insurance Company
RFP # 200909526

Dirigo Health Agency
Post Hearing Brief

INTRODUCTION

Celtic Insurance Company (“Celtic”) has appealed the award by the Dirigo Health Agency (“DHA” or “Agency”) of a contract for Health Insurance services to Harvard Pilgrim Health Care (“Harvard”). A hearing on the appeal was held on February 8, 2010. At the close of the hearing the parties were requested to submit findings of fact and conclusions of law.

Celtic claims (1) that the RFP was ambiguous with regard to the style in which bidders were to submit health plan benefit design and did not fairly state that bidders were to submit enough information to enable DHA to independently calculate actuarial value; (2) that DHA failed to consider the clarifying information submitted by Celtic; and (3) that DHA failed to consider the cost sharing parameters that Celtic submitted in calculating the alternative plans submitted by Celtic.

Celtic has the burden to prove by clear and convincing evidence that the award was in violation of law, fundamentally unfair or arbitrary and capricious. The record in this appeal shows, however, that Celtic initially failed to comply with the requirements of the RFP with regard to a determination of actuarial value and when granted the opportunity to submit clarifying information failed to provide information that supported

its calculation of actuarial value. Without satisfactory information to verify the actuarial value of the plans submitted by Celtic, DHA was unable to determine the cost of the plans and scored Celtic's proposal accordingly. There is no merit to Celtic's claim that DHA did not provide adequate information to bidders or did not fairly consider the cost information provided by Celtic. DHA provided the data necessary for any diligent bidder to submit a proposal that met the cost objectives of the Agency, granted all bidders full opportunity to request any additional information needed to prepare a proposal and thoroughly considered all information submitted. Under these circumstances, Celtic cannot carry its burden of proof and the Panel should deny the appeal and confirm the award to Harvard.

ARGUMENT I

I. Information Provided In The RFP Was Sufficient For Any Diligent Insurer To Respond In Full To The Specifications

Findings of Fact

The RFP was issued on October 5, 2009. The RFP included detailed specifications, bid sheets with specific instructions and data to enable bidders to prepare a proposal. DHA held a bidders conference where the Agency made it clear that the Agency was seeking to look beyond the current DirigoChoice health or status quo in providing a health insurance product and correctly assumed that experienced insurers would carefully prepare their proposals and provide all information requested in the RFP and sufficient information for the Agency to evaluate what specific plan benefits were being offered and the cost of the plan. In addition to the bidders' conference, DHA provided the opportunity to present written questions and conducted interviews with bidders. DHA provided written responses to questions and provided supplemental data.

Celtic at no time raised any question about required information or sought clarification with regard to plan benefit design or actuarial valuation. Mr. Keizur, an actuary who testified on behalf of Celtic, stated that he had access to the tools necessary to assist Celtic in developing its proposal. These tools included the data books provided by DHA and the extensive Milliman data base maintained by Milliman.¹

In its proposal, Celtic failed to provide any information on out-of-pocket (“OOP”) maximum costs in completing Bid Form 2, Benefit Check, which requested a statement of limitations on services provided. OOP maximum costs are a plan limitation, as acknowledged by Mr. Keizur, and a critical element in determining actuarial value and evaluating the true cost of a benefit plan. Ms. Gorman testified to the importance of understanding cost sharing elements of an insurance product. In particular, if an insurance product has deductibles and co-insurance, it is important to know the OOP limits. Ms. Gorman further testified that it was industry standard to submit such limitations with a rate proposal so that a client knows what it is buying. Bid Form 2 also invited bidders to submit a Summary of Benefits (“SOB”). Celtic chose not to do so even though the SOB would include OOP maximum costs and even though, as Ms. Gorman testified, it was industry standard to provide a SOB with its proposal. The bid forms for the status quo and for the alternative plans required bidders to submit a methodology write-up. Celtic failed to provide the required methodology.

For the non-group Alternative Plan, Celtic presented three plans with identical deductibles but the actuarial values for the plans showed there were plan differences.

¹ Celtic’s assertion that it was hampered because it did not have DirigoChoice data that was available to DHA and Harvard is a red herring. Mr. Keizur made a point of testifying to the experience of his firm in the health care industry and the extensive data base maintained by the firm.

Apparently Celtic intended the deductibles to represent the “effective” deductible, but Celtic presented no supporting information.

After initial review of the proposals, DHA sent clarifying questions to all bidders asking for plan design, including out-of-pocket structure, deductibles and co-insurance. In response, Celtic submitted a SOB, indicated OOP maximums and an actuarial memorandum setting forth a methodology. Even though, as Ms. Gorman testified, the response of Celtic did not shed light on how it had cost out its benefit plans, DHA attempted to evaluate the cost the benefit plans being offered, making some assumptions based on industry practice. Nevertheless, at the interview with Celtic, it became clear that the assumptions made were not consistent with those adopted by Celtic.²

Conclusions of Law

The record shows that DHA provided bidders sufficient data and other information for bidders to present a transparent proposal and provided more than ample opportunity for bidders to seek clarification of the requirements and to provide clarifying information to the Agency. The burden was on Celtic to present adequate information for DHA to evaluate Celtic’s proposal. Celtic failed to meet this burden. Accordingly, there was no violation of law with regard to the information provided to bidders; DHA’s procedure for the evaluating the proposals was not fundamentally unfair; and DHA’s evaluation and scoring of the proposals was not arbitrary or capricious.

² Ms. Gorman testified that actuaries reviewing the same data can reach different results based on the assumptions being made. Since Celtic did not provide any information about assumptions used, it was not possible to determine, for example, whether the assumptions were conservative or aggressive.

ARGUMENT II

I. DHA Fairly Considered The Clarifying Information Submitted By Celtic But The Information Was Internally Inconsistent And Inconsistent With Its Proposal

Findings of Fact

As indicated above, DHA sent clarifying questions to all bidders. In response, Celtic provided submitted a SOB, indicated OOP maximums and provided an actuarial memorandum. The actuarial memorandum showed development of 20 premium rates, which it boiled down to six. Ms. Gorman testified that DHA was unable to reconcile the SOB for each plan presented with Celtic's proposal; was unable to determine from the actuarial memorandum how the 20 premium rates were transitioned to the six plans presented; was unable to confirm Celtic's calculation of actuarial value; and unable to reconcile the new information with Celtic's proposal. For example, one SOB showed a \$1,200 deductible plan, which DHA had not requested and that DHA assumed corresponded with the initial bid sheet of \$1,250 deductible for small groups. Another SOB showed a \$1,750 deductible plan, which was not in the initial bid sheets. A third SOB showed a \$2,500 deductible plan that DHA had to assume corresponded with the initial bid sheets. Celtic did not submit a SOB for the \$5,000 deductible plan for small groups that it presented with its initial submission. Furthermore, the schedules attached to the actuarial memorandum appeared to show a rate buildup for 20 products, which added further confusion to the Celtic proposal. In its clarifying submittal, Celtic made no attempt to provide guidance on how the supplemental information related to its proposal and, as a result, DHA was left to guess which products were intended for which population and which products belonged to which rates. At the hearing, Celtic made no attempt to reconcile the various conflicts and irregularities. Mr. Westerfield, Celtic COO,

acknowledged that he did not undertake a thorough review of what was being submitted to DHA. Similarly, Mr. Keizur testified that after he sent his materials to Celtic, he did not review the final submission.

Nevertheless, DHA undertook to do an actuarial analysis using the assumption that Celtic intended to offer plan designs show in its SOB. At the Celtic interview, however, DHA learned that its assumptions were incorrect. This is critical, for as Ms. Gorman testified, and as noted above, whether aggressive or conservative assumptions are made, drives the result. DHA, on the basis of information submitted by Celtic, therefore, was unable to confirm the validity of the pricing of the plans submitted in addition to being unable to discern which rates went with which plans.

Conclusions of Law

Under the circumstances noted above, it cannot reasonably be said that DHA failed to fairly consider Celtic's clarifying information. Rather, it appears that Celtic did not exercise due diligence in preparing its proposal or in responding to DHA's request for clarifying information. Celtic therefore has failed to carry its burden of proof to show a violation of law or that DHA's review of Celtic's proposal and clarify information was fundamentally unfair or arbitrary or capricious.

ARGUMENT III

I. DHA Thorough Reviewed And Evaluated All Cost Sharing Parameters Included In Celtic's Bid And Clarifying Submittal

Findings of Fact

The final claim by Celtic that DHA did not take into account cost sharing parameters set forth in the Bid Form 2 Checklist in evaluating Celtic's proposal is really only a variation on the claim discussed in Argument II above. The instructions in Bid Form 2 asked bidders to provide, among other items, deductible information and a description of services provided and any limitations the bidder applied to a service. Celtic is correct that in its proposal it provided the information on deductibles, but it did not provide out-of-pocket maximums, a critical "limitation" in calculating the cost of the benefit plan being offered, as acknowledged by Mr. Keizur, Celtic did provide out-of-pocket maximums in the SOB sheets included with its clarifying submittal. But as indicated above, the SOB sheets could not be reconciled with Celtic's proposal either with regard to intended populations or with regard to rates being offered.

Conclusions of Law

The facts described above show that, contrary to Celtic's claim, DHA made every effort to evaluate information provided by Celtic, including the parameters set forth in calculating the alternative plans. Thus it can only reasonably be concluded that Celtic failed to carry its burden of proof to show that DHA's review of Celtic's proposal and clarify information was fundamentally unfair or arbitrary or capricious.

CONCLUSION

For the foregoing reasons, DHA requests that Celtic's appeal be denied and the award to Harvard upheld.

Respectfully submitted,



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