

FREDERIC THEODORE LE CLERCQ

March 5, 2024

Via Email & U.S. MailMississippi Division of Medicaid
Office of Procurement
550 High Street, Suite 1000
Jackson, MS 39201
Procurement@medicaid.ms.govMississippi Division of Medicaid
Public Records Officer
550 High Street, Suite 1000
Jackson, MS 39201
RFI@medicaid.ms.govOptum State Government Solutions, Inc.
c/o Ms. Teresa Drexler
11000 Optum Circle
MN101-W013
Eden Prairie, MN 55344
Teresa.drexler@optum.comTim Sensing, Esq.
Watkins & Eager PLLC
P.O. Box 650
Jackson, MS 39205
tsensing@watkinseager.com

Re: Notice of Intent to Seek Protective Order Pursuant to Mississippi Code § 25-61-9

All:

We represent MedeAnalytics Inc. (“MedeAnalytics”). The Mississippi Division of Medicaid (“DOM”) has notified MedeAnalytics that Optum State Government Solutions, Inc. (“Optum”) submitted a request to obtain records maintained by DOM related to RFP #4243 (“RFP”) and that Gainwell Technologies, LLC (“Gainwell”) has amended its February 13, 2024 request, which was the subject of MedeAnalytics February 27, 2024 Notice of Intent to Seek Protective Order. Among other things, Optum and Gainwell (collectively “Requesters”) ask for technical and cost proposals from all bidders/responding parties, documents sufficient to identify the criteria involved in compiling the strengths/weaknesses details for each of the RFP bidders, documents referring or referencing any of the responses to the RFP, and documents used or considered in any way in connection with the selection of the successful RFP bidder. Copies of the Optum request, notice of the Optum request from DOM to MedeAnalytics, and Gainwell’s amended request are attached.

MedeAnalytics submitted a bid in response to the RFP. Therefore, its information is subject to Requesters’ requests. The information that Requesters seek includes MedeAnalytics’ trade secret, confidential, and proprietary information (“Confidential Information”), including without limitation:

- Commercial and financial information
- Trade secrets
- Organization, staffing, key personnel and personnel personal data
- Privacy, data protection, recovery and cyber security information
- Project work plan and methodologies
- Testing and compliance strategies

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- Training approaches
- Maintenance and operations processes
- Cost information
- Customer and subcontractor data
- Acquisition and market information
- Historical performance data
- Scorecard metrics and data analytics

The Confidential Information is exempt from the Mississippi Public Records Act of 1983 and should not be disclosed. See Miss. Code Ann. §§ 25-61-9(1) and 79-23-1. Therefore, MedeAnalytics gives notice to DOM and Requesters that unless Requesters withdraw or modify their requests, MedeAnalytics will seek a protective order from the Chancery Court of the First Judicial District ff Hinds County preventing the disclosure of the Confidential Information.

MedeAnalytics respectfully requests that DOM immediately publish this notice on the Mississippi Procurement Portal.

Sincerely,

/s/ Ted Le Clercq

FREDERIC THEODORE LE CLERCQ

cc: David Schribman, Esq. (via e-mail)

Third Party Notification Memorandum

To: Ryan L Smith, Chief Revenue Officer, MedeAnalytics Inc.
From: David C. Johnson
CC: Teresa Drexler, Optum State Government Solutions, Inc.
ITS Project File Number: 48197
Date: March 4, 2024
Subject: Request for Records Furnished by Third Parties Containing Trade Secrets or Confidential Commercial or Financial Information under the Mississippi Public Records Act

Contact Name: Kim White, ITS Public Records Officer
Contact Phone Number: 601-432-8211
Contact E-Mail Address: Kim.White@its.ms.gov

COPY SENT VIA EMAIL; ORIGINAL SENT VIA UNITED STATES POSTAL SERVICE

ITS has received a request from a third party for copies of information you previously submitted to ITS.

Party requesting your information: Optum State Government Solutions, Inc., 11000 Optum Circle, MN101-W013, Eden Prairie, MN 55344

A copy of the request is enclosed for your review.

In accordance with Miss. Code Ann. § 25-61-9(1), "records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction under this chapter until notice to third parties has been given, but the records shall be released no later than twenty-one (21) days from the date the third parties are given notice by the public body unless the third parties have filed in chancery court a petition seeking a protective order on or before the expiration of the twenty-one-day time period. Any party seeking the protective order shall give notice to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure."

Further, Miss. Code Ann. § 25-61-9(7) also requires that "any party seeking a protective order for a procurement contract awarded by state agencies shall give notice to and provide the reasons for the protective order to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure. The notice and reasons for the protective order **must** be posted on the Mississippi procurement portal for a minimum of seven (7) days **before** filing the petition seeking the protective order in chancery court." (Emphasis added).

In accordance with ITS's Public Records Policy, you must provide ITS with 14 days' notice of the petition for protective order, including the reasons for the petition, prior to filing your petition in

Chancery Court.

Pursuant to Miss. Code Ann. § 25-61-9(1) and the ITS Public Records Policy **you are hereby given notice**, that unless you file a petition seeking a protective order in accordance with Miss. Code Ann. § 25-61-9 and the ITS Public Records Policy, which includes filing the petition for protective order on or before **twenty-one days from the date of delivery of this notice as established by the United States Postal Service's records**; the information specified on the attached request **will be released** to the party requesting the information as required by law. ITS must also receive a copy of your filed petition for a protective order by the 21-day deadline.

You may review the ITS Public Records Policy and associated guidelines adopted in compliance with this act in Section 019-010 of the ITS Procurement Handbook, available at:

<https://www.its.ms.gov/sites/default/files/ProcurementPDFs/ISS%20Procurement%20Manual.pdf>

If you do not wish to file a petition seeking a protective order to prevent the release of the requested information, please sign below and return this memo via email to: open.records@its.ms.gov

Your signing and returning this memo gives ITS permission to release your information prior to the above deadline.

Printed Name

Signature

Date

PLEASE NOTE:

(1) Mississippi Accountability and Transparency Act of 2008 (MATA) and Confidential Information: The following language is included in each ITS contract, within the contract articles titled "Transparency" and "Confidential Information" and generally provides:

TRANSPARENCY – "In accordance with the Mississippi Accountability and Transparency Act of 2008, § 27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and § 31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Agreement and any subsequent amendments and change orders shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.mississippi.gov/>. Prior to ITS posting the Agreement and any subsequent amendments and change orders to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as "confidential" will be redacted by ITS. Notwithstanding the preceding, however, it is understood and agreed that pursuant to § 25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of this Agreement shall not be deemed a trade secret or confidential commercial or financial information and shall thus not be redacted."

CONFIDENTIAL INFORMATION – "With the exception of any attached

exhibits which are labeled as "confidential", the parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to vendor. ITS will provide third party notice to vendor of any requests received by ITS for any such confidential exhibits so as to allow vendor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

The parties understand and agree that pursuant to § 25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of this Agreement shall not be deemed confidential information."

As stated above, with the exception of any contract exhibits labeled as "confidential" at the time of contract execution, contracts executed between the state of Mississippi and a Contractor and any subsequent amendments and change orders shall be posted to the Internet in compliance with MATA and may be reproduced and distributed by the state without notification to vendor, and the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of the contract shall not be deemed a trade secret or confidential commercial or financial information and shall be available for examination, copying or reproduction. ITS will, as stated in the contract provisions set forth above, provide third party notice to vendor of requests received by ITS for any contract exhibits properly labeled as "confidential", so as to allow vendor the opportunity to protect the information by court order as outlined in the ITS Public Records Policy. Contractors are directed to review the above applicable provisions within the ITS contract.

- (2) It is the responsibility of **MedeAnalytics Inc.** to notify any sub-contractors, that may have jointly participated in submitting a response to ITS, that confidential information has been requested.

Any questions related to this notice should be directed to Kim White at 601-432-8211 or via e-mail at open.records@its.ms.gov.

Enclosure

Request Type:

Custom Open Records Request - \$70

RFP Code:

4243

Description:

Copies of Technical & Cost Proposals, including pricing, submitted by each bidder re RFP 4243; & Each Evaluation Committee team members qualitative notes & quantitative scoring each bidder's proposal.

First Name:

Teresa

Company:

Optum State Government Solutions, Inc.

Address:

11000 Optum Circle

Address 2:

MN101-W013

City:

Eden Prairie

State:

MN

Phone:

952-205-5555

Fax:

N/A

Email:

teresa.drexler@optum.com

**Last
Name:**
Drexler

Zip:
55344

Report generated on 2/29/2024 at 3:44 PM

Mailing Address:
P.O. Box 650
Jackson, Mississippi 39205
Telephone: (601) 965-1900
Facsimile: (601) 965-1901

Timothy L. Sensing
Direct Dial: (601) 965-1813
E-mail: tsensing@watkinseager.com

March 4, 2024

Via Electronic Mail

Mississippi Department of Information Technology Services
c/o Kim White, ITS Public Records Officer (kim.white@its.ms.gov)

Re: Public Records Request of Gainwell Technologies, LLC

Dear Public Records Officer:

We represent Gainwell Technologies, LLC and are writing to request that the Department of Information Technologies (“ITS”) provide us with the following materials pursuant to the Mississippi Public Records Act (Miss. Code Ann. §25-61-1 *et seq.*).

1. Copies of all proposals including all attachments, supplements, follow-up bid clarifications, amended offers, best-and-final offers, or additional information provided regarding DOM’s Request for Proposal #4243 (“RFP”) submitted by all Offerors.
2. Copies of all written answers submitted by Offerors in response to written questions from ITS or its evaluators in connection with the RFP.
3. All analyses of any of the responses to the RFP prepared by ITS or received by ITS, including, but not limited to, summaries, evaluations, rankings, scoring sheets and drafts of the same.
4. All emails, text messages, instant messages or any other electronic communication or other correspondence and handwritten notes kept by and/or exchanged between reviewers, subject matter experts and/or consultants regarding the RFP or bidders in consideration of the responses to the RFP, including, but not limited to, notes related to subject matter, scores, rankings and opinions.
5. All emails, text messages, instant messages or any other electronic communication or other correspondence of any form between ITS, the Mississippi Division of Medicaid and any offeror or respondent to the RFP.
6. All written questions received regarding the RFP.
7. All documents regarding the procedures and process utilized in the consideration of the responses to the RFP.

8. All documents provided to reviewers to assist in review/scoring the RFP, including, but not limited to, training materials, educational materials and instructions.
9. Documents sufficient to identify the criteria and person involved in compiling the strengths/weaknesses details for each of the RFP bidders along with any formula utilized in connection to the comments/consideration that would affect the scoring either for raw score or weighted score.
10. All documents referring or referencing any of the responses to the RFP received by ITS.
11. All documents used or considered in any way in connection with the selection of the successful RFP bidder.
12. Documents sufficient to identify all individuals, including, but not limited to, consultants and subject matter experts, involved in the consideration of the responses to the RFP.
13. All correspondence, including e-mail correspondence, between ITS and its consultants and subject matter experts regarding the RFP.
14. All documents reflecting or regarding the utilization of any consultants or subject matter experts regarding the RFP in any respect, including, but not limited to, development of the RFP, evaluation of the applications received and scoring.
15. All documents regarding the process utilized in selecting the consultants and subject matter experts referred to in the proceeding request.
16. All documents regarding any failure by any of the RFP bidders to comply with any of the requirements, technical or otherwise, of the RFP.
17. Any recordings of Cognosante's demonstration or presentation to ITS, as well as all documents reflecting any communications about it.

As you know, Gainwell has limited time in which to decide whether it will file a formal protest to the RFP award. Therefore, please make every effort to produce these documents as quickly as possible. Gainwell would also be happy to accept the documents on a rolling basis as they are available.

Sincerely,

Watkins & Eager PLLC

/s/ Tim Sensing
Tim Sensing