

# Exhibit 2

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of :  
: Index No. \_\_\_\_\_/2024  
FREEDOM CARE LLC, :  
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Petitioner, : **Oral Argument Requested**  
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For Judgment Pursuant to CPLR Article 78 :  
:  
\_\_\_\_\_- against - : **VERIFIED PETITION**  
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THE NEW YORK STATE DEPARTMENT OF :  
HEALTH; JAMES V. MCDONALD, in his official :  
capacity as Commissioner of the New York State :  
Department of Health; and PUBLIC :  
PARTNERSHIPS LLC, :  
:  
Respondents. :  
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Petitioner Freedom Care LLC (“Petitioner”), by its undersigned attorneys, Gibson, Dunn & Crutcher LLP, for its Verified Petition, alleges as follows:

**NATURE OF THE PROCEEDING**

1. This action challenges the New York State Department of Health’s (“DOH”) sham bidding process that resulted in a multibillion-dollar contract award to Public Partnerships LLC (“PPL”—an out-of-state company with no relevant prior experience in New York—to be the Statewide Fiscal Intermediary, a position created pursuant to a recent amendment to New York’s Consumer Directed Personal Assistance Program (“CDPAP”), a home personal care program for the chronically ill and physically disabled. To arrive at its predetermined outcome, DOH disregarded PPL’s abysmal record in other states; rigged the bidding process by imposing extra-statutory requirements that narrowed the field of eligible bidders (while ignoring requirements actually imposed by the CDPAP statute and DOH’s own Request for Proposals (“RFP”)); refused

to provide material information about its scoring metrics or guidelines to potential bidders (giving DOH virtually unfettered discretion to select PPL); and arbitrarily selected PPL’s proposal over that of Freedom Care, in violation of DOH’s statutory mandate to select the proposal offering the “best value” for the State. Specifically, Freedom Care proposed leveraging its considerable experience, established footprint, and longstanding relationships as the largest fiscal intermediary in New York to provide statewide fiscal intermediary services at a cost to the State that was lower than PPL’s bid *on every component*. Yet DOH selected PPL—confirming reports from months before the RFP was issued that PPL was already the predetermined winning bidder. For these reasons, the bid award to PPL (the “Contract Award”) was arbitrary and capricious, an abuse of discretion, affected by errors of law, and in violation of lawful procedure. It should be annulled.

2. Seeking to transform this fundamentally flawed award into a *fait accompli*, DOH and PPL are moving quickly to implement it—to the imminent, irreparable harm of Freedom Care and many others. Just this past Friday, November 22, Freedom Care learned that DOH has authorized managed care plans to reach out to Petitioner’s customers (called “consumers”—the individuals who received care under the program) to instruct them that Petitioner will soon no longer be permitted to provide fiscal intermediary services in the State, to request contact information for their personal assistants (the individuals who provide care), and to direct them to register with PPL as soon as PPL is authorized to accept them.<sup>1</sup> In addition, DOH recently issued a “mandate” that purports to require fiscal intermediaries to provide confidential data regarding every single one of its consumer and their personal assistants to “help assist in expediting [sic] the transition of consumers from their current [fiscal intermediary] to the Statewide [Fiscal Intermediary].”<sup>2</sup> While Freedom Care has thus far not provided the requested information, despite

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<sup>1</sup> Affidavit of Cory Weiner (“Weiner”) ¶ 13, dated Nov. 22, 2024 and filed herewith.

<sup>2</sup> *Id.* ¶14 & Ex. A.

a purported November 15 deadline, it is very concerned about potentially severe enforcement consequences if it continues not to provide this information, particularly once the secondary deadline of November 29, 2024, set out in the directive, passes.<sup>3</sup> These calls to consumers and information demands interfere with and will irreparably harm Petitioner's customer relationships, its consumer and personal assistant goodwill, Petitioner's ability to retain its customers, and its reputation—the lifelines of its business.<sup>4</sup>

3. This is just the beginning. DOH and PPL have announced that they will soon sign a Statewide Fiscal Intermediary contract and will begin directing and transitioning new and existing consumers and personal assistants to PPL starting on **January 6, 2025**.<sup>5</sup> The transition of consumers and personal assistants to PPL will cause further severe, immediate, and irreparable harms to Petitioner: new consumer enrollment will cease, and Petitioner will immediately and irreversibly lose existing consumers and personal assistants.<sup>6</sup> The loss of these relationships and associated goodwill is an irreparable evil unto itself and it will also cause an irrecoverable loss of revenue that is impossible to quantify.<sup>7</sup> If the transition proceeds in short order across the state, as planned, Petitioner will be forced to close down its CDPAP business in New York entirely.<sup>8</sup> In addition, Petitioner's reputation as a leading, reliable, and trusted provider of fiscal intermediary services will be severely damaged by the flawed transition to PPL, making it more difficult to win contracts and retain consumers in other states.<sup>9</sup> Fiscal intermediaries are not the only ones that will be irreparably harmed while the Court reviews the merits. Based on its abysmal performance

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<sup>3</sup> *Id.* ¶ 15.

<sup>4</sup> *Id.* ¶ 25.

<sup>5</sup> Ex. 11 (November 12, 2024 Press Release); Ex. 12 (PPL Presentation). References to numbered exhibits are to the exhibits attached to the Affirmation of Akiva Shapiro, dated Nov. 25, 2024 and filed herewith.

<sup>6</sup> Weiner ¶¶ 26-27.

<sup>7</sup> *Id.* ¶ 28.

<sup>8</sup> *Id.* ¶ 29.

<sup>9</sup> *Id.* ¶ 30.

in other states, PPL's assumption of control over CDPAP is certain to cause interruptions in service, leaving personal assistants without pay and consumers without the care they need.<sup>10</sup>

4. *Petitioner is therefore seeking emergency relief by Order to Show Cause to temporarily restrain and preliminarily enjoin Respondents from implementing the Contract Award during the pendency of this action, including by: (a) compelling Petitioner to turn over its consumer or personal assistant data; (b) contacting or authorizing others to contact consumers or personal assistants enrolled with Petitioner for the purpose of directing them to transition to PPL; (c) entering into the Statewide Fiscal Intermediary contract; (d) enrolling consumers or personal assistants with, or transitioning them to, PPL. To prevent these imminent, irreparable harms, Petitioner needs immediate relief.*

5. Created in 1995, CDPAP is a New York State program that allows chronically ill and physically disabled Medicaid beneficiaries to hire a personal assistant to provide personal care services in their own homes, for example, to help them get dressed or bathe. In contrast to those employed through a licensed home care services agency, personal assistants under CDPAP are permitted to be members of the consumer's family, allowing the consumer to be cared for by someone they already know and trust, which leads to more stable and better care. Since the inception of CDPAP, consumers have chosen a fiscal intermediary to manage the administrative, financial, and compliance responsibilities associated with receiving home care under the program. As the program has grown, the number of fiscal intermediaries has increased to 600 mostly small businesses in New York State providing good jobs to thousands of New Yorkers.

6. On April 20, 2024, in a late-breaking agreement with the Governor during the budget negotiations, the New York Legislature amended CDPAP to move from many fiscal

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<sup>10</sup> *Id.* ¶31.

intermediaries to a single statewide fiscal intermediary to be selected by DOH, ostensibly via a competitive bidding process. The amended CDPAP statute requires this new Statewide Fiscal Intermediary to have previously provided these services on a statewide basis in a state other than New York and to subcontract with existing fiscal intermediaries subject to certain requirements. The amendment exempted the contract and bidding process from New York State Comptroller oversight, paving the way for DOH to reach its predetermined outcome—the selection of PPL.

7. In fact, Assemblymember Ron Kim suggested earlier in April 2024—before the CDPAP amendment was adopted, and well before DOH issued its RFP in June—that it was already foreordained that PPL would be the winner of the RFP, stating: “Who wants to bet \$500 million that PPL will be the winner?”<sup>11</sup> PPL similarly “came up again and again in conversations [a Capitol reporter] had with sources and lawmakers” in April, with “[m]ultiple sources” telling a reporter at the time that “the entity under consideration is Public Partnerships, LLP.”<sup>12</sup> This, despite the fact that PPL is an out-of-state company with no experience providing fiscal intermediary services in New York and has a troubled history providing similar services in other states.

8. For example, PPL’s assumption of Pennsylvania’s program immediately left 20,000 home care workers without pay, in some cases for months. Pennsylvania authorities reported being “inundated with complaints” regarding the “problematic transition to PPL.”<sup>13</sup> An

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<sup>11</sup> Ron Kim (@rontkim), X (Apr. 19, 2024, 2:14 PM), <https://x.com/rontkim/status/1781385816930975943> (“RE: CDPAP and the state-backed monopoly FI system: Who wants to bet \$500 million that PPL will be the winner?”).

<sup>12</sup> Dan Clark, *Budget Talks Could Drag into Next Week, Hochul's Expected Secretary of State Nominee*, Capitol Confidential (Apr. 11, 2024), [https://www.capitolconfidential.com/p/budget-talks-could-drag-into-next?utm\\_source=publication-search](https://www.capitolconfidential.com/p/budget-talks-could-drag-into-next?utm_source=publication-search); Dan Clark, *Stressed N.Y. Cities Should Be Wary of Changing Economy, Comptroller Says*, Capitol Confidential (Oct. 3, 2024), <https://www.capitolconfidential.com/p/nys-stressed-cities-and-a-changing>.

<sup>13</sup> Eugene A. DePasquale, *Performance Audit: Department of Public Welfare's Oversight of Financial Management Services Providers*, Commonwealth of Pa. Dep’t of the Auditor Gen. at iii (Nov. 2013),

audit by the Pennsylvania Department of the Auditor General concluded that “the transition to PPL was problematic, even confusing, and left many waiver participants frustrated and overwhelmed.”<sup>14</sup> Following the botched transition, PPL’s mismanagement of the program continued to pose problems for participants. In 2017, 20,000 home care workers filed a class-action lawsuit against PPL, alleging that the company repeatedly failed to pay them for overtime hours, despite some consistently working 60 or more hours per week. PPL had a similarly disastrous performance in numerous other states, including Oregon, Washington, and New Jersey, and it failed to have a contract renewed in Pennsylvania in 2018, Washington in 2019, Virginia in 2019, and Tennessee in 2023.

9. Yet in drafting the RFP to select the new Statewide Fiscal Intermediary, DOH structured the process with an apparent eye toward PPL, imposing eligibility requirements that eliminated almost all of PPL’s potential competitors—though, importantly, Freedom Care was able to jump through every hoop DOH erected. Specifically, DOH introduced a conflicts provision into the RFP that prohibits the Statewide Fiscal Intermediary from being owned or controlled by a licensed home care services agency in New York State but did not impose this restriction on entities based in other states. In the RFP, DOH also adopted a narrow construction of the statutory phrase operating on a “statewide basis”: those under a contract with the single state agency designated to administer the state’s Medicaid program in a state other than New York. Through both of these mechanisms, DOH gave a leg up to out-of-state operators, chief among them PPL.

10. After the RFP was issued, DOH invited questions from bidders but refused to provide critical information relating to the scoring or evaluation of bids in the Questions and

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<https://www.paauditor.gov/wp-content/uploads/audits-archive/Media/Default/Reports/speDPWPPL111413.pdf> [hereinafter *Pa. Performance Audit*].

<sup>14</sup> *Id.* at 34.

Answers. In response to several questions requesting basic information on the RFP's scoring metrics, including how DOH would score and weigh the dozens of discrete services, practices, and requirements constituting the majority of a bid's score, DOH repeatedly stated that such information would "not be shared with the bidding community."<sup>15</sup> The effect of DOH's evasion was to disadvantage PPL's competitors and provide DOH with the ability to select PPL, the company DOH desired, as the winner regardless of the relative strength or weakness of its bid.

11. DOH was also improperly coordinating with PPL behind the scenes during the restricted period of the bidding process. In a press release announcing PPL as the winning bidder, the State touted as a justification for selecting PPL the "new alliance" of proposed subcontractors that DOH had helped assemble—despite the fact that many of these proposed partners plainly do not satisfy the requirements for subcontractors set out in the CDPAP statute and the RFP, including that they must have been operating as a fiscal intermediary since 2012.<sup>16</sup> After selecting PPL, DOH subsequently purported to waive these and other requirements, fundamentally corrupting the bid process as Freedom Care had structured its bid, and its proposed pricing, with the understanding that it would be required to comply with these costly requirements.

12. Regardless, Freedom Care's proposal was much stronger, including as to price. It offered *lower* administrative costs and *zero* initial transition costs—equating to millions of dollars more than the State will have to spend in initial costs, and over \$1 million more per month on an ongoing basis, on PPL's "winning" bid. Further, unlike PPL, whose disastrous performance as a statewide fiscal intermediary in Pennsylvania left 20,000 care workers without pay for months, Freedom Care has never missed payroll in company history. Had DOH conducted a genuinely

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<sup>15</sup> Ex. 4 (RFP #20524 Questions and Answers).

<sup>16</sup> Ex. 10 (September 30, 2024 Press Release).

competitive bidding process, Freedom Care would have won the award as it is a responsible bidder that offered the best value for the services required—unlike PPL.

13. For all these reasons, Petitioner respectfully requests that this Court annul and vacate DOH's determination to award the Statewide Fiscal Intermediary contract to PPL.

14. Petitioner also respectfully requests, by concurrently filed Order to Show Cause: (1) expedited discovery of limited materials directly relevant to its claims, including PPL's proposal, DOH's scoring matrix and guidelines, scoresheets for PPL and Freedom Care, and communications regarding the predetermined outcome of the bid; and (2) a temporary restraining order and preliminary injunction, to preserve the status quo and prevent irreparable harm to Petitioner and the public while the instant proceeding is pending.

### **THE PARTIES**

#### **I. Petitioner Freedom Care LLC**

15. Petitioner Freedom Care LLC is a limited liability company organized under the laws of the State of New York. Founded in 2015, Freedom Care provides fiscal intermediary services to approximately 30,000 consumers in New York's CDPAP, making it the largest fiscal intermediary in the State. Freedom Care operates and maintains intake locations across New York State, including New York City, and has done so for many years. It directly employs approximately 260 people in the State. Its principal place of business is in New Hyde Park, New York. Freedom Care has since expanded its operations to nine other states and serves as a statewide fiscal intermediary in Nevada and Arizona.

#### **II. Respondents**

16. Respondent New York State Department of Health is an administrative agency of the State of New York that administers CDPAP.

17. Respondent James V. McDonald is Commissioner of the New York State Department of Health. He is named as a respondent here in his official capacity only. References herein to the Department of Health are intended to include Commissioner McDonald in his official capacity.

18. Respondent Public Partnerships LLC is a financial management services company that was the successful bidder for the Contract Award. PPL is incorporated in Delaware, and its principal place of business is in Alpharetta, Georgia.

#### **JURISDICTION AND VENUE**

19. This Court has jurisdiction over this proceeding against Respondents pursuant to CPLR 3001 and 7801, 7802, 7803, 7804, 7806.

20. The Contract Award is a final agency determination. Because the amended CDPAP statute exempts the Contract Award from comptroller review and because DOH has no internal agency appeal process, no administrative remedies are available to Petitioner.

21. This proceeding is timely because it is commenced within four months after issuance of the Contract Award.

22. Venue is appropriate in the County of New York because material events, including many events preparatory to DOH's award of the contract to PPL, occurred in the County of New York, pursuant to CPLR 506 and 7804(b).

#### **FACTUAL BACKGROUND**

##### **I. The Consumer Directed Personal Assistance Program**

23. Pursuant to Section 1905(a)(24) of the federal Social Security Act, New York State provides two options for chronically ill and/or physically disabled Medicaid beneficiaries to receive personal care services in their homes.

24. The first option allows a Medicaid beneficiary to receive personal care services from “individuals who are qualified to provide such services, who are supervised by a registered nurse and who are not members of the recipient’s family, and furnished in the recipient’s home or other location.”<sup>17</sup> In that scenario, a licensed home care services agency “is responsible for hiring, training, supervising and providing the home care worker with salary and benefits.”<sup>18</sup>

25. The second option is CDPAP, codified in the New York Social Services Law, Chapter 55, Article 5, Title 11, Section 365-f and administered by DOH. Under CDPAP, a participating Medicaid beneficiary (referred to in the statute as a “consumer”) directly hires an individual (referred to in the statute and regulations as a “personal assistant”) to provide personal care services under the consumer’s direction. Consumers are responsible for recruiting, hiring, training, and supervising their personal assistants. Consumers and personal assistants are responsible for setting out and agreeing upon the terms of employment.

26. CDPAP personal assistants—in contrast to those employed through the licensed home care agency option—are permitted to be members of the recipient’s family. This was intentional: it was understood that many of the vulnerable individuals who are eligible for home care services would prefer and benefit from being cared for by someone they already know and trust, and that a family member, as opposed to a stranger, would often be the preferred option from the care-recipient’s perspective. And it was understood that these ideal caregivers would generally not be in the financial position to sacrifice other job opportunities in order to provide these critical services—including helping care-recipients with toileting, bathing, and other daily activities—unless the care providers receive sufficient financial remuneration for doing so. CDPAP also

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<sup>17</sup> New York State Medicaid Plan, Attachment 3.1-A, Supplement New York 3(d)(A).

<sup>18</sup> New York State Medicaid Plan, Attachment 3.1-A, Supplement New York 3(d)(i).

allows personal assistants to perform certain health services, like administering medications, that ordinarily can only be performed by a nurse or certified home health aide.<sup>19</sup>

27. Since its inception in 1995, CDPAP has proven to be a resounding success. By 2002, over 75% of county Medicaid offices in New York offered CDPAP services. Since late 2012, CDPAP has been included as an option in all mainstream Managed Care and Managed Long Term Care Medicaid benefit packages. Today, CDPAP is a \$9 billion-per-year program serving 250,000 chronically ill and/or disabled New Yorkers.<sup>20</sup>

## II. Fiscal Intermediaries

28. To handle the various administrative, financial, and compliance responsibilities associated with receiving home care under CDPAP, consumers rely on companies known as fiscal intermediaries.<sup>21</sup> Fiscal intermediaries provide a wide range of statutorily enumerated services, including:

- a. “wage and benefit processing for consumer directed personal assistants”;
- b. “processing all income tax and other required wage withholdings”;
- c. “complying with workers’ compensation, disability and unemployment requirements”;
- d. “maintaining personnel records for each consumer directed personal assistant, including time records and other documentation needed for wages and benefit processing and a copy of the medical documentation required pursuant to regulations established by the commissioner”;

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<sup>19</sup> 18 N.Y.C.R.R. § 505.28(b)(3).

<sup>20</sup> Kate Lisa, *Calls Grow for N.Y. to Bid Medicaid Program Contract with Care*, Spectrum1 News (Sep’t 26, 2024, 8:43 PM), <https://spectrumlocalnews.com/nys/central-ny/politics/2024/09/27/calls-grow-for-ny-to-bid-medicaid-program-contract-with-care>.

<sup>21</sup> Brad Lander, *New York by the Numbers: Monthly Economic and Fiscal Outlook*, N.Y.C. Comptroller No. 84 at 7 (Dec. 12, 2023), <https://comptroller.nyc.gov/wp-content/uploads/documents/Monthly-No.-84-Dec.-2023.pdf>.

- e. "ensuring that the health status of each consumer directed personal assistant is assessed prior to service delivery pursuant to regulations issued by the commissioner";
- f. "maintaining records of service authorizations or reauthorizations";
- g. "monitoring the consumer's or, if applicable, the designated representative's continuing ability to fulfill the consumer's responsibilities under the program and promptly notifying the authorizing entity of any circumstance that may affect the consumer's or, if applicable, the designated representative's ability to fulfill such responsibilities";
- h. "complying with regulations established by the commissioner specifying the responsibilities of fiscal intermediaries providing services under [CDPAP]";
- i. "entering into a department approved memorandum of understanding with the consumer that describes the parties' responsibilities under this program"; and
- j. "other related responsibilities which may include, as determined by the commissioner, assisting consumers to perform the consumers' responsibilities under this section and department regulations in a manner that does not infringe upon the consumer's responsibilities and self-direction."<sup>22</sup>

29. Fiscal intermediaries fill a critical gap that would otherwise exist in the CDPAP program. Outside the CDPAP context, home care aides are employed by the home care agencies that manage the patients' care, meaning that the agencies handle all of the employment-related responsibilities. But under CDPAP, patients hire their caregivers directly—with the fiscal intermediaries stepping in to manage the associated responsibilities that the patients are not in a

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<sup>22</sup> Ex. 1 (CDPAP Amendment), N.Y. Soc. Serv. Law § 365-f(4-a)(ii).

position to handle themselves, such as “setting wage levels and fringe benefits, including health insurance coverage and other benefits, e.g. unemployment and workers compensation.”<sup>23</sup>

30. As of 2024, there are approximately 600 fiscal intermediaries through which patients can obtain fiscal intermediary services to facilitate payment and benefits for their personal assistants.

### III. The CDPAP Amendment

31. In early 2024, Governor Hochul proposed replacing the existing network of fiscal intermediaries with a single Statewide Fiscal Intermediary selected by DOH (the “CDPAP Amendment”). On April 20, 2024, the Governor approved the New York State Budget for State Fiscal Year 2024–25, which included the CDPAP Amendment. DOH, under the leadership of Commissioner McDonald, was centrally involved in the conception and formulation of the CDPAP Amendment.

32. The CDPAP Amendment establishes the position of Statewide Fiscal Intermediary, defined as an “entity that provides fiscal intermediary services and has a contract for providing such services with the department of health and is selected through the procurement process” provided in the statute.<sup>24</sup> The statute directs the commissioner of DOH to award the contract for the Statewide Fiscal Intermediary “to the contractor that meets the criteria for selection and *offers the best value* for providing the services required pursuant to this section and the needs of consumers.”<sup>25</sup>

33. The CDPAP Amendment, however, exempts the Statewide Fiscal Intermediary bid process and contract award from State Comptroller involvement and review and from the detailed

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<sup>23</sup> New York State Medicaid Plan, Attachment 3.1-A, Supplement New York 3(d)(i).

<sup>24</sup> Ex. 1 (CDPAP Amendment), N.Y. Soc. Serv. Law § 365-f(4-a)(i).

<sup>25</sup> *Id.* § 365-f(4-a)(b)(iii) (emphasis added).

procurement process requirements of State Finance Law section 163, which generally apply to all service contracts with a State agency in any amount over \$50,000.<sup>26</sup> This one-time exemption for a multibillion-dollar contract is particularly surprising in light of the fact that the Legislature in December 2022 affirmatively restored the Office of the State Comptroller's review of certain state contracts which had previously been removed, with the Comptroller noting at the time that "independent contract review is an essential and important deterrent to waste, fraud and abuse in the state's procurement process. By reviewing contracts before they are awarded, my office protects taxpayers and state agencies by uncovering significant fiscal and integrity issues and helps to ensure a level playing field for vendors."<sup>27</sup>

34. The CDPAP Amendment requires that the entity selected for the contract be "capable of performing statewide fiscal intermediary services with demonstrated cultural and language competencies specific to the population of consumers and those of the available workforce, has experience serving individuals with disabilities, and as of April [1, 2024] is providing services as a fiscal intermediary on a statewide basis with at least one other state."<sup>28</sup>

35. After being selected, the Statewide Fiscal Intermediary must subcontract to facilitate the delivery of fiscal intermediary services with at least one entity per rate-setting region with a proven record of delivering services to individuals with disabilities and the senior population.<sup>29</sup> Each of these core subcontractors must have been providing fiscal intermediary services since January 1, 2012, and must provide any delegated fiscal intermediary services with cultural and linguistic competency specific to the population of consumers and those of the

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<sup>26</sup> *Id.* § 365-f(4-a)(b); *see also* N.Y. State Fin. Law § 163.

<sup>27</sup> See Comptroller DiNapoli Statement on Governor Signing Legislation to Restore Contract Review Authority (Dec. 31, 2022), available at <https://www.osc.ny.gov/press/releases/2022/12/new-york-state-comptroller-dinapoli-statement-governor-signing-legislation-restore-contract-review>.

<sup>28</sup> Ex. 1 (CDPAP Amendment), N.Y. Soc. Serv. Law § 365-f(4-a)(b)(i)(B).

<sup>29</sup> *Id.* § 365-f(4-a)(a)(ii-b).

available workforce.<sup>30</sup> CDPAP became a Medicaid Managed Care Program in 2012; at that time, there were only a handful of fiscal intermediaries operating in the State of New York..<sup>31</sup>

36. The Statewide Fiscal Intermediary must also subcontract to facilitate the delivery of fiscal intermediary services “to an entity that is a service center for independent living” that has been providing fiscal intermediary services since January 1, 2024, or earlier.<sup>32</sup> Service Centers for Independent Living (“ILCs”) are “community based non-residential program[s] designed to promote independent living for persons with disabilities.”<sup>33</sup>

37. Pursuant to the CDPAP Amendment, the Statewide Fiscal Intermediary must assume responsibility for administering all CDPAP services on April 1, 2025, after which date no entity is permitted to “provide, directly or through contract, fiscal intermediary services” as part of CDPAP “[e]xcept for the statewide fiscal intermediary and its subcontractors.”<sup>34</sup>

#### **IV. The Request for Proposals**

38. On June 17, 2024, DOH issued Request for Proposals #20524 (the “RFP”) to select the Statewide Fiscal Intermediary.<sup>35</sup> The RFP states that “DOH will evaluate each proposal based on the ‘Best Value’ concept,” meaning the proposal “that best ‘optimizes quality, cost, and efficiency among responsive and responsible bidders’ shall be selected for award.”<sup>36</sup> The only evaluation metrics provided in the RFP are the “Technical Proposal and compliance with other

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<sup>30</sup> *Id.*

<sup>31</sup> N.Y. State Dep’t of Health, *Guidelines for the Provision of Personal Care Services in Medicaid Managed Care 4* (May 31, 2013), [https://www.health.ny.gov/health\\_care/medicaid/redesign/docs/final\\_personal\\_care\\_guidelines.pdf](https://www.health.ny.gov/health_care/medicaid/redesign/docs/final_personal_care_guidelines.pdf).

<sup>32</sup> Ex. 1 (CDPAP Amendment), N.Y. Soc. Serv. Law § 365-f(4-a)(a)(ii-b).

<sup>33</sup> N.Y. Educ. Law § 1121(1).

<sup>34</sup> Ex. 1 (CDPAP Amendment), N.Y. Soc. Serv. Law § 365-f(4-a-1)(a).

<sup>35</sup> Ex. 2 (Request for Proposals #20524).

<sup>36</sup> *Id.* at 25 (citing N.Y. State Fin. Law § 163(1)(j)).

RFP requirements,” weighted at 65% of a proposal’s total score, and a Cost Proposal, weighted at 35% of a proposal’s total score.<sup>37</sup>

39. The RFP specifies the minimum qualifications for eligibility as: “An entity capable of performing statewide fiscal intermediary services with demonstrated cultural and language competencies specific to the population of consumers and those of the available workforce with experience serving individuals with disabilities **and** as of April 1st, 2024, is providing services as a fiscal intermediary on a statewide basis in at least one other state.”<sup>38</sup>

40. Regarding the Cost Proposal, the RFP states that the Statewide Fiscal Intermediary will be reimbursed for (1) administrative costs; (2) initial transition costs; and (3) direct care service costs (i.e., wages for caregivers).<sup>39</sup> Payment for administrative costs will be based on the bidder’s proposed Per Member Per Month (PMPM) price, which is the “all-inclusive price to complete all [Fiscal Intermediary] Statewide Administrative functions through the resulting contract,” excluding initial transition costs.<sup>40</sup> Payment for initial transition costs will be based on the bidder’s proposed PMPM price for such services.<sup>41</sup> The RFP therefore requires bidders to provide two prices: one all-inclusive PMPM price to complete all fiscal intermediary statewide administrative functions through the resulting contract, and one all-inclusive PMPM price to complete all initial transition activities.<sup>42</sup> The direct care service costs, meanwhile, will be reimbursed separately and without markup pursuant to contracts with the MMCOs or the FFS Fee Schedule for FFS Members<sup>43</sup>; thus, bidders are not to submit bids for direct care service costs.

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 4 (emphasis in original).

<sup>39</sup> *Id.* at 12; Ex. 3 (RFP #20524 Amendment 3) at 10.

<sup>40</sup> Ex. 2 (Request for Proposals #20524) at 12; Ex. 3 (RFP #20524 Amendment 3) at 3.

<sup>41</sup> Ex. 3 (RFP #20524 Amendment 3) at 4.

<sup>42</sup> *Id.* at 10.

<sup>43</sup> *Id.* at 4.

41. The RFP also introduces a conflicts provision, not present in the CDPAP Amendment, which requires the successful bidder to “[e]nsure the avoidance of actual or perceived conflicts of interest while operating as the Statewide [Fiscal Intermediary].”<sup>44</sup> The RFP states that conflicts of interest “may include but are not limited to: An entity that is owned or controlled by a Licensed Home Care Services Agency (LHCSA) or a Managed Care Organization (MCO) in New York State or that owns or holds the controlling interest in a LHCSA or MCO in New York State.”<sup>45</sup> Notably, the RFP does not exclude entities owned or controlled by a licensed home care agency in a state other than New York from serving as the Statewide Fiscal Intermediary.

42. Although the CDPAP Amendment exempts the RFP from the comptroller oversight and procurement requirements of Sections 112 and 163 of the State Finance Law, it does not exempt the bid process from “quiet period” requirements. Specifically, the RFP establishes a restricted or quiet period, during which any communications with DOH officers, employees, and representatives are prohibited “where a reasonable person would infer that the communication was intended to influence this procurement.”<sup>46</sup> This quiet period began with the earliest written notice of the RFP in mid-June and concluded with the “final contract award and approval by DOH.”<sup>47</sup>

## V. DOH’s Questions and Answers

43. DOH permitted interested parties seeking to clarify terms or sections within the RFP to submit questions by July 2, 2024.<sup>48</sup> Parties submitted a total of 1,362 questions<sup>49</sup>—a volume that speaks to the widespread confusion and uncertainty surrounding the RFP. DOH originally announced that it would provide answers to the questions by July 19 and that the

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<sup>44</sup> Ex. 2 (Request for Proposals #20524) at 8.

<sup>45</sup> *Id.* at 8.

<sup>46</sup> *Id.* at 11.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 3.

<sup>49</sup> Ex. 4 (RFP #20524 Questions and Answers).

deadline for submission of proposals was August 2.<sup>50</sup> After pushing its own answer deadline back multiple times, DOH released answers to the questions on August 7, together with a set of substantive amendments to the RFP.<sup>51</sup> At the same time, it moved the deadline for submission of proposals to August 21. In other words, bidders had only 14 days to review DOH's answers to 1,362 questions and finalize their bids pursuant to the information included in the questions and answers.

44. In the questions submitted to DOH, numerous bidders requested that DOH clarify what it means to provide "services as a fiscal intermediary on a statewide basis in at least one other state," given ambiguity around the meaning of "statewide basis."<sup>52</sup> DOH now interprets the phrase "statewide basis in at least one other state" to mean that the fiscal intermediary "is currently engaged in a contract with the single State agency established or designated to administer or supervise the administration of the State's Medicaid program in a state other than New York, to be a provider of fiscal intermediary services throughout the entire geographic area of the subject state."<sup>53</sup> This definition artificially constrains the pool of eligible bidders beyond the terms set by the statute itself.

45. The questions submitted to DOH also raised the issue of the meaning of "providing services as a fiscal intermediary" in another state, as the concept of a CDPAP "fiscal intermediary" is a creature of New York law, and different states' home health care programs differ in various respects.<sup>54</sup> In response, DOH indicated that it would construe "providing services as a fiscal

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<sup>50</sup> Ex. 2 (Request for Proposals #20524) at 3.

<sup>51</sup> See generally Ex. 2 (Request for Proposals #20524); Ex. 3 (RFP #20524 Amendment 3).

<sup>52</sup> See, e.g., Ex. 4 (RFP #20524 Questions and Answers) at 28 (Question Nos. 355, 359-62); see Ex. 3 (RFP #20524 Amendment 3) at 2.

<sup>53</sup> Ex. 3 (RFP #20524 Amendment 3) at 2.

<sup>54</sup> See Ex. 4 (RFP #20524 Questions and Answers) at 26 (Question No. 332) (asking whether an entity that "provid[es] services similar to those offered by a fiscal intermediary, but is not called a fiscal intermediary in that state" is eligible to bid).

intermediary” in another state to mean “performing services *similar to* those required under Social Services Law 365-f.”<sup>55</sup> This nebulous interpretation resulted in DOH, in selecting the Statewide Fiscal Intermediary, having virtually unfettered authority to determine which kinds of services are sufficiently “similar to” the services outlined Social Services Law 365-f.

46. The RFP provided virtually nothing in the way of objective metrics or guidance for evaluating competing bids—and the Questions and Answers only compounded the problem. As a result, bidders were kept in the dark about DOH’s selection criteria and its methodology for scoring bids. That DOH consciously and intentionally kept this information from bidders is confirmed by its responses to a series of questions asking how bids would be scored or evaluated and who would be involved in the process. Again and again, it answered: “This information will not be shared with the bidding community.”<sup>56</sup> DOH thereby granted itself virtually unfettered discretion to select a winner for any or no reason.

47. In fact, DOH refused to respond to over 200 of the submitted questions—many relating to scoring or evaluation of bids—claiming that the questions were either “not relevant” or that the answers would “not be shared with the bidding community.”<sup>57</sup> For example, DOH refused to provide additional information in response to questions regarding how DOH would “score and weigh the dozens of discrete services, practices, and requirements set out in Sections 4.0 through 4.7 in determining a total Technical Proposal score”<sup>58</sup> and whether the “total Cost Proposal-related score [is] based purely on Proposed PMPM.”<sup>59</sup> Thus, as noted, fiscal intermediaries had little guidance on what (if any) objective criteria DOH would use in weighing and evaluating competing

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<sup>55</sup> *Id.* (emphasis added).

<sup>56</sup> See *id.* at 26 (Question No. 330), 31–33 (Question Nos. 403–24), 64 (Question No. 815).

<sup>57</sup> See, e.g., *id.* at 31–32 (Question Nos. 403–22), 47 (Question Nos. 582–87).

<sup>58</sup> *Id.* at 33 (Question No. 424).

<sup>59</sup> *Id.* at 31 (Question No. 400).).

bids, and DOH had virtually unfettered discretion to select a “winning” bidder from among those who submit proposals—even if that bidder objectively did not offer the best value.

48. Bidders also requested clarity about how the Statewide Fiscal Intermediary would generate revenue.<sup>60</sup> DOH responded that administrative costs “will exclusively be paid through the PMPM established under this contract” and that direct care service costs “will be paid through existing means with the expectation it flows to the worker.”<sup>61</sup>

49. Addressing the statutory requirements for subcontractors, DOH stated that any fiscal intermediary that began providing fiscal intermediary services after January 1, 2012 could be a subcontractor “[o]nly if the [fiscal intermediary] is an independent living center under section 1121 of the New York State Education Law and has been providing [fiscal intermediary] services since January 1, 2024 or earlier.”<sup>62</sup> Thus, DOH’s stated position is that an entity that began providing fiscal intermediary services only subsequent to January 1, 2012 is ineligible to be a subcontractor to the Statewide Fiscal Intermediary unless it is an independent living center.<sup>63</sup>

50. In addition, DOH stated that subcontractors to the bidder need to satisfy the conflicts provision in the RFP, which disqualifies entities owned or controlled by, or that own or hold the controlling interest in, LHCSAs from operating as the Statewide Fiscal Intermediary.<sup>64</sup>

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<sup>60</sup> *Id.* at 57 (Question No. 708).

<sup>61</sup> *Id.* (“Q: Currently, the FI vendors bill for full services, but only pay out a portion of their billing. The difference between the two is income or revenue to the FI. However, this contract calls for a PMPM as payment to the FI. Does the Department intend to stop the practice of allowing the FI to bill for the full services? A: Administration will exclusively be paid through the PMPM established under this contract. Direct care will be paid through existing means with the expectation it flows to the worker[.]”).

<sup>62</sup> *Id.* at 76 (Question No. 954) (emphasis added).

<sup>63</sup> After awarding the contract to PPL, DOH has apparently reversed its position and informed PPL that it will not be enforcing the requirement that fiscal intermediaries must have begun providing CDPAP services before 2012. See Ex. 14 (PPL email).

<sup>64</sup> See Ex. 4 (RFP #20524 Questions and Answers) at 10 (Question No. 146) (“Q: Section 4.5 (d) references a conflict of interest with entities owned by a LHCSA or MCO. Does this conflict of interest apply to subcontractors? A: Yes.”); *id.* (Question No. 147) (“Q: Do subcontractors to the prime bidder also need to meet the conflict provision (where

DOH refused to explain, however, how it would “evaluate the role of subcontractors in fulfilling the [fiscal intermediary] services.”<sup>65</sup>

51. DOH received a total of 136 bids in response to the RFP before its August 21, 2024, deadline.<sup>66</sup>

## VI. Freedom Care

52. Petitioner Freedom Care was formed in 2015, after its founder struggled to find quality home care for his elderly grandmother and saw firsthand how his family’s involvement in her care benefitted her long-term health. Freedom Care was founded on the belief that strangers do not belong in one’s home and that patients deserve and have the right to be cared for by someone they trust and who genuinely cares about them. Over the past decade, Freedom Care has helped countless families care for their loved ones and developed lasting relationships with loyal consumers throughout New York State.<sup>67</sup>

53. On August 20, 2024, Freedom Care submitted a proposal and certified that it met all the requirements stated in the RFP.

54. In its Technical Proposal, Freedom Care explained that it provides fiscal intermediary services to approximately 35,000 participants in all 62 counties of New York, making it the largest fiscal intermediary in the State.<sup>68</sup> It proposed “14 physical offices and employees

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they cannot be both an FI and an LHCSCA)? A: Yes.”). DOH clarified that a LHCSCA is not an eligible bidder for the contract. *Id.* at 11 (Question No. 158).

<sup>65</sup> See *id.* at 34 (Question No. 444) (“Q: How does the Department define and evaluate the role of subcontractors in fulfilling the FI services? Are there specific qualifications subcontractors must meet? A: The specific components of the Department’s evaluation will not be shared with the bidding community. Bidders should submit their Technical Proposal in accordance with Section 6.2 of the RFP.”).

<sup>66</sup> Ex. 5 (Tabulation of Proposals).

<sup>67</sup> See, e.g., FreedomCare, *FreedomCare Hero Award 2023*, YouTube (May 19, 2023), <https://www.youtube.com/watch?v=MIcZgDwn0yw> (telling the story of Alex Rodriguez, whose positive experiences as a FreedomCare customer inspired him to work for the company, where he is now an assistant manager for quality assurance).

<sup>68</sup> Ex. 6 (Freedom Care’s Technical Proposal) at 4, 11.

spread out strategically across the State to address the local and cultural needs of all of New York,” which would allow it to “take over the entire program with no disruption or delay in care.”<sup>69</sup> In addition, Freedom Care noted that more than 60% of its “Intake, Onboarding, and Care Coordination departments are bilingual in English and Spanish to meet the Spanish language needs of 50% of New York City residents and 15% of New York State residents,” and its “staff and collaborating live-language line partners speak more than 19 different languages, including 10 of the top 12 most-spoken languages in New York State according to 2020 American Community Survey data.”<sup>70</sup>

55. The proposal also highlighted that Freedom Care has one of the fastest onboarding processes for personal assistants in New York State, with an average time of 27 days in 2024.<sup>71</sup> Freedom Care provides training to ensure that personal assistants are well-equipped to perform their tasks.<sup>72</sup> In addition, all new Freedom Care employees are required to complete a three-week comprehensive training program provided through live classes and guided courses before starting work.<sup>73</sup>

56. Freedom Care developed a proprietary mobile application, FreedomCare Plus, that leverages geolocation and facial recognition technology to prevent fraud, waste, and abuse, and provides a simple way to track and confirm personal assistant hours for timely pay.<sup>74</sup>

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<sup>69</sup> *Id.* at 11.

<sup>70</sup> *Id.* at 4.

<sup>71</sup> *Id.* at 14.

<sup>72</sup> *Id.* at 18-21, 34-36, 45-47.

<sup>73</sup> *Id.* at 14.

<sup>74</sup> *Id.* at 14, 55.

57. Freedom Care also offers virtual personal assistant communities that enable personal assistants to provide each other with support, encouragement, and tips to prevent burnout.<sup>75</sup>

58. The bid also explained that Freedom Care offers a comprehensive Consumer Peer Support Program to provide peer mentoring and counseling services, including targeted resources and tools to help consumers navigate the Medicaid program.<sup>76</sup> The Peer Support program also provides support to personal assistants.<sup>77</sup> The initiative includes focused workshops for personal assistants, advising them on navigating the Medicaid and Medicare systems, navigating being a family member while also being a caregiver, and how to mentor other personal assistants.<sup>78</sup>

59. Freedom Care has never missed payroll in company history.<sup>79</sup> Freedom Care has a 95% direct deposit utilization rate, which means nearly all personal assistants receive their payment electronically, without any unintended postage delays.<sup>80</sup> This is well above the industry average.<sup>81</sup> In addition, Freedom Care has remained fully compliant in processing all applicable income tax and wage withholdings in its eight years of operation across all markets.<sup>82</sup>

60. Freedom Care's proposed PMPM price for administrative functions was \$126<sup>83</sup> In arriving at this proposed price, Freedom Care factored in the requirements of the RFP and governing regulations, including the anticipated costs of ensuring the health status for all personal assistants who would transition to Freedom Care as the Statewide Fiscal Intermediary, pursuant to

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<sup>75</sup> *Id.* at 20.

<sup>76</sup> *Id.* at 35.

<sup>77</sup> *Id.* at 37.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 16.

<sup>80</sup> *Id.* at 20.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 19.

<sup>83</sup> Ex. 7 (Freedom Care's Cost Proposal) at 3.

the requirements set out in the RFP.<sup>84</sup> However, after awarding the contract to PPL, DOH waived the health assessment requirement for any personal assistant who obtained one within the last 12 months.<sup>85</sup> Had Freedom Care known that the Statewide Fiscal Intermediary would not incur this cost, it would have proposed an even lower PMPM price for administrative functions.

61. Freedom Care's proposed all-inclusive PMPM price to complete all initial transition activities was *zero*—that is, it offered to complete all initial transition activities for free.<sup>86</sup>

62. Because DOH stated that all direct care service costs were expected to “flow[] to the worker,”<sup>87</sup> Freedom Care did not anticipate making any profit from reimbursement for direct care service costs and planned its bid accordingly.

## VII. Public Partnerships

63. DOH also received a proposal from Public Partnerships LLC, which was later announced to be the successful bidder.

64. Upon information and belief, PPL's proposed PMPM administrative price was higher than Freedom Care's price of \$126. Specifically, on information and belief, it was no lower than \$130.

65. Upon information and belief, PPL's all-inclusive PMPM price to complete initial transition activities was \$13—in comparison to Freedom Care's \$0 bid.

66. Petitioner's counsel submitted a FOIL request to DOH on October 10, 2024, to obtain a copy of PPL's proposal, the scoring matrix used by DOH to score bids, any scoresheet for

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<sup>84</sup> Ex. 2 (Request for Proposals #20524) at 22 (indicating that the Statewide Fiscal Intermediary would be responsible for ensuring that “the health status of each [personal assistant] is assessed prior to service delivery pursuant to 10 NYCRR § 766.11(c) and (d) or any successor regulation”).

<sup>85</sup> Ex. 15 (PPL's FAQs).

<sup>86</sup> Ex. 7 (Freedom Care's Cost Proposal) at 3.

<sup>87</sup> Ex. 4 (RFP #20524 Questions and Answers) at 76 (Question No. 954).

PPL's and Freedom Care's bids, and any other guidance DOH used to evaluate and score the bids, among other pertinent information.<sup>88</sup> DOH acknowledged receipt of the request on October 10, 2024, and, on October 17, 2024, stated that a determination would be made in approximately 20 business days.<sup>89</sup> On November 18, 2024, DOH stated that it expects to respond to the request by February 18, 2025.<sup>90</sup> As of the date of this filing, DOH has not provided the requested documents to Petitioner. Petitioner's counsel also submitted a FOIL request to the Executive Chamber on October 10, 2024, to obtain all communications sent to or received from PPL, its lobbyist, 1199SEIU, and PPL's proposed subcontractors regarding the RFP or PPL's selection as the Statewide Fiscal Intermediary.<sup>91</sup> On November 12, 2024, the Executive Chamber stated it needed more time to respond to the request and would provide a status update on or before December 11, 2024.<sup>92</sup> Without this basic information, it is impossible to fully evaluate PPL's bid, compare it to Freedom Care's, or fully evaluate DOH's determination to award the Statewide Fiscal Intermediary contract to PPL. Once Petitioner obtains these documents, it may seek to amend the instant Verified Petition with supplemental allegations and causes of action.

67. The requested information, and additional information regarding, *inter alia*, the predetermined decision to award the Statewide Fiscal Intermediary contract to PPL, PPL's apparent violation of the quiet period in coordinating with DOH prior to the announcement of the award, and other suspect and potentially improper actions taken by PPL to obtain the award, cannot be obtained from other sources—among other reasons because, upon information and belief, PPL has required former employees who worked on its efforts to obtain the Single Fiscal Intermediary

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<sup>88</sup> Ex. 9 (FOIL Correspondence) at 1-2, 5-6.

<sup>89</sup> *Id.* at 5-9.

<sup>90</sup> *Id.* at 14-16.

<sup>91</sup> *Id.* at 3-4.

<sup>92</sup> *Id.* at 10-11.

contract to sign nondisclosure agreements when they leave the company. In this way, PPL has prevented former employees from acting as whistleblowers, despite the fact that it sought to obtain, and has now been awarded, a multibillion-dollar contract from the State of New York.

#### A. PPL's Long, Troubled History Providing Fiscal Services

68. Although the detailed contents of PPL's bid have not yet been disclosed, it is publicly known that PPL has a troubled history of providing fiscal services in other states, which includes major failures in transitioning to a single fiscal intermediary model. PPL's abysmal record should have been—but arbitrarily and capriciously was not—given overriding weight by DOH in evaluating PPL's bid, and should have served as grounds for eliminating PPL from consideration altogether for failure to be a “responsible” bidder,<sup>93</sup> which the State Finance Law defines (“responsibility”) as “the financial ability, legal capacity, *integrity, and past performance* of a business entity and as such terms have been interpreted relative to public procurements.”<sup>94</sup>

69. Over the past decade, PPL has repeatedly demonstrated its inability to facilitate timely and accurate payments, failed to establish open and reliable communication with Medicaid patients and care workers, and circumvented RFP requirements to the detriment of more competitive bidders.

##### 1) Pennsylvania

70. In January 2012, the Pennsylvania Department of Public Welfare (“DPW”) issued a Request for Application to provide financial management services (“FMS”) to approximately 20,000 patients within three separate regions of Pennsylvania—less than 10% of the number of current CDPAP beneficiaries in New York.<sup>95</sup> After receiving proposals from seven different

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<sup>93</sup> Ex. 2 (Request for Proposals #20524) at 25.

<sup>94</sup> N.Y. State Fin. Law §163(c).

<sup>95</sup> Pa. Performance Audit at 13–14.

companies, DPW selected PPL to provide these services statewide—despite the fact that PPL had never provided financial management services to a program as large as Pennsylvania’s and did not have any offices in the state.<sup>96</sup>

71. In January 2013, pursuant to the grant agreement, DPW transferred payroll services from 37 vendors to PPL. PPL’s assumption of the program immediately left 20,000 home care workers without pay, in some cases for months, and patients “afraid they could lose the personal care services that allowed them to remain in their homes.”<sup>97</sup> The Pennsylvania Department of the Auditor General’s Taxpayer Hotline and Pennsylvania General Assembly members’ offices reported being “inundated with complaints . . . regarding the January 2013 problematic transition to PPL.”<sup>98</sup> In March of that year, Pennsylvania Auditor General Eugene DePasquale announced that he was conducting a review of the transition plan. The audit, which was completed in November 2013, found that DPW “ignored many red flags that PPL was not fully prepared to pay all direct care workers by January 1, 2013.”<sup>99</sup>

72. Making matters worse, PPL made it needlessly difficult for home care workers to have their pay restored long after the bungled transition. In contrast to other fiscal management service providers, which had physical offices located through Pennsylvania, PPL offered customer service only through a toll-free telephone line operated from a call center in Arizona. PPL’s customer service number was overwhelmed for months with calls from participants and direct care workers when its phone number was released to the public in October 2012.<sup>100</sup> Some participants

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at iii.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at iv.

<sup>100</sup> *Id.* at 28. The audit found that “PPL’s delays in returning phone calls was another factor that caused direct care workers to miss being paid on January 1, 2013, because participants did not have answers to their questions regarding what forms and information they needed to send to PPL before the transition date.” *Id.* at 40.

stated that they waited weeks, or in some cases more than a month, for a return call from PPL, and the Department of the Auditor General received numerous complaints about the lack of customer service from PPL.<sup>101</sup> PPL's problems persisted long after the transition. In April 2015, a patient with cerebral palsy found someone to work as her aide and submitted paperwork to PPL. PPL did not inform the patient until July that her file had been deleted and that she would have to reapply, a process that could take nine months.<sup>102</sup>

73. The audit further noted that PPL encountered problems with its paper-based timesheets, which direct care workers found difficult to understand.<sup>103</sup> Some participants were so frustrated and dissatisfied that they transferred to the more expensive agency-directed program model just so they could avoid using PPL.<sup>104</sup> The audit concluded that "DPW did not achieve the expected efficiencies because the transition to PPL was problematic, even confusing, and left many waiver participants frustrated and overwhelmed."<sup>105</sup>

74. The audit, moreover, found significant flaws in the procurement process used to select PPL, concluding that it was "unfair to other vendors who might have bid lower and ultimately performed better."<sup>106</sup> The audit noted that PPL was selected to provide services in all three regions of the state, despite the fact that PPL did not have the highest overall score in the central region.<sup>107</sup> The highest-scoring applicant in that region was not chosen because of DPW's "conflict-free" requirement, which required an applicant to show that neither its governing body

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<sup>101</sup> One waiver client wrote that "PPL was clearly NOT capable of handling the workload which was transferred to them all at one in December. They are providing grossly inadequate service." *Id.* at 39.

<sup>102</sup> Paul Muschick, *Woman with Cerebral Palsy Miffed at Lengthy Delay in Getting Home Care*, Morning Call (Mar. 30, 2019, 8:58 AM), <https://www.mcall.com/2015/08/22/woman-with-cerebral-palsy-miffed-at-lengthy-delay-in-getting-home-care>.

<sup>103</sup> Pa. Performance Audit at 40.

<sup>104</sup> *Id.* at 42.

<sup>105</sup> *Id.* at 34.

<sup>106</sup> *Id.* at 13.

<sup>107</sup> *Id.* at 16.

nor individual employees could work for or be affiliated with an existing provider of home and community-based waiver services.<sup>108</sup> The inclusion of this conflict-free requirement effectively led to the exclusion of former FMS providers, because they provided other home and community-based waiver services.<sup>109</sup> By contrast, because PPL was the only applicant that did not provide financial management services in Pennsylvania,<sup>110</sup> complying with the conflict-free requirement was not an issue for PPL.<sup>111</sup>

75. In addition, even though cash advances were not to be provided pursuant to the procurement guidelines, during the grant agreement negotiations PPL ended up requesting, and receiving, a cash advance of \$18 million for payroll processing beginning on January 1, 2013.<sup>112</sup> The audit concluded that allowing this cash advance—which was not included in the RFA—was significant “because the procurement process could have been vastly different . . . if all potential providers knew they did not have to cover such large payroll costs up front.”<sup>113</sup> It further noted that, by allowing the initial cash advance, “DPW opened the door for additional demands from PPL, and PPL took advantage of that open door by requesting ongoing cash advances”—none of which, the audit found, PPL actually needed.<sup>114</sup>

76. Finally, the audit found that, months after it began operating as the sole financial management services provider in Pennsylvania, PPL *still* had not complied with the requirements of its contract. Although the grant agreement required PPL to provide monthly and quarterly reports to DPW, PPL had not done so as of August 2013.<sup>115</sup> DPW officials stated that they had to

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<sup>108</sup> *Id.* at 16, 19–20.

<sup>109</sup> *Id.* at 20.

<sup>110</sup> *Id.* at 14.

<sup>111</sup> *Id.* at 20–21.

<sup>112</sup> *Id.* at 16.

<sup>113</sup> *Id.* at 17.

<sup>114</sup> *Id.* at 18.

<sup>115</sup> *Id.* at 47–48.

put pressure on PPL to develop these reports for September; “otherwise, they believe PPL would have continued to delay compliance with this requirement.”<sup>116</sup> Nor had PPL installed the customer satisfaction survey on its toll-free line by August 2013, which PPL promised to do in its response to the RFA.<sup>117</sup>

77. Shortly after the audit report was published, Pennsylvania House Minority Whip Mike Hanna sent a letter to Attorney General Kathleen Kane, requesting an investigation into the contract procurement process that led to PPL taking over sole management of payroll for home health caregivers.<sup>118</sup> In a letter to state Department of General Services Secretary Sheri Phillips, Rep. Hanna wrote that it “would appear that [PPL’s then-parent company] the Public Consulting Group and Public Partnerships LLC have failed to live up to their promises to the taxpayers in the delivery of services which failure, if found to be true, warrant debarment or suspension.”<sup>119</sup>

78. Following the botched transition, PPL’s mismanagement of the program continued to pose problems for participants. In 2017, 20,000 home care workers filed a class-action lawsuit against PPL in the U.S. District Court for the Eastern District of Pennsylvania, alleging that the company repeatedly failed to pay them for overtime hours, despite the fact that some consistently worked 60 or more hours per week.<sup>120</sup> The lawsuit alleges that for years the company used its regular hourly rate regardless of hours worked, and the company has continued to omit or incorrectly calculate overtime compensation as required by federal and state law for hours worked over 40 per week. The plaintiffs won class certification in 2022, and the lawsuit is still ongoing.

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<sup>116</sup> *Id.* at 48.

<sup>117</sup> *Id.*

<sup>118</sup> Mario Moretto, *Pa. Lawmaker Requests Attorney General Review of Welfare Consultant Hired by Lepage*, Bangor Daily News (Nov. 22, 2013), <https://www.bangordailynews.com/2013/11/22/news/pennsylvania-lawmaker-requests-attorney-general-review-of-welfare-consultant-hired-by-lepage/>.

<sup>119</sup> Pennsylvania House of Representatives: Democratic Caucus, Press Release, 03/03/2014.

<sup>120</sup> *Talarico v. Public Partnerships, LLC*, No. 5:17-cv-2165 (E.D. Pa. filed May 11, 2017).

79. In 2021, Pennsylvania's Community HealthChoices program replaced PPL with Tempus Unlimited, Inc. as its new financial management services provider.<sup>121</sup>

## 2) Oregon

80. PPL also mismanaged the disbursement of emergency COVID-19 rental relief in Oregon. In August 2021, Oregon Housing and Community Services (OHCS), the state's housing finance agency, contracted with PPL to deliver hundreds of millions of dollars in federal emergency rental assistance to renters and landlords impacted by the COVID-19 pandemic.<sup>122</sup> After PPL became involved, Oregon legislators grew concerned by inconsistent results across counties, technical difficulties with the program delivery software, and a lack of communication to landlords and renters.<sup>123</sup> In December 2021, the Chairs of the Housing Committees in both the Oregon Senate and House sent a letter to the Oregon Secretary of State's Office requesting a performance audit of the program, the results of which were published in January 2024.<sup>124</sup>

81. The audit report found that, in a sample of randomly selected payments, PPL had close to a 30% error rate distributing payments.<sup>125</sup>

82. The audit attributed this high error rate to PPL's focus on profits: because OHCS paid PPL more to process applications deemed qualified for rental assistance than applications that were denied, PPL was incentivized to process and approve as many applications as possible, increasing the risk of it paying ineligible applicants—at taxpayers' expense.<sup>126</sup>

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<sup>121</sup> Pa. Health L. Project, *Changes Coming for People Using PPL for Participant-Directed Services* (Dec. 14, 2021), <https://www.phlp.org/en/news/changes-coming-for-people-using-ppl-for-participant-directed-services>.

<sup>122</sup> Or. Hous. & Cnty. Servs., *OHCS Prioritized Providing Emergency Rental Assistance Funds to Oregonians in Crisis but Could Have Done More to Ensure Funds Were Properly Distributed* 7–8 (Jan. 2024), <https://sos.oregon.gov/audits/Documents/2024-01.pdf>.

<sup>123</sup> *Id.* at 1.

<sup>124</sup> *Id.* at 9.

<sup>125</sup> *Id.* at 14.

<sup>126</sup> *Id.* at 13–14.

83. Similar to the issues with PPL's performance in Pennsylvania, the Oregon audit found that renters, landlords, and local community-based organizations had difficulty reaching PPL to resolve problems that arose.<sup>127</sup> One staff member stated that it took three weeks to coordinate a phone call between an elderly renter, PPL, and the community organization.<sup>128</sup> On the call, they learned the reason the application had not moved forward was because the renter had sent a black-and-white photo of his driver's license, instead of a color photo.<sup>129</sup>

84. As reported in the press, problems abounded. For example, a spokesperson for OHCS estimated that between 50 to 75 checks issued by PPL have been returned because they were made out to the wrong person.<sup>130</sup> And a Portland-area landlord said he received a 1099 tax document from PPL, which showed that the agency had paid him \$37,500 for back rent for one of his tenants—despite the fact that neither he nor his tenant had applied for rental assistance. After the landlord received a letter from PPL stating that the agency had deposited the money into his account, he “spent hours on the phone over four days trying to reach someone from the company to figure out why he received the documents,” eventually discovering that someone had imitated his email address to receive the money.<sup>131</sup> One Portland-based property manager said his company received about 10 checks from PPL that he was unable to cash with his bank. He tried to call the

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<sup>127</sup> *Id.* at 21.

<sup>128</sup> *Id.* at 21 n.26.

<sup>129</sup> *Id.*

<sup>130</sup> Jamie Goldberg, *Software Glitches Send Emergency Rent Checks to the Wrong Landlords*, Oregonian: Or. Live (last updated Dec. 10, 2021, 2:05 PM), <https://www.oregonlive.com/business/2021/12/software-glitches-send-emergency-rent-checks-to-the-wrong-landlords.html>.

<sup>131</sup> Jayati Ramakrishnan, *Tenants, Landlords Agree a Rocky Rollout Marred Oregon Rent Assistance Push*, The Oregonian: Or. Live (Mar. 30, 2022, 7:00 AM), <https://www.oregonlive.com/business/2022/03/tenants-landlords-agree-a-rocky-rollout-marred-oregon-rent-assistance-push.html>.

phone number listed on the check and also contacted PPL directly, but did not receive a response.<sup>132</sup>

### 3) Washington

85. Pursuant to a contract with the Washington State Department of Social and Health Services, PPL created Individual Provider One (“IPOne”), a new payroll system for Medicaid-financed caregivers to submit timesheets. Many caregivers had difficulty getting paid on time as a result of the rollout, and it reportedly took approximately two years to have the bugs worked out of the system.<sup>133</sup> One individual who received a late payment lost her healthcare for a month due to issues with the payment system.<sup>134</sup>

86. In April 2016, the labor union Service Employees International Union (SEIU) 775 announced that it was filing a class-action grievance against the state, “demanding that they hold [PPL], the company that built IOPOne, accountable for what they’ve [put] caregivers through.”<sup>135</sup> SEIU 775 explained that the rollout of IOPOne “has been an incredible hardship on so many caregivers” and demanded that they be reimbursed “for the crazy amount of time they spent filing their timesheets because of the botched launch of the new payroll system, and that they be reimbursed for any costs they incurred by having to fax or mail their timesheets because the online system wasn’t working.”<sup>136</sup> It additionally demanded that “any problems with incorrect paychecks be corrected immediately, and that caregivers be reimbursed for any late fees, fines, or other

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<sup>132</sup> Jayati Ramakrishnan & Jamie Goldberg, *State Housing Agency Sent Bad Checks to Oregonians Seeking Emergency Rent Assistance*, The Oregonian: Or. Live (last updated Dec. 6, 2021, 6:29 PM), <https://www.oregonlive.com/business/2021/12/state-housing-agency-sent-bad-checks-to-oregonians-seeking-emergency-rent-assistance.html>.

<sup>133</sup> House Bill Report ESSB 6199, H.R. Reg. Sess. (Wa. 2018), app.leg.wa.gov/documents/billdocs/2017-18/Htm/Bill Reports/House/6199-S.E HBR APH 18.htm.

<sup>134</sup> *Id.*

<sup>135</sup> *IOPOne live blog*, SEIU775 (last updated visited Nov. 18, 2024), <https://seiu775.org/iponeupdate/>.

<sup>136</sup> *Id.*

penalties or problems they faced as a result of late or incorrect paychecks due to IPOne failures.”<sup>137</sup>

As a result of the grievance, Washington entered into a \$125,000 settlement to compensate caregivers for expenses caregivers incurred due to late pay or incorrect pay.<sup>138</sup>

#### 4) New Jersey

87. In 2020, the Alliance for the Betterment of Citizens with Disabilities released a report detailing the “egregious fiscal and operational failures” by PPL in managing two New Jersey Department of Human Services programs for individuals with disabilities.<sup>139</sup> Calling these failures “predictable,” the report noted that participants and their employees were still experiencing problems more than a year and a half after PPL assumed full responsibility for the programs.<sup>140</sup>

88. Among the various problems, the report noted that PPL failed to establish a \$3 million line of credit as required by the RFP, which would have assured a means of cash flow to pay participant’s employees. As a result, personnel were not getting paid. The report observed that workers were quitting, and participants were receiving notices for wage and hour violations because workers are not being paid as legally required. In addition, PPL failed to include a subcontractor utilization plan, which was another a requirement of the RFP and mandated under state law.

#### B. PPL’s Prior Misrepresentations in RFPs

89. In 2023, the law firm Dilworth Paxson LLP, representing the unsuccessful bidder Palco, Inc., sent a letter to the Pennsylvania Department of Human Services to protest the award

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<sup>137</sup> *Id.*

<sup>138</sup> *IPOne: When We Stand Together, We Win!*, SEIU 775 (last visited Nov. 18, 2024), <https://seiu775.org/ipone-when-we-stand-together-we-win/>.

<sup>139</sup> *Egregious Fiscal and Operational Failures By Public Partnerships, LLC Were Predictable*, Alliance for the Betterment of Citizens with Disabilities (Jan. 20, 2020), <https://abcdnj.org/wp-content/uploads/2020/08/ABCD-PPL-Operational-Failures-White-Paper.pdf>.

<sup>140</sup> *Id.* at 2.

of a contract to PPL for the provision of financial management services in self-directed programs.<sup>141</sup> The letter alerted the Department to PPL's potential violations of the request for applications and to "PPL's failure to qualify as a responsible bidder."<sup>142</sup>

90. The letter highlighted PPL's history of making misrepresentations in other RFPs. Specifically, in response to an RFP in Arkansas in 2022, PPL claimed that it served 12,000 Pennsylvanians through the Office of Long Term Living. The letter states that at that time, however, PPL had already lost the majority of that work and serviced fewer than 300 individuals.<sup>143</sup> Similarly, in its response to an RFP in Tennessee in 2023, PPL represented that it "ha[s] not had a contract terminated or not renewed within the past 5 years."<sup>144</sup> The letter states that PPL failed to have a contract renewed in Pennsylvania in 2018, Washington in 2019, Virginia in 2019, and Tennessee in 2023.

91. Finally, the letter stated that PPL had misrepresented the number of individuals it served in other states, sometimes on the order of ten thousand participants.

**C. Despite a History of Issues and Mismanagement, DOH Structures the RFP Process to Funnel the New York Statewide Fiscal Intermediary Award to PPL**

92. In August 2022, PPL was sold.<sup>145</sup> Since then, PPL's financial performance has declined, in no small part due to its repeated performance failures and numerous states' resulting refusal to renew their contracts with PPL. Upon information and belief, PPL's new owners were trying to figure out how to rescue their drowning company after years of problems and reached

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<sup>141</sup> Letter from Thomas S. Biemer, Dilworth Paxson LLP, to Dr. Valerie A. Arkoosh, Pa. Sec. of Hum. Servs. (Sept. 19, 2023), reprinted in Lisa, *supra* note 11.

<sup>142</sup> *Id.* at 1.

<sup>143</sup> *Id.* at 6.

<sup>144</sup> *Id.* at 7 (alteration in original).

<sup>145</sup> Sarah Pringle, *DW Healthcare, Linden Quietly Back Public Partnerships*, Axios (Aug. 8, 2022), <https://web.archive.org/web/20221128151126/https://wwwaxios.com/pro/health-tech-deals/2022/08/08/public-partnerships-dw-healthcare-linden-self-directed-home-care>.

out to senior leaders at 1199SEIU—the healthcare workers’ union for New York and other East Coast states—for advice. 1199SEIU chose to partner with PPL to advocate for New York’s transition to a Statewide Fiscal Intermediary and for PPL to be awarded the multibillion-dollar contract with New York State for fiscal intermediary services.

93. All available evidence suggests that DOH engineered the RFP process to arrive at the selection of PPL, in violation of DOH’s statutory duty to award the contract to the bidder that offers the “best value” for the required services.<sup>146</sup> For example, DOH drafted the RFP to eliminate many of PPL’s potential competitors from eligibility. Specifically, DOH imposed a conflicts provision that prohibited the Statewide Fiscal Intermediary from being owned or controlled by a LHCSCA or a MMCO in New York State, but did not impose this restriction on entities based in other states. DOH then adopted a narrow construction of the phrase “statewide basis” in the RFP, which limits bidders to those under a contract with the single state agency established or designated to administer or supervise the administration of the state’s Medicaid program in a state other than New York. The purpose and effect of these additional requirements were to artificially constrain the pool of eligible bidders and set up PPL—an out-of-state entity with a known track record of failure in other states—as the winning bid.

94. The RFP, moreover, is almost entirely bereft of scoring guidelines, yet DOH refused to provide more detailed information on scoring in response to hundreds of questions submitted by potential bidders. As a result, DOH granted itself virtually unfettered discretion to award the contract to whomever it wanted—specifically, PPL. And the CDPAP Amendment eliminated comptroller review of both the RFP and the award, again structuring the process to

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<sup>146</sup> Ex. 1 (CDPAP Amendment), N.Y. Soc. Servs. Law § 365-f(4-a)(b)(iii).

facilitate the selection of PPL by freeing DOH from oversight designed to ensure an appropriate, fair, and competitive procurement process and award decision.

95. That PPL was foreordained to win the new statewide fiscal intermediary contract was evident early on. *Capitol Confidential* reported in April 2024 that “[m]ultiple sources told [the reporter] the entity under consideration is Public Partnerships, LLP,” even before the CDPAP Amendment was adopted.<sup>147</sup> That same month, Assemblymember Ron Kim suggested that it was already decided that PPL would be the winner.<sup>148</sup> At around the same time, the *New York Post* published a similar report.<sup>149</sup>

### **VIII. Announcement of PPL as the Successful Bidder**

96. On September 30, 2024, Freedom Care was notified that DOH had selected PPL as the winning bidder, as were the other bidders. While some bidders were told by DOH that they did not meet the minimum qualification requirements outlined in the RFP, DOH’s letter to Freedom Care simply stated:

This is to advise you of the outcome of the Department of Health’s RFP #20524: New York State Fiscal Intermediary Services. The successful vendor is Public Partnerships LLC. The Department of Health thanks FreedomCare LLC for its participation in the RFP procurement process and looks forward to your continued interest in any further procurements.<sup>150</sup>

97. The issuance of the award to PPL on September 30 represented a remarkable turnaround time given that the bid submission deadline was August 21, 2024, and that DOH had

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<sup>147</sup> Dan Clark, *Budget Talks Could Drag into Next Week, Hochul's Expected Secretary of State Nominee*, *Capitol Confidential* (Apr. 11, 2024), [https://www.capitolconfidential.com/p/budget-talks-could-drag-into-next?utm\\_source=publication-search](https://www.capitolconfidential.com/p/budget-talks-could-drag-into-next?utm_source=publication-search).

<sup>148</sup> Ron Kim (@rontkim), X (Apr. 19, 2024, 2:14 PM), <https://x.com/rontkim/status/1781385816930975943> (“RE: CDPAP and the state-backed monopoly FI system: Who wants to bet \$500 million that PPL will be the winner?”).

<sup>149</sup> Vaughn Golden, *Critics Furious over Hochul, Heastie Plan to Crack Down on NY's \$8 Billion Home Care Medicaid Program: 'Recipe for Corruption'*, *NY Post* (Apr. 11, 2024, 8:16 PM), <https://nypost.com/2024/04/11/us-news/critics-furious-over-hochul-heastie-plan-to-crack-down-on-nys-8-billion-home-care-medicaid-program/>.

<sup>150</sup> Ex. 9 (Freedom Care Non-Award Letter).

received 136 proposals to review—each containing dozens of pages of detailed information. As Assemblymember Albert Stripe noted, the “[o]verly aggressive RFP timeline” allowed the DOH only “forty-one days to review proposals, score those proposals, make an award, and then enter into a contract with the winning bidder,” raising the concern that the timeframe did not allow the DOH “to do adequate due diligence.”<sup>151</sup> Indeed, the only reasonable explanation is that it did not fully and fairly consider each bid submission, knowing full well from the outset that it would select PPL as the “winner.”

98. Governor Hochul’s press office issued a press release on September 30, 2024, which publicly announced PPL as the winning bidder within hours of the notification to bidders.<sup>152</sup> The press release revealed that PPL had assembled a “diverse alliance of subcontracted partners” throughout New York State, consisting of more than 30 “home care agencies currently active in New York’s CDPAP.”<sup>153</sup> The press release featured quotes from each of PPL’s “four core regional home care partners,” which presumably correspond to the subcontractors for each rate-setting region mandated by the CDPAP Amendment.<sup>154</sup>

99. Yet two of the “core” subcontractors—Chinese-American Planning Council Home Attendant Program, Inc. and Angels in Your Home, LLC—are licensed home care services agencies, which are barred from being subcontractors by the conflicts provision in the RFP.<sup>155</sup> In

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<sup>151</sup> Letter from Albert Stripe, N.Y. Assemblyman, 127<sup>th</sup> Dist., to James McDonald, N.Y. State Dept. of Health, Commissioner (Oct. 1, 2024), reprinted in Kate Lisa, ‘We’re Flexible’: New York Leaders Eye Leeway in Home Care Program Changes, Spectrum News 1 (Oct. 4, 2024, 5:17 AM), <https://spectrumlocalnews.com/nys/central-ny/politics/2024/10/03/we-re-flexible---n-y--leaders-eye-leeway-in-home-care-program-changes>.

<sup>152</sup> Ex. 10 (Sept. 30, 2024 Press Release). The press release lists two phone numbers to contact the Governor’s office, one in Albany and one in New York City. *Id.*

<sup>153</sup> Ex. 10 (September 30, 2024 Press Release) at 3–4.

<sup>154</sup> *Id.*

<sup>155</sup> The press release states that the Chinese-American Planning Council Home Attendant Program will be “the lead regional partner for New York City, Long Island and Westchester County,” and Angels In Your Home will be “the lead regional partner for mid-state areas including Albany, Saratoga, Rochester, Buffalo, Syracuse and surrounding counties.” Ex. 10 (September 30, 2024 Press Release) at 3.

addition, Angels in Your Home was only formed on May 27, 2016, meaning that it had not been providing fiscal intermediary services since January 1, 2012. As a result, Angels in Your Home could not qualify as core subcontractor under the CDPAP Amendment—or, for that matter, as *any* subcontractor (core or non-core), according to DOH's interpretation of the requirement in its Questions and Answers.<sup>156</sup>

100. The press release also featured praise from 1199SEIU President George Gresham for the changes to CDPAP. In response to a reporter's question about whether PPL has a relationship with 1199SEIU a few days later, PPL's chief growth and strategy officer, Maria Perrin, did not address the specific ties between the two organizations.<sup>157</sup>

101. Finally, the press release announced that, as part of the deal, PPL was moving its national headquarters to New York, which will "create more than 1,200 jobs for New Yorkers."<sup>158</sup> The press release did not mention, however, where PPL would be relocating its headquarters from. That omission was convenient. Earlier in this year, PPL had announced that it was relocating its corporate headquarters from Boston to Alpharetta, Georgia.<sup>159</sup> At that time, PPL President and CEO Vince Coppola declared that PPL was looking forward "to growing our business and expanding our services in partnership with Alpharetta's diverse and highly skilled workforce."<sup>160</sup> Anticipating that PPL's new headquarters "will open opportunities in digital health in Alpharetta," a representative from the Georgia Department of Economic Development congratulated PPL, the

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<sup>156</sup> Ex. 4 (RFP #20524 Questions and Answers) at 76 (Question No. 954).

<sup>157</sup> Amanda D'Ambrosio, *The Company that Just Won Health Care's Most Coveted Contract*, Crain's N.Y. Bus. (Oct. 2, 2024, 5:33 AM), <https://www.crainsnewyork.com/health-pulse/company-just-won-new-yorks-most-coveted-health-care-contract>.

<sup>158</sup> Ex. 10 (September 30, 2024 Press Release).

<sup>159</sup> National Self-Directed Care Services Provider PPL Relocates Headquarters to Alpharetta, Georgia, PPL (Feb. 1, 2024), <https://web.archive.org/web/20240422161732/https://pplfirst.com/news/national-self-directed-care-services-provider-ppl-relocates-headquarters-to-alpharetta-georgia/>.

<sup>160</sup> *Id.*

city of Alpharetta, and all their partners on the move.<sup>161</sup> That announcement has since been taken down from PPL’s website.<sup>162</sup>

102. The level of detail and array of quotes the press release contains, including quotes from a PPL representative, each of the “core” subcontractors, and 1199SEIU, strongly suggests that PPL and DOH improperly communicated and coordinated on the press release—and thus, among other things, that PPL was informed it would be selected as the winner—during the restricted period, which lasted from the announcement of the RFP through the selection of a winner. There is simply no way that, in a matter of hours, PPL and DOH informed these diverse parties that PPL had been selected, each company or entity—including PPL itself—prepared a press statement, received corporate authorization for the statement, and the press release was prepared and signed off on by all required parties. The only reasonable inference is that DOH had informed PPL that it was the winning bidder—and PPL or DOH communicated this information to numerous subcontractors and 1199SEIU—well in advance of the public announcement, and that these parties then communicated and coordinated to prepare the press release in the days or weeks before the public announcement, in violation of the quiet period.

103. In a November 12, 2024, press release, the State announced that the “statewide partnership is expected to begin in January and take full effect by April 1;” that DOH had conditionally approved 24 “partners” to work with PPL, which “partners” collectively operate in “all 62 counties throughout the State”; that “additional CDPAP partners” will be announced by the State “in the coming weeks”; and that “State officials and partners” are “beginning a comprehensive transition process.”<sup>163</sup>

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<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> Ex. 11 (November 12, 2024 Press Release). As with the earlier press release, the November 12, 2024, press release lists two phone numbers to contact the Governor’s office, one in Albany and one in New York City. *Id.*

104. In response to a lawsuit filed by various fiscal intermediaries prior to the announcement of the award, Petitioner understands that DOH has represented that it will not sign a contract with PPL until after January 1, 2025. However, Petitioner is not aware of any formal stipulation or judicial order to that effect.

#### **FIRST CAUSE OF ACTION<sup>164</sup>**

##### **PREDETERMINED OUTCOME AND SHAM BID PROCESS (UNLAWFUL, ARBITRARY AND CAPRICIOUS AGENCY ACTION IN VIOLATION OF CPLR ARTICLE 78)**

105. Petitioner repeats and re-alleges the allegations of the preceding paragraphs as if set forth fully herein.

106. The central purposes of New York's competitive bidding statutes are "(1) protection of the public fisc by obtaining the best work at the lowest possible price; and (2) prevention of favoritism, improvidence, fraud and corruption in the awarding of public contracts." *Matter of New York State Chapter, Inc., Associated Gen. Contractors of Am. v. New York State Thruway Auth.*, 88 N.Y.2d 56, 68 (1996). The "power to reject any or all bids may not be exercised arbitrarily or for the purpose of thwarting the public benefit intended to be served by the competitive process." *Id.* at 82 (citation omitted). "Post hoc rationalization . . . cannot substitute for a showing that . . . the agency considered the goals of competitive bidding." *Id.* at 75.

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<sup>164</sup> Petitioner expects that DOH in its Answer to this Petition will produce the complete administrative record, including, at a minimum, PPL's entire bid, the scoring matrix, the scoresheet for PPL and Freedom Care, and any other guidance DOH used to evaluate and score the bids. Petitioner reserves the right to amend its Petition to add additional allegations and claims and/or raise additional arguments once these documents are produced. Petitioner is also seeking expedited discovery from Respondents by Order to Show Cause of limited materials directly relevant to its causes of action. Copies of Petitioner's proposed discovery requests are attached as Exhibit 13 to the attorney affirmation being submitted herewith, and the basis for the discovery requests is set out in more detail in the supporting memorandum of law. To the extent Respondents have any confidentiality concerns about such materials, Petitioner is willing to enter into an appropriate Protective Order.

107. All available evidence suggests that DOH engineered the RFP process to arrive at the selection of PPL, in violation of DOH's statutory duty to award the contract to the bidder that offers the "best value" for the required services.<sup>165</sup>

108. At the outset, DOH drafted the RFP to eliminate many of PPL's potential competitors from eligibility. Specifically, DOH imposed a conflicts provision that prohibited the Statewide Fiscal Intermediary from being owned or controlled by a LHCSA or a MMCO in New York State, but did not impose this restriction on entities based in other states. DOH then adopted a narrow construction of the phrase "statewide basis" in the RFP, which limits bidders to those under a contract with the single state agency established or designated to administer or supervise the administration of the state's Medicaid program in a state other than New York. Although a very limited number of other fiscal intermediaries—including Freedom Care—were able to meet all of these additional requirements, their purpose and effect were to artificially constrain the pool of eligible bidders and set up PPL—an out-of-state entity with a known track record of failure in other states—as the winning bid.

109. After the RFP was issued, DOH refused to provide critical information relating to scoring or evaluation of bids in the Questions and Answers, disadvantaging other Fiscal Intermediaries in their efforts to prepare and submit the strongest possible bid. At the same time, the vagueness of the RFP strategically provided DOH cover to select PPL as the winner regardless of the relative strength or weakness of its bid (which, as set forth below, in fact did not present the best value). For instance, DOH has construed the phrase "providing services as a fiscal intermediary" in another state to mean "performing services similar to those required under Social Services Law 365-f," leaving the agency with unbridled discretion to determine which bundles of

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<sup>165</sup> Ex. 1 (CDPAP Amendment), N.Y. Soc. Servs. Law § 365-f(4-a)(b)(iii).

services are sufficiently “similar to” the list of broadly defined “fiscal intermediary services” required by statute in New York.

110. During the restricted period, DOH improperly coordinated with PPL on its bid. As evidence of DOH’s role in assembling PPL’s “new alliance” of subcontractors, the September 30, 2024 press release includes quotes from several of those partners. The press release also includes a quote from 1199SEIU, underscoring the union’s role in facilitating PPL’s preselection by DOH.

111. The CDPAP Amendment eliminated comptroller review of both the RFP and the award, facilitating the selection of PPL by freeing DOH to structure the RFP and select a winner without external oversight. On information and belief, DOH was involved in these and all aspects of the conception and formulation of the CDPAP Amendment.

112. Finally, DOH improperly—and secretly—exempted PPL’s bid from the RFP’s requirement that subcontractors not be licensed home care services agencies and from the CDPAP Amendment’s requirement that each of these core subcontractors must have been providing fiscal intermediary services since January 1, 2012. As a result, DOH was able to promote PPL’s “diverse alliance” of regional partners as a justification for its decision—notwithstanding the fact that at least two “core members” of that alliance are LHCSAs, one of which was formed after 2012, and thus could not qualify as subcontractors under the RFP and statute. In this case, DOH’s attempted rationalization was not only *post hoc* but also invalid on its face. *See New York State Chapter, Inc., Associated Gen. Contractors of Am.*, 88 N.Y.2d at 75.

113. Because it was the product of a rigged RFP process, the Statewide Fiscal Intermediary contract awarded to PPL was made in violation of lawful procedure, was affected by errors of law, was arbitrary and capricious, and was an abuse of discretion. *See In re Laro Service Systems, Inc. v. N.Y.C. Business Integrity Com’n*, No. 1128842005, 2005 WL 8145613, at \*10

(N.Y. Sup. Ct. N.Y. Cnty. Sept. 30, 2005) (finding that the petitioner had shown “a likelihood of success of its claims that . . . [the agency] conducted a related ‘sham’ bidding process in furtherance of its predetermined outcome to” grant the award to the respondent).

114. DOH’s award of the contract to PPL is therefore unlawful, invalid, and unenforceable, and accordingly must be vacated and annulled.

### **SECOND CAUSE OF ACTION**

#### **AWARD OF CONTRACT TO IRRESPONSIBLE BIDDER (UNLAWFUL, ARBITRARY AND CAPRICIOUS AGENCY ACTION IN VIOLATION OF CPLR ARTICLE 78 AND CHAPTER 55 § 365-f OF NEW YORK SOCIAL SERVICES LAW)**

115. Petitioner repeats and re-alleges the allegations of the preceding paragraphs as if set forth fully herein.

116. Courts have “repeatedly held in a variety of contexts that an agency acts arbitrarily when it fails to comply with its own rules.” *Acme Bus Corp. v. Orange Cnty.*, 28 N.Y.3d 417, 425 (2016).

117. The RFP requires the selected bidder to be “responsible.”<sup>166</sup> The State Finance Law defines “responsibility” in the context of a competitive procurement process as “the financial ability, legal capacity, *integrity, and past performance* of a business entity and as such terms have been interpreted relative to public procurements.”<sup>167</sup> In its Guide to Financial Operations, the Office of the State Comptroller explains that, as part of the assessment of responsibility, an agency

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<sup>166</sup> Ex. 2 (Request for Proposals #20524) at 25.

<sup>167</sup> N.Y. State Fin. Law §163(c) (emphasis added). Although the RFP is exempted from State Finance Law 103, DOH reasonably imposed upon itself the requirement that the selected bidder be “responsible.” It is therefore appropriate to look to State Finance Law 103’s definition of “responsibility” and related guidance in evaluating DOH’s compliance with its own rules. In any event, “responsible” in the context of a bidder for a state contract necessarily and by its plain meaning must include past performance on other government contracts and integrity.

should examine whether a bidder “performed at acceptable levels on other government contracts” and should consider factors such as “reports of less than satisfactory performance.”<sup>168</sup>

118. PPL’s abysmal record in other states, including as the single statewide contractor for healthcare-related fiscal services in other states (as set out in greater detail herein), establishes that PPL is not a “responsible” bidder. Accordingly, DOH should have eliminated PPL from consideration and should not have granted the Statewide Fiscal Intermediary award to PPL. *See Mid-State Indus. Ltd. v. City of Cohoes*, 221 A.D.2d 705, 706 (3d Dep’t 1995) (“Based on petitioner’s past history of dishonest work practices and inadequate performance of prior public works contracts, the Board could rationally conclude that petitioner was not the lowest responsible bidder”); *DeFoe Corp. v. N.Y.C. Dep’t of Transp.*, 87 N.Y.2d 754, 763 (1996) (“An agency has an obligation to consider the responsibility of a bidder, including its skill, judgment and integrity, and may, on the basis of the prior criminal record of some of its principals, rationally reject that bidder.”).

119. It was arbitrary and capricious for DOH to ignore—or fail to review or investigate—PPL’s repeatedly atrocious past performance on other government contracts, voluminous reports of far less than satisfactory performance of those contracts, apparent lack of integrity (including shenanigans around its broken promise to move its headquarters to Georgia), and multiple state’s refusal to renew PPL’s contracts in light of these and related issues.

120. DOH’s award of the Statewide Fiscal Intermediary contract to PPL was accordingly made in violation of lawful procedure, was affected by errors of law, was arbitrary and capricious, and was an abuse of discretion.

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<sup>168</sup> Off. N.Y. State Comptroller, *Vendor Responsibility* (accessed Nov. 18, 2024), <https://www.osc.ny.gov/state-agencies/gfo/chapter-xi/xi16-vendor-responsibility#:~:text=Factors%20Affecting%20a%20Vendor's%20Responsibility,levels%20on%20other%20government%20contracts?>

121. The award is therefore unlawful, invalid, and unenforceable, and accordingly must be vacated and annulled.

### **THIRD CAUSE OF ACTION**

#### **FAILURE TO AWARD CONTRACT TO THE PROPOSAL PRESENTING THE BEST VALUE (UNLAWFUL, ARBITRARY AND CAPRICIOUS AGENCY ACTION IN VIOLATION OF CPLR ARTICLE 78 AND CHAPTER 55 § 365-f OF NEW YORK SOCIAL SERVICES LAW)**

122. Petitioner repeats and re-alleges the allegations of the preceding paragraphs as if set forth fully herein.

123. Where an agency fails to act in compliance with a governing statute, its actions are affected by errors of law, violate lawful procedure, and are arbitrary and capricious and an abuse of discretion. *See New York Skyline, Inc. v. City of New York*, 94 A.D.3d 23, 29 (1st Dep’t 2012) (granting Article 78 petition where “no fair reading of the statute” could lead to NYPD’s determination that amusement park tickets constituted a “good or service”); *Capital City Rescue Mission v. City of Albany*, 235 A.D.2d 815, 816–17 (3d Dep’t 1997) (annulling decision denying request for a building permit where zoning board’s decision was inconsistent with definitions in the applicable city ordinance). Courts have, moreover, “repeatedly held in a variety of contexts that an agency acts arbitrarily when it fails to comply with its own rules.” *Acme Bus Corp.*, 28 N.Y.3d at 425. An agency’s action is also arbitrary and capricious if it is made “without a sound basis in reason and generally without regard to the facts.” *Nestle Waters N. Am., Inc. v. City of New York*, 121 A.D.3d 124, 127 (1st Dep’t 2014) (citing *Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 (1974)).

124. The CDPAP Amendment requires DOH to award the contract to “the contractor that meets the criteria for selection and offers the best value for providing the services required

pursuant to this section and the needs of consumers.”<sup>169</sup> The RFP states that “DOH will evaluate each proposal based on the ‘Best Value’ concept,” which means that “the proposal that best ‘optimizes quality, cost, and efficiency among responsive and responsible bidders’ shall be selected for award.”<sup>170</sup>

125. Even if PPL were a “responsible” bidder, in awarding it the Single Fiscal Intermediary contract over Freedom Care, DOH failed to select the proposal that “offers the best value” for providing fiscal intermediary services, despite the statutory command to do so, and specifically failed to select the proposal that optimized quality, cost and efficiency, despite the fact that the RFP instructs that DOH “shall” do so.

126. For each component of the RFP, Freedom Care’s bid was superior to PPL’s bid.

127. *First*, as to the Technical Proposal, which demonstrates “the qualifications, competence, and capacity of the bidder to perform” the required services, Freedom Care boasts a history of uninterrupted service as a fiscal intermediary, without ever having missed a payroll. Moreover, Freedom Care already has the infrastructure, partnerships with other entities, and relationships with 30,000 existing consumers built over its eight-year history of operations in New York State.

128. By contrast, PPL has no history of providing fiscal intermediary services in New York, and its dismal performance in other states has left tens of thousands of personal assistants without pay for months. And, in other instances, PPL made erroneous payments to individuals who were ineligible to receive the benefits at issue. PPL’s history of mismanagement in its performance of other government contracts reflects poorly on the quality of service that PPL can offer for CDPAP.

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<sup>169</sup> Ex. 1 (CDPAP Amendment), N.Y. Soc. Serv. Law § 365-f(4-a)(b)(iii) (emphasis added).

<sup>170</sup> Ex. 2 (Request for Proposals #20524).at 25 (quoting N.Y. State Fin. Law, art. 11, §163(1)(j)).

129. *Second*, as to the Cost Proposal (*i.e.*, cost and efficiency), Freedom Care offered to complete all fiscal intermediary statewide administrative functions for the price of \$126 Per Member Per Month and to complete all initial transition activities at *no cost to the State*. Upon information and belief, PPL proposed a higher administrative functions cost of no lower than \$130 Per Member Per Month, as well as significant transition costs of \$13 Per Member Per Month. The transition costs alone will cost the State many millions of dollars given that all 280,000 current CDPAP consumers will need to be transitioned to a new fiscal intermediary in a process that will take months to complete. Freedom Care's cost proposal came in at a far lower price than, and was thus unambiguously superior to, PPL's proposal.

130. In sum, DOH had, on the one hand, a proven fiscal intermediary in Freedom Care—the largest in New York State, serving approximately 30,000 consumers across every county—that had been operating in New York since its founding in 2015 without ever missing a single payment. Instead, DOH chose an out-of-state operator with an abysmal track record in other states—including Pennsylvania, where PPL was tasked with taking over for just 36 existing fiscal intermediaries serving just 20,000 patients.

131. Because DOH's award of the contract to PPL violated the statutory command to the select the proposal that “offers the best value,” and failed to comply with the RFP's directive and guidelines for determining “best value,” the award was made without sound basis in reason and in violation of lawful procedure, was affected by errors of law, and was arbitrary and capricious and an abuse of discretion.

132. The award is therefore unlawful, invalid, and unenforceable, and accordingly must be vacated and annulled.

## **FOURTH CAUSE OF ACTION**

### **FAILURE TO ENFORCE THE STATUTE'S AND RFP'S REQUIREMENTS AND RELIANCE ON EXTRANEous CONSIDERATIONS (UNLAWFUL, ARBITRARY AND CAPRICIOUS, AND INVALID AGENCY ACTION IN VIOLATION OF CPLR ARTICLE 78 AND CHAPTER 55 § 365-f OF NEW YORK SOCIAL SERVICES LAW)**

133. Petitioner repeats and re-alleges the allegations of the preceding paragraphs as if set forth fully herein.

134. Where an agency fails to act in compliance with a governing statute, its actions are affected by errors of law, violate lawful procedure, and are arbitrary and capricious and an abuse of discretion. *See New York Skyline, Inc.*, 94 A.D.3d at 29. In addition, “[i]t is well settled that an agency acts arbitrarily and capriciously by failing to comply with its own rules and regulations.” *Church v. Wing*, 229 A.D.2d 1019, 1019 (4th Dep’t 1996); *see also Steck v. Jorling*, 219 A.D.2d 727, 729 (2d Dep’t 1995) (granting Article 78 petition where agency’s determination that petitioners operated a solid waste management facility without a permit was inconsistent with plain language of agency regulations). In awarding the contract to PPL, DOH ignored the requirements in the CDPAP Amendment and its own RFP and Questions and Answers.

135. Among DOH’s stated reasons for awarding the contract to PPL was its proposed “alliance” with more than 30 “regional partners” in New York. Yet at least two of the four “core” proposed partners—Chinese-American Planning Council Home Attendant Program and Angels In Your Home—are licensed home care services agencies, which plainly do not satisfy the RFP’s conflicts provision prohibiting an “entity that is owned or controlled by a Licensed Home Care Services Agency” in New York State from being a subcontractor.

136. Moreover, Angels in Your Home cannot qualify as a subcontractor in any event because it was formed *after* 2012 and is not an independent living center—and certainly cannot qualify as the “core” subcontractor in a rate-setting region per the express terms of the CDPAP

Amendment.<sup>171</sup> In fact, the vast majority of the more than 30 unnamed “regional partners” that PPL is working with—with DOH’s blessing—are barred from being subcontractors by the CDPAP Amendment’s plain terms, because only a few entities have been providing fiscal intermediary services in New York State since January 1, 2012. DOH’s consideration of this proposed alliance as a factor in favor of selecting PPL’s bid was arbitrary and capricious and an error of law. Had Petitioner known that DOH would flout its own requirements for subcontractors,<sup>172</sup> it too would have proposed partnerships with many (otherwise) ineligible fiscal intermediaries as subcontractors in its bid. And given the opportunity for many consumers and personal assistants to remain with their existing fiscal intermediaries as “subcontractors,” eliminating significant transition costs, Petitioner would have proposed an even lower PMPM price for administrative functions.

137. In addition to ignoring these statutory and agency requirements, DOH also improperly relied on criteria extraneous to the RFP in awarding the contract to PPL. The press release’s announcement that PPL will move its headquarters to New York, which would purportedly create 1,200 “new” jobs in the State, indicates that DOH gave weight to this promise in evaluating PPL’s bid—even though company relocation, and resultant job creation, were not criteria listed in the RFP. Allowing DOH “to consider additional criteria not specified in the bid request effectively circumvents the open bidding process.” *AAA Carting & Rubbish Removal, Inc. v. Town of Southeast*, 17 N.Y.3d 136, 144 (2011). DOH’s consideration of PPL’s pledge to relocate its headquarters, which could only apply to an out-of-state operator like PPL, was therefore arbitrary and capricious. See *Acme Bus Corp.*, 28 N.Y.3d at 425 (granting Article 78 petition where the “the municipality evaluated[] a proposal using a standard that deviate[d] from

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<sup>171</sup> See Ex. 4 (RFP #20524 Questions and Answers) at 76 (Question No. 954).

<sup>172</sup> See Ex. 14 (PPL email).

a standard expressly set forth in the RFP” and noting that “[c]hanging the expressly defined rules midway gives rise to speculation of fraud or corruption”); *Browning-Ferris Indus. of N.Y., Inc. v. City of Lackawanna*, 204 A.D.2d 1047, 1047–48 (4th Dep’t 1994) (annulling the awarded contract where the city “awarded the contract . . . based on a material criterion not disclosed in the specifications”).

138. There is also little reason to believe that PPL will follow through on its promise to move its headquarters to New York—at all or in any meaningful way—now that it has been awarded the Statewide Fiscal Intermediary contract, or that it will create any net new jobs in the State (as opposed to simply hiring some of the people who currently work for existing fiscal intermediaries and will lose their jobs upon the transition to a Single Statewide Intermediary). In fact, given its history, there is every reason to believe that PPL will now move on to the next state, where it will again promise to move its headquarters in order to obtain yet another governmental contract on false pretenses.

139. DOH’s award of the Statewide Fiscal Intermediary contract to PPL was accordingly made in violation of lawful procedure, was affected by errors of law, was arbitrary and capricious, and was an abuse of discretion.

140. DOH’s award of the contract to PPL is therefore unlawful, invalid, and unenforceable, and accordingly must be vacated and annulled.

#### **FIFTH CAUSE OF ACTION**

#### **VAGUE AND AMBIGUOUS SCORING PROCESS RESULTING IN STANDARDLESS AWARD (UNLAWFUL, ARBITRARY AND CAPRICIOUS AGENCY ACTION IN VIOLATION OF CPLR ARTICLE 78)**

141. Petitioner repeats and re-alleges the allegations of the preceding paragraphs as if set forth fully herein.

142. As discussed in Paragraph 109 above, DOH's refusal to respond to questions and clarify the criteria during the Questions and Answers process rendered the Contract Award arbitrary and capricious. DOH provided little guidance on key components of the RFP, which made it difficult for the most qualified bidders to submit their strongest proposals. *See Sagamore Auto Body, Inc. v. Nassau Cnty.*, 104 A.D.2d 818, 821 (2d Dep't 1984) (finding "the bid specifications set forth in [the] bid proposal . . . ambiguous" and "insufficiently precise to comply with the public policy underlying the competitive bidding statutes"); *O'Henry's Film Works, Inc. v. Bureau of Ferry & Gen. Aviation Operations*, 111 Misc. 2d 464, 469 (Sup. Ct. N.Y. Cnty. 1981) (granting injunctive relief where the RFP was vague and ambiguous and directing respondents to draft an RFP using "certain and clear" terms).

143. The absence of objective scoring criteria and guidelines also provided DOH with insufficiently bounded, and indeed unfettered, discretion to select a winner based on improper or utterly subjective grounds—which is exactly what it did.

144. DOH's award of the Statewide Fiscal Intermediary contract to PPL was accordingly made in violation of lawful procedure, was affected by errors of law, was arbitrary and capricious, and was an abuse of discretion.

145. DOH's award of the contract to PPL is therefore unlawful, invalid, and unenforceable, and accordingly must be vacated and annulled.

#### **NO PRIOR APPLICATIONS**

146. Petitioner has made no prior application in this or any Court for the relief sought in this Petition.

**PRAYER FOR RELIEF**

**WHEREFORE**, Petitioner prays for entry of an order and a judgment, pursuant to CPLR 3001, 6301, 6311, 6312, 7801, 7803, 7805, and 7806:

1. Granting each of the Verified Petition's causes of action;
2. Declaring that the New York State Department of Health's determination that Public Partnerships LLC is the winning bidder and awardee of the contract for the provision of statewide fiscal intermediary services pursuant to Request for Proposals #20524 was made in violation of lawful procedure, was affected by errors of law, was arbitrary and capricious, and/or was an abuse of discretion;
3. Annulling and vacating the Contract Award in its entirety;
4. Granting Petitioner leave to obtain the requested expedited discovery;
5. Temporarily restraining, and preliminarily and permanently enjoining, Respondents from implementing the determination to award a contract for the provision of statewide fiscal intermediary services to Public Partnerships LLC pursuant to Request for Proposals #20524;
6. Awarding Petitioner the costs, fees, and disbursements incurred in connection with these proceedings; and
7. Granting such other and further relief as to the Court seems just and proper.

Dated: November 22, 2024  
New York, New York

Respectfully submitted,  
GIBSON, DUNN & CRUTCHER LLP

By: /s/ Akiva Shapiro

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**VERIFICATION**

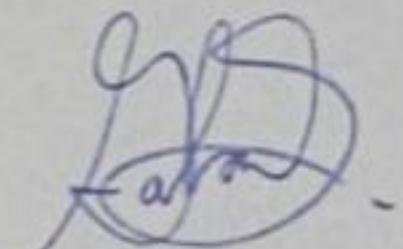
STATE OF NEW YORK )

) ss:

COUNTY OF NEW YORK )

(Queens)

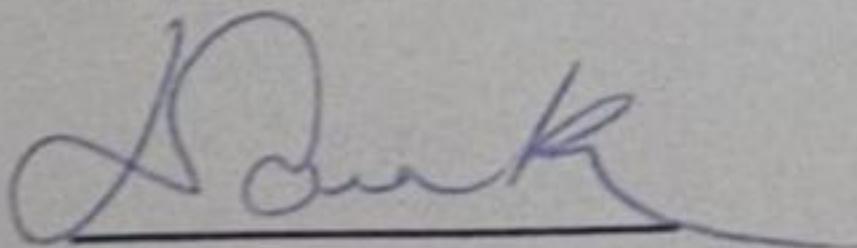
Yoel Gabay, being duly sworn, states that he is Founder and Chief Executive Officer of Freedom Care LLC, the Petitioner in this proceeding, and has read the foregoing Petition and knows the contents thereof; that the same is true to his own knowledge, except to matters therein that are stated upon information and belief or for which citations are provided; and as to those matters, he believes them to be true.



YOEL GABAY

Sworn before me this

22 day of November, 2024



DANA BETESH  
Notary Public, State of New York  
No. 01BE6356955  
Qualified in Queens County  
Commission Expires April 10, 2025

NOTARY PUBLIC