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Via Email (list below) and Hand-Delivery

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**Re: American Medical Response West’s Response to Santa Barbara County
Fire Protection District’s Protest (RFP 8010001)**

Dear Ms. Loman:

On July 13, 2022, the County of Santa Barbara Department of Public Health, which is the local EMS agency for Santa Barbara County (the “LEMSA”), issued a request for proposals to allow the LEMSA to award the contract for the Exclusive Ambulance Services Provider for the Santa Barbara County Exclusive Operating Area (“RFP”) to the successful bidder. On or about October 3, 2022, two providers bid on the RFP: the Santa Barbara County Fire Protection District (“County Fire”) and American Medical Response West (“AMR”). The five (5) independent evaluators who reviewed the bids scored AMR 317.75 points higher than County Fire out of a total of 2300 points available – AMR 2,077.75 to County Fire 1,760. On November 4, 2022, County Fire filed its bid protest (“Protest”). AMR timely provides this brief response as allowed by the RFP.¹

¹ Pursuant to Section 2.10(H) of the RFP, this response is due November 11, 2022, thus it is timely filed. For the sake of brevity, we address only a subset of the errors in the County Fire bid protest. Our lack of response on a particular argument in this letter should not be construed as a concession as to the merits of an unaddressed point.

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I. Overview

AMR is an experienced ambulance provider that has faithfully served the County and its citizens for many years. For decades, AMR has provided similar services in more than 20 counties in California and currently operates approximately 1,000 ground ambulances per day. In California, AMR provides approximately 980,000 annual 911 ambulance transports and provides approximately 29,000 ambulance transports annually in Santa Barbara County. In contrast, County Fire operates only three ambulances, has never run a county-wide ambulance transport system, provides approximately 730 annual 911 ambulance transports a year, and outside of occasional mutual aid has never operated outside of its limited footprint of U.C. Santa Barbara, Vandenberg Village, and New Cuyama. The five independent evaluators here recognized the difference in experience, capabilities and the quality of the bids and awarded AMR 317.75 points more than County Fire received. AMR is the better-suited provider and was awarded the contract. None of County Fire's arguments in its Protest is persuasive or legally valid.

II. The Panel of Five Independent Evaluators

The County's General Services Department in consultation with the LEMSA and its third-party industry consultant, Fitch & Associates, assembled an expert panel of five independent evaluators upon whom they can rely when determining whom to contract with to operate the EMS system in the County. Each of the five persons chosen offered a separate but valuable perspective. Dr. Justin Fairless is an experienced emergency department Medical Director from Texas with extensive experience with EMS systems. Steven Fellows is a retired Chief Operating Officer for a Santa Barbara County based hospital, Cottage Health, with multiple years working in other hospital systems. Chief Steve Smith is a retired fire chief from Las Vegas, Nevada with experience regarding response time compliance and implementation of ALS services by a fire department. Richard Schomp is the Chief Operating Officer for a Florida-based private ambulance company and a retired firefighter. Lastly, Lawanda Lyons-Pruitt is a local representative of the NAACP and retired Chief Investigator for the Santa Barbara County Public Defender's Office with years of community experience focused on promoting justice, fairness, equality and equity in public systems. They had the benefit

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of an independent financial analysis performed by Kevin Harper, CPA.² Mr. Harper examined each bidder's proposal, analyzed whether the bid met the four minimum qualifications outlined in the RFP and performed a fiscal review of the recent audit results and payer rates. He concluded that AMR and County Fire both met the minimum financial qualifications, the audit results, and the payer rates.

A Health & Safety Section 1797.224 competitive bid process, such as the one employed here, must be fair, unbiased and free from an appearance of favoritism and bias. *See Advanced Real Estate Services, Inc. v. Superior Court* (2011) 196 Cal.App.4th 338, 353 (sale of a fairgrounds was stopped due to failures in the bid protest procedures, relying on *Schram*); *Schram Construction, Inc. v. Regents of University of California* (2010) 187 Cal.App.4th 1040, 1059 (University must put affirmative safeguards in place to prevent bias and other arbitrary factors from influencing the bid selection). Further, a reviewing Court when ruling upon a bid protest will examine whether the public entity's actions were "arbitrary, capricious, entirely lacking in evidentiary support, or inconsistent with proper procedure." *Schram*, 187 Cal.App.4th at 1052. However, deviations from "strict adherence" to competitive bidding standards receive "close judicial scrutiny." *Id.*

To date³, the RFP process has implemented numerous safeguards to ensure fairness, objectivity and to remove bias from the process considering County Fire and the County have the same governing board. The RFP had a mandatory bidders' conference, the RFP allowed bidders to ask questions, the RFP had oral presentations, the RFP⁴ had an objective scoring matrix, and the RFP had independent expert evaluators. *See generally* RFP at Section 2.7. The process followed here with its prestigious panel of five

² County Fire contends that there was no financial analysis completed. Given Mr. Harper's review, this assertion is without merit.

³ The County's early release of AMR's bid, which included its innovative approaches, e.g. nurse navigation and patient elopement project, to its competitor – County Fire - is inconsistent with the usual practice followed in most counties in light of the California Supreme Court opinion in *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, 1067 (public disclosure of such bids on public contracts properly may await conclusion of the agency's negotiation process, occurring before the agency's recommendation is finally approved by the awarding authority). The early release of AMR's bid will present problems later if the County asks the bidders to rebid this RFP.

⁴ The RFP included thirty (30) scored categories adding up to 460 points. This scoring was designed to ensure "apples to apples" scoring amongst bidders and utilizing five independent evaluators provided protections from one scorer having too much influence on scoring.

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independent reviewing experts should stand up to any close judicial scrutiny because the RFP was well-designed and well-executed to date with the benefit of a well-credentialed panel of independent evaluators. Accordingly, the judgment reached by these experts deserves respect and should receive appropriate deference. The independence and depth of experience of the review panel chosen here is the type of affirmative safeguard that the court in *Schram* mandated public entities utilize in bid processes. Having done so, the County can comfortably rely on and defer to this independent expert panel's fairness, thoroughness and judgment in analyzing the bids here.

III. AMR Met the "Minimum Qualifications" of the RFP

County Fire argues that AMR's proposal failed to establish AMR's minimum qualifications because "AMR failed to identify recent noncompliance, and, thus, the panel should have scored this requirement [in Section 2.9] with a 'fail' and discontinued consideration of AMR's proposal." (Protest at p.2). This argument is unsound. AMR is the most qualified provider in the United States, and its bid demonstrated that it more than met the minimum qualifications. The RFP required each bidder to demonstrate that the bidder has a "stable track record" of rendering all types of ambulance services at "levels of clinical quality and response time reliability **substantially equivalent** to the services required under this procurement." (RFP Section 2.9)(emphasis added). For purposes of establishing minimum qualifications, AMR focused on its decades of experience running the system in this County. AMR easily passed this "pass/fail" test. AMR included information about other counties simply to show AMR's breadth and depth in running other EMS systems. For the past five years, AMR has responded to several million 911 calls for service in California. Its relevant experience vastly exceeds the minimum called for by the RFP. County Fire tries to read out of the RFP the "substantially equivalent" language, which a reviewing court would not do. AMR had some minor contractual deviations in another county – Santa Clara County – related to lingering COVID-19 challenges. The October 12, 2022 meeting in Santa Clara that County Fire focuses on in its Protest occurred **after** AMR submitted its bid here on October 3, 2022. These isolated events in a different county did not disqualify AMR as a bidder because AMR demonstrated that it has rendered all types of required ambulance services in a sustained manner in Santa Barbara County – the jurisdiction AMR relied upon to meet the test. In fact, AMR has consistently met response times in

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Santa Barbara even during COVID. AMR easily met all minimum qualifications and “passed” this minimum qualifications standard.⁵

IV. There Is No Kickback in the AMR Bid

County Fire argues in its Protest that AMR’s bid should be rejected because AMR offered a kickback to the County in violation of the “Medicare and Medi-Cal Anti-Kickback Statute.” County Fire’s argument is legally without merit. AMR has not offered a kickback to the County. AMR indicated that if some possible federal funding (“PPIGT”) were to become available at some undefined point during the life of the contract, AMR would explore with the LEMSA a potential method for accessing the funds. AMR did not offer to pay any remuneration to the County in violation of the Anti-Kickback Statute (“AKS”). Instead, AMR – as the County’s anticipated partner in providing ambulance services – indicated its willingness to have a conversation about the funding to see if the EMS system could secure it in the future. AMR expressly noted in its Proposal that any potential funding was subject to all legal requirements and approvals, *i.e.*, “[i]n accordance with applicable federal and state laws and necessary approvals.” See AMR proposal at pp. 95-96. This negates the principal element of intent under the Anti-Kickback Statute. Additionally, if funding were secured, the monies would benefit the EMS system. County Fire does not appear to understand the legal aspects of the federal AKS. The author’s lay opinion should be disregarded because it lacks any legal validity.⁶

V. The Scoring Arguments Lack Merit

County Fire posits two scoring arguments. It asserts that the independent panel’s scoring of sections 4.2 and 4.10 was defective, and “thus the entire AMR Proposal should be considered non-responsive.” As the panel of independent evaluators correctly recognized, AMR thoroughly and sufficiently documented its clinical innovations throughout its proposal and in Attachment 04. This attachment included a sampling of

⁵ This test was not intended to be a high bar to entry otherwise County Fire would not have passed given that it has only three ambulances and has no experience operating a high performance EMS system across an entire county like that contemplated in this RFP. It is a pass/fail test that examines basic qualifications not ideal qualifications.

⁶ It is unclear whether County Fire consulted with an attorney regarding its unsupported AKS argument. There is no lawyer copied on the Protest, and there is no reference to any consultation with any lawyer about the possible application of the AKS to the facts here.

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AMR's clinical and EMS research activities; these included publications in peer-reviewed journals, grant proposals and multi-site research studies. Attachment 04 shows detailed examples as recommended in the RFP. It also agreed to embrace the scorecard system that the LEMSA may implement. There is no need to adjust the scoring of these two sections; AMR met the requirements of the RFP, and the County is not empowered here to apply its own interpretation or discretion to rescore these sections that were scored by the independent expert evaluators. *See generally, Konica Business Machines USA, Inc. v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 456-57 (strict adherence to the RFP is required when the award is a standard competitive contract).

VI. Other Miscellaneous Arguments Lack Merit

County Fire includes a grab bag of various minor arguments that hold no merit. None of them invalidates the RFP, and none of them is supported by substantial evidence of any error that would overrule the judgment of the independent expert evaluators. None of these arguments is going to concern a reviewing court. AMR here addresses the main ones: (1) County Fire objects to AMR's language about its fleet of ambulances. AMR submitted the required evidence that it can stand up the required fleet of ambulances prior to the beginning of the contract. The panel awarded points accordingly. (2) County Fire objects to AMR's use of the phrase "Just Culture." "Just Culture" is the intellectual property of another company, and AMR has a contractual right to use those words and logos in its RFP. (3) County Fire objects to AMR's use of the phrase "Lead CCT-P." County Fire misread the page; the exclusive icon is referring to the overall/entire clinical integration with CALSTAR, not the Lead CCT-P position. (4) Lastly, in preparing its bid on the RFP, AMR attached an incorrectly color-coded map at page 103 (the map contained a graphical typo with San Luis Obispo County colored blue instead of red). The textual description was correct (page 107) -- AMR provided an accurate list in the text of communities it serves with ground ambulance services, air ambulances services. AMR apologizes for this inadvertent map error. It should be noted, however, that AMR does provide mutual aid in San Luis Obispo County. If requested, AMR can also demonstrate why the other objections in County Fire's grab bag of objections should be disregarded.



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VII. Conclusion

Thank you for the opportunity to respond to County Fire’s Protest. To date, it appears that the County and its consultants have endeavored to run an objective and fair RFP process. Respectfully, County Fire’s Protest should be denied, and AMR is prepared to move forward with the County contract. If you have any questions or wish to meet with us, we are available at your convenience.

Very truly yours,

/s/ Pamela L. Johnston

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